CASE STUDY:
A Guided Tour of Performance and Behavior Management under Justice in Employment

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Legal Disclaimer

The information set forth in these materials is intended to provide an outline of the law existing as of the presentation date.

It is not intended as, nor should it be considered, “legal advice.”

If you are presented with a specific issue, you should consult with qualified legal counsel.
Justice in Employment

*JIE* contains a number of provisions that assist in the hiring, development and management of staff:

- 215 G.M. – Probation or In-training Period
- 216 G.M. – Orientation
- 217 G.M. - Work Ministry/Planning and Review
- 218 G.M. - Resolution Of Work Related Issues
- 220 G.M. - Progressive Discipline
- 221 G.M. - Discharge: Just Cause
Performance Reviews

- Why do you need to do them?

- What does JIE require?

- How do you do them?
Why do performance reviews?

- JIE requirements
- Employees know what is expected from them
- Connect and stay “in tune” with employees
- Provide feedback, praise, and constructive criticism
- Provides an opportunity to recognize achievements or coach individuals who are having problems
- Can be used to support discipline and termination decisions
Why do performance reviews?

- Can be used to support discipline and termination decisions

- Use in discipline and termination decisions
  - Failure to improve performance after an evaluation and after a clear identifiable goal, can support the further discipline or termination

- Use in RIF
  - JIE requires consideration of past performance and qualifications
Case Study

- Congratulations, You’re Hired!
  - Parish hires a new lead, daytime custodian to start in February 2012.
    - I. M. Osoclean
Orientation Documents

- Start off on the right foot by providing:
  - Mission statement
  - Expectations regarding attitudes, behavior, and practices which promote the mission of the parish or institution
  - Organization chart
  - Diagram of the facilities
  - Policy handbook (including Justice in Employment)
  - Information on benefits
  - Other information to help the new employee feel welcome

- Also provide accurate and complete job description (if not provided earlier)
**JIE’s Performance Review Requirements**

- *Justice in Employment* requires evaluations during probation or in-training period.

- **When?**
  - End of 2\textsuperscript{nd} month
  - End of 3\textsuperscript{rd} month
  - Prior to change of status to regular employment.
JIE’s Performance Review Requirements

“The employee’s immediate supervisor must conduct written evaluations at the end of the second and third month of employment and prior to a change of status to regular employment.”

--215 G.M.: Probation or In-Training Period
JIE’s Performance Review Requirements

- *Justice in Employment* also recommends a performance evaluation at least once a year.

“A performance analysis should be conducted at least once a year. There may be a need for more frequent meetings during the first year of employment or in a new assignment.”

--217 G.M.
Return to the Case Study

For Ike

- Schedule a reminder to do the performance reviews at the end of 2 and 3 months.

- Remember to do a performance review prior to the end of the probationary period.

- Remember to do more performance reviews as needed during the first year.

For Ike and Everyone Else

- At least once a year
End of probation

- Remember to do a performance review prior to the end of the probationary period.

- Consider whether probation should be extended.
Ike in Spring 2013

- **The Good:**
  - Managing part-time custodians
  - Pleasant attitude, friendly, and well-liked.
  - Usually productive

- **The Bad**
  - Chattiness interferes with work
  - Delegating work to others
  - Not aiding with groundskeeping
  - Refers to other custodians as his “little helpers”
  - Work is disrupting other staff
How do you conduct an effective performance review of Ike that is consistent with JIE?
Effective performance reviews begin with effective behavior management.

- Address problems when they arise
- Check-in regularly with employees
  - i.e., Stay tuned in!
- Nothing in the review should be a surprise to the (rational) employee
Develop a Process for the Review

- Considerations:
  - Timing
  - Format of written remarks
  - Meeting with employee
  - Plan for following up on goals or performance issues
  - System for maintaining relevant records
“Performance analysis and evaluation is built on a foundation of careful planning, employee involvement, use of objective job-related criteria, commitment to employee development and candid communication about performance between the employee and the supervisor.

Through observation and dialogue with the employee about expectations and job related issues, the supervisor and the employee work to establish an environment in which mutual respect may develop and work related issues may be resolved.”

--217 G.M.
JIE Procedures

- Establish criteria for performance analysis based on the position description
- Establish the priorities to be accomplished
- Establish the relative importance of duties and responsibilities.
JIE Procedures

- Use objective job-related criteria
- Conduct private meetings with enough time to address issues
JIE Procedures

- Put reviews in writing
  - Assure understanding and clarity
  - More accurate than human memory
  - Later termination or any legal claims may require documentation

- Allow employee to provide written comments
**JIE Procedures**

- Recordkeeping
  - Copy to the Employee
  - Copy in the Personnel File
Timing

- Identify a date by which all reviews must be completed.
  - AND STICK TO IT!

