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Performance Management: Getting the Best Out of Your Workforce

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Discussion Topics

- **What is “Performance Management”?**
 - *Note: Performance Management may also be referred to in these slides as “PM”*
 - It’s an art, not a science
 - We are going to bust the myths surrounding PM
- **Performance Management Tools**
 - Both formal and informal
- **Limiting Liability**
 - Enhance employee performance while protecting the school
- **Best Practice Tips**
 - E.g., consistent and clear communication; documentation
- **Common Pitfalls**
 - E.g., Forgetting to check your “blind spots”; being the “too nice” guy

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Ever-Present Considerations

■ Culture is Queen

- What is acceptable performance/behavior in **OUR** school?
- There is no one-size-fits-all performance management approach.

■ Risky Business

- There is no such thing as “zero risk” when managing a workforce.
- PM involves making risk assessments
 - If we discipline Problem Employee, he may sue. If we don't, he may continue to drag down our business practices.

■ Is the Left Hand Talking to the Right Hand?

- Are we using consistent management strategies?
- Are we coordinating efforts?
- Is our documentation coordinated (handbooks, agreements, policies)?

■ Don't forget Our Employee Service Providers

- Who is supervising our tutors and coaches?



What is Performance Management?

- It is the management of our employees for the purpose of ensuring that goals and objectives are being reached efficiently and effectively.
- Inspire and encourage and reward great performance; train and redirect where necessary; and take other measures to address deficiencies.
- PM is used to make us, collectively, the best version of ourselves. PM helps retain talented employees, enhance employee learning and performance, and promotes a constructive and positive culture.
- PM requires regularly digging into the PM Toolbox. PM tools include employee coaching and guidance, discipline, appraisals, communication, improvement plans ...



Myth Busters!

■ Myth: PM = annual reviews + discipline

- Performance Management/PM is a holistic approach that requires continuous engagement.
 - *Employees – They’re Just Like Us!*
 - *Personnel Relationships are like Personal Relationships (especially similar to teaching or raising children)*
 - Monitor
 - Provide feedback (the good, bad, & ugly)
 - Engage in regular communication
 - Find teaching moments
 - Address performance issues

Myth Busters!

■ **Myth: Independent schools don't need PM**

- It's true that independent schools are distinct in character from Fortune 500 companies.
- However, arguably, the people-oriented nature of our business demands attention to Performance Management more than any other.
- Building and maintaining a successful community requires daily supervision and care. *(Again, like raising children!)*

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Myth Busters!

■ Myth: PM is an “annual” thing

- Remember that Personnel Relationships are like Personal Relationships! (Imagine annual feedback in a marriage)
 - Relationship maintenance is ongoing.
 - Regular communication is key.
 - Be responsive
 - Promptly react, communicate, address situations
 - » *A stitch in time saves nine*

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Myth Busters!

- **Myth: PM is for human resources to handle**
 - Go back to our child-rearing analogy:
 - It takes a village!
 - Successful PM requires the training of anyone in a supervisory role, so they know how to communicate effectively, “coach” employees, address performance issues, and document appropriately.
 - We also want consistency in our approaches (mixed messages and methods are harmful in any relationship).

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Myth Busters!

- **Myth: PM is just a way to help your lawyer if you get sued**
 - Nope – that’s just an added benefit 😊.
 - It enables counsel to point to a process whereby the school tried to get the best out of its employees, and it’s helpful when the documentation corroborates that narrative.

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Improving your school's Performance Management systems

■ Step One: Circle the Wagons

- Identify key personnel for discussion
 - What are our goals?
 - General and specific, including particular areas that require attention
 - What are our tools?
 - Which tools do we currently use well?
 - What other tools should we be using?
 - What tools are simply not working, or require retooling?
 - What is our plan for improving our PM systems?

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Improving PM Systems Continued ...

