LEAGUE OF CALIFORNIA CITIES
CITY CLERKS NEW LAW & ELECTIONS SEMINAR

Managing the Marginal Employee

12/11/2019

PRESENTED BY:

T. Oliver Yee
Managing the Marginal Employee
League of California Cities City Clerks
New Law & Elections Seminar
December 11, 2019

Presented By: T. Oliver Yee
Today’s Agenda

I. Characteristics of the Marginal Employee

II. Impact of the Marginal Employee

III. Motivating the Marginal Employee
   a. Supervisory tools
   b. Evaluative tools
   c. Disciplinary tools
I. Characteristics of the Marginal Employee

What is a “Marginal” Employee?
“Marginal” - A Definition

• “Close to the lower limit of qualification or acceptability”
Common Traits of the Marginal Employee

- Confrontational
- Careless
- Withdrawn/Non Communicative
- Blaming
- Difficult/“High-Maintenance”
True, False, or Maybe

How a supervisor manages a marginal employee has no impact on other employees in the department.
Poisons the Workplace and Causes Mistrust

• Infects the Workplace
  – Work quality/quantity declines
  – Employee morale declines
  – Good employees leave

• Credibility Suffers
  – Supervisor credibility
  – Agency credibility
  – Internally/externally
  – Can impact recruitment
Proactive Management Required

• Must Address Marginal Performance
  – Frustrating
  – Time-Consuming
  – Difficult

• Alternative is Unacceptable
III. Motivating the Marginal Employee

A. Attempt to identify the source

B. Use LCW Toolbox
   • Supervision
   • Evaluation
   • Discipline
Attempt to Identify the Source

- “Seniority” Mentality
- Lack of Advancement
- Pay/Perks/Low Salary
- Lack of Recognition/Agency Support
- Insufficient Training
- Management Techniques
Attempt to Identify the Source

• Health/Psychological Issues
• Drug/Alcohol/Substance Abuse Issues
• Interpersonal Problems
• Culture Clash
• Inadequate Skills
• Family Issues, Conflicts, Responsibilities
Consider Your Own Motivations

- Personal Feelings Toward the Employee
- Understand Any Disconnects
- Under-Performance v. Character Flaws
Use LCW Toolbox:
Supervisors should only give feedback to employees on a periodic basis or employees will feel harassed.
A. Effective Supervision

• Motivates Most Employees
  – Lets employees know where they stand on a daily basis
  – Provides useful assistance to improve
  – Includes employees in decision making
Three Parts to Effective Supervision

1) Organizational Planning
2) Ongoing Communication
3) Accountability
Organizational Planning—
Setting Goals/Expectations

• What work employee should do
• When employee should do the work
• How employee should do the work/behave
Organizational Planning—Setting Measurable Standards

- What are standards?
- How do you set standards?
Ongoing Communication – Communicate Expectations to Employees

I. Work To Be Done

- The Basic Assignment
- Purpose of the work
- How work will be used
- Who will use the work
- How success will be measured
II. When They Should Work

- When to start
- When project is due
- Policies on:
  - Absenteeism
  - Zero tolerance for tardiness
  - Adherence to lunch break/workday
III. How They Should Do The Work

- Resources
- Technology
- Experts
- Existing reports
- Other tools
IV. How They Should Behave

- Work solo
- Work with team
- Get information from others
- Communicate with others
- Model behavior of agency leaders
Ongoing Communication – Enhance Your Communication Skills

• Keep Your Cool
• Communication Is A Two-Way Street
• Develop Trust
Accountability – Effective Feedback

• Immediate Feedback
• Regular Check-Ins
• Motivation Can Include Positive Reinforcement
Accountability – Effective Feedback

• Think First!
• Purposeful communication
• What do I want to communicate?
  – Concerns?
  – How to express?
  – Best approach with employee?
• Result of communication?
### Accountability – Effective Feedback

- How do I want to communicate (oral/written)?
- Where do I want to communicate?
- When should I communicate?
- Who should be present?
Accountability – Effective Feedback

• Content of Communication
  – Clear and specific
  – Constructive
  – Objective
  – Respectful
  – Accurate
Accountability – Effective Feedback

• Content of Communication (continued)
  – Link conduct to impact
  – No “he said/she said”
  – Forest not trees
  – Close with action plan
  – Check for understanding
  – Identify available assistance
Accountability –
Supervisory Traps to Avoid

The Best Defense Is An Offense---the marginal employee will notice your mistakes!

