

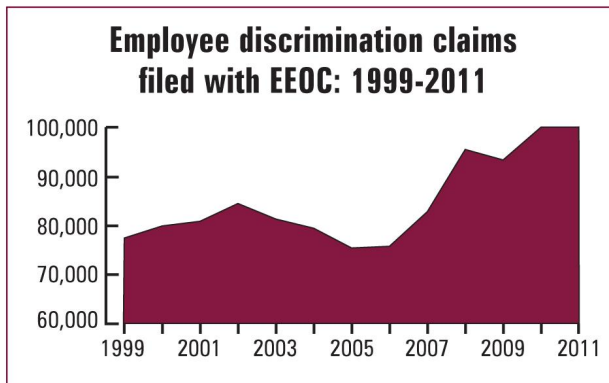
# HR says: 'Document, document, document!' but managers must also avoid 3 legal pitfalls

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**HR says: 'Document, document, document!' — but managers must also avoid 3 legal pitfalls**



Falls Church, Va. — Most managers have probably heard the Human Resources Managers' mantra: "Document, document, document." But that doesn't mean they have been taught how to keep records of important hiring and disciplinary conversations.

"If you're ever hauled into court to testify in a lawsuit against your organization, what you say, and how you say it, can sink your defense—or help you win," says Patrick DiDomenico, Editorial Director at [Business Management Daily](#) and the founding editor of [The HR Specialist](#). "And more than your credibility may be on trial; you could even be held personally liable for some discriminatory acts." In a dispute, the quality of the documents goes to the heart of an employer's credibility. Anything less than Grade A record-keeping can make those documents Exhibit A in court.

Effective HR managers know that HOW to document is even more important than the "document, document, document" mantra.

"Sloppy documents—particularly emails—can help an employee's lawyer show discriminatory intent," says Allison West, a former employment law litigator, "Documentation should be prepared for a fact-finder's eyes (e.g., judge, jury, EEOC or other government agency)." West cites 3 common document pitfalls that sink employers:

1. **Little or no evidence to support decisions** to discipline or terminate
2. **Ambiguous or unclear evidence** that the employee was given appropriate notice of issues
3. **Documents that contain personal attacks** and subjective comments

“Many people don’t know that inadequate documentation can create as much liability as having no documentation at all.” (See *pitfall # 3.*) West warns that, “A number of key words and phrases should never be used in documents unless they are properly (and fairly) backed up with supporting details.” Among the words she advises managers to be careful about using in performance reviews: “shortcomings,” “failure” and “inadequacy.” Also, she warns managers to be cautious about writing overly glowing appraisals that ignore or downplay key employee weaknesses. “They can make it difficult to argue that poor performance in a critical area led to discipline or a termination.”

West explains, “Juries are predisposed to sympathize with employees who have lost their jobs and self-esteem. An organization that fires without first trying to improve performance will appear insensitive and mean-spirited ... For that reason alone, it’s worth counseling an employee before firing him or her—and documenting verbal coaching efforts correctly. And it is the job of all managers to make sure that their documentations are legal, clear, objective, complete, consistent and fair.”

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