



# **Are Healthcare Managers Killing Themselves With Kindness?**

Insights

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When dealing with a difficult adversary, sage advice suggests that one should consider “killing them with kindness.” That advice does not work out well, however, when healthcare managers are too kind when addressing (or ignoring) employee performance shortcomings.

While management’s documentation is almost always pivotal in employment cases, it’s the content of that documentation that can tip the scales in either direction. In many situations, managers can inadvertently kill their own best interests by employing a brand of kindness. Stated another way, if you do not communicate clearly and directly enough when addressing an employee’s performance problems, you only hand plaintiff’s lawyers an effective weapon to use in bludgeoning your own credibility.

## **The Importance Of Being Honest**

There is no doubt that managers should always strive to demonstrate respect for their employees. It is also important to be generous with praise, when appropriate. When criticism or counseling is needed, leaders should present the message in a constructive manner. It is not effective or even respectful, however, when managers soft-sell criticism, especially when the soft-selling makes the intended message almost unrecognizable. Specifically, managers cannot bury their message with mild or indirect suggestions.

Whether the issue is poor job performance or violations of policies, managers must identify the shortcomings and clearly state what they expect the employee to do. Otherwise, a disgruntled former employee may be able to testify credibly that they were not even aware that management expected them to change behavior.

In a recent situation, for example, rather than telling the employee that five recent unscheduled absences were excessive and that the employee must demonstrate immediate, sustained improvement, the manager described the purpose of the meeting by writing, “Management notes that Ms. Jones has recently been absent from work an unusual number of times. She has an opportunity to improve her attendance.”

When Ms. Jones was subsequently terminated for excessive unscheduled absences, she claimed that she had no idea that her attendance was that bad or that her job was in jeopardy. The employer’s documentation did not convincingly refute Jones’ contention.

Defense of employment discrimination and retaliation claims almost always hinges heavily upon performance evaluations and corrective action forms from employee personnel files. Vague comments, or those that tip-toe around the issues, can devastate your explanation for deciding to terminate. The Equal Employment Opportunity Commission, state agencies, and plaintiffs' lawyers will aggressively scrutinize and question documentation that is not clearly consistent with your explanation for your actions.

### **The 3 Critical Kinds Of Documents**

Thus, three critical sets of documents in any case involving discipline or termination are: (a) employee performance evaluations; (b) warning or corrective action notices; and (c) the employer's documented reason for its actions. While these documents can help win a lawsuit, they can also lose a case if not completed effectively. In every case, you should ensure that these documents clearly and fully convey the relevant facts so that a third party (i.e., a judge or jury) can understand what they are saying. In almost all cases, human resources leadership should be significantly involved in this process.

**Performance evaluations** that plainly identify an employee's performance shortcomings and expected improvement are invaluable in defending a legal claim. On the other hand, an overly generous performance evaluation, signed by a manager, containing no indication of concerns or less-than-satisfactory performance, can be extremely damaging. Many managers have learned this lesson the hard way through having to answer questions about these documents under oath in a court proceeding.

The same is true of **corrective actions or warning forms**. Before presenting them to employees, managers and HR should confer to ensure that the document clearly identifies the problem as a shortcoming and describes what the employee is expected to do to correct it. It is almost always a good idea to state that the hospital expects "sustained" compliance with its expectations. Once again, managers and HR should ask themselves whether an independent third party would understand the message contained in the document.

Finally, when a termination occurs, managers and HR must ensure the **stated reason** is as accurate as possible. In employment litigation, plaintiffs almost always seek to prove that the employer is untrustworthy and that its stated reason for termination was actually pre-text for an improper (discriminatory or retaliatory) reason. If you change your explanation after the termination, this gives plaintiffs an improved chance of casting doubt on your motives.

### **Conclusion**

In sum, while it is vital for managers to demonstrate respect and to be constructive in leading their employees, this must be done in an effective way that does not increase the hospital's risk of being sued. Given the natural human tendency to avoid or minimize confrontation, it is therefore equally vital to train managers on the importance of involving HR in the process and creating effective documentation, especially performance evaluations, corrective action forms, and explanations for

terminations. Otherwise, when preparing this type of documentation, soft-selling the issues or being too “kind” can quickly backfire.

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