• No favoritism
• Practice what you preach:
  – Be on time
  – Do your work well and timely
  – Proofread written communication
  – Follow the rules
• Follow the rules of effective communication
Accountability – Supervisory Traps to Avoid

- Avoid These Tendencies:
  - No sugarcoating
  - No inflated feedback or evaluations
  - No positives only
  - No watering down criticism
  - No excusing poor performance
True, False, or Maybe

I should not make a written record of communication about performance issues unless I place it in the personnel file.
Accountability – Effective Feedback

• Make a record of the communication
  – Informal is not invisible
  – Calendar entries
  – Meeting log
  – Notes
  – Confirming memos
Accountability – Effective Feedback Case Study

Sandy works at the Front. Community members routinely complain about her disheveled appearance, rude behavior, and word choice. Supervisor Josie suggests that Sandy wear more appropriate clothes in the workplace and, perhaps, trim and dye her hair.

Did Josie effectively communicate the agency’s concerns?
Marginal Probationary Employees

• Do not let them pass probation!
B. Evaluation

Second Motivational Tool of LCW Toolbox
Evaluation

• Importance:
  – Required by Agency’s rules
  – To improve performance
  – Tells employee what doing right
  – Tells employee what doing wrong
  – Record of performance
  – Supports disciplinary actions
  – Critical evidence in defending litigation
Effective Evaluation

• On Going Process-No Surprises
• Provides Clear and Consistent Feedback
• Covers Entire Review Period
• Identifies Good Performance
Effective Evaluation

- Includes Plan for Improvement
- Communicates Timelines and Consequences
- Communicates/Identifies Poor/Marginal Performance
- Available Assistance
True, False, or Maybe

It is a good idea to ask an employee to suggest assistance he/she thinks may be helpful.
### Key Tools for Performance Evaluation

- Supervisor’s File
- Personnel File
Two Key Tools

• **First: The Supervisor’s File**
  – Keep track of details
  – Temporarily store documents
  – Facilitates discussions with employee
  – NOT substitute for personnel file
  – Must remain confidential
Two Key Tools

• Personnel File
  – Official record
  – Confidential
  – Disciplinary action based on THIS file
  – Follow rules and procedures
  – Long-term impact on employee
  – Long-term impact on agency
Performance Factors

- Job Specific Skills
- Personal and “People” Skills

![Venn diagram showing the overlap between Job Specific Skills and Personal Skills](Image)
Performance Factors

**Job Specific Skills**

- Job knowledge
- Quantity of work performed
- Quality of work performed
Performance Factors

**Personal and People Skills**

- Adaptability to work situation
- Effectiveness in working with others
- Attendance and punctuality
Supervisory Traps to Avoid

The Marginal Employee Will Challenge You To Do It Right!

• Strictly follow formal evaluation timelines
• Strictly follow formal evaluation rules
• Follow-through on:
  – Regular performance feedback
  – Training or assistance
• Do what you say you will do
C. Discipline

• Third Motivational Tool of LCW Toolbox
Why Discipline?
Why Discipline?

• Two Critical Functions
  – Last motivational tool
  – If not motivate-management’s tool to remove
Basic Discipline Rules

• Identify “Cause”:
  – Job standards
  – Personnel rules
  – Harassment/discrimination policy
  – Department rules/procedures
  – MOUs
  – Written orders
Basic Discipline Rules

• Types of Progressive Discipline
  – Counseling
  – Oral warning
  – Written warning
  – Suspension
  – Reduction in pay
  – Demotion
  – Discharge
Basic Discipline Rules

• Legal Boundaries
  – First amendment rights
  – Retaliation
  – Accommodation for disability
  – Invasion of privacy
  – Drug and alcohol testing
  – Unlawful discrimination
  – Fair Labor Standards Act
Basic Discipline Rules

