



FOSTER PEPPER PLLC

Northwest Marine Trade Association Presents:
**Managing Employee Performance
While Reducing Legal Risks**

July 30, 2013

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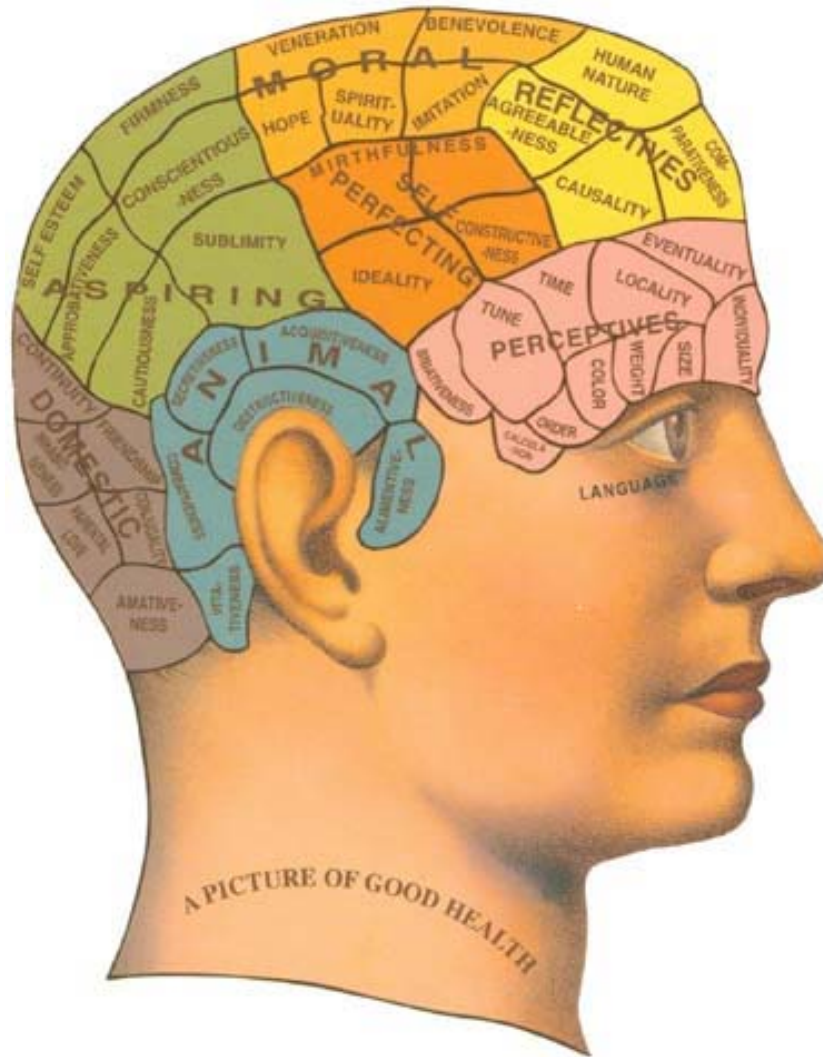
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What We'll Cover

- Recruiting and hiring
- Orientation and training
- Performance management
- Termination



Consult with HR



Maintain At Will Employment

- Either party may terminate at any time with or without cause or advance notice
- Alternatives
- ALL nonunion employees should be at will



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PART 1: Recruiting and Hiring



Hiring Goals

- Hire the right people based on best information
- Portray the organization in best light
- Avoid claims
 - Discrimination
 - Privacy rights of employees
 - Negligent hiring



Use Background Check Information

- License, degree or certification
- References
- Criminal background checks
- Beware of social media searches

www.washingtonworkplacelaw.com/private-employers/letting-someone-else-dig-for-the-dirt-hiring-vendors-to-assist-in-social-media-searches/

<http://www.washingtonworkplacelaw.com/private-employers/what-happens-in-vegas-doesnt-stay-in-vegas-best-practices-for-using-social-media-in-the-recruiting-p/>

Scrutinize

- All portions of application / resume
- Missing information
- Ambiguity or inconsistency
- Gaps in job or address history



Interrogate

- Ask tough questions
- Maintain forms and notes
- Avoid improper questions



<http://apps.leg.wa.gov/wac/default.aspx?cite=162-12-140>

<http://www.eeoc.gov/laws/practices/>

Ask Job-Related Questions



Topic: Work Experience



Topic: Education



Topic: Personal Qualities



“It’s funny. I’m asked my greatest weakness in so many interviews and yet I still haven’t decided if it’s my pathological lying and stealing or my uncontrollable bouts of blind rage”

