

# Quiz for managers: Documenting discipline the legal way

## Documentation quiz for managers

*It's important to know the kind of language managers should—and should not—use in documentation. Test your knowledge by answering “True” or “False” to the following statements:*

- \_\_\_\_ 1. An employee is caught stealing company equipment. It's best to list the termination reason as “gross misconduct” since “stealing” could be defamatory.
- \_\_\_\_ 2. An employee with a disability is having trouble meeting job standards. It's better to list her performance as “satisfactory” so she doesn't become discouraged.
- \_\_\_\_ 3. A disciplinary warning should always contain language that spells out the potential penalties the employee faces if he repeats the offense.
- \_\_\_\_ 4. If an employee is terminated for poor performance, the best way to disqualify him from unemployment benefits is to use terms such as “unsatisfactory work” or “totally inefficient.”

## ANSWERS

- 1. FALSE.** It's not defamatory to list the truthful reason for an employee's termination and to share that on a need-to-know basis. Sharing the reason with other employees or the public could be defamatory.
- 2. FALSE.** This type of thinking can land a manager in the middle of a disability discrimination lawsuit if the employee has to be fired and then fights your performance reasoning in court. So be honest. Spell out the problems and attempt to find solutions.
- 3. TRUE.** Courts typically uphold claims if they believe an employee was not properly warned about the possible consequences of future violations. So spell out in writing exactly what the employee can expect from further violations.
- 4. FALSE.** Terms such as “unsatisfactory work” are the very ones that could result in unemployment benefits. Such payments are typically withheld only when employees are terminated for gross insubordination or willful misconduct.

## Documenting employee discipline: 3 cardinal rules

To be successful, employee feedback should not be an annual or even quarterly event. It should be a routine part of a manager's day.

In the same way, managers should make documentation of employee performance, behavior and discipline a regular habit.

This documentation can be informal as handwritten notes tossed in an employee's file, but they should always include the dates and names of all parties involved. As with any documentation, stick to the facts and stay objective. Avoid opinions.

Strong documentation is especially important if an employee or ex-employee ever files a legal complaint saying his or her termination or discipline was based on illegal discrimination (race, age, gender, disability, religion, etc.). Sound, ongoing documentation by management will prove that performance—not bias—was the reason for the firing.

A manager's documentation should be built on three basic principles:

**1. Immediate.** Memory is a shaky defense in court, so make 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.

**2. Accurate & believable.** When an outside observer (judge, jury or EEO investigator) is called to judge your side of the story, detailed observations add authenticity. The more specific the documentation, the greater the credibility. Hang your hat on facts, not impressions, to reflect objectivity.

For example, instead of noting that "Bill's work has been sloppy lately," it's better to note, "In each of his last three reports, Bill had at least two important accounting mistakes that needed revisions."

**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.

If the document relates to a behavioral or co-worker conflict, ask the person to summarize her input in writing. Then compare it to yours. If you can't reach an agreement, try to get detailed statements from witnesses.

How would it read in court?

When documenting employee performance and conduct, always have this key question in mind: "How would this sound if it were read aloud in court?"

If the language used even suggests a discriminatory or retaliatory motive, the organization could find itself in legal trouble.

So before you even put a single word on paper, ask yourself these questions as part of your personal anti-bias audit:

- Do I restrict my written comments to an employee's on-the-job performance and not worry about his or her off-hours activities?
- Do I remain objective when it comes to analyzing an employee's work—not letting personal feelings about the employee come into play?
- Do I consider how my words may be construed as unprofessional, demeaning or sarcastic?
- Do I make certain that I get all the facts from all involved parties?

Even the most informal note tossed into an employees' file should follow these constraints.

Use this '**Memo to Managers**' article to educate your supervisors. Paste the content into an e-mail, company newsletter or other communication. Edit as desired.