

Negative Performance Reviews Are Just a Pretext When You've Already Decided on Termination – Ask The Expert



Provide performance reviews consistently and give employees a fair chance to improve.

QUESTION

We're finally ready to terminate an employee who's been underperforming for years. The problem is that she's never had a performance review. Should we provide her one right before we fire her?

ANSWER

That's probably not a good idea at this point.

EXPLANATION

Negative [performance reviews](#) are typically crucial documentation that you need to justify an employee for poor performance. However, this is the case only under 3 conditions:

- You provide performance reviews on a consistent basis;
- The purpose of the performance review is to identify problems and help the employee improve; and
- You actually give the employee a fair opportunity to fix the problem and improve after the review.

Unfortunately, any performance review you provide at this point won't meet a single one of these conditions. Having already made up your mind to terminate, delivering a negative performance review is really just a way to cover yourself after the fact. For example, in a case called *Black v. Robinson Group Ltd.*, an Ontario court ruled that there was no just cause to fire an accountant for performance where the decision was made **before** her highly negative performance review. Suggesting that performance was a pretext, the Ontario court noted that it was the accountant's first review in 13 years on the job and took place just before a scheduled salary raise was about to kick in.

By contrast, a federal court ruled that denying promotion to border guard with excellent performance reviews was legit because the agency followed a consistent and transparent process of filling positions based on merit via open competition where internal performance reviews weren't considered so as not to give agency employees an unfair advantage over outside applicants [*Hughes v. Canada (Attorney General)*].