Performance Appraisals in Court

The three most common types of lawsuits employees bring against organizations involve \textbf{wrongful termination, discrimination,} or \textbf{harassment}. When an employee brings such a suit against an organization, attorneys on \textbf{both sides will try to use the employee's performance appraisals to prove or disprove the employee's case.}

\textbf{Wrongful Termination Lawsuits}

Most employees have an \textbf{at-will relationship} with the organization, which means neither the employee nor the employer is bound by an employment contract. At-will employees can quit or be terminated at any time for any reason—except for reasons based on legally protected attributes.

Supervisors must be careful not to compromise the at-will relationship during the performance period, on the appraisal form, or in the appraisal meeting. Doing so exposes the company to a potentially valid wrongful termination claim. To avoid compromising the at-will relationship:

\begin{quote}
Never make statements that imply a promise of continued employment, such as “You have a great future here” or “Keep up the good work and you’ll always have a job.”
\end{quote}

Make sure the performance appraisal form and the appraisal meeting contain detailed documentation of performance-based reasons for termination.

\textbf{Discrimination and Harassment Lawsuits}

Discrimination and harassment lawsuits happen when employees feel they’ve received unfair or hostile treatment—not necessarily termination—due to a legally protected attribute, such as sex or race. Attorneys can use performance appraisals in these suits as well, so employers should avoid all of the following:

\begin{quote}
Making statements that might be considered discriminatory or harassing, such as, “Margaret's German accent makes her unappealing to customers”
\end{quote}

\begin{quote}
Referring in any way—even jokingly—to an employee’s legally protected attributes, such as age or religion
\end{quote}

\begin{quote}
Using language that implies that an employee is “different,” such as “Ted just doesn’t fit in around here”
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