

# Counsel to Counsel

## Addressing Challenges for the GC/CLO in 2023

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April 30 – May 1, 2023

EPSTEIN  
BECKER  
GREEN

50  
YEARS

# How Effective Performance Reviews Can Empower and Improve Your Legal Team

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# How Effective Performance Reviews Can Empower and Improve Your Legal Team

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Denise Dadika  
Epstein Becker Green



Kate Rigby  
Epstein Becker Green

# Agenda



1. Overview of Effective Performance Management
2. Do's and Don'ts of Employment Documentation
3. Best Practices for Review Meeting
4. Case Studies
5. Minimizing Liability

# Performance Management Process



**Effective performance management systems typically include:**



- Goal setting



- Performance review

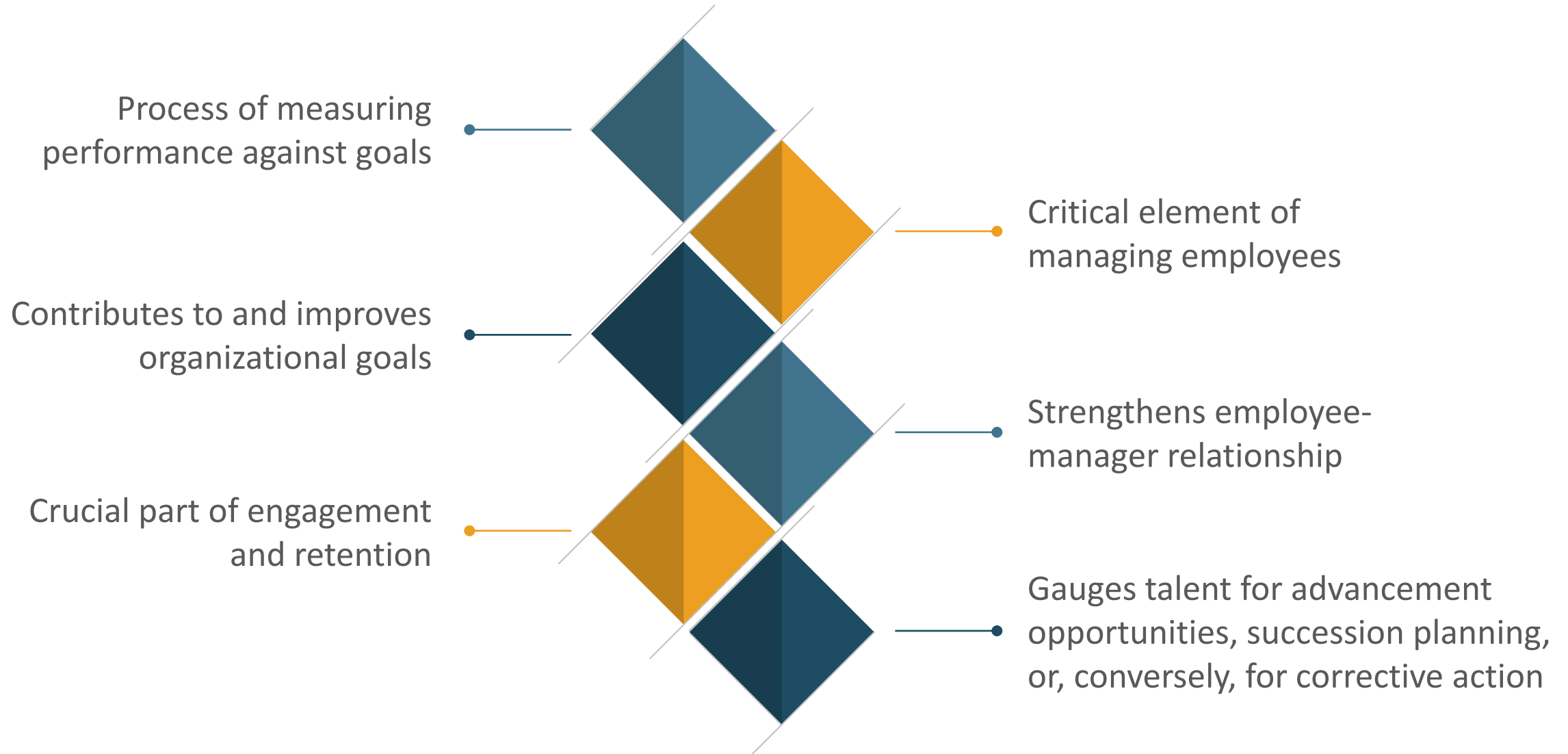
- Informal discussions
  - Frequent dialogue, coaching, real-time feedback, goal progress
- Formal written evaluation
  - Quarterly, Mid-year, Annual Reviews
  - Self-evaluation



- Performance improvement process

# Performance Reviews

## Discussions & Written Evaluation



# Performance Reviews

## Discussions & Written Evaluation



**Two-way  
conversation that  
may address:**

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Career growth and  
development

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Alignment to organizational  
goals

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Progress toward annual goals

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Performance and engagement  
challenges