• Establish Factual Basis
• Documentation
• Investigation
• Due Process
Basic Discipline Rules

• Establish Factual Basis:
  – Description easily understood by third party
  – Describe specific facts and conduct
  – Include all supporting documentation
  – Description should be self-contained
Basic Discipline Rules

• Documentation/Corroboration Comes in Many Forms:
  – Oral recollections
  – Notes
  – Calendars
  – Memos
  – Reprimands/other prior discipline

• WRITING IS BEST!
Basic Discipline Rules

• Discipline Documents Must Include:
  – Rules violated
  – Specific facts
  – Discipline history
  – Impact on workplace
  – Hearing rights
  – All supporting documents
  – Statement re placing in personnel file
    (and make sure it gets there)
Basic Discipline Rules

• Just Cause Checklist:
  – Forewarning/notice
  – Reasonableness
  – Fair and objective investigation
  – Evenhandedness
  – Progressive discipline
  – Appropriate level of discipline
Basic Discipline Rules

• Procedural Checklist:
  – Notice of intent to discipline
  – *Skelly* conference
  – Notice of discipline
  – Evidentiary appeal
Manage the Marginal Employee

- Use the LCW Toolbox!!!
Thank You!

T. Oliver Yee
Partner | Los Angeles Office
Phone: 310.981.2000 | oyee@lcwlegal.com
www.lcwlegal.com/our-people/T-Oliver-Yee
Managing the Marginal Employee
League of California Cities City Clerks New Law & Elections Seminar | December 11, 2019
Presented by: T. Oliver Yee

Today’s Agenda

I. Characteristics of the Marginal Employee
II. Impact of the Marginal Employee
III. Motivating the Marginal Employee
   a. Supervisory tools
   b. Evaluative tools
   c. Disciplinary tools

I. Characteristics of the Marginal Employee

What is a “Marginal” Employee?
“Marginal” - A Definition
• “Close to the lower limit of qualification or acceptability”

Common Traits of the Marginal Employee
• Confrontational
• Careless
• Withdrawn/Non Communicative
• Blaming
• Difficult/“High-Maintenance”

True, False, or Maybe
How a supervisor manages a marginal employee has no impact on other employees in the department.
Managing the Marginal Employee
League of California Cities City Clerks New Law & Elections Seminar | December 11, 2019
Presented by: T. Oliver Yee

Poisons the Workplace and Causes Mistrust
- Infects the Workplace
  - Work quality/quantity declines
  - Employee morale declines
  - Good employees leave
- Credibility Suffers
  - Supervisor credibility
  - Agency credibility
  - Internally/externally
  - Can impact recruitment

Proactive Management Required
- Must Address Marginal Performance
  - Frustrating
  - Time-Consuming
  - Difficult
- Alternative is Unacceptable

III. Motivating the Marginal Employee
A. Attempt to identify the source
B. Use LCW Toolbox
   - Supervision
   - Evaluation
   - Discipline
Managing the Marginal Employee

League of California Cities City Clerks New Law & Elections Seminar | December 11, 2019
Presented by: T. Oliver Yee

Attempt to Identify the Source

- “Seniority” Mentality
- Lack of Advancement
- Pay/Perks/Low Salary
- Lack of Recognition/Agency Support
- Insufficient Training
- Management Techniques

Attempt to Identify the Source

- Health/Psychological Issues
- Drug/Alcohol/Substance Abuse Issues
- Interpersonal Problems
- Culture Clash
- Inadequate Skills
- Family Issues, Conflicts, Responsibilities

Consider Your Own Motivations

- Personal Feelings Toward the Employee
- Understand Any Disconnects
- Under-Performance v. Character Flaws
Managing the Marginal Employee
League of California Cities City Clerks New Law & Elections Seminar | December 11, 2019
Presented by: T. Oliver Yee

Use LCW Toolbox:

True, False, or Maybe

Supervisors should only give feedback to employees on a periodic basis or employees will feel harassed.

