

To Document or Not to Document

Protect your company with good, consistent employee documentation.

The No. 1 misconception of business owners is that documentation will magically stave off liability in employment disputes. In fact, the opposite may be true. An embarrassing exhibit often will doom an employer in court.

That's not to diminish the importance of documentation, but as the key to a successful defense, performance reviews, warnings and other documented discipline should be consistent with the employer's overall personnel philosophy.

As Vince Lombardi said, "Practice does not make perfect. Perfect practice makes perfect." Similarly, documentation alone does not protect against employment claims—but good, consistent documentation provides employers with a road map showing the path taken to legitimate employment decisions.

Common Mistakes

Two of the most common documentation problems are:

Grade inflation and reluctance to criticize //

Most managers have to be prodded and trained to provide constructively critical feedback to employees. Judges and juries are skeptical when an employee is terminated for poor performance following years of satisfactory or better performance reviews.

When a manager says the performance problems existed for years but were just never documented properly, that may be an honest explanation; however, it's usually cold comfort in employment litigation.

Papering the file late //

When a manager realizes that she wants to terminate an employee, but the personnel file lacks notation of performance deficiencies, a common reaction is to go back and record past transgressions or to begin disciplining the employee for minor problems. Even if the 11th-hour documentation is honest and accurate, judges and juries tend to believe the late "papering of the file" is an attempt to cover up an illegitimate rationale.

Integrated Personnel Philosophy

How, then, does one ensure documentation that will help defend against employment claims? The keys are consistency and commitment. Characteristics of successful documentation strategies include:

Management training // Managers should be trained to recognize, communicate and record performance deficiencies (as well as strengths) on a regular basis, including during periodic performance reviews. Not only will such training create an accurate paper trail, it just might help the employee identify legitimate areas for improvement

and reduce performance-based terminations (and, thus, turnover).

Management commitment // It's one thing for a company to implement a plan for feedback and reviews—it's another to ensure

that managers buy into the philosophy and live up to the obligations. A manager who fails or refuses to provide the required feedback in a timely manner will be presumed to have, at best, innocently contributed

to the employee's poor performance and, at worst, orchestrated the dismissal for invalid reasons. Before implementing a documented employee feedback plan, employers should make sure managers will commit to the time and effort involved.

Oversight // Upper management, human resources professionals or legal counsel should periodically review management feedback and recording practices to ensure they are appropriate and constructive and that any resulting documentation is consistent with legitimate employment decisions. ■

It's not a quick fix, but a feedback and documentation plan is a good investment.



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