




	<p>HOW YOU CAN HELP YOUR ATTORNEY IN NON-RENEWAL CASES</p>
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<p>INTRODUCTION TO DOCUMENTATION</p>	
<ul style="list-style-type: none"> • A clear understanding between employee and supervisor as to what is acceptable job performance is essential. • This understanding is achieved through the development and maintenance of job descriptions and through regular performance assessment: <ul style="list-style-type: none"> Job description. A general description of what is expected of employees in their positions. Performance assessment. The supervisor's judgment of how well an employee performs his/her job based on established criteria and standards. Disciplinary Actions. The supervisor's response to a specific employee action. 	

<p>WHY DOCUMENT?</p>	
<ul style="list-style-type: none"> • The primary purpose of supervision of employee performance is to promote growth and competence and to increase employee productivity. • Documentation provides the foundation for a constructive management/employee relationship. An open line of communication concerning performance is essential to a productive workforce. 	

WHY DOCUMENT? (CONT.)

- Employees have a need to know how they are doing. Ignoring this need creates uncertainty, anxiety, poor morale and loss of productivity.
- A well-documented and consistently applied personnel record system may provide a valid defense to employment litigation.



MAJOR OBJECTIVES OF DOCUMENTATION

- To inform the employee concerning his or her progress towards meeting job responsibilities and expectations and to correct unsatisfactory conduct or deficient performance.
- To enforce established rules and policies.
- To help the employee be a better worker, thereby protecting his or her job and employment security.



MAJOR OBJECTIVES OF DOCUMENTATION (CONT.)

- To protect the employer's investment in training and replacement costs and to obtain a more efficient worker.
- To protect the health and safety of all employees.
- To assure a full day's work for a full day's pay.



EXERCISE CARE IN DOCUMENTATION

- Many supervisors are reluctant to record negative comments for fear of discouraging a borderline employee, or of being sued for defamation.
- Deficient documentation can be damaging. Keep in mind, "How will this look to a jury?"



EXERCISE CARE IN DOCUMENTATION (CONT.)

- Care needs to be exercised in regard to the use of email.
 - Supervision by email is usually not a good idea.
 - Email messages are discoverable and easily forwarded.
 - Management of email messages creates practical record retention issues.
 - Email is convenient, but you can't be sure that the recipient has received the message (as opposed to having received the e-mail).



AVOID LEGAL PROBLEMS IN DOCUMENTATION

- Have regular meetings with supervisory staff.
- Continued reinforcement of the supervisor's role as a "supervisor" is important.
- Clearly communicate to employees what their duties are and what is satisfactory performance.



AVOID LEGAL PROBLEMS IN DOCUMENTATION (CONT.)

- Tell employees the criteria upon which their performance will be reviewed.
- Make sure that employees understand the consequences of their failure to improve.
- Provide employees with ongoing feedback.



AVOID LEGAL PROBLEMS IN DOCUMENTATION (CONT.)

- Document poor performance in writing. Again, this can be in the form of coaching, training, discipline or assessment.
- Give the employee time to improve and offer resources and assistance, if appropriate.
- Use other supervisory personnel, if possible, to mitigate claims of personality conflict.



AVOID LEGAL PROBLEMS IN DOCUMENTATION (CONT.)

- Make sure that the employee understands the consequences for failure to perform at an acceptable level. There should be no surprises in employee supervision.
- It is important to maintain confidentiality in documentation.



SPECIFIC PROBLEMS WITH SUPERVISORS AND DOCUMENTATION

- Rating inflation.
- Prejudice or bias.
- Overshadowing reality.
- Failure to use the complete rating scale.
- Inconsistencies in scoring, weighing, or defining factors.
- Unrealistic goals and/or objectives.
- Comments that are misleading.
- Too much or too little detail.
- Focus on the problem, and not the employee.



PRACTICAL GUIDELINES FOR DOCUMENTATION

- The employee should be told what he/she is doing wrong.
 - a. Be clear and specific
 - b. How is this documented?
 - c. Review history of the deficiency.
- The employee should be told what the employee must do.
 - a. What are your expectations?
 - b. What must be done for the employee to succeed?