A. Effective Supervision

• Motivates Most Employees
  – Lets employees know where they stand on a daily basis
  – Provides useful assistance to improve
  – Includes employees in decision making
Three Parts to Effective Supervision

1) Organizational Planning
2) Ongoing Communication
3) Accountability

Organizational Planning—Setting Goals/Expectations

- What work employee should do
- When employee should do the work
- How employee should do the work/behave

Organizational Planning—Setting Measurable Standards

- What are standards?
- How do you set standards?
### Ongoing Communication – Communicate Expectations to Employees

#### I. Work To Be Done
- The Basic Assignment
- Purpose of the work
- How work will be used
- Who will use the work
- How success will be measured

#### II. When They Should Work
- When to start
- When project is due
- Policies on:
  - Absenteeism
  - Zero tolerance for tardiness
  - Adherence to lunch break/workday

#### III. How They Should Do The Work
- Resources
- Technology
- Experts
- Existing reports
- Other tools
Ongoing Communication – Communicate Expectations to Employees

IV. How They Should Behave

• Work solo
• Work with team
• Get information from others
• Communicate with others
• Model behavior of agency leaders

Ongoing Communication – Enhance Your Communication Skills

• Keep Your Cool
• Communication Is A Two-Way Street
• Develop Trust

Accountability – Effective Feedback

• Immediate Feedback
• Regular Check-Ins
• Motivation Can Include Positive Reinforcement
Managing the Marginal Employee
League of California Cities City Clerks New Law & Elections Seminar | December 11, 2019

Presented by: T. Oliver Yee

---

**Accountability – Effective Feedback**

- Think First!
- Purposeful communication
- What do I want to communicate?
  - Concerns?
  - How to express?
  - Best approach with employee?
- Result of communication?

---

**Accountability – Effective Feedback**

- How do I want to communicate (oral/written)?
- Where do I want to communicate?
- When should I communicate?
- Who should be present?

---

**Accountability – Effective Feedback**

- Content of Communication
  - Clear and specific
  - Constructive
  - Objective
  - Respectful
  - Accurate

---
Managing the Marginal Employee
League of California Cities City Clerks New Law & Elections Seminar | December 11, 2019
Presented by: T. Oliver Yee

Accountability – Effective Feedback

• Content of Communication (continued)
  – Link conduct to impact
  – No “he said/she said”
  – Forest not trees
  – Close with action plan
  – Check for understanding
  – Identify available assistance

Accountability – Supervisory Traps to Avoid

The Best Defense Is An Offense---the marginal employee will notice your mistakes!

• No favoritism
• Practice what you preach:
  – Be on time
  – Do your work well and timely
  – Proofread written communication
  – Follow the rules
• Follow the rules of effective communication

Accountability – Supervisory Traps to Avoid

• Avoid These Tendencies:
  – No sugarcoating
  – No inflated feedback or evaluations
  – No positives only
  – No watering down criticism
  – No excusing poor performance
True, False, or Maybe

I should not make a written record of communication about performance issues unless I place it in the personnel file.

Accountability – Effective Feedback

- Make a record of the communication
  - Informal is not invisible
  - Calendar entries
  - Meeting log
  - Notes
  - Confirming memos

Accountability – Effective Feedback Case Study

Sandy works at the Front. Community members routinely complain about her disheveled appearance, rude behavior, and word choice. Supervisor Josie suggests that Sandy wear more appropriate clothes in the workplace and, perhaps, trim and dye her hair.

Did Josie effectively communicate the agency’s concerns?
Managing the Marginal Employee

League of California Cities City Clerks New Law & Elections Seminar | December 11, 2019

Presented by: T. Oliver Yee

Marginal Probationary Employees

- Do not let them pass probation!

