



Document Employee Discipline: Don't Wait Until It's Too Late

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Documenting employee discipline is as important from a litigation defense perspective, as is counseling the employee in the first place to try to correct or improve job performance. Documentation confirms the employer's perspective, and a good counseling form tells the employee what, exactly, was done wrong and what performance improvement is expected.

Holding the face-to-face meeting with the employee is often harder than completing the necessary paperwork. Issuing a warning or performance notice to an employee who is performing poorly can be uncomfortable and even confrontational. Supervisors may be reluctant to put formal counseling or discipline in writing. Delaying or soft-peddling the problem, however, does not help the company prove that there was a problem, and that the employee was aware of it. It also does not help the employee who isn't performing well to understand the seriousness of the issue.

Some practice pointers to keep in mind are listed below:

1. Supervisors need to know and enforce basic employer policies regarding employee performance requirements and discipline, including the employer's policy on workplace conduct, attendance, and productivity (where applicable). Familiarity with the employee's job description is also important.
2. Keep the counseling form simple. Typically a one-page form is enough to document the reason for the counseling. While additional disciplinary action may be taken (and listed on the form) pursuant to the company's policies, the key for documentation purposes is the written document of the problem or infraction itself.
3. The written warning information should be specific, stating just objective facts -- dates, times, places of the infraction, a short summary of the problem, and how it is to be remedied.

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4. Some performance failures (attendance, for example) are easier to identify and document than others. If the problem is more subjective (insubordination or other inappropriate conduct), it is still important to document the problem. Keep in mind, however, that these performance problems must be documented with particular clarity and confirm, to the extent possible, that the standard for deciding to issue a counseling statement regarding them is consistent for all supervisors and all employees.
5. Follow up with further, timely, and cumulative written warnings, as appropriate. For example, if it is the third time the employee has been written up for the same problem, make sure the documentation makes that clear.

An employee warning report doesn't have to be signed by the employee in order to be placed in the employee's file. Obtain the signature if possible, but the key is to document that there was a problem, it was discussed with the employee, and when the discussion occurred. If the employee refuses to sign the warning, make a notation that the report was "discussed with employee on [date], but employee refused to sign" on the signature line. Two supervisors should then sign below the notation. Documentation in an administrative file kept separately by supervisory personnel can later be placed in the employee's personnel file, under limited circumstances, even if the "write up" of the incident is not shared with the employee. Under the Bullard Plawewski Right to Know Act, there is a six month deadline for placing such documentation in an employee's file.

Too often employers get to the point of terminating an employee, but don't have documentation to show that they have supportable reasons for doing so. Simply put, if a document records valid and objective information about an employee relating to his/her performance, good or bad, the document should be included in the employee's personnel file.

Please contact your Foster Swift employment law professional if you have any questions.