- Hold supervisors accountable for not completing the reviews by that date.
Avoid Common Pitfalls

- Mentioning age, gender, race or other protected categories
- Referring to rumors, speculation, or unsubstantiated complaints about the employee
- Using vague terms, e.g., “bad attitude,” “lazy”
- Inflating ratings
- Falling victim to the “Horns or Halos” Effect
- Focusing only on recent events
After the Review

- Keep record in personnel file.

- Employee has right to comment in writing on the review.

- Regularly review goals being met.

- Consider whether the employee has the resources needed to meet the performance standards.
Ike’s May 2013 Review

- Identify what is going well:
  - Attendance
  - Greeting parishioners with a smile
Ike’s May 2013 Review

- Identify opportunities for improvement:
  - Stop calling part-time staff “little helpers.”
  - Complete assigned tasks on a timely and accurate basis. Do not delegate to other staff.
  - Communicate with other departments about custodial and maintenance work that would impact them.
Synergy between Reviews and Discipline

- Both are intended to communicate about performance
- Both require honesty, clarity and precision
- One must be consistent with the other
- Neither should be a surprise
- Both require employee input
Termination under Justice in Employment

Once the probationary period has ended, JIE requires that termination can only be ended "for cause"

- poor employee performance,
- improper conduct,
- violation of work rules and
- other violations of the employer/employee relationship.
Immediate Termination under JIE

- Illegal discrimination or harassment
- Theft, misappropriation, falsification of records
- Misconduct at the work place which endangers others
- Insubordination or breach of professional ethics
- Working under the influence of illegal or controlled substances
- Consumption of alcohol (unless authorized) or drugs at work or prior to work, so as to affect the employee’s performance.
- Public conduct which is inconsistent with the faith, morals, teachings and laws of the Catholic Church
- Other gross violations of the employer/employee relationship
For everything else, progressive discipline is needed:

- Documented oral warning
  *(Stop that)*
- Written warning
  *(I mean it)*
- Second written and/or suspension
  *(If you don’t stop you’ll be punished)*
- Termination
  *(That’s it – go to your room)*
Progressive Discipline under JIE

Two very important functions:

- It gives the employee a fair chance at becoming a positive contributor; and

- It serves as evidence that the employee was given that chance.
Essential Ingredients for a Warning

- What happened.
- Why it’s a problem.
- What should have happened instead.
- Timeline for next steps.
- Consequences if repeated.
- Employee acknowledgment & response.
What to Avoid in a Warning

- Inaccuracies
- Labels
- Smoking guns
- Vagueness/Subjectivity
- Lapses into other professional roles
- Suspicion or speculation
Inaccuracies

- Get it right
  - Names
  - Dates (all dates)
  - Places
  - Events
- Details
- The policy or practice at issue
Labels

- Insubordination ("You failed to comply")
- Incompetent ("You failed to perform satisfactorily")
- Theft/stealing ("You took school property home without authorization")
- Gross negligence ("you were negligent")
- Forgery ("You signed your supervisor’s name without authorization")
- Assault ("You violated the workplace violence policy")
- Lying ("Your statement could not be proven")
Smoking Guns

- **Avoid referring to protected class:**
  - “Jose, our little Mexican mascot…”
  - “Carol is the third woman to fail in this job”

- **Avoid admissions:**
  - “We finally have enough evidence to terminate”
  - I know it looks bad to fire him two days after his work comp claim but…”
  - “I’m not sure but…”
Smoking Guns

Avoid terms that sound like legal conclusions:

- “Harry fraudulently took sick time.”
- “Harry sexually harassed her.”
- “Harry committed theft of time.”
Vagueness/Subjectivity

- “Bad attitude”
- “Not a team player”
- “Poor performer”

Cite objective evidence.
Lapses into Other Professional Roles

- “Given your substandard performance, I think you may be depressed. I would recommend that . . .”
- “This indicates a drinking problem.”
- “You are forgiven…”
Speculation

- Avoid inferences or assumptions.
  - “You spend so much time at the computer you must be looking at porn.”
  - “You are obviously covering something up.”
  - “You are terminated for suspicion of theft.”
From: Ann Oid, Parish Business Administrator

Date: May 15, 2013

Your employment is governed by the Archdiocesan document entitled Justice in Employment (JIE). This document is intended to be a documented oral warning regarding your job performance in accordance with the requirements of JIE.

Concerns

We have discussed informally some areas of your job performance that require improvement. Still, I continue to see the following deficiencies in your job performance:

1. You sometimes spend too much time talking to parishioners or visitors during working time. This prevents you from completing your assignments or requiring other staff to cover for you. Recent examples include floors not being swept, garbage not emptied or lawn and grounds-keeping assignments not being done.

