

## FIRM NEWS

# PANDEMIC PERFORMANCE REVIEWS POSE CHALLENGES FOR MANAGERS; TIPS FOR EVALUATING PERFORMANCE IN THE COVID-19 ERA

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PROFESSIONALS  
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With employers beginning to prepare for the last quarter of 2020, it is time to start thinking about performance reviews. But how will that actually work, when some employees have not been seen in person since March, and others who have returned to work have periods in which they did no work, or could not be observed? This year is bound to be different, according to Deborah Brouwer, a partner with Detroit-based management side labor and employment law firm Nemeth Law, P.C. Brouwer says the stay-at-home order, which kept employees out of the workplace for three months and is likely to extend well into the fall for some workers, presents a variety of challenges for evaluating performance.

“The performance review process and criteria will need to be adjusted, especially for jobs that don’t have numeric, objective measurements as a performance gauge,” Brouwer said. “Plus, while productivity may have increased for some during the stay-at-home period, many solid employees didn’t adapt well working from home, and that presents a quandary for their evaluating supervisors.”

Brouwer harkens back to the 90’s management philosophy of “Managing by Walking Around” to explain the difficulty of evaluating performance under current conditions.

“In the office, supervisors can observe staff interacting with colleagues, handling phone calls, and generally doing their jobs – or not. With remote work, managers are not walking around the office and providing immediate feedback, support, or guidance. The regular online meetings that employers substituted during the pandemic, while certainly important, do not provide the same insights,” Brouwer said. “These realities make the normal evaluative criteria of a performance review difficult to track and may require a hybrid of old and new criteria to be used, as is sometimes done in normal times when an employee has two different supervisors within a performance review period.”

### **Should the pandemic be considered in the performance evaluation?**

“Employers should recognize that as a result of working from home, job duties and requisite skill sets may have changed. Evaluation criteria should account for those changes, but also consider the extent to which those

expectations and criteria were made clear to the employee in advance,” Brouwer said. “To the extent that expectations changed on a day-to-day basis to account for the unexpected, flexibility and the ability to adapt quickly may become critical performance criteria.”

On the other hand, people have reacted in a variety of ways to working remotely and other changes to our previously normal lives. Understandably, these changes have affected work performance in ways the employee might not even be aware of. “Sympathetic employers may be tempted to recognize that the stress of the situation is affecting the employee more than she may realize, but in doing so, the employer risks impermissibly tying performance to either a real or perceived medical condition,” Brouwer said.

Likewise, there are a host of new protections for employees arising from federal statutes and emergency orders, ranging from childcare leave to quarantine requirements that have to be accounted for. Clearly employees cannot be evaluated more harshly because they took a protected leave of absence. But what about employees who chose not to take a leave of absence, continuing to work remotely while simultaneously providing home schooling to their children and caring for a quarantined spouse? How harshly should they be evaluated for not always being immediately available during set working hours or for being slightly untimely in the completion of work tasks? More importantly, will the employer be equally forgiving to all similarly situated employees, or will some be judged more harshly than others because the supervisor is more or less sympathetic to some circumstances than others?

#### **Your performance was excellent! Here is why you are not getting a raise**

Another dilemma facing employers is how to manage performance evaluations when the employer is not able to offer salary increases. How do you communicate that the employee has contributed greatly during the pandemic while also saying that the company cannot afford to give anyone raises?

“As tempting as it might be to forego reviews altogether when raises are not an option, that approach may be short-sighted, because the employer may end up letting poor performance continue, while good performers may look elsewhere for work, absent some encouragement,” Brouwer said. “Instead, this might be a time to think creatively, perhaps offering benefits that are low or no cost, such as additional PTO, paid holidays, or the possibility of end of the year bonus.”

#### **Tips for conducting performance reviews in the COVID-19 era**

- Be kind, but fair. Given the added stressors of the pandemic, such as fear of contracting COVID-19, caring for a family member who is ill, home-schooling children, financial concerns and overall heightened anxiety, employees will be on high alert for any excess criticism, regardless of its constructive intent.
- Given that the previous six-month period for which performance is being monitored will include both traditional and remote work scenarios, consider an abbreviated review where only key performance issues or measurements are discussed.
- Allow time for employees to vent and express their frustrations or concerns.
- Consider establishing new evaluative criteria that reflects both the remote work scenario and changes to job duties or requisite skill sets.
- Document the performance review and have the employee sign it as well.

Brouwer adds that performance reviews remain important, despite current obstacles.

“There’s always a need for employers to document performance on a regular basis to determine pay and promotions and to note incidents or areas for improvement, but it goes beyond that,” Brouwer said. “Regular

performance reviews solidify employee/manager relationships and help both parties grow. They also contribute to a positive workplace culture where staff development and career opportunity are seen as company values.”

**About Nemeth Law, P.C.**

Nemeth Law specializes in employment litigation, traditional labor law, management consultation, arbitration, mediation, and workplace investigation for private and public sector employers. It is the largest woman-owned law firm in Michigan to exclusively represent management in the prevention, resolution and litigation of labor and employment disputes.