

SMITH ANDERSON

PERFORMANCE APPRAISALS TOP 10 LEGAL “GOTCHAS” LIST

Kimberly J. Korando
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, L.L.P.
Raleigh, North Carolina
919.821.6671
kkorando@smithlaw.com

1. Recent performance appraisal exists – but it does not mention the performance problem on which manager now relies to terminate, not promote, or take other action against the employee.
2. Performance appraisal rates employee as Meets Expectations or Satisfactory, but manager wants to terminate (or take other adverse action) because employee is a poor performer.
3. No recent performance appraisal exists.
4. Performance appraisal exists – but the employee did not sign it.
5. Manager relied on second hand information to complete appraisal and did not verify it or had minimal opportunity to observe the employee.
6. Performance appraisal does not reflect that the employee was given assistance in overcoming deficiencies or an opportunity to do so.
7. Performance appraisal does not include facts and specific examples to illustrate general conclusions.
8. Performance appraisal contains misspelled “werds” and have bad grammar.
9. HR adopts “breakthrough” new appraisal system highly touted at another company – but fails to analyze the ramifications and adoption of the system at its own company.
10. Smoking gun statements in appraisals referencing prohibited characteristics (e.g., FMLA, pregnancy, etc.), or statements in the workplace by managers suggesting a plan to get rid of the “old dogs.”