

## ‘You’re Doing A Great Job Brownie, Er Comey . . . And You’re Fired!’ Avoiding Unforced Errors In Employment Terminations

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Last week, former FBI director James Comey testified before a Senate Committee in front of a packed house and with millions more watching on television (the event even was live-streamed in some D.C.-area bars). During the hearing, Comey expressed confusion over being fired for poor performance because before his termination, the president allegedly told him that he was doing a “good job.” Comey’s testimony is reminiscent of the firing of another government official – Michael Brown. You may remember that Brown was the head of FEMA during Hurricane Katrina. He initially had the support of then-President Bush who famously declared: “Brownie, you’re doing a heck of a job.” But, like Comey, Brown was sacked soon after. Employees hardly can be faulted for questioning why they are being fired after their boss tells them they are doing a “good job.” Unfortunately, this happens frequently, and countless employment lawsuits are based on this very paradigm. Although some of those claims may have merit, the vast majority involve managers who are either careless or just don’t like conflict.

**Taking things literally** It makes sense for employers to be honest and up front with their subordinates. Unfortunately, human nature tends to get in the way; most of us do not want to be confrontational and it’s easier to get out of an uncomfortable conversation with a throwaway line like “you’re doing a good job” than to invite trouble or risk souring what otherwise might still be a workable relationship. Better to offer up some faint praise than risk making things worse. Right? Wrong. The problem is that employees tend to take what their bosses say literally. If someone is fired, trust that the employee will vividly remember not only the praise their employer once gave them – even though faint – but also that the praise does not square with the subsequent claim they were under-performing. Any performance communication provided to an employee should be – above all – accurate. If an employer truly does not believe an employee is performing as expected, the employee should communicate this shortcoming – ideally with some guidance on how the employee can improve. Likewise, a dissatisfied employer should pause before considering whether to praise the employee’s deficient past work, either in a formal performance evaluation, an off-hand comment, or especially, an e-mail. Doing so is counterproductive and, frankly, does no one any good. To the contrary, it creates a false impression in the employee’s mind that will only be crushed once the truth comes out – and predictably will lead to questions about the company’s true motives. Inaccurate reporting of performance also hurts the employer in the long-run. For one thing, the employer is needlessly discarding a valuable coaching opportunity for an employee whose behavior still might be corrected. Additionally, the employer

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is missing an opportunity to build a record of the worker's true performance that it may need to support a future decision to discipline or terminate that person (not to mention provide evidence of the company's position in a lawsuit). **How do you handle performance communication?** Regardless of one's political viewpoint, employers could take a cue from take last week's Congressional testimony and review how they handle performance communications for their workforce:

- Are you taking steps to ensure that you only provide accurate information to employees and do not over-inflate the assessment of their performance?
- Do you carefully prepare and review written performance evaluations before they are provided to employees to make sure the information correctly depicts the employer's assessment?
- Do you train key decisionmakers with influence over how performance is measured (owners, executives, managers, supervisors and HR personnel), so that they do not make offhand comments that may be exaggerated or that will come back to haunt the company?

If the answer to one or more of the above questions is "no," now might be the time to ask: Why not?