2. Your interactions with co-workers are inappropriate. For example, you have on occasion assigned your work to the two part-time employees, which diverts them from their regular assignments. You also have been heard to refer to them as your “little helpers,” a term they find unwelcomed and condescending.

3. Your scheduling of work has disrupted other departments on more than one occasion. For example, you assigned staff to wash windows and replace screens during the same time that the DRE had scheduled some training and meetings.
Expectations

1. You must complete your job assignments in compliance with your schedule. While we expect our staff to be welcoming and friendly, you must limit your interactions so as to allow you to complete your assigned tasks.

2. You must not assign others to perform your work. This impedes their ability to complete their own tasks and misrepresents your accomplishments.

3. You must communicate more effectively. Stop using nicknames or other demeaning names for your co-workers and interact more with other department to insure that you schedule your department’s work in a less intrusive manner. Failure to make immediate and sustained improvement will result in additional disciplinary action up to and including termination.
Back to Ike...

• By July 2013, Ike has found a way to solve the grounds-keeping problems.

• “Volunteers” mowing lawn and trimming trees
To: I. M. Osoclean

From: Ann Oid, Parish Business Administrator

Date: July 15, 2013

The terms of your employment are governed by the Archdiocesan document entitled *Justice in Employment (JIE)*. This document is intended to be a written warning regarding your job performance in accordance with the requirements of JIE.

On May 15, 2013, you received an oral warning for a variety of job performance concerns. Since that time, I have learned that you recruited and assigned parish volunteers to mow the lawns and trim the trees. This is extremely inappropriate because:

1. You are paid to perform these tasks. By having others perform them, you are misrepresenting your work performance and are taking pay for work that you are intentionally choosing not to perform.
2. You placed these volunteers and the parish at risk by having them perform potentially dangerous work without adequate training or protective clothing.
3. You exceeded your authority and placed the parish at risk for legal penalties by retaining workers who could be considered employees and therefore subject to income tax, I-9 and minimum wage requirements, among other matters.

You must immediately assume all responsibilities for lawn mowing and tree trimming, and must inform the volunteers that they may no longer perform these tasks. In addition, for the next month, you must prepare and submit to me a daily list of jobs you intend to accomplish. I will use this list to evaluate whether you are scheduling and completing your work as intended.

Failure to carry out these requirements and/or to continue the improvements required in your previous warning will result in additional disciplinary action up to and including termination.

Date:________________________

Ike M. Osoclean
Before the next review

- Collect and maintain information relevant to the review.

- Document and keep notes
  - Supervisory notes
  - Use email
After Ike’s 2nd Written Warning

- **Fall 2013:**
  - Works with the building inspector to ensure that the parish’s systems met code requirements and were functioning correctly.
  - Arranges additional safety training for all custodian staff.

- **December 2013:** Comes to work ½ hour late twice.

- **Spring of 2014:**
  - Organized spring cleaning; finished early because of his efficient planning
  - But floors were ruined and had to be redone because other staff were using the same area.
  - Parishioners commend Ike’s good nature and positive demeanor.
  - Part-time custodians and evening custodian complaints about Ike’s work
  - Occasionally late for work; extended lunch breaks
How will you evaluate Ike’s performance?
Format for Written Remarks

• No cookie cutter/one size fits all approach

• Main objective: Give direct, objective, and honest feedback.

• Cover positives and negatives.

• Use objective job-related criteria
  ◦ Start with the job description
Format for Written Remarks

• Include a self-assessment?

• Pros:
  ◦ Employee knows the job (*hopefully!*)
  ◦ Helps to engage employee in review process
  ◦ Provides opportunity to consider achievements or issues overlooked by management

• Cons:
  ◦ Spin/overstating
  ◦ Some studies have shown that lower-performing employees tend to rate themselves higher and higher-performing employees are more modest
Format for Written Remarks

- **Tips for self-assessment**
  - Standardize the assessments
  - Seek assessment of skills against current job requirements
  - Identify areas for improvement and goals for upcoming year → ACTION PLAN
  - Also look forward, ask employees to evaluate themselves based on future goals
Format for Written Remarks

• Give concrete examples
  ◦ Use production records, disciplinary reports, attendance records, and examples of work quality.
  ◦ Be clear about how you arrived at your conclusions.
Format for Written Remarks

• Consider any disciplinary issues
  ◦ If discipline or discharge is being considered, employee performance deficiencies can provide a critical component.
  ◦ Performance deficiencies that are not documented in the performance evaluations will undermine the employer’s claim that discipline or discharge is appropriate.
  ◦ Same thing with inflated ratings.
Addressing Performance Problems

- Not a time for making friends.
- Don’t soft-peddle.
- Be specific and detailed.
Addressing Performance Problems

- Specifically identify the performance to be improved or comment on performance, not personal behavior.

