



# Monthly Strategies

HR Strategies, LLC

Volume 17, Issue 2  
February 1, 2020

## ***Time to Update Your AAP's***

Many Affirmative Action Plans (AAPs) expired on December 31, 2019. Under federal law, government contractors and subcontractors with 50 or more employees who have entered into at least one contract of \$50,000 or more with the federal government must prepare and maintain a written affirmative action program, which must be developed within 120 days from the commencement of the contract and **must be updated annually**.

AAP's should be submitted to DOL during the first quarter of 2020.

### **Reminder: Contractors should resurvey their workforces with Voluntary Self-Identification of Disability**

The regulations that updated Section 503 of the Rehabilitation Act of 1973 took effect on March 24, 2014. These updates required federal contractors and subcontractors to invite their employees to voluntarily self-identify their status as an individual with a disability using the Office of Federal Contract Compliance Programs' (OFCCP) official invitation, **Form CC-305** and require that contractors resurvey their workforces at least once every five years, as well as issue at least one reminder between invitations.

## ***Post OSHA 300A by February 1<sup>st</sup>***

Covered employers must complete and post their 2019 annual summary of work-related injuries and illnesses by February 1, 2020, and keep it posted in a common area until April 30, 2020. All employers required to keep Form 300, the Injury and Illness Log, must utilize the annual summary Form 300A to comply with posting requirements even if there have been no recordable injuries or illnesses, as the Occupational Safety and Health Administration (OSHA) will continue to focus on record-keeping violations in 2020. This year's summary must include the total number of job-related injuries and illnesses that occurred in 2019.

The summary Form 300A reports a business's total year-end number of fatalities, missed workdays due to injury or illness on the job, job transfers or restrictions, and injuries and illnesses as recorded on Form 300. It also

includes the number of employees and the hours they worked for the year.

Please visit [www.hrstrategies.org](http://www.hrstrategies.org) to download the instructions and applicable forms.

## ***Managing the Difficult Employee***

Managing employee performance is the most important part of a manager's job. A manager, by definition, does not get paid for what they do, but for what the employees who work for them do. Recognizing this, good managers do everything in their power to help employees succeed. Yet, even for successful managers, some employees are simply more difficult. This article looks at some of the most common types of difficult employee behaviors and offers constructive suggestions for increasing the effectiveness of performance management. The terms "performance" and "behavior(s)" are used interchangeably; the analysis applies regardless of whether unsatisfactory performance (i.e., tardiness, a lack of dependability, a lack of proficiency in work performance) or direct acts of misconduct (i.e., offensive/inappropriate workplace conduct, dishonesty, theft, sleeping on the job) are being discussed.

### **Identify the Problem Behavior**

Successful managers recognize that there are far fewer truly "difficult employees" than there are problematic behaviors. A manager's job is not actually managing people but managing people's behavior within the restricted parameters of the business environment. In essence, an employer is "renting," through compensation and benefits, certain behaviors that may or may not conform to an employee's behavior during personal time. While managers may not dictate employee's beliefs, values, or morals, they may indeed force employees to conform their behaviors to workplace norms while at work, or employees may suffer discipline or discharge.

When employee behaviors conform to employer rules, there is little occasion for conflict. Problems arise quickly, however, when an employee does not do what the employer expects. The first step to successfully addressing a performance issue is to identify the unsatisfactory behavior in factual terms, being careful not to attribute attitudes, beliefs, or motives to the

employee that may be inaccurate. For example, “I have noticed that you were late three times this week” is a factual statement. “I’m concerned that you are not taking your responsibility to report on time seriously” is a projection of assumptions and a blame-placing statement guaranteed to make an employee defensive. In defining unsatisfactory behaviors, stick to what you see and hear. Ask yourself:

- What is it about this person’s behavior that has an adverse impact on the work being done?
- What are the things I actually see and hear that indicate there is a problem?
- What are the things I would have this person do (or stop doing) that would convince me the employee has solved the problem?

The more specifically a performance problem is defined, the easier it will be to open a dialogue. For example, calling in an employee and reporting generally that coworkers find them difficult to work with will elicit demands for more specific information, defensive explanations, excuses, and counter-blaming. If the same conversation is framed with specifics—i.e., “John, on three occasions I have observed you speaking to colleagues in a manner that both your fellow employees and I found offensive. The comments I heard included the following: \_\_\_\_\_.”—then the employee’s options for response are more limited. While the employee may attempt to deny or explain the behavior, the manager has fairly confronted the employee with the fact that: 1) they have personally observed the problem behavior; and 2) they found it offensive (which is a problem whether or not the employee intended it to be offensive). The coaching session can continue from this foundation.

