The Art of Verbal and Documented Disciplinary Interventions to Turn Around Employee Performance and Insulate Your Company from Liability
Your Presenter . . .

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And Author of . . .

- *101 Sample Write-Ups for Documenting Employee Performance Problems: A Guide to Progressive Discipline and Termination*

- *101 Tough Conversations to Have with Employees: A Manager’s Guide to Performance, Conduct, and Discipline Challenges*

- *96 Great Interview Questions to Ask Before You Hire*

- *2600 Phrases for Effective Performance Reviews*

- *75 Ways for Managers to Hire, Develop, and Keep Great Employees* (new in the spring of 2016)
The Rules of Engagement

• Each to his own without judgment

• What you want for yourself, give to another

• Change your perspective and you’ll change your perception
Rules (cont.)

• It’s not what you say but *how* you say it

• Put others’ needs ahead of your own by treating them with dignity and respect, and expect them to respond in kind

• The path of least resistance is avoidance
Your Tools

• We’re all responsible for our own *perception* management (“Let me share with you what it looks like from my vantage point. . .“)

• Invoke ________, not anger!

• Positive confrontation = “I’m sorry” and “thank you” (the importance of *vulnerability*)

• Heightened sensitivity and raised awareness
The “Velvet Glove” Approach to Tough Conversations

• The path of least resistance is *avoidance*

• Results = grade inflation on annual performance reviews, perceptions of *favoritism*, unwillingness to discipline or hold employees accountable to the highest standards of performance or conduct
“Velvet Glove” (cont.)

- How can you make tough conversations more personalized and comfortable?

- How can you apply constructive feedback techniques to feel more at ease in delivering difficult news?

- How can you develop greater *respect* and *trust* in the eyes of those you lead?
Providing Effective Feedback during the Annual Performance Review Season

“Do I have your permission to share some feedback that you may not be aware of?”

“Can I share a bit about a perception issue that may be holding you back?”
Providing Effective Feedback (cont.)

When preparing to deliver tough news regarding someone’s performance or productivity, open with a question:

- **How would you grade yourself in terms of** the overall quality and volume of your work? [open-ended]

- **On a scale of 1 – 10, 10 being the highest, how would you grade yourself in terms of** timeliness, quality delivery, and overall productivity? Typical answer: [8]

- **Follow-up question:** Why are you an [8]?

- **Follow-up to follow-up question:** What would make you a 10?
When Employees Award Themselves Higher Grades than You Feel They Deserve

• “So if you see yourself as a 10 overall, how would you rank-order yourself relative to your peers? Be as objective as you can here, almost as if you were a third party evaluator of our team: Where do you, John, stand relative to Kelly, Francis, and Jose, and how would you evaluate the team in terms of your scoring?”

• “I say this with all due respect, but if I shared with you that my evaluation level would be closer to a 7 rather than a 10, why do you think I might feel that way? And again, as objectively as possible, how do you feel my peers at the [VP/director/manager] level might grade you based on your overall contribution to our department?”

• “John, the answer is actually a lot closer to a 7 than it is a 10, and let me share with you what this looks like from my vantage point . . .”
Assigning a Failing Grade

• “Ted, my goal here isn’t to surprise you with new information introduced at the time of the annual review, but I’m afraid that’s necessary in this case because the issues have become detrimental to your reputation and to our ability to execute effectively as a team.

• “Before we begin walking through the details on the evaluation that I’ve prepared, I want you to know that you won’t be meeting expectations for this review period.”
Assigning a Failing Grade (cont.)

• “Again, I’m holding myself accountable for not sharing problematic issues with you at the time they occurred, but I’ll commit to you to bring problematic issues to your attention immediately in the future.

• However, it’s time to share our concerns formally in writing and set our expectations on a go-forward basis, and the annual review gives us that opportunity each year because it’s hard stop in terms of providing feedback and level-setting for the future.”
Coaching Attitude Problems

- **Rule 1**: Tell the person in private how you perceive her actions and how she makes you feel.

- **Rule 2**: Avoid the term “attitude” and replace it with the words “behavior” or “conduct”.

- **Rule 3**: Be specific and “paint a picture with words”.

Attitude Problems (cont.)

- “Lisa, I need your help. You know they say that perception is reality until proven otherwise. Truth be told, I feel like you’re either angry with me or with the rest of the group. . .

- “I may be off in my assumption, but that’s an honest assessment of the perception you’re giving off. . .”

  [Provide detailed specifics here]

E.g., rolling eyeballs, murmurs and comments along the lines of “Unbelievable, you’ve got to be kidding, this is BS,” and the like
Attitude Problems (cont.)

• “I just want you to know that I wouldn’t treat you that way in front of others. I respect you too much as a colleague.

• “But let me ask you, how would you feel if you were the supervisor and one of your staff members responded that way in front of other members of the team?”

• “Likewise, how would it make you feel if I responded to your questions with that kind of tone of voice or body language?”

• “You’re better than this, and we’re better than this as a team. We hired you because we saw talent and passion, and that may be getting lost . . .”
Foul Language

“Jim, you’re not hearing me. You’re playing offensive when you should be on the defense. This isn’t about you any longer – it’s about your coworkers and our company.

“When someone puts us on notice that they’re no longer comfortable with the curses and loose banter and jokes that arguably become “pervasive” in the workplace, then in the eyes of the law, the whole company is deemed to be placed on notice. At that point, we no longer have the discretion to laugh it off and ignore it. In fact, if we do, we could have a hostile work environment claim levied at us, and as you know, hostile work environment claims are a subset of sexual harassment, which in turn, falls under our company’s anti-discrimination policy.”
Foul Language (cont.)

