

Pre-Performance Review Compliance Audit



- Ratings are wildly inconsistent.
- Managers introduce performance standards on the fly.
- Accommodation-related absences distort attendance evaluations.

These are just some of the ways that year-end performance reviews become Exhibit A in an employee's lawsuit against your company for discrimination, workplace harassment, wrongful dismissal, breach of contract, etc.

That's why it's imperative to step back and assess your year-end performance review from a compliance perspective. The goal should be not simply to complete reviews on time each year but to ensure that each performance assessment is evidence-based, legally defensible, and consistent with the company's legal obligations and HR policies.

Here's an Audit Checklist Tool HR managers can use to perform the assessment. It focuses on the subtle legal risks that can turn a routine performance appraisal into evidence of wrongdoing.

PRE-YEAR-END PERFORMANCE REVIEW COMPLIANCE AUDIT CHECKLIST

Instructions: Complete this Checklist twice: first before your managers meet with employees to review their performance and again after reviews are submitted but before they're finalized. That second review gives HR the opportunity to correct problems that may lead to legal disputes or expose the Company to liability risk before they become part of the employee's formal record.

Company:

Review Date:

Next Scheduled Review Date:

1. Verify the Rules Governing the Performance Review

[] Confirm that performance criteria were established in advance.

Instructions: Compare the performance review form with and verify its consistency with job descriptions, published objectives, and prior communications. Flag any new criteria—such as “leadership presence,” “flexibility,” or “commitment”—that were never communicated as expectations.

[] Cross-check performance review against employment contracts, collective agreements, and HR policies.

Instructions: Identify and ensure that the performance review and resulting actions are consistent with promised review procedures, deadlines, appeal rights, bonus conditions, and any required progressive discipline or performance improvement processes. Do not assume a general management-discretion clause overrides these specific commitments.

[] Identify jurisdiction-specific obligations.

Instructions: Determine whether the employee is federally or provincially regulated and which jurisdiction's human rights, employment standards, labour relations, privacy, pay equity, occupational health and safety, and workers' compensation laws apply. Flag separate procedures for unionized, public-sector, or specially regulated employees.

2. Test the Evidence Supporting Each Performance Rating

[] Require specific evidence for adverse ratings.

Instructions: For every below-expectations score or rating, require a dated example, the applicable standard, the operational impact, and any feedback previously given. Replace unsupported labels or descriptions, such as "poor attitude," with observable conduct.

[] Reconcile the appraisal with the employee's performance history.

Instructions: Compare the proposed rating with any prior reviews, mid-year feedback, warnings, project records, and documented praise provided to the employee. If a previously strong performer is now rated poorly, require an explanation of what changed and when.

[] Check for recency, visibility, and comparator bias.

Instructions: Ensure the review covers the entire appraisal period. Check whether remote, part-time, shift-based, or less visible employees were assessed using evidence comparable to that used for other employees doing similar work.

[] Test subjective criteria for potentially discriminatory effects.

Instructions: Flag and require job-related examples for subjective terms used in the review such as "culture fit," "executive presence," and "potential." Look for patterns in ratings across protected groups and investigate unexplained disparities rather than assuming that consistent forms mean consistent treatment.

3. Identify Potential Accommodation, Human Rights, & Protected Leave Liability Risks

[] Check whether legally protected absences affected ratings or eligibility.

Instructions: Review whether disability-related leave, pregnancy-related leave, religious observances, accommodation-related, or other legally protected or entitled absences reduced an employee's ratings, bonus eligibility, or opportunities to meet targets. If so, ensure that the evaluation is re-performed so that the absence doesn't count against the employee.

[] Assess employees against the work requirements that applied with accommodation.

Instructions: Where an employee's duties, schedules, equipment, or work location were adjusted as a reasonable accommodation, assess performance against the applicable accommodated requirements—not an unadjusted standard the employee could not reasonably meet.

[] Flag and escalate potential accommodation triggers.

Instructions: If a manager reports a sudden deterioration in attendance, concentration, conduct, or output, consider whether the circumstances trigger a duty to inquire about the need for reasonable accommodation under human rights laws. Follow Company accommodation protocols and refrain from diagnosing the employee or demanding unnecessary medical details.

[] Resolve accommodation concerns before finalizing an adverse rating.

