

TIPS FOR EFFECTIVE DOCUMENTATION OF EMPLOYEE PROBLEMS

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1. *Decide whether the problem is a disciplinary issue or a performance issue.* The standards and notice requirement for discharge differ, depending on whether the discharge is for just cause or for unsatisfactory work performance. Weingarten rights are also affected by this characterization.

2. *If it is a disciplinary issue, state the reason for the discipline.* Whenever possible, use one of the causes for discipline set forth in the Manual. If none of these causes are applicable, set forth a specific policy or procedure, preferably one taken from the Manual or the Agreement, that applies. If there is an applicable departmental rule, the rule should also be cited.

3. *If it is a performance issue, state the employer's expectations and the manner in which the performance is deficient.* Determine your ultimate goal for the employee and the most effective way to accomplish that goal. If there is a specific policy or procedure, it should be cited. Intermediate goals, improvement requirements and timelines for reassessment should be included if the process of change will take awhile.

4. *Get employee feedback, if possible.* If you conduct an interview with the employee as part of the performance review or disciplinary process, get feedback from the employee on what tools they may feel they need to make an effective change. If feasible, adopt the employee's suggestions. People tend to respond better if they feel some ownership in the proposed change.

5. *Be as broad as possible regarding the basis for discipline or the basis for unsatisfactory performance.* If there are multiple provisions of the Manual or Agreement or work rules that have been violated, or multiple performance deficiencies, list all of them. Broad descriptions allow for similar conduct to be the basis for progressive discipline or a second warning of unsatisfactory work performance if the employee engages in similar, but not identical, conduct in the future. Listing all applicable grounds also provides a broader basis for upholding the employer's actions in an arbitration or legal proceeding.

6. *Describe the specific conduct or performance deficiency.* After listing the violation(s) or deficiency(ies), describe what the employee did wrong with enough detail to allow for correction of the problem (if appropriate) or to provide the evidence necessary to support discharging the employee.

7. *Be clear about consequences.* Let the employee know what will happen if change is not forthcoming, or if inappropriate conduct is repeated.

8. *Avoid inflation.* If you use a scale to grade performance, do not indulge in grade inflation. A score of "needs improvement" or "satisfactory" may not be sufficient to support a discharge if the performance could have been graded as "unsatisfactory." The fact that every other employee was rated "excellent" and this particular employee received a "good" rating does not normally establish that the employee's performance was unsatisfactory.

9. *Document improvement accurately.* If the employee has improved, but the performance or conduct is still unsatisfactory, make sure that your evaluation includes both of these facts (instead of just stating that the employee has improved) and explains what else is needed to bring the conduct up to acceptable levels.

10. *Be evenhanded.* Similar problems should be treated similarly to avoid claims of discrimination or retaliation.

11. *Apply a level of discipline that is appropriate for the conduct or performance.* Check the Agreement and Manual for guidance.

12. *Remind the employee that he or she can still be disciplined or discharged for other inappropriate conduct.* Sometimes, written documentation implies that, if the employee addresses the specific problem listed, then the employee will remain employed forever. Make sure that, after listing required corrective action, a statement is included to the effect that nothing in this warning (or memo or evaluation or whatever the document is) precludes corrective action for any other matter. This is particularly important for at-will employees. Ideally, disciplinary memos and performance correction notices for at-will employees should also reiterate their at-will status.

13. *Follow the Manual and the Agreement's steps for decisionmaking.* The Manual and job descriptions generally describe the disciplinary authority of supervisors, department heads, and the mayor. Be sure to have the person with the appropriate level of authority mete out the discipline. The steps for handling a grievance are usually set forth in the Agreement, and should be followed where applicable.

14. *Follow the Manual and the Agreement's steps for records retention.* The Manual usually describes how records relating to employees, including performance and disciplinary records, are to be kept. The Manual or Agreement generally address written notice and record retention requirements for unsatisfactory work performance.

15. *Decide what you are going to do in advance.* Planning ahead will allow you to determine if you must allow a union representative to be present at your meeting with the employee, to determine whether a Loudermill hearing is required, and to decide whether it is appropriate to contact the Human Resources Department or City attorney. Planning ahead by anticipating the employee's response may also reveal any areas where additional investigation or documentation may be necessary.