Topic: Career Objectives



Avoid Pitfalls at the End of the Interview

- Stating that that applicant has the job
- Promised pay or benefits
- Promised or implied longevity





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PART 2: Orientation and Training



Orientation and Training

- Baseline for measuring performance
- Expectation-setting
- Evidence for claim



Orientation and Training

- Acclimate to policies, procedures, expectations
- Train on EEO and harassment
- Complete training program
- Document



Continuing Training and Development

- Constant changes in the business
- Changes in legal requirements
- Skill sharing and development
- Need for supervisory training
- Transitional planning

Continuing Training and Development





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PART 3: Performance Management



Early Evaluation

- Establish accountability from the start
- 30/60/90 day assessments
- Document/address performance issues early

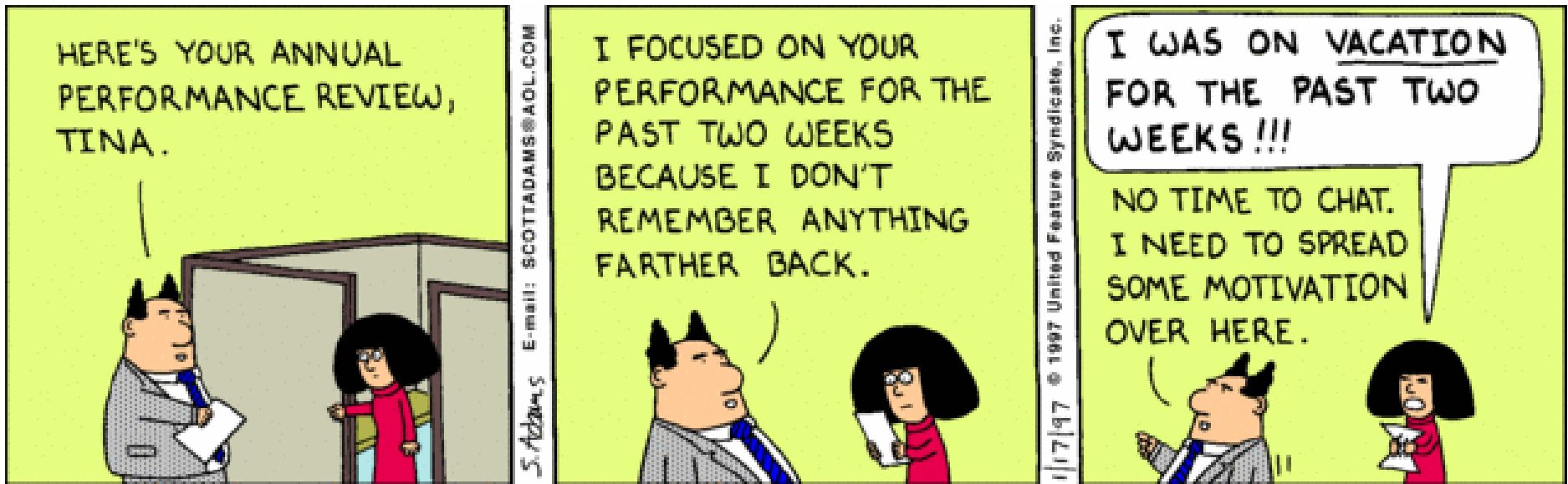


Performance Review

- Timely
- Appropriate setting
- Objective/complete
- Interactive
- Set expectations
- Document and follow up



Performance Review – The Big Picture



Positive Reinforcement

- What is employee doing right?
- As important as criticism
- Should be timely (more than at review)



Positive Reinforcement



Performance Improvement Planning

- Problem performers may not know
- Specify and communicate standards
- Set improvement plan with realistic timeline





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PART 4: Termination



Transition

- Performance issues v. economic ones
- For those leaving voluntarily, why are they going?
- Consistent process for transitioning employees out



The First Meeting

- Prepare with documented observations
- Get to the point, keep it simple
- Focus on key areas for improvement
- Objective, specific, examples
- Consider additional training
- Schedule meetings for collaboration and coaching

Informal Follow-Up

- Ask how employee feels, allow to reflect
- Reaffirm commitment to helping solve the problem



Regular Coaching and Checkpoints

- Candidly assess how employee is improving (or not)
- Assist and train
- Inside/outside coaches and mentors
- Reconsider timeline if needed
- Consistent but consider extra process for high risk employee
- Document

Completing the Process

- Improvement
- Termination meeting
 - Short, to the point
 - Respectful
 - Truthful
- Document either way





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