

# Employment Practices

## UPDATE

## SIDE 2

### Building An Effective Evaluation Process

## Performance Evaluations: *Will They Help or Hurt in Litigation?*

Costly lawsuits for wrongful termination, discipline, and failure to promote plague Emergency Services Organizations (ESOs). Maintaining an effective and honest performance evaluation program can greatly reduce exposure to these claims.

### Scenario

An ESO member files a wrongful termination claim, alleging the termination was not based on unacceptable performance, but instead on other illegal grounds.



**The Good** — Ideally the ESO can point to ample documentation, including consistent performance evaluations that communicate the legitimate reasons behind the termination.



**The Bad** — Alternatively, the ESO may not conduct performance evaluations for any members. A lack of periodic documentation regarding poor or good performance makes it difficult for the ESO to defend the wrongful termination claim.



**The Ugly** — The ESO's worst case scenario is having conducted evaluations that don't accurately document the former member's performance as failing to meet expectations. This presents the classic example of poor risk management: evaluations that communicate the individual "met expectations" or even "exceeded expectations." A plaintiff's

attorney will certainly ask the question, "If my client was such a poor performer or behaved inappropriately, why do his evaluations say otherwise?"

### Failing to Administer Evaluations

As a consultant for ESOs nationwide, it is this author's opinion that approximately 50% of ESOs fail to carry out performance evaluations for their employees, paid-on-call members, or volunteers. Another estimated 25% of ESOs conduct evaluations, but report a lack of confidence in their accuracy, effectiveness, and ability to assist the organization in the event of litigation. The remaining 25% have instituted a comprehensive evaluation process that members believe is worthwhile.

### Why Aren't We Evaluating?

Success of an ESO very much depends on employees and volunteers trusting each other, thus building loyalty and a family-like work environment. It may be easier for supervisors to avoid conflict by being overly generous with performance evaluation ratings. This may lead to a reluctance to be honest and classify co-workers as "failing to meet expectations".

Another reason cited by some ESOs is a fear of some members or employee groups that evaluations will be used as a weapon to unfairly oust personnel. Trust is a main ingredient for a successful performance program.

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## Performance Evaluations: Will They Help or Hurt in Litigation?

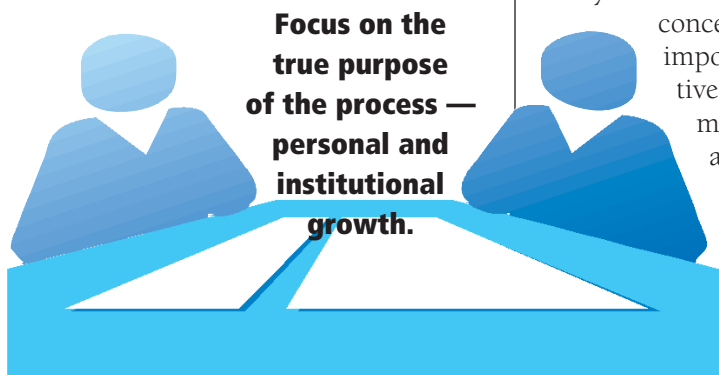
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### Building an Effective Evaluation Process

#### Employee/Member “Buy-in” —

Those utilizing the performance management system must believe it is a valuable process that benefits employees, volunteers, and ESOs alike. Supervisors and non-supervisors should be given the opportunity to provide input regarding the evaluation process, so it will fit the ESO’s needs and job descriptions.

As an example, one ESO established a Performance Management Committee that reviewed evaluation forms and procedures from many similar organizations. They incorporated components that work well for their ESO. Customization allowed personnel to believe more in the fairness and purpose of the system.



#### Quality and Timeliness —

Is there a quality assurance process in place? Are evaluations performed on or around the date as set forth in written procedures? It is recommended that more than one level of supervision review each evaluation.

#### Training —

Too often, supervisors receive little or no formal instruction concerning how to conduct proper and uniform evaluations.

#### Evaluate Supervisors —

Are supervisors evaluated on whether they complete evaluations on time and thoroughly? Performance management is a substantial responsibility and should be quantified in evaluating a supervisor’s performance.

#### Evaluation Meetings —

Counseling and constructive criticism can be sensitive, especially when dealing with a difficult member. Similar to termination meetings, emotions can run high. With only two people in a room, conversation can sometimes turn into a matter of “he said, she said.” ESOs should consider including a third person in evaluation meetings, usually another supervisor or HR Manager.

#### Performance Improvement Plan (PIP) —

Many are unfamiliar with the PIP concept, which is an important facet of an effective performance management process. A PIP is a joint effort between a supervisor and subordinate, to develop a two-way plan of increased communication, guidance and accountability. Supervisors ask

questions like, “How can the ESO and I enable you to better meet the responsibilities of your position?” In turn, a plan is documented holding the member accountable in meeting time-specific goals.

#### Self-Evaluations —

Completing self-evaluations prior to meeting with their supervisors allows members to take “ownership” of the process. ESOs find that some members scrutinize their performance more harshly than their supervisors would. Others may classify themselves as surpassing expectations, whereas the supervisor’s perspective is different. Avenues of communication are opened, thus clarifying expectations and improving performance.

#### Rename the Process —

Some members feel threatened by the evaluations. Rather than “evaluations,” an alternative may be “performance management.” This slight change may help focus on the true purpose of the process — personal and institutional growth.

### Conclusion

Personnel-related litigation often involves answering the question, “What documentation exists that accurately reflects the former employee or member’s job performance and conduct?” Without a thoughtfully developed performance management or evaluation process, an ESO may find itself in court with insufficient answers.

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