Instructions: Check whether an accommodation request was delayed, denied, or inadequately implemented and may have contributed to the alleged shortfall or problem. HR must be involved before the resulting performance gap is treated as the employee's failure.

4. Validate Ratings Linked to Pay, Bonuses & Promotion

[] Reconcile ratings with compensation outcomes.

Instructions: Compare proposed raises, bonuses, and promotions with performance ratings. Investigate unexplained differences among comparable employees, including patterns that may disadvantage employees based on race, religion, sex, age, disability, or other protected characteristic.

[] Read the actual incentive-plan terms before recommending non-payment.

Instructions: Check eligibility dates, proration, targets, discretion clauses, and the treatment of protected leave, resignation, and termination. Recognize that a low rating doesn't automatically extinguish a contractual or statutory entitlement.

[] Check pay equity and equal-pay implications.

Instructions: Where ratings affect compensation, investigate whether subjective scoring creates unexplained pay differences. Consider applicable provincial or territorial equal-pay rules and, for federally regulated employers, the *Pay Equity Act* where relevant.

[] Flag and escalate disputed or discretionary compensation decisions.

Instructions: Require documented reasons for material departures from normal rating-to-pay guidelines. Have HR or legal counsel review proposed withholding of earned compensation, particularly where employment is ending or the employee has been on protected leave.

5. Protect Records, Privacy & Procedural Fairness

[] Ensure all comments are job-related and fact-based.

Instructions: Remove unsupported opinions or speculation about employees' medical diagnoses, family responsibilities, personality, or private life. Include sensitive information only where it's legitimately relevant and lawfully handled.

[] Control access to drafts, calibration notes, and final reviews.

Instructions: Restrict access to performance review information to people with a legitimate need to know. Be aware of and comply with all applicable privacy laws, employee-access requirements, retention schedules, and secure-storage practices. Remember that informal notes may also become relevant employment records.

[] Preserve existing evidence when a dispute is foreseeable.

Instructions: If there's a reasonable possibility of a complaint, grievance, accommodation dispute, claim, or other legal dispute, follow legal-hold procedures. Never rewrite or backdate earlier reviews to make the record appear more consistent.

[] Make the meaning of the employee's signature clear.

Instructions: State whether signing confirms receipt, participation, or agreement. Provide a process for recording disagreement and correcting material factual errors; do not treat a disputed signature as misconduct.

[] Check employee access and disclosure obligations.

Instructions: Determine whether the employee has any rights to access the appraisal or related records under applicable privacy law, employment policies, or collective agreements. Do not promise absolute confidentiality where disclosure may be legally required.

6. Prepare Managers for High-Risk Performance Review Meetings

[] Require HR review of high-risk ratings before meetings.

Instructions: Escalate the lowest-tier ratings, sudden rating drops, disputed allegations, potential discrimination concerns, and reviews likely to support demotion, a performance improvement plan, or dismissal.

[] Do not use the annual performance review to spring serious allegations on an employee.

Instructions: Ensure that any concerns raised in the performance review that could lead to discipline or termination were raised promptly and fairly. If new information emerges, give the employee an appropriate opportunity to respond.

[] Set measurable expectations and support for improvement.

Instructions: Specify the required result, measurement method, resources or training, review date, and consequences of continued shortfall. Avoid vague directions such as "show more leadership."

[] Give employees a meaningful opportunity to respond.

Instructions: Allow employees to identify missing evidence, explain constraints, and raise accommodation concerns. Record material disagreements and assign responsibility and deadlines for follow-up.

[] Do not treat a negative appraisal as automatic grounds for dismissal.

Instructions: Recognize that poor performance alone doesn't automatically establish just cause to termination. Before recommending termination for performance, assess the employee's record, clarity of expectations, feedback, support, opportunity to improve, accommodation obligations, contractual notice, and other applicable legal factors.

Final HR Authorization

Before releasing reviews or approving consequential decisions, HR must confirm that:

☐ All adverse ratings have adequate evidence and are consistent with the performance history.

☐ Accommodation, protected leave and potential discrimination issues have been addressed.

☐ Rating-related compensation decisions comply with applicable plans, agreements and laws.

☐ Privacy, employee-access and records-preservation requirements have been considered.

☐ High-risk cases have been reviewed by HR or legal counsel where appropriate.

Download this full compliance audit checklist in doc or PDF formats below.