

## Employee Documentation: Dos & Don'ts

Today's employment documentation may very well become critical evidence in tomorrow's employment discrimination case. Would yours hold up to a court's inspection and help support your employer's side of the case? Or could it inadvertently cause your employer's defense to crumble? It doesn't hurt to review your company's documentation practices now to ensure that they will help you to avoid trouble in the future.

### DOCUMENTATION DON'TS

Let's start with some documentation minefields that must be avoided.

**DON'T** wait weeks or months to document problems. Managers and supervisors must get into the habit of documenting performance problems as soon as they occur. For example, timing is especially crucial in

### TRAINING: Documentation Record

Employee Name: \_\_\_\_\_ Date: \_\_\_\_\_

#### PREPARATION GUIDELINES:

- |  |  |
|--|--|
| 1. Have you set aside time to review the problem?            | 4. Have you reviewed policies/procedures/work rules? |
| 2. Have you investigated the events surrounding the problem? | 5. Have you defined the expectations?                |
| 3. Have you interviewed all witnesses?                       |  |

#### DETERMINING CAUSE:

- |   |  |
|---|--|
| 1. Did the employee have advance warning of the possible or probable disciplinary consequences?                           | 5. Did the investigation produce substantial evidence or proof that the employee was guilty as charged?  |
| 2. Was the company rule or supervisor's order reasonably related to the efficient and safe operation of the business?     | 6. Have you applied the company policies, procedures and work rules in a FAIR, UNIFORM AND CONSISTENT MANNER?  |
| 3. Before administering corrective action did you make certain that the employee did, in fact, violate the rule or order? | 7. Was the degree of progressive corrective action administered in this particular case reasonably related to (a) the seriousness of the employee's proven offense and (b) the record of the employee in his service with the company? |
| 4. Did you conduct a fair and objective investigation?  |  |

STATE PROBLEM: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*1. Be specific! Record the actual event and all the facts, including the dates and times. (Do not use opinion or judgement words).*

WHAT POLICY RULE, OR STANDARD WAS VIOLATED? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*1. Clearly state what the observed behavior was, and why it was unacceptable.*

SOLUTION: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*1. State or reaffirm what the expected behavior or standard is. Get the employee's commitment.*

PROGRESSIVE CORRECTIVE ACTION: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 1. Tell the employee what step of the Progressive Corrective Action they are on.*
- 2. Ask the employee if they understand the Progressive Corrective Action Policy. If not, explain the Policy to them.*

CONSEQUENCES: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Supervisor's Signature: \_\_\_\_\_ Employee's Signature: \_\_\_\_\_

Personnel Manager's Signature: \_\_\_\_\_

FOLLOW UP: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*1. Review the employee's work after the warning. Recognize the employee for improvement. Administer successive steps of Progressive Corrective Action if the violations continue.*

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defending against retaliation charges. A court could read into delayed documentation that the problem wasn't important enough to document at the time it occurred, and only became important after the employee filed a discrimination complaint.

**DON'T** forget to sign and date documents, and make sure employees do the same, as applicable. Tip: If an employee absolutely refuses to sign a document, note their refusal on the document. Be sure to have another member of management witness the refusal in case the employee later claims they didn't sign the document because they never saw it.

**DON'T** include vague or malicious statements. For example stating, "Joe drives me nuts. He's more trouble than he's worth." A court will see these statements more as a personal grudge against Joe, rather than a fair and objective assessment of Joe.

**DON'T** over-document. Writing up an employee for every little infraction could actually backfire and support an employee's discrimination or retaliation claim. The employee could claim disparate treatment if no one else is similarly scrutinized.

**DON'T** under-document. If you only document major employment decisions without including or bridging the relevant incidents leading up to them, it can appear as though there was no context for, or valid reason behind, the decisions.

**DON'T** fabricate or falsify documentation. It is illegal for any employer to falsify employment records, regardless of reason or purpose. In fact, falsifying employee documentation can lead to further damages against the company should records be proven in court to be fabricated. This type of mistake can easily cost a company thousands, if not millions, of dollars if any employee chooses to sue.

**DOCUMENTATION DO'S**

Now, here are some best documentation practices that all managers should follow.

**DO** fully and consistently document employees' work histories, because it provides the context in which employment decisions were made. Courts will evaluate an employee's claim (and your company's defense) in the context of all of the applicable employment records. An employee can't rely on having a few bright spots in

their work record to show that he/she was wrongfully terminated when you also have records of procedural violations, inability to work well with others, etc.

**DO** maintain only "official" files (i.e., those that are reviewed with the employee and are prepared under the assumption that they may be called into question in court). Any personal notes that you write, say, as a reminder to yourself should either be incorporated into the official file or destroyed. This will reduce the possibility that an off-the-cuff comment will be misconstrued by a court.

**DO** double-check documents for accuracy. One or two seemingly minor errors or inconsistencies could call into question the accuracy of an employee's entire file. When possible, have another member of management review your documentation for tone and accuracy.

**DO** make sure that all documentation is legible. Don't make defending your company in court that much more difficult.

**DO** be specific, objective and accurate. Cite examples; avoid jumping to conclusions. Comments such as "Sue comes to work hung-over all the time" are not specific and not objective. Instead, be specific, such as "On Monday, February 2, Sue arrived to work 30 minutes late. She then sat in the Hyster, eyes closed for 10 minutes before starting any productive work. On Wednesday, February 4, Sue was 20 minutes late. Upon arrival she then drove the Hyster to a remote corner of the Plant where she remained for 30 minutes. This resulted in the Planer running out of Lumber to surface."

**BOTTOM LINE**

Evaluating, disciplining and firing employees is an important and serious management function. Managers, supervisors and HR personnel must be mindful that the amount of time put into the documentation process will be paid back multiple times over and pales in comparison to the time spent in litigation or in picking up the slack for a poor performer. Many employers may have documentation forms they presently use, however if your present form is not meeting your needs, TPM has provided the sample form shown to the left as a word document, that can be accessed on the TPM website without the yellow instructions. Login to the website ([www.timberassociation.com](http://www.timberassociation.com)) and go to the Membership Tab>HR Samples & Forms>Documentation Record Sample Form.