

BACK TO BASICS: 10 STEPS TO CONSIDER WHEN HIRING, FIRING, AND DISCIPLINING EMPLOYEES

Insights
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Many employers have felt the effects of the Great Resignation and struggled to stay afloat over the last few years while managing record-high turnover and absenteeism. Managers may have lowered their performance expectations as they dealt with unprecedented changes in the labor market – which were driven by the COVID-19 pandemic and its impact on the economy. But what does the future hold? As job growth slows and predictions of an economic downturn loom, you may want to review and refresh your policies on hiring, rewarding, disciplining, and terminating employees. Whether you're a new manager who was thrown into the fire over the last few years or a seasoned professional looking for a refresher, here are 10 steps you should consider taking as you review your workplace practices.

1. Remind Employees of Your Policies and Practices – And Make Sure They're Up to Date

If you haven't had time to update your employee handbook this year, you should consider doing so now. Review your policies for compliance with the latest employment law developments at the federal, state, and local level, and ensure employees receive a copy of the handbook and sign any applicable acknowledgements. You may want to pay particular attention to paid sick leave, remote work, and other policies that may have changed during the COVID-19 pandemic. States and localities have been particularly active in implementing new workplace requirements.

Related People



Lisa Nagele-Piazza
Legal Content Counsel

[404.760.7943](tel:404.760.7943)



Jennifer B. Sandberg
Regional Managing Partner

[404.240.4152](tel:404.240.4152)

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Additionally, you should take steps to ensure a safe and respectful environment for all workers. While there's no "one size fits all" for workplace culture, you must let workers know that unlawful harassment and discrimination will not be tolerated. Moreover, policies can go beyond what is legally required to also curb bullying and other disrespectful behaviors. Be cautious, however, with general civility codes because the legal and regulatory landscape is ever-changing. A code of conduct should not prohibit workers from [engaging in protected concerted activity](#) under Section 7 of the National Labor Relations Act.

2. Set Performance Expectations

In response to staffing shortages, supervisors may have overlooked employee attendance and performance problems – but these issues can't be ignored long term. Consider meeting with workers to remind them of your business objectives, review policies and procedures, and tie company goals to performance metrics. Make sure goals are realistic and measurable and employees know how they will be held accountable.

Additionally, you may want to review and update job descriptions, as some roles likely changed in response to labor shortages and evolving business dynamics. Do your job descriptions still accurately describe the job performed? To make this determination, solicit input from your supervisors and employees. This exercise can also help you set performance expectations and goals in collaboration with the employees.

3. Review Hiring Procedures

Did you lessen your hiring standards while scrambling to fill vacancies? If so, you should review your staffing policies and set consistent hiring practices. For example, you may want to develop written interview questions that hiring managers can ask each job applicant. You may also want to review your background screening and drug testing policies. After a switch away from such pre-employment screening tools, we are beginning to see the pendulum swing the other way. Likewise, revisit your third-party relationships with vendors to make sure you are all on the same page when it comes to pre-employment screening and compliance, FCRA requirements and responsibilities.

4. Set Diversity, Equity, and Inclusion (DEI) Goals

Creating DEI workplace initiatives can increase morale and work output for an increase in your bottom line. To recruit and retain the best talent, your policies must be fundamentally fair, and your workplace should be as inclusive and engaging as feasible. Training and awareness programs on diversity and ethics should be targeted to meet your unique business needs in light of the particular industry, employee expectations, and community standards. Be sure to help your hiring managers understand the do's and don'ts of lawful DEI efforts. Many managers wrongly assume the DEI overrides long-standing EEO principles.

5. Audit Pay Practices

Have you critically examined your compensation policies and practices to ensure that pay inequality does not persist among individuals with substantially equal job duties? Tackling pay equity is a critical element of building a diverse and inclusive workplace and complying with the law. The federal Equal Pay Act (EPA) has long required that men and women in the same workplace be compensated with equal pay for equal work, and now, many state and local laws are even more stringent. Pay equity claims present significant financial consequences, so you should consider conducting a pay audit in coordination with experienced counsel to determine which employees perform "comparable" work, ensure employees are being paid fairly, and determine whether you are complying with both new and long-standing laws.

6. Reward Top Performers

In addition to attracting the best talent for your workplace, you'll also want to focus on retaining your good employees. Don't forget to recognize and reward employees who meet or exceed performance goals. Your specific recognition program may depend on your business environment and company culture, but even saying "thank you" or recognizing an employee's accomplishments during a meeting can go a long way. For more formal programs, set clear guidelines, performance indicators, and award types so employees understand the criteria and can set their goals accordingly. Consider asking employees what types of rewards they would like to see the company offer.

7. Discipline Consistently

Once you've established performance standards and updated your policies and procedures, you should be sure to apply them consistently. Disciplining and firing employees is difficult for everyone involved, but the burden may be eased by following fair and consistent standards that account for anti-discrimination laws, wage and hour rules, and other applicable employment laws. Discuss performance issues privately with employees and be objective and honest when giving feedback. Be sure to go over the specifics of the performance challenges, identify ways the employee can correct the problem, and communicate the consequences for failing to meet future performance objectives. Document the conversation, as well as your expectations, and set a time to follow up with the employee. Then, be sure you follow through as a manager on the follow up you require.

8. Develop a Process for Terminations

Unfortunately, performance issues and misconduct will sometimes lead to termination decisions, even after you have set expectations and plans for improvement. As with disciplinary discussions, you should be prepared to follow fair and consistent practices when firing employees. Your human resources, legal, and technology departments should work together to ensure compliance with employment laws and safety and security protocols. Be sure to collect company property – such as laptops, phones, and other equipment – and provide departing employees with any applicable benefits paperwork, notices, and final pay, as required by federal, state, and local laws.

9. Conduct Exit Interviews

Conducting exit interviews when employees resign can help you uncover and fix problems, improve your culture, and reduce further turnover. The exit interview also gives you an opportunity to remind the departing employee of ongoing obligations to your company regarding intellectual property and confidentiality.

You might also consider [conducting "stay interviews"](#) by asking your current employees: "What makes you stay?" Their answers may help you fine-tune your programs and further reduce turnover.

10. Train Managers and Supervisors

Effectively managing your hiring, performance, discipline,

and discharge decisions can improve individual employee performance, increase organizational effectiveness, and decrease the risk of litigation. That's why training managers and supervisors is so important. They should be familiar with your organization's objectives, policies, and procedures and know how to respond to performance issues as they arise. Let managers and frontline supervisors know who to contact in your legal or HR department to guide them through making staffing decisions and managing difficult situations. Both manager inaction and zeal create a multitude of employment compliance issues for unprepared employers.

Conclusion

We will continue to monitor economic developments that impact the workplace. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact the authors of this Insight or your Fisher Phillips attorney.