### Analyze the Problem Behavior

Once the unsatisfactory behavior has been identified, the manager must analyze it using whatever information they have available. Generally, the manager should ask:

- Is addressing the behavior worth the time?
- If it is not important, addressing the behavior may do more harm than good.
- Does the employee know their performance is not what it should be?
- If not, let the employee know in an honest and factual manner.
- Does the employee know what is supposed to be done and when?

If not, tell the employee! Employers frequently mistakenly assume that expectations are clear when they are not.

- Are there obstacles beyond the employee’s control?

If yes, either remove them or acknowledge that the requested performance cannot be realized with the tools provided.

- Does the employee know how to perform the desired behavior correctly?

If not, provide training or allow practice. Too often, employees are expected to hit the ground running and are penalized for performance that could have been easily corrected with a small investment of a manager’s time.

- Does a negative consequence follow performance?

If so, change the consequence. For example, exceeding performance requirements may be perceived as detrimental if it results in additional disfavored assignments or ostracism from colleagues.

- Does a positive consequence follow non-performance?

If so, change the consequence. If employees who fail to complete less likeable portions of their responsibilities succeed in having those responsibilities reassigned, the manager is reinforcing non-performance.

- Is the employee capable of performing as expected?

This is the ultimate question. When a manager becomes convinced through progressive performance management that the answer to this question is no, it is time to reassign the employee to another function, or help the employee successfully complete the termination process.

If the manager does not have enough information to answer these questions, they may form the basis for an initial conversation with the employee.

In addition to analyzing the behavior itself, the manager should analyze the impact of the behavior on the business before discussing it with the employee. Most employees want to perform well and will agree readily to change behaviors that are identified as problematic. Where an employee is resistant, being able to demonstrate the impact of the employee’s performance, or lack thereof, on the business is helpful. Putting an employee’s performance in relative terms is also a good tool to promote recognition of an issue, i.e., “Susan, while I understand that you may feel that being late is beyond your control, your tardiness record places you in the bottom 10% of the workforce in terms of reliability.”

Going through this analytical process prior to meeting with the employee allows a manager to focus their thoughts and guide the conversation more efficiently.

### **Discuss the Behavior with the Employee**

The discussion of performance/behavior with an employee is the most critical component of performance management. This direct interaction is what determines a manager's success. To be successful, the discussion must either build on superior performance or correct inadequate performance. It must not, however, destroy the underlying relationship. Performance can be achieved through intimidation and scare tactics, but the long-term results are anger, apathy, and frequently, absence. Managers who use power-based tactics are disliked, avoided, and rarely perceived as successful over time. Positive coaching, on the other hand, can *produce commitment, heightened understanding, and improved performance.*

The purpose of meeting with an employee whose performance or behavior is problematic is to get an agreement that a problem exists. A manager should ensure that the meeting is held in a private place, with no interruptions and sufficient time to complete the discussion. The manager should begin by stating the purpose of the meeting, i.e., "Jean, I asked to meet with you specifically to talk about your performance relative to (an issue/an incident that occurred last week/a report that was filed by another employee)." Employees should be reassured that the intent is to gain an understanding of their perspective of the issue, not to establish guilt or innocence. The manager may want to state up front that while there are a number of questions, they will also give the employee a chance to add any information they think is relevant to the resolution of the situation.

Once this rapport is established, the manager should specifically describe the behavior that is an issue and attempt to get an agreement that a problem exists. Once there is an agreement that a problem exists, the employee should be encouraged to explore alternative solutions with the manager. Discuss possible roadblocks or obstacles and how to conquer them. Finally, the manager and employee should concretely agree on a solution. This requires getting a commitment from the employee to act—which is more than an agreement to "try." Emphasize the developmental nature of the meeting and close with encouragement.

It is important, however, that employees are also honestly told the consequences of a failure to improve performance. If an employee will be discharged if no improvement is shown, it is important that they be told precisely that. Mincing words or speaking in generalities

in order to avoid difficult statements is unfair to the employee, who may later be surprised at consequences that are harsher than expected.

### **Follow Up on Your Discussion**

One of the most common mistakes managers make is to have the appropriate conversation with an employee, consider the matter closed, and put the file away. The greatest factor in sustaining improvement in performance is *follow up!*

Any improvement in performance or behavior following a performance appraisal must be recognized. Even if an employee has not perfected the performance issue, recognition of improvement cements and furthers the employee's efforts. Failure to recognize employees for improvement conveys either that the matter was unimportant to begin with, or that the manager is only capable of pointing out flaws and is not focused on supporting and rewarding employees. Neither effect is desirable.

Likewise, it is important that if problematic behaviors are not corrected, despite positive coaching, that the employee is held accountable for continued failure to meet the company's standards. Nothing will affect the morale of other employees faster than watching unacceptable performance go unaddressed, or worse, be addressed and then tolerated, which implies the manager is incapable of dealing with the situation.

