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OC Register Q&A – Performance Reviews

Q: "Can events outside of a specified annual review period be included (legally) in someone's review? A review is set for a period from Jan 1, 2002 to Jan 1, 2003. Something negative happens in May and due to a late review (June), it is introduced into the annual review. Is this legal? Shouldn't the annual review be confined to the dates of review period?"

A: From a legal perspective, there is no law that says employees are entitled to receive performance reviews, nor is there is any legal basis that states evaluations must be confined to a certain period. However, in order for employers to avoid legal problems when giving employees performance evaluations, they should be honest and consistent with their employees.

If the opinion given in a performance evaluation by the employee's supervisor is based on some bias or prejudice, the employee could have grounds for a discrimination lawsuit. But if the opinion given is based on the supervisor's observations of the employee's work performance, there is probably no ground for a lawsuit. If the opinion given in the review is based on "facts" that are shown to be untrue, there may be cause for a claim of defamation. Recently, however, the California Court of Appeals held that a company cannot be sued over information in a performance evaluation, even if it is wrong. The court said, "Employers should neither be required to justify performance evaluations by reference to objectively provable facts, nor subjected to fear of liability for good faith, but mistaken, judgments about the value of an individual employee to the business enterprise." In other words, even if the manager was wrong, he couldn't be sued.

- Written by Audrienne Adams