



Radical Candor in the Workplace: How “Being Nice” To Employees May Place You In Legal Jeopardy

Insights

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Is honesty really the best policy at the workplace? Some employers believe that a few little white lies might help them avoid uncomfortable situations and confrontations. It's common for some to spare an employee's feelings during performance reviews for fear of upsetting the employee or being accused of treating them differently from others. Many employers also believe it's a good policy to avoid candor when letting an employee go for performance deficiency reasons, opting instead to tell some story about a work slowdown or mysterious economic circumstances.

However, the failure to address work performance issues during employment or at the termination stage could have legal ramifications if the employee later challenges an employment decision and files a claim against the company. In order to address this problem, you should resolve to practice the act of radical candor.

What Is Radical Candor?

In her recent book, “Radical Candor: Be a Kick-A** Boss Without Losing Your Humanity,” Kim Scott provides employers a detailed roadmap on how to be honest with employees while retaining their respect and loyalty. Scott, an entrepreneur and former executive at Google and Apple, saw firsthand how the lack of candor can lead to unpleasant conversations (or worse) when an employee must ultimately be terminated due to a performance issue about which they were never counseled.

For example, Scott tells the story of how she fired an employee who had been performing shoddy work for years, but no member of management had ever told him there was an issue. Management liked him; he was a nice guy, but performed horrible work. As you would imagine, he was shocked and felt betrayed when he was fired. “Why didn't anyone tell me about my work? I thought you liked me.”

Scott knew she made a mistake with that employee. She should have been more honest with him. Not only did it upset him, her company's work product and efficiency suffered, particularly when the work done by the fired employee had to be “fixed” by another worker. As part of her reflection on this eye-opening incident, she made it her mission to counsel other employers and leaders on how to avoid her mistake.

If You Aren't Candid In Performance Reviews, You Could Land In Legal Hot Water

Many discrimination claims brought by employees in a protected class, such as age, sex, and disability, involve circumstances where the employee's protected status had nothing to do with their termination. However, the plaintiff claims they had never received a bad performance review and the employer always gave them a raise or, even worse, a performance bonus. And many times it's true.

If you don't give an employee a bad performance review, but instead provide generic feedback like "meets expectations" or "average," that employee will be shocked if you discipline or terminate them later due to poor work product or failure to perform. Reeling from this disappointment, there is a good chance the ex-employee will visit a lawyer or government agency to start the process of filing a legal claim against you, predictably rationalizing that age, gender, or other protected status must have been the real reason for the termination, given the consistently neutral or positive performance reviews they received. When it comes time to defend the case, you won't have any "bad" performance reviews to validate your claim that the termination was for legitimate and non-biased reasons. Ultimately your decision to be "nice" instead of honest turned out to be a very bad idea.

Hiding The Ball At Termination Could Be Costly

Another common scenario is trying to avoid the uncomfortable truth when the time comes to terminate a worker. Some employers will invent a reason such as "the business is slowing," while others believe that they don't need to provide any reason at all for the termination simply because the employee is "at will." It's not uncommon to hear stories of employers trying to do the right thing (or the nice thing) by telling an employee that they are being fired, but no reason will be given for the termination because of their at-will status.

There are several major problems with such an approach. First, the truth will always come out. Any plaintiffs' attorney worth their salt will examine the financial records of a company claiming that economic woes were the driving force behind a termination, and can often find a much rosier picture than the company had painted (along with evidence that the company hired new personnel to replace the departed employee).

Second, the law generally punishes an employer who lies to a worker about why they are being let go, even if the employer's heart was in the right place. A company on the defense will have an uphill climb to prove that the fabricated reason was not intended to shield some discriminatory reason. Finally, those employers that choose to avoid providing any reason for termination provide the perfect opportunity for the terminated worker to invent their own narrative. This is a prime motivator for ex-workers to seek out legal assistance, as they can't help but want to know the truth and will have a natural curiosity to explore further.

Show *Radical Candor* With Your Employees

Instead of trying to spare feelings, you should employ radical candor at these critical junctures. Here are five practical lessons you can glean from Kim Scott's advice:

1. **Be Critical.** Not everyone does a great job, at least the first time. “Your job as a boss is to set and uphold a quality bar,” Scott says. Being candid with employees improves work product and ensures clear communication without causing unwanted surprises like the employee fired by Scott. This will help you defeat a later claim that “no one ever said I wasn’t doing well.”

Don’t allow generational differences to keep you from being honest. Some may think baby boomers are more likely to accept and understand criticism, whereas millennials are perceived by some as more sensitive. Developing trust with employees will help make it less difficult to offer criticism, no matter their age.

2. **Be Timely.** Check in with the employee on their performance early and often. You are building a business with high quality work. It’s important to stress quality early in the employee’s tenure with the company. You can even begin to set expectations in the employee’s interview. If there are no issues, you can lengthen the period between performance reviews. However, don’t wait until the employee’s annual review to be critical. Your formal evaluations are meant to reinforce, not substitute for, the feedback you should give to your employees frequently about their work product.
3. **Be Consistent.** As a supervisor, show no favorites. If you demonstrate to your entire team that you care but that you treat everyone fairly, they will be more likely to respond positively to your mission of promoting excellence in the workplace.
4. **Be Descriptive.** At the time of termination, you should present your employee with a short one-page letter explaining your reasons for letting them go. It should contain a brief, to-the-point summary of your justification for termination, devoid of emotion. This letter begins your process of providing clear and consistent reasons for termination at every step along the way (unemployment claims, demand letters, lawsuits, etc.), and should be written in such a way as to serve as Exhibit A in any lawsuit defense you might need to muster.
5. **Be Compassionate.** In her book, Scott cautions that effective honesty in the workplace is not just about candor. She urges employers to show compassion to employees as well, saying you can’t have one without the other. If you exhibit both of these qualities during employee reviews, you will develop a stronger workforce and avoid awkward confrontations when poor performance requires the termination of an employee.

Be open with your employees. Listen to them. Don’t try to convince them that your values are “right” and theirs are “wrong.” One way to accomplish this goal is to remain open to new ideas and listen to how your employees feel and why they feel that way. If an employee hasn’t done great work, Scott encourages you to allow employees to work on a project where they can shine. Put them in a position to succeed. This gives your employees an opportunity to show their potential. It also shows you care about their success with the company. If you show compassion, your employees will be more likely to accept criticism if and when it’s necessary.

Conclusion

Kim Scott's book offers practical and important advice for all employers. Be honest with your employees and show them compassion. It will not only help you grow a stronger business and develop better employees, but hopefully prevent future unanticipated legal claims. Your legal counsel can assist with documenting the steps you took to advise the employee on performance issues and in drafting an effective termination letter should you need to defend a future lawsuit.

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