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Recognition

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Peer feedback

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Client/customer feedback

# Preparing for Formal Evaluation

## Gathering Data



### Review the following:

- Employee's responsibilities and goals

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- Organizational goals

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- Employee's self-evaluation

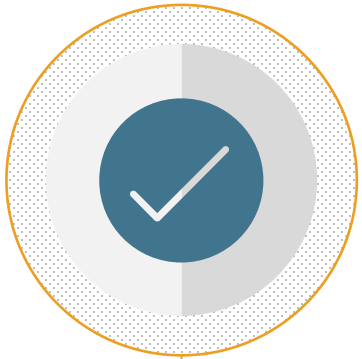
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- Notes from performance discussions, formal or informal, with the employee

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- Feedback from others, managers, clients, or colleagues



# Documentation Do's and Don'ts

## Documentation

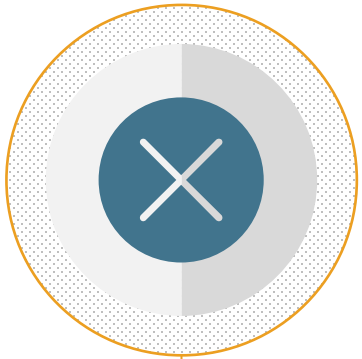


### Do:

- ✓ State accurately (don't sugar coat)
- ✓ Use objectivity (state facts, not opinions)
- ✓ Provide specifics (projects, achievements, errors)
- ✓ Identify how individual's performance, good or bad, impact the team and organization
- ✓ Be consistent (same for all similar offenses by the same or other employees)
- ✓ Evaluate the performance, not the person
  - ✓ "Rafi doesn't care" vs. "Rafi fails to meet deadlines"
- ✓ Provide balanced feedback
- ✓ Be clear about consequences where improvement is needed
- ✓ Use detailed phrases to describe performance
  - ✓ Initiates and executes creative ideas such as...
  - ✓ Excels at developing programs / strategies that have delivered X results
  - ✓ Achieves optimal levels of performance and accomplishment with / for ...

# Documentation Do's and Don'ts

## Documentation



### Don't:

- ✗ Create damaging documents
- ✗ Don't include stereotypical/biased language or phrases
  - "You can't teach an old dog new tricks"
  - "She's too aggressive"
  - "Bri would have hit her target if she hadn't been off on maternity leave."
- ✗ Don't reference participation in investigations or workplace complaints
- ✗ Don't mention/complain about leave or medical condition
- ✗ Include comparisons to other employees
  - ✗ "You're the only team member who fails to X"
- ✗ Don't include surprises
  - ✗ Address problems as they arise
  - ✗ Have regular discussions about performance and goals
- ✗ Don't generalize or be vague
  - ✗ "You always/never do X"
  - ✗ "You're a good employee"
- ✗ Don't speculate the reason for under performance
  - ✗ "John seems to have a fear of failure."

# Performance Evaluations

## Common Pitfalls Associated with Evaluations



**Appraiser discomfort**

**Lack of  
Differentiation**

**Bias and lack of  
objectivity**

**Halo/horns effect**

**Recency effect**

**Supervisor unable to  
observe behavior**

# Evaluation Meeting

## Best Practices



To the extent you can, put the employee at ease by establishing a rapport



Explain that the purpose of the meeting is to discuss past performance and to plan for future development



Explain that the appraisal is based on established performance standards



Discuss the major responsibilities indicated as strengths first



Then discuss the areas where improvement is needed



Provide specific examples of the positive and negative



Discuss how their performance impacted team and organization

# Evaluation Meeting

## Best Practices



Discuss actionable ways to progress/improve



Discuss any obstacles



Encourage the employee to participate in the conversation

- Ask them to discuss their accomplishments/challenges
- Ask them to identify growth opportunities



Be open to employee comments and questions  
– if the employee does not understand why performance was poor, it will not improve