• “In short, we’re putting you on notice that the language and behavior have to stop immediately.

• “If you really feel you can’t accommodate our request, *then you may have to make an employment decision:* In other words, if you can’t or won’t agree to this at this point, you’ll either have to resign or realize you’ll be terminated for cause should this occur again.”
Foul Language (cont.)

• “Oh, and Jim, there’s one more thing: I’m not saying this to scare you – It’s just that I want you to be fully educated on the matter. If the company were to be sued, you would also be named as an individual defendant in the lawsuit. In fact, in extreme cases where the company warns the employee and the employee refuses to change his ways, then he may be considered to be acting outside the course and scope of his employment.

• “And under those circumstances, the company’s legal team wouldn’t necessarily protect you. In short, you could be on your own to find your own lawyer and pay the damages that arise from the claim.”
Foul Language (cont.)

- “In fact, in some states you could be sued for up to $50,000 of your own money for engaging in what’s known as ‘managerial bad acts.’”

- “Not so here: In California, there’s no cap.”
Foul Language (cont.)

• “We don’t pay you enough money to risk your home and your bank account for work-related lawsuits, so any time you find yourself slipping back into your old ways, be sure and stop by my office so that I could remind you about the risks you’re assuming when it comes to foul language and potential harassment in the workplace. . . .”
Mastering Progressive Discipline and Structuring Terminations

The Fundamental Elements of Workplace Due Process

Rule 1: The employee needs to know what the problem is

Rule 2: The employee needs to know what she needs to do in order to fix the problem (a measurable standard must be known in advance)
Fundamental Elements (cont.)

- **Rule 3**: The employee needs to have a reasonable time period in which to fix the problem

- **Rule 4**: The employee needs to understand the consequences of inaction
What is Progressive Discipline?

- A series of one or more formal (documented) notices that an employee’s performance and/or conduct doesn’t meet standards

- A progressive system of notification where each step contains some added element to impress upon the employee the growing sense of urgency
Performance vs. Conduct

- Follow the verbal > written > final written warning paradigm unless starting with anything less than a final written warning could make you, as an employer, appear irresponsible.

- Accord more due to process to longer-term workers (via letters of clarification or paid decision-making leaves rather than unpaid suspensions).
Corrective Action Documentation Structure

**Part I:** The Narrative (include sample work product and outline negative organizational impact as well as the employee’s response)

**Part II:** The PIP (Performance Improvement Plan): Expectations, Resources and Tools, and an Invitation to Rebut the Warning’s Findings

**Part III:** Outcomes & Consequences
Part I: Narrative Writing Rules

“I found inconsistencies throughout your calculations and had to correct them myself before they could be processed. As a result, . . .

• I had to work until 10:00 PM last night

• We’ll have to hire a temp to meet the deadline

• We’ll need to push back the go-live date.”
Narrative Writing Rules (cont.)

• “When I asked you how this occurred, you stated. . .”

• Special Note: Don’t forget to attach the evidence!!!
Part II: Measurable and Tangible Improvement Goals (PIP)

State your **expectations** clearly:

- “I expect you to complete your recruitment statistics by the fifth of the month and tell me in advance if you will be unable to collect the data from HRIS to meet this goal.”

- “I expect you to always treat your coworkers with respect and to foster an inclusive work environment.”
PIP (cont.)

• “I will meet with you in your office every Monday for the next four weeks to . . .”

• “In an effort to sensitize you about how your behavior might impact others, please investigate one-day workshops on dealing with interpersonal conflict in the workplace, which you may attend on company time and at company expense.”
Part III: Outcomes & Consequences

- **Catch-All:** “Failure to demonstrate immediate and sustained improvement may result in further disciplinary action, up to and including dismissal.”

- **Conduct:** “If you *ever again* engage in conduct with a supervisor, coworker, or customer that could be considered hostile or offensive, or threatening or overly challenging, you may be immediately dismissed.”
Employee Acknowledgment

• “I have received a copy of this document. It has been discussed with me, and I have been advised to take time to consider it before I sign it. I have freely chosen to agree to it, and I accept full responsibility for my actions. By signing this, I commit to following the company’s standards of performance and conduct.”

• [“Further, I understand that my position is now in immediate jeopardy of being lost and that this is my last chance. I recognize that I must make immediate and substantial improvements in my performance in order to remain employed.”]
Some Final Tips

• Don’t ever rush to judgment: You’re better of placing an individual on a paid, investigatory leave when you need additional time to reach a conclusion.

• Don’t manage by fear of a lawsuit: Instead, make sure that if one comes your way, you’re getting sued on your terms, not theirs!
Final Tips (cont.)

- Avoid using the words “always” and “never” in both your verbal and written communications.

- Avoid documenting “state of mind” offenses: do not use words such as “willfully, maliciously, purposely, deliberately, or intentionally” (mental element qualifiers).

- Do not “codify the damage.” Remember, these documents are all discoverable (e.g., “Sexual Harassment” is considered a legal conclusion).
Final Tips (cont.)

- **Always focus on shifting responsibility for improvement to the employee and away from your company**

- **Successful verbal and documented interventions allow you to handle matters respectfully, responsibly, and in a timely manner, which are the key tenets of workplace due process and fairness**
Additional PowerPoint Presentations

- Situational Executive Coaching: How Do You Coach to “Normal”?
- Managers as Mediators: Realigning Your Team by Resolving Conflict Fairly and Constructively
- Unique Techniques and Strategies for Motivating and Rewarding Your Staff
- Corporate Ethics Training for Front-Line Leaders
Q&A

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