B. Evaluation

Second Motivational Tool of LCW Toolbox

Evaluation

- Importance:
  - Required by Agency’s rules
  - To improve performance
  - Tells employee what doing right
  - Tells employee what doing wrong
  - Record of performance
  - Supports disciplinary actions
  - Critical evidence in defending litigation
## Effective Evaluation

- On Going Process-No Surprises
- Provides Clear and Consistent Feedback
- Covers Entire Review Period
- Identifies Good Performance

## Effective Evaluation

- Includes Plan for Improvement
- Communicates Timelines and Consequences
- Communicates/Identifies Poor/Marginal Performance
- Available Assistance

## True, False, or Maybe

It is a good idea to ask an employee to suggest assistance he/she thinks may be helpful.
Managing the Marginal Employee
League of California Cities City Clerks New Law & Elections Seminar | December 11, 2019
Presented by: T. Oliver Yee

Key Tools for Performance Evaluation

• Supervisor’s File
• Personnel File

Two Key Tools

• First: The Supervisor’s File
  – Keep track of details
  – Temporarily store documents
  – Facilitates discussions with employee
  – NOT substitute for personnel file
  – Must remain confidential

Two Key Tools

• Personnel File
  – Official record
  – Confidential
  – Disciplinary action based on THIS file
  – Follow rules and procedures
  – Long-term impact on employee
  – Long-term impact on agency
Performance Factors

- Job Specific Skills
- Personal and “People” Skills

Job Specific Skills
- Job knowledge
- Quantity of work performed
- Quality of work performed

Personal Skills
- Adaptability to work situation
- Effectiveness in working with others
- Attendance and punctuality

Presented by: T. Oliver Yee
Managing the Marginal Employee
League of California Cities City Clerks New Law & Elections Seminar | December 11, 2019
Presented by: T. Oliver Yee

Supervisory Traps to Avoid

The Marginal Employee Will Challenge You To Do It Right!

- Strictly follow formal evaluation timelines
- Strictly follow formal evaluation rules
- Follow-through on:
  - Regular performance feedback
  - Training or assistance
- Do what you say you will do

C. Discipline

- Third Motivational Tool of LCW Toolbox

Why Discipline?
Why Discipline?

- Two Critical Functions
  - Last motivational tool
  - If not motivate-management’s tool to remove

Basic Discipline Rules

- Identify "Cause":
  - Job standards
  - Personnel rules
  - Harassment/discrimination policy
  - Department rules/procedures
  - MOUs
  - Written orders

Basic Discipline Rules

- Types of Progressive Discipline
  - Counseling
  - Oral warning
  - Written warning
  - Suspension
  - Reduction in pay
  - Demotion
  - Discharge
Managing the Marginal Employee
League of California Cities City Clerks New Law & Elections Seminar | December 11, 2019
Presented by: T. Oliver Yee

Basic Discipline Rules
• Legal Boundaries
  – First amendment rights
  – Retaliation
  – Accommodation for disability
  – Invasion of privacy
  – Drug and alcohol testing
  – Unlawful discrimination
  – Fair Labor Standards Act

Basic Discipline Rules
• Establish Factual Basis
• Documentation
• Investigation
• Due Process

Basic Discipline Rules
• Establish Factual Basis:
  – Description easily understood by third party
  – Describe specific facts and conduct
  – Include all supporting documentation
  – Description should be self-contained
Basic Discipline Rules

• Documentation/Corroboration Comes in Many Forms:
  – Oral recollections
  – Notes
  – Calendars
  – Memos
  – Reprimands/other prior discipline
• WRITING IS BEST!

Basic Discipline Rules

• Discipline Documents Must Include:
  – Rules violated
  – Specific facts
  – Discipline history
  – Impact on workplace
  – Hearing rights
  – All supporting documents
  – Statement re placing in personnel file
    (and make sure it gets there)

Basic Discipline Rules

• Just Cause Checklist:
  – Forewarning/notice
  – Reasonableness
  – Fair and objective investigation
  – Evenhandedness
  – Progressive discipline
  – Appropriate level of discipline
Basic Discipline Rules

- Procedural Checklist:
  - Notice of intent to discipline
  - Skelly conference
  - Notice of discipline
  - Evidentiary appeal

Manage the Marginal Employee

- Use the LCW Toolbox!!!

Thank You!

T. Oliver Yee
Partner | Los Angeles Office
Phone: 310.981.2000 | oyee@lcwlegal.com
www.lcwlegal.com/our-people/T-Oliver-Yee