

The golden rules of proper documentation

When you're documenting an incident in the workplace, employ the traditional "who, what, where, when, why" paradigm. The logic being that you're not only writing for this particular employee or situation. You have to assume your documentation will be held under some form of legal scrutiny. You're actually writing this for a jury a year from now.

Strong documentation systems must be built on three basic principles.

- 1. Accuracy** — which goes hand in hand with immediacy. Memory is a shaky defense, so be sure to take notes right after an incident occurs. That makes it much harder for an employee to cast doubt on a manager's motives if the written explanation comes right after the action, with no intervening events. You get an added plus in case you need a record of what happened down the line after someone leaves the company.
- 2. Believability** — when an outside observer (EEO investigator, judge or jury) is called to judge your side of a story, detailed observations add authenticity. The more specific the documentation, the greater the credibility. Hang your hat on facts, not impressions, to reflect objectivity.
- 3. Agreement** — if both sides agree on what happened, it's much tougher for either side to later change claims. Try to get employees involved in the documentation process. Have them summarize their feelings about what happened and compare it to yours. If you can't reach an agreement, try to get detailed statements from witnesses.

Try to make documentation a daily habit (part of the regular routine, not an intermittent occurrence). These notes can be informal, but they should always include the dates and names of all parties who are involved.

How to document employee infractions: 4 'musts' to include

In his recent Business Management Daily webinar, *Documenting Employee Performance*, author and HR executive Paul Falcone explained how much (and what kind) of details should be included when documenting employee performance and behavior problems:

- 1. Paint pictures with words.** Use your senses when describing events. For example, *"You left your work area untidy again"* means nothing to a jury nine months from now. But they can picture it if you write, *"An eight-inch stack of incoming work orders was piled on your desk and AC parts were lying on your typing table."*

Turn subjective evaluations into concrete facts. Don't state, *"You appeared at the customer's home under the influence of alcohol."* How would you know unless you had a breathalyzer? What you can state is, *"The customer reported that he heard you slurring your words, saw that your eyes were glassy, smelled alcohol on your breath and that your gait was unsteady."*

- 2. Document the negative impact** that resulted from the employee's actions. That's the legitimate business reason that's justifying the discipline.

Too many times, managers come to me and say, *"My gosh. I was in the office until 10 last night doing all this*

stuff that the employee was supposed to have done.”

That all needs to go into the documentation: *“I found inconsistencies throughout your calculations and had to correct them myself before they could be processed. As a result, I had to work until 10 p.m. last night. We’ll have to hire a temp beginning tomorrow and need to push back the goal date a week.”*

3. Keep physical evidence. I’ve seen cases in which the employee turns in a work product with so many errors that the manager just throws it in the garbage out of frustration. Big mistake. That’s the most important piece of evidence they had.

When you write employees up, try to attach that faulty work product as an example. That’s what justifies the discipline.

4. Include the employee’s response to the written warning or discipline, whenever possible. That allows you to document that you listened to the individual’s side of the story *before* taking disciplinary action. You incorporated their feedback in the document, yet you’re still holding them to the same standard.

Timely documentation: Your best legal defense

Good written records are key to defending most claims related to hiring, promotion and compensation.

Recent case: Patricia, who is black, worked as an associate analyst for a utility. Presumably because she was unwilling or unable to find an attorney interested in pursuing a lawsuit on her behalf, she decided to file her own lawsuit and act as her own lawyer. She alleged she had been passed over for a promotion to analyst back in 2013 because of her sex or race.

The employer came forward with evidence that it didn’t promote her because her work performance as an associate analyst was “substandard and erratic.” It showed that a few months before being turned down, Patricia’s performance review indicated that, at best, she met the expectations for the job she held, but not for the one she sought.

The court then shifted the burden to Patricia to show some evidence that those carefully documented performance problems were just a pretext to get away with sex and race discrimination. She didn’t have any evidence showing bias based on sex or race to counter the utility’s documents.

The case was dismissed. (*Flowers v. Connecticut Light*, 2nd Cir., 2019)