- **Step Two: Education!**
 - *In line with our business ethos!*
- **PM Education Tools:**
 - **Training**
 - Global employee training:
 - workplace conduct; student boundaries
 - Supervisor training
 - Educate them on PM Tools and how to use them
 - How to:
 - » Monitor
 - » Communicate effectively
 - » What to say and NOT to say
 - » How to be discreet but not private
 - » How to focus (put down the phone!)
 - » Coach/counsel
 - » Document
 - » Appraise/review performance

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Education Continued ...

■ **More Education Tools in the PM Toolbox** – **Educational Documentation**

- Offer letters and employment agreements
- Handbooks and other policies addressing expectations, performance, conduct, performance management (including reviews and discipline)
- Documentation should be:
 - Clear
 - Consistent/Coordinated
 - Regularly reviewed/updated

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Performance Management Toolbox

■ Communication (informal and formal)

- When?
 - Real-time, Responsive, Reactive - AND -
 - Scheduled
 - “Check-ins,” appraisals, feedback
 - Set intervals, but don’t make promises you can’t keep
 - » Check written documents for “promises”
- About what?
 - Remember our holistic approach to PM
 - Remember that Personnel Relationships are like Personal Relationships
- Why?
 - Remember the goal – to get the best out of our workforce
 - Avoid surprises (for us and them)
 - Get employees thinking!
 - Especially useful for student boundaries



Communication Tools

- **Informal two-way honest communication**
- **Formal performance reviews**
 - Worthless if not honest
 - Careful of “halo” or “horns” problem
 - Should be documented
- **Coaching & counseling**
 - How can we help improve performance?
 - We know what coaches are – we need to expect that skill of our supervisors
 - Often does not involve formal written documentation, but consider a note to file

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Communication Tools

■ Warning

- Discipline is an element of PM
- No bright line between “management” tools and “discipline” tools
 - A coaching & counseling session may be the same or similar to issuing a verbal warning, but they may also be different
 - PM tools should be tailored to address the needs of the specific situation
- Warnings may be verbal or written
- Where verbal, consider a note to file

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Communication Tools Continued

■ Performance Improvement Plan (“PIP”)

- Can be useful in situations where there are clear and identifiable goals
 - Goals must be realistic
 - Establish a timeline for achieving the goals
 - Can include periodic assessments
 - But always require:
 - *Immediate and sustained improvement*
- PIPs should be documented
 - Documentation should state that the PIP does not guarantee employment or alter the at-will status of employment
- Be clear and concise
 - What does the school need (what constitutes improvement)?
 - What are the consequences for failing to improve?



Other PM Tools

- **Supervision**
- **Suspensions (with or without pay)**
 - Useful when necessary to conduct an investigation into alleged misconduct
 - May be categorized as unpaid time off when “suspension” doesn’t fit the situation
- **Additional training**
 - May be skill or task specific, or behavior/conduct training
 - Invest in “human capital”
- **Modification**
 - Balancing an open mind and flexible approach with the need for consistency and equitable treatment
 - Sometimes we can’t see the forest through the trees

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Common PM Pitfalls

■ **DELAYED RESPONSE OR NO RESPONSE AT ALL**

– Molly Manager is one busy lady. Her task list would give you night-sweats. Molly oversees an entire department—the very department in which Tardy Tina works. Molly keeps meaning to address Tina’s tardiness, but, well, the task list is never ending and the days are too short (even shorter for Tina, due to her tardiness). Molly finally decides she’s going to meet with Tina on Tuesday. That Monday, Molly stops Tina in the hall to tell her about a health problem that could be considered a short term disability under the law.

- Molly’s message now looks bad & received differently.

Common PM Pitfalls

■ THE “FRIEND-FIRST” SUPERVISOR

- Friendly Freddie likes everyone. And the feeling is mutual. All in all, it makes for a pretty nice working environment. Sure, it’s frustrating that Magpie Magda talks through all of his trainings, group meetings, and is often late to events due to chatting with students and colleagues in the hall, but Magda is one of Freddie’s best friends, so he lets it slide. Eventually, Magda’s performance issues affect other people, and the school has had enough. It’s termination time. Magda is replaced with a very qualified, but younger woman, Maddie, so she naturally assumes she was terminated due to her age. If her performance was such an issue, surely her supervisor would have addressed it with her!
- When asked, Freddie explained he was just being friendly, and didn’t want to upset the apple-cart.