### **"Problem Employees"**

Again, the problem is not the employee, but the behavior. It is the employee's responsibility, not the manager's, to correct the behavior or suffer the consequences. Here are some techniques to cope with the most difficult behaviors commonly confronted in the "Discuss" step.

First, remember that the success or failure of the meeting lies largely in getting the employee involved in the communication process. To do this, a manager must get the employee to speak, rather than do all of the speaking himself. A common mistake is for the manager to ask, and then supply the answer to, their own question. To avoid this mistake, ask the question, and then be silent. Give the employee all the time in the world to answer. If they don't answer, ask if they would like you to repeat the question. Observe their behavior: "Why aren't you able to answer my question?" Do not answer for them!

Being confronted with unacceptable behavior is difficult for anyone. A manager needs to be prepared for a variety of responses, including:

**Anger/Intimidation:** Employees may determine the best defense is a good offense and become belligerent and hostile, raising their voices or insulting the manager. The best response is to let the employee vent, paraphrase their feelings and demonstrate that the matter is a serious one that you will not be afraid of handling. For example, the manager may want to say, “I understand that you are angry, and that you believe you have been treated unfairly. It’s important that I understand your perspective, but it’s difficult for me to absorb the information when you are so upset. This is an important matter. Let’s take a break and get back together at 3:00 p.m. to continue our discussion.”

With the increasing prevalence of workplace violence, however, no manager should be required to remain in a situation where they feel personally threatened. In such cases, depending on the severity, company security or local law enforcement may be called, or the manager may just terminate the meeting to consider a different approach.

**Tears/Emotional Despair:** Another common response to criticism, even when constructive, is a tearful display. Again, the response should be respected as genuine. Many times, it is sufficient to simply observe, “I see you’re very upset, and I understand these issues may be difficult for you to discuss. Would you like to stop for a few minutes?” Most employees choose to go on.

**Complaining/Blaming:** These are the employees who have never done anything wrong, but they can very readily identify others who have. It is most effective with these employees to name their behavior specifically. For example, “Beth, I understand that you believe that this problem was more due to someone else’s behavior—or that others have engaged in the same behavior without consequence—and I am willing to hear more about that later in our discussion. For now, though, I am focusing specifically on your own behavior. What could you have done differently? What specific actions can you take to ensure the problem does not recur?” For employees who still stubbornly refuse any accountability, it sometimes helps to observe, “It troubles me that you feel helpless to affect this outcome. Is that a feeling you have often in this position?” No one likes that description.

**Silent Treatment:** Ask open-ended questions to get them talking, or provide a simple invitation to conversation. “Tell me what happened from your perspective...” Allow the silence to work for you. It is very uncomfortable for people to be silent with one another and chances are the employee will begin speaking after a short interval. If they do not, again, it is appropriate to observe that behavior: “I’d like you to respond to my

questions, but you’re not. Why is that?” When the person does speak, practice active listening.

**Not Willing to Resolve:** If an employee is simply unwilling to agree to a problem, or a solution, it is important that the situation is not abandoned. Instead, make expectations clear to the employee, close the meeting, and reschedule. “It is essential that we reach an agreement on how to proceed. It doesn’t appear that you are willing to do that right now, but perhaps some more time to reflect on the options we have discussed would be helpful. What time are you available tomorrow to resume our discussion?” It is important that the employee understand that this is not an exemption from dealing with the issue, but a deferral. If necessary, the manager may need to say something like, “I would really like to resolve this issue and come up with an action plan based on input from you. I need to tell you, though, that it is essential that a resolution be achieved, even if it is one, I need to identify unilaterally. If we’re unable to reach an agreement this week, I will notify you of my decision and expectations for the future in writing.” Then, at least, the manager can establish that the employee had the opportunity to participate in the problem solving process and cannot later claim that their exclusion was unfair.

Again, the key in many cases to performance management is distinguishing the person from their behaviors. Honoring an employee’s right to be treated professionally, courteously, and respectfully aligns equity on the side of the manager and allows the relationship to survive the problem. In the end, **employees and managers succeed or fail, together.**

### **Talent Acquisition Support**

If your organization has job openings and needs assistance in filling those open positions, contact HR Strategies’ staff for support. We can focus on your recruiting needs so that you can focus on your business needs.

Contact HR Strategies staff at 302.376.8595 or [info@hrstrategies.org](mailto:info@hrstrategies.org) if you would like support or would like to learn more about the items in this newsletter. Please contact us if you would like to be removed from our Monthly Strategies mailing list or if you would like for us to add someone to our mailing list.