

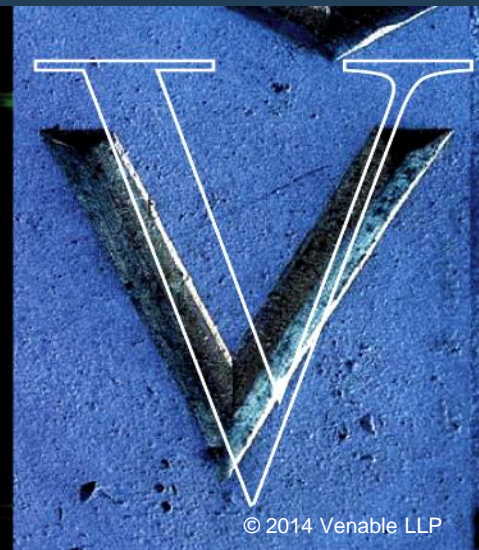
Nonprofit Organizations Committee Legal Quick Hit: Performance Management and Discipline in Nonprofits: Common Pitfalls, Effective Solutions

Moderator: Jeffrey S. Tenenbaum, Esq.

Tuesday, May 13, 2014

Presenter: David R. Warner, Esq.

3:00 p.m. ET



Program overview

- Principles of performance management and discipline
- Avoiding common pitfalls
- Using “PIPs” and other tools to address common problems
- Questions



Principles of performance management

- Purpose
 - To provide a **fair** and **accurate** evaluation of employees against the standards **required for success** in their positions
- **NOT** to “paper the file”
- And **NOT** to game compensation



Principles of effective discipline

- **Documentation** is key
 - **Accurate** records and consistent enforcement of **clearly communicated** standards are best “defense” to potential claims
- **Consistency** in practices
 - Key is treating **similarly situated employees** alike, with supporting documentation
- Follow written **policies**
 - Ensure that progressive discipline is **available** at management discretion but **not** mandatory



Pitfall – Botching (or ignoring) performance management

- Perform appraisals **on time**
- **Train** managers and **hold accountable**
- Avoid **leniency** or giving everyone a “**middle of the road**” rating
- Avoid the “**halo**” (or “**horns**”) effect--rating employees the same in all categories
 - Include **specific comments**, good and bad
 - Base on entire period covered by appraisal
- Provide for cross-checks and avenue for **appeal**



Pitfall – Failing to use PIPs and other tools in the management tool chest

PIPs should provide:

- Objectivity;
 - Clearly identify performance deficiencies
- Opportunity for improvement; and
 - Timeline for improvement (60 days, 90 days, etc.)
 - Clear performance targets
 - “Immediate **and sustained** improvement”
- Support from management
 - “Open door”
 - Scheduled meetings with supervisor
 - Mentoring



Pitfall – Failing to use PIPs and other tools in the management tool chest

- Executive coaching or other third-party review
- **Prospective** pay reduction or hold-backs
- Suspension
 - Ensure referenced in discipline policies
 - Exempt employees can be subject to unpaid suspensions for “serious misconduct” if pursuant to written policy
- Last chance warnings



Common challenges

- The bully – “Why are all of my subordinates so useless?”
- The toxic co-worker – “I hate this place and everyone in it!”
- The borderline or “yo-yo” performer
- Tardiness and attendance issues
- The true believer – “You can’t fire me, I’m [insert protected category here].”



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