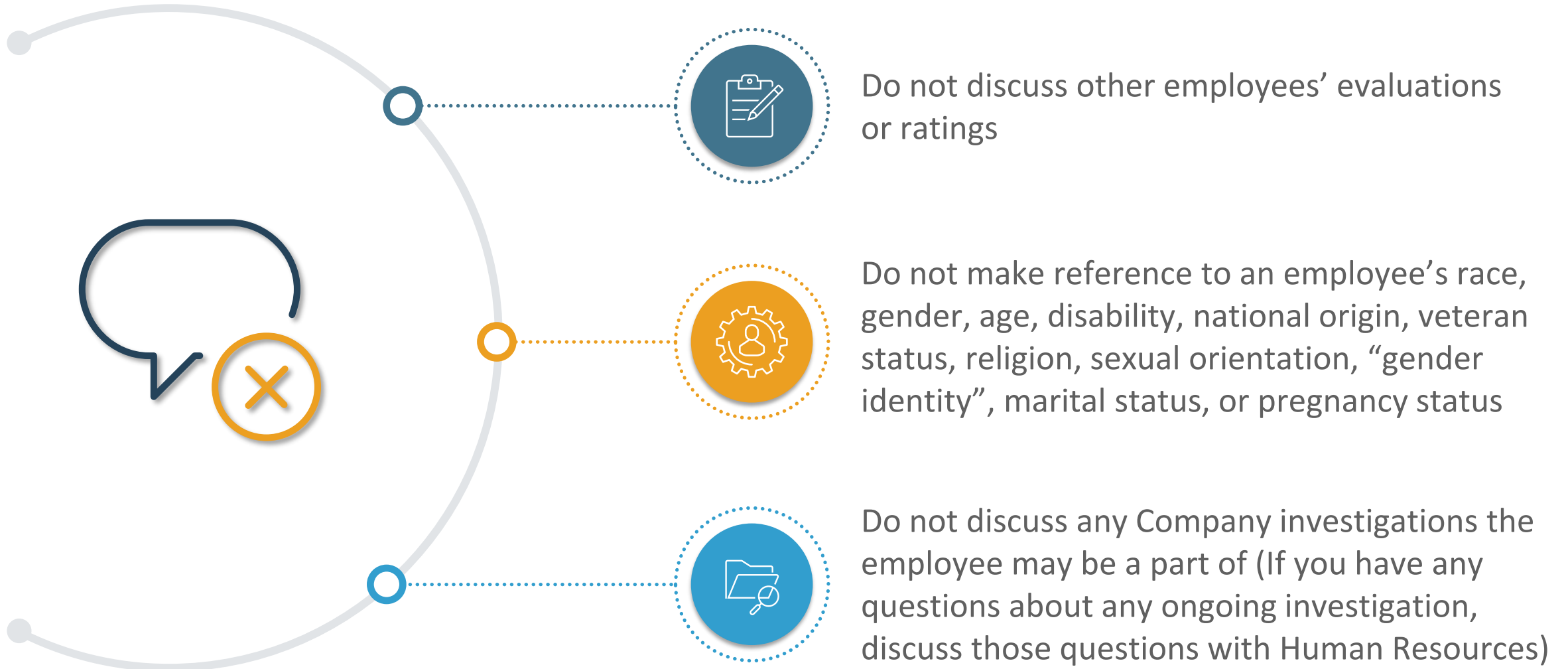


Determine next steps

- Goals
- Training and development
- Areas of Improvement



# Is There Anything I Should **NOT** Say During an Evaluation Meeting?



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# Handling Challenging Dialogues



- Prepare and practice
- Focus on the specifics of the behaviors and its impact
- Acknowledge and listen
- Stay calm and objective; stick to the facts
- Ask them to focus on what they can control
- Ask them to repeat what they heard you say
- Allow for silence, even if uncomfortable
- Identify gaps and blind spots between self-assessment and observed performance
- Reinforce that feedback is intended to be helpful while recognizing the impact of feedback is personal
- Encourage open-mindedness, even if feedback is difficult for them to acknowledge
- Spell out what success or improvement looks like; be specific
- Focus on mutual identification of solutions and ways to move forward, rather than debating

# Handling Responses to Feedback

Ask probing, open-ended questions to help identify underlying issues and engage the individual

Is argumentative	<p><i>"I recognize that you are upset about..."</i></p> <ul style="list-style-type: none"><li>Paraphrase/reflect the person's key concern or confirm and let them talk</li></ul> <p><i>"Let me suggest that we focus on...and come to an agreement on..."</i></p>
Is shocked	<p><i>"I can see you are surprised about what I'm sharing with you"</i></p> <ul style="list-style-type: none"><li>Show empathy</li></ul> <p><i>"I recognize you may be surprised because..."</i></p>
Deflects the blame	<p><i>"I recognize that/I admit that/It is possible that what you are saying is accurate, however..."</i></p> <p><i>"What specifically...how specifically..."</i></p> <ul style="list-style-type: none"><li>Accept valid criticism</li></ul> <p><i>"Let's put aside the discussion of (name). I would like to go back to talking about..."</i></p>
Disagrees or doesn't think it's a problem	<p><i>"Let me share with you some examples that support my position"</i></p> <p><i>"I hear you, let me explain how it could affect you if this isn't addressed"</i></p>
Talks very little or is silent	<p><i>"What do you think about...?"</i></p> <ul style="list-style-type: none"><li>Ask open-ended questions to draw them out and understand their perspective</li></ul> <p><i>"What are your concerns? How would you describe?"</i></p> <ul style="list-style-type: none"><li>Don't answer your own questions to fill the silence – use silence to encourage them to talk</li></ul>
Becomes upset	<p><i>"I can appreciate why you are upset that..."</i></p> <ul style="list-style-type: none"><li>Accept hurt feelings and allow expression</li><li>Stick to the issue while showing empathy</li></ul> <p><i>"From what you've heard, what do you view as the issue?"</i></p>
Interrupts	<p><i>"I can appreciate that you want to add your point of view. I want to go back to..."</i></p> <ul style="list-style-type: none"><li>Accept concerns and redirect to the topic at hand</li></ul>

# Minimizing Liability



- Accurate documentation
- Regular Communication
- Be Honest
- Avoid Subjectivity
- Evaluate performance, not the person
- Be Consistent
- Capture the full year
- Avoid surprises
- No stereotyping
- Don't just rubber stamp