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Common PM Pitfalls

■ FAILING TO CHECK YOUR BLINDSPOTS

– Betty is a new business officer, and she's in charge of human resource issues. Betty is READY! Her first month, she identifies an employee that simply must be suspended, and, ultimately, terminated. She's going with her gut on this one. Unfortunately, while Business Officer Betty's gut instincts may be pretty good, her decision is contrary to the process set forth in the employee handbook, and the measures taken are harsher than the measures taken with another employee, just six months prior, for the exact same issue.

- What if the subject employees were different genders? Inconsistencies can create liabilities (and the inference of discrimination).
- Are there other issues that should be part of the risk assessment (e.g., harassment complaint)?

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Common PM Pitfalls

■ NO DOCUMENTATION

- Honest Abe is, well, honest. And he assumes everyone else is too. Abe is also the athletic director and he has implemented routine procedures for all of his staff. Delinquent Delia keeps missing deadlines and strays from procedure. Abe has had several discreet, but firm and clear (and, of course, honest) conversations with Delia about her performance, but Abe doesn't see the need to document. Giving Delia a piece of paper seems harsh. Jotting it down in a file seems unnecessarily time consuming. Eventually, unable to manage her performance effectively and see improvement, Abe must recommend Delia's termination. Turns out, not everyone is as honest as Abe, and Delia finds a lawyer willing to make the case that she was terminated due to her sexual orientation—a factor not once even considered by ole Abe. Abe swears up and down that he met with Delia numerous times (rebutting the claim of discriminatory intent), but there are no emails, no notes, no documentation. Classic he-said-she-said.



Common PM Pitfalls

■ PREJUDGMENT & FAILURE TO ADDRESS ACCUSED

- The rumor mill is hot that Sally was arrested for stealing cosmetics when she was in college. Sally is now in charge of ordering our supplies for our faculty. Mysteriously, supplies begin to go missing under Sally's watch. Naturally, knowing the rumors, we assume that Sticky Fingers Sally is up to her old ways. So, we make the call and terminate her.
 - Performance Management has an element of Law and Order: we do our best to maintain some level of innocent until proven guilty, and we must address accusations with the accused.
 - Investigations are an important element of addressing allegations of misconduct.
 - Investigations themselves could get their own concurrent session, but, in short, review investigation best practice tips before diving in, including the pro tip to address allegations with the accused and document the meeting.

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Common PM Pitfalls Continued ...

- **Failing to realize that PM, including discipline, is usually a PROCESS, not an end result**
- **Failing to periodically review PM processes and documentation**
- **Failing to explore alternatives to termination**
 - *Off With Her Head!*
- **Or, waiting TOO long to explore them**
 - There are no prizes for endurance
- **Making promises that can't be kept**

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Common PM Pitfalls Continued ...

- **Failing to understand the interplay between disability, job-protected leave, and PM**
 - When does the performance issue require an accommodation?
 - When does the need for leave or accommodation create risks in PM?
 - When do we need to continue with stern PM measures anyways?

- **Ignoring issues that are “performance-related”**
 - E.g., Inappropriate social media presence

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Limiting Liability while Managing Performance

- **Signs, Signs, Everywhere a Sign!**
 - Hindsight may be 20/20, but were we paying attention?
 - The Creepy Teacher; The Bully Employee
 - *Employees are often asked to leave due to long-standing or ongoing circumstances ... were we paying attention?*
- **Communication:** Sets expectations and helps avoid surprises
- **Documentation:**
 - *“You don't write because you want to say something, you write because you have something to say.”*
 - Be thoughtful and make it meaningful
 - Don't fake it
 - Papering the file, implementing sham plans
 - When thinking about what to write, and when to coach and counsel an employee, think about what is productive and helpful, meaningful and realistic. The “papered file” is a bonus (and we, your lawyers, may thank you, depending on what you write!)

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