



## WORDS ON WISE MANAGEMENT

### Are you really documenting performance?

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Clients often ask for advice on the right time to discharge employees who are unable or unwilling to improve their performance over time, even after being given a performance improvement plan. Unfortunately, there's no set answer because every circumstance is just a little bit different.

#### ***Request all written documentation***

When reviewing a case, I always keep in mind how a third party might look at the documentation. Specifically, what am I looking for?

- Good two-way communication between the manager and the employee. What was the employee told in terms of expectations? How did the employee respond to the manager?
- How complete is the documentation? Is it a compilation of the supervisor's notes, or is it more structured, with details in chronological order? Is it easy to read and follow?
- Are there any photos that can supplement the narrative? For example, if an employee hasn't fixed a machine properly or didn't complete an assignment, can that be demonstrated through pictures?
- Are there any signed documents in which the employee has acknowledged either a conversation or a specific plan for improvement?

#### ***Insist on speaking with the manager***

It isn't enough just to rely on written documentation. It's critical to talk with the manager to get the details behind the written documentation. What's missing from the written documentation that could come back to haunt the company during a vigorous cross-examination from opposing counsel in court or during arbitration? I may have multiple conversations with a manager until I can decide whether the company has a strong enough case to withstand the scrutiny of a judge or an arbitrator.

In addition, sometimes the manager has to rely on a direct supervisor for information. In that case, I now have to be concerned not just about a manager's performance documentation but also about a supervisor's notes.

If the company is in a unionized environment, the union has a right to review the documentation in your possession. A union's request for information could be fairly extensive and include e-mails, phone records, notes, and other related documentation.

If the company is involved in litigation, the employee's attorney will make a very broad information request.

#### ***Have a good idea of what the employee will say***

My approach is often to play devil's advocate with the manager so I can "pressure test" just how strong a case is and determine whether we've missed anything in the performance review.

#### ***Advise termination***

If the steps above are to my satisfaction, then I ask one last set of questions before I advise a client to discharge an employee. Will the termination of this employee at a particular point in time create issues in the workplace? Is the employee being discharged right before profit-sharing checks are distributed? Is the company in negotiations with the union representing the employee? Is there other news that could negatively affect the employee's view of the company? Was the employee popular, or someone who was well respected?

#### ***Bottom line***

My best advice for documenting an employee's performance, whether it's in a memo, e-mail, or letter, is to draft the document, walk away for a little while, and then come back and review it again. As you're reviewing what you wrote, imagine you are the opposing counsel. Could an attorney question your motives, or is the statement written in such a way that it could be misconstrued or misinterpreted? If the answer is either "yes" or "possibly," keep working until you feel comfortable with what you have written, any sketches you drew or photographs you took as part of an investigation, or any attachments you may have included in your documentation.



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