



## **DEVELOPING & MAINTAINING EMPLOYEE DOCUMENTATION – IT’S ALL IN THE AUDIT TRAIL**

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One of the biggest complaints I hear from clients is “Why can’t I just fire the person? We’re covered under Employment-at-Will!” Although many states are “At-Will” states, which is defined as “both the employer and the employee can end the employment relationship at any time for any reason or for no reason without any notice”, you still need to make sure that you are not ending the relationship in violation of any local, state or federal law, act or statute. What you, as employers need to be concerned about, is how well have you documented those employee issues that drive us all crazy.

A national survey conducted by HRhero.com indicated that one out over every three employers rate their organizations documentation (including misconduct, performance appraisals, attendance and personnel files) as “Not Very Good.” Employers tend to get themselves into trouble by not having proper documentation to support their employment decisions. The biggest reasons cited in the survey are fear of confrontation, do not like doing the paperwork, lack of supervisory training and discipline procedures are just too much trouble. What’s even worse is that managers and supervisors who do an inadequate job of documenting employee conduct or performance are rarely disciplined themselves. Since there is little accountability, why do it?

So, how do we go about making sure we can support our decisions? Consider the following:

***If in doubt, write it out*** – It is a valuable practice to keep a record of both positive and negative outcomes of employee activity. They will be examples to use in the performance appraisal, they will give you opportunities to provide recognition to employees (which, by the way, is the number one item on an employee’s “What Gives Me Job Satisfaction” list) and they will provide you with ammunition in disciplinary discussions. Another point: Judges and juries are more likely to believe contemporaneous documents than people.

***There should be no surprises when conducting the performance appraisal interview*** – Many employers like to use the Checklist appraisal form because all one has to do is check a series of boxes. These appraisals are not very helpful to employees in understanding why they were rated the way they were and what made the manager or supervisor select the rating. When we develop appraisal forms for our clients, we include a section called “Examples” rather than “Comments” with each performance factor. This requires managers and supervisors to explain why they checked off the box that they

checked. In addition, it is difficult for employees to argue with examples. When you state specifics about situations that happened, there is little room for discussion. It is hard to fight facts.

***Use the Three-Strike method in handling disciplinary issues*** – Many managers and supervisors struggle with handling discipline because it is a distasteful task. No one likes to tell someone that they are doing poorly or violating company policy. The problem however, is that if it is not addressed in a timely and proper manner, it only gets worse. Employers need to document their discussions with their employees. The HRhero.com survey indicated that the problem most organizations have is that managers and supervisors talk to employees about problems but do not write anything down. Seventy-nine percent of the respondents to the survey have written warning templates and 63% have oral warning templates, but very often, they do not use them. Strike One is a verbal discussion; however, make sure you, as the manager or supervisor, keep notes about what was discussed. Write down the date, time of discussion and what you talked about. Describe the employee's reaction to the discussion as well as the timeframe you agreed to address the issue again if the problem persists. If a second discussion is warranted, Strike Two is a written warning. This should be a formal statement that includes the date, time of discussion, what was talked about and what the consequences will be if the problem continues. In addition, you should have the employee sign the statement as confirmation of the discussion and that he/she has received a copy of the statement. If the problem persists and the consequence discussed in the written warning was termination of employment, Strike Three is termination of employment. You now have three pieces of documentation – your notes from the first discussion, the signed statement from the second meeting and the termination notice, which includes a discussion of the verbal and written warnings. This will provide proper backup for most inquiries. You always want to make sure that you have given the employee a reasonable amount of time to improve, that you have spoken with them before about the issue and that the employee has had the opportunity to present his/her side of the story.

As an employer, there is no such thing as too much documentation. Train your managers and supervisors to ALWAYS write it down. This will also provide direction for future situations to ensure that the level of discipline is consistent among employees. Sometimes the things employees do wrong, as standalone items are relatively minor. But when put together, over a period of time, they become your worst nightmare. Document, document, document! It will speed up the process and reduce the chance of litigation.

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