- “Your work is sloppy” v. “You had 10 errors in your last two reports.”
Addressing Performance Problems

- State the behavior in specific terms and point to particular instances.

  - “Your are not timely completing your monthly reports. Your January report was 2 days late and your March report was a week late.”
Addressing Performance Problems

• Explain the negative impact of the problem on parishioners, colleagues, or the employer.

• “When the report is late, the projections which we need are also late. This results is in poor planning and poor financial decisions.”
Addressing Performance Problems

- Provide clear expectations about the required change.

- Identify S.M.A.R.T. goals
  - Specific, Measurable, Attainable, Relevant to parish’s goals, and Time-sensitive

  - “In order to get the projections on time, I need your report before the 15th of every month.”
Addressing Performance Problems

- Identify consequences for not improving.
  - “Failing to report to work on time will result in additional discipline, up to and including termination.”
Evaluate Ike’s performance

• Identify Simple format

• Cover areas of strong performance

• Cover areas needing improvement
  • Describe problem
  • Describe expectations/goals

• Describe consequences
St. Sample Catholic Church
Employee Performance Review
(To be completed by Supervisor)

EMPLOYEE: ___________________________  POSITION: ___________________________
SUPERVISOR: ___________________________  DATE: ___________________________

A. Areas of commendable performance

1. 
2. 

B. Areas needing development or improvement and performance expectations

1. Description of the problem:
   
   Expectations/Goals:
   
   2. Description of the problem:
      
      Expectations/Goals:
      
C. Consequences

Signature of Employee ___________________________________  Date _______________
Signature of Supervisor ___________________________________  Date _______________
Ike’s Evaluation

A. Areas of commendable performance

1. Spring cleaning
   - Efficiently managed tasks and custodial employees result in early completion
   - Could have been further improved as noted below

2. Positive interactions with parishioners
   - Makes parishioners feel welcome by greeting parishioners in a positive and friendly way
Ike’s Evaluation

B. Areas needing development or improvement and performance expectations

1. Communication about custodial or maintenance work

Description of the problem:

- Does not regularly and effectively communicate or consult with other departments about custodial or maintenance work (e.g., damage to stripped and re-sealed floors during spring cleaning)
- Did not place signage or barriers to work area where floors were being re-sealed, which resulted in work being disturbed and created a hazard for staff and visitors
- Damage to floor resulted in a loss of time and additional expense because the work needed to be redone and it disrupted the work of the other department that had been planning to use the room
Ike’s Evaluation

Expectations/Goals:

- Must consult with and effectively communicate with other departments about the planned work of the custodial department
- Review shared calendar for conflicts
- Use shared calendar to note work that is being planned
- Attend and participate in weekly meetings (Tues., 10 a.m.) with department heads
- Create and post appropriate signage and barriers around work areas to ensure safety and notice of work being done
Ike’s Evaluation

2. Timely completion of assigned work

Description of the problem:

- Does not timely complete assigned tasks and sometimes delegates them to other employees
- Has not been restocking bathrooms
- Has not been completing “take downs” after special events
- Failing to complete assigned tasks misrepresents work performance and disrupts work of others
Ike’s Evaluation

3. Attendance

Description of the problem:

- ½ hour late twice in December 2013
- Continues to occasionally come to work late
- Regularly takes extended lunch breaks
- Violates parish’s attendance policy and prevents completion of work on a timely basis

Expectations/Goals:

- Review parish handbook policies on breaks and attendance.
- Must arrive on time each day
- Must return on time from breaks
Ike’s Evaluation

C. Consequences

Failing to immediately adhere to the above described expectations will result in additional disciplinary action up to and including termination.
Meeting with Ike

- Consider whether Ike should read the review ahead of time or during the meeting.
  - No surprises
  - Planned responses
  - More meaningful engagement
Meeting with Ike

- Planned, two-way communication
  - Be professional and be mindful of your tone.
  - Avoid asking closed questions.
  - Allow the employee time to respond.

- Learning by both sides

- Agreement on goals and priorities and follow-up
Follow-up for Ike

- Consider timeline and method for follow-up for Ike on goals.
- Identify a system for making sure follow-up is completed.
Final Written Warning

- Same issues
  - Not completing his work
  - Assigning work to others
  - Communication
  - Attendance
Final Written Warning

- This is the time for very frank talk
- Don’t just seek improvement – you want fully satisfactory performance.
- Set out the specific timeframe for required improvement
- There are no remaining interim steps
- Don’t take shortcuts, e.g. “Maybe you just want to quit?”
Thank you for your time and attention.