

Strategies for Reducing Legal Risks through Communication and Performance Management

Sarah Sawyer: Welcome to this week's OK at Work in person um, with myself, Sarah Sawyer and my colleague Russell Berger, both attorneys at Offit Kurman. And today we are talking about building teams, managing employees. Russell, what do you think is a happy employee or an unhappy employee more likely to sue you?

Russell Berger: I'm gonna go with unhappy.

Sarah Sawyer: So I think that, obviously we talk a lot about performance management and documentation and being proactive and managing teams from like a legal compliance perspective. And that is a really important exercise. Just like having a handbook is important and, you've gotta be checking the boxes of, documenting things, having policies in place.

Doing performance improvement plans perhaps. But what about managing employees on a day-to-day basis in a practical way, Russell, what's the impact and how does that play into everything? [00:01:00]

Russell Berger: Yeah, I mean, obviously, we give the advice a lot of the time, have you talked to your employee about this?

Have you warned them? Have you given them coaching on this? Have you documented that? We have those conversations all the time when clients call us and say, I wanna let go of this employee. Because it's critical factors in reducing the risk. One of the things that really jumps out is besides the fact that the answer to those questions should be, yes, I've done this, I've documented, I've had the conversations it's a lot less risk for you as the business if those conversations are effective in change behavior.

While we can help manage legal risk, it's best if it never gets to the level of legal risk at all. And so while all those things are still true, have proactive management identify things, put people on PIPs, do those sorts of things, it's better if you're thinking about how do I actually get through to this employee?

How do I actually change their behavior? This isn't just checking the box. It is checking a box, but it's more than just checking a box. How do I actually compel this person to change the way they're behaving in a manner that is best for the content?

Sarah Sawyer: Yeah, I think it's [00:02:00] important if you're actually trying to effectively change and actually have a good workforce, build a good team, have a productive team.

And what comes to mind for me is also obviously I scroll Instagram, like a lot of us throughout the day or at night or whatever. And there's a lot of funny pages around HR and people management. Around bad ways to do this that are box checking and the employees know that it's box checking, right?

And sometimes that might be your desired reason for doing it. And you might want them to think that way depending on what your goals are. But if your goals are actually to build a good team,

have a productive workforce, make sure that expectations are clear, then you wanna be thoughtful about that approach and how you're doing it.

'Cause I think, people are smart often if you've hired them and they're good at their jobs and they'll understand if it's a box checking exercise versus you actually trying to build a team, trying to improve their skill sets and, help manage their performance in both a way that is documented and helpful to the company, but also a way that's helpful [00:03:00] to them and helpful to building a successful team.

Russell Berger: And I think one of the key pieces of doing that is really understanding your audience. So no two employees are gonna be exactly the same. There is no one size fits all. This is how I'm going to coach everyone who's in this situation. It really requires a knowledge of your team, knowing what motivates them, knowing what they're hoping to get out of it.

And by it I mean their employment with you and speaking to them. And building a message that resonates with that employee. Going through the process of, I like to use something called the desk method where you describe the problem, explain the negative effects that it's happening.

You specify solutions and then you call for a commitment from the employee. But even within that method, there's a lot of customization that can go to the person that you're talking to your audience, and I really encourage everyone to take a minute and think about like, how does this message that I know I need to deliver to make my company better, to reduce my legal risk.

How does it really resonate with this person? How do I really get through and, hopefully [00:04:00] solve the problem? 'cause, if I can get this person on the right track, that's the best possible outcome for the business.

Sarah Sawyer: Yeah. And it all comes down to communication and being thoughtful about it and what you might document behind the scenes and how you might note that narrative of a conversation you had and documenting the file or documenting things for yourself should probably be a little bit different than what you're saying to the employee as far as, how you're messaging things.

It's a different impact and they serve different purposes. So, important to be thoughtful. Well, thanks Russell. See you next time.

Russell Berger: Thanks, Sarah.