PRACTICAL GUIDELINES FOR DOCUMENTATION (CONT.)

- The employee, in many instances, should be given assistance.
 - How can you help the employee succeed?
 - What assistance will be offered?
 - The employee clearly has a responsibility to help him/herself.
 - Document all assistance and attempts to assist.



PRACTICAL GUIDELINES FOR DOCUMENTATION (cont.)

- The employee should be informed of the timetable for achieving improvement.
 - When is improvement expected?
 - Employee must be given a chance (time) to improve.
- The employee should be told of the consequence for failure or unwillingness to correct the identified deficiencies.
- Follow-up review should occur.



THE SUPERVISORY FILE

- Supervisors generally have the right to maintain personal "logs" or records of matters which involve the normal course of their activities and responsibilities.
- "Logs" or records may include the dates and times of incidents involving employees under their control.
- "Logs" or records are not part of the employee's official personnel file and may not need to be made known to the employee.



THE SUPERVISORY FILE (CONT.)

- Since these "logs" or records are not part of the personnel file, this material might only be used as the basis for a formal reprimand or as evidence (if a disciplinary proceeding is begun) by incorporating it into a document placed in the official personnel file. If that isn't done, they will likely be considered inadmissible.
- Many minor items will be insufficient to substantiate any sort of reprimand. However, when these items are taken together, they may show a pattern of activity which justifies the employer's actions.



WHAT IS JUST CAUSE?

- Generally accepted in industrial relations as a standard which must be met by the employer to justify disciplinary or discharge action.



WHAT IS JUST CAUSE? (CONT.)

- Determining whether the offense alleged occurred;
- The quantum of proof required;
- The significance of the failure to follow customary procedures;
- Determining whether the penalty imposed is commensurate with the seriousness of the offense; and
- Whether there are mitigating factors which affect the degree of punishment imposed.



WHAT IS JUST CAUSE? (CONT.)

- There are numerous definitions of just cause, but all share the concept of an employer's obligations in determining:
 - Whether the employee is guilty of the misconduct or actions alleged; and
 - The degree of discipline imposed.



DAUGHTERY STANDARDS OF JUST CAUSE

- 1. Did the employer give to the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?
- 2. Was the employer's rule of managerial order reasonably related to (a) the orderly, efficient, and safe operation of the employer's business and (b) the performance that the employer might properly expect of the employee?
- 3. Did the employer make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?



DAUGHTERY STANDARDS OF JUST CAUSE

- 4. Was the employer's investigation conducted fairly and objectively?
- 5. At the investigation did the "judge" obtain substantial evidence or proof that the employee was guilty as charged?
- 6. Has the employer applied its rules, orders, and penalties evenhandedly and without discrimination?
- 7. Was the degree of discipline reasonably related to (a) the seriousness of the employee's proven offense, and (b) the record of the employee in his service with the employer?



GENERAL APPROACHES IN ARBITRATION DECISIONS

While reference to Daugherty's standards is gaining greater acceptability, the questions usually addressed by arbitrators in determining whether just cause exists are as follows:

- a. Was the alleged misconduct satisfactorily proven?
- b. If so, does the misconduct warrant disciplinary action?
- c. Did the employer act in an arbitrary or discriminatory way?
- d. Are there circumstances that may mitigate the penalty imposed?



CONCLUSION

In order for your employees to do their best:

- They must know what they are supposed to do, preferably in terms of an end-product.
- They must have a clear understanding of what their authority is – and of its limits.
- They must know what their relationships with other people are.



CONCLUSION (CONT.)

In order for your employees to do their best (cont.):

- They should know what constitutes a job well done in terms of specific results.
- They should know when and what they are doing exceptionally well.
- They should know when and where they are falling short.
- They must be made aware of what can and should be done to correct unsatisfactory results.



CONCLUSION (CONT.)

In order for your employees to do their best (cont.):

- They must feel that their supervisors not only recognize the value of their contribution, but will make it known to others.
- They must feel that their supervisors have an interest in them as individuals.
- They must feel that their supervisors are anxious for them to succeed and progress.