

Documenting Employee Performance Issues

Farmingdale State College
Human Resources Department
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Topics:

- ▶ Coaching
- ▶ Counseling
- ▶ Constructing the Counseling Memo
- ▶ When is it Discipline?
- ▶ Discipline Process
- ▶ Arbitration Standards
- ▶ Common Performance Problems
- ▶ Contract Grievances
- ▶ Improper Practice

Coaching

- ▶ Appropriately reinforce good performance
- ▶ Give adequate and timely recognition
- ▶ Provide Support
- ▶ Model behavior and attitude you want from your employees
- ▶ Address and correct issues as they occur

Coaching

- ▶ Coaching is a part of day to day management
- ▶ Feedback, positive and negative is given regularly
- ▶ You most likely coach employees as part of your normal supervision

Counseling

- ▶ Can be verbal or written
- ▶ Formal and addresses a specific performance issue
- ▶ Counseling should begin as a conversation
- ▶ The employee should have a chance to explain
- ▶ During the session, corrective behavior should be agreed upon
- ▶ Employees are not entitled to union representation during counseling sessions

Don't ...

- ▶ Yell, scream or curse.
- ▶ Base counseling actions on rumors.
- ▶ Discuss an employee's performance or conduct issues with the employee's co-workers.

Counseling Memo

- ▶ Use an opening statement about the purpose of the documentation.
- ▶ Include a summary of the discussion
- ▶ Proceed with statements describing and defining the infraction and supporting information. Be sure to include dates when possible.
- ▶ The problem behavior should be identified
- ▶ Corrective behavior should be clearly stated
- ▶ Consequences of failure to perform should be indicated

Counseling Memo

- ▶ A copy must be placed in the Personnel File in order to be official
- ▶ HR is available to provide guidance and assistance constructing the counseling session and memo
- ▶ **DO NOT INCLUDE THE NAMES OF WITNESSES OR COMPLAINING PARTIES.**

Warning

- ▶ If you uncover any issues that may lead to formal discipline, conclude the counseling session and call Human Resources immediately
- ▶ An employee is entitled to representation as soon as we become aware that discipline is a possibility

Double Jeopardy

- ▶ An employee cannot be counseled and disciplined for the same incident
- ▶ If an infraction warrants discipline, be mindful not to counsel the employee, either verbally or in writing

When does it become discipline?

- ▶ An act can be so egregious that a one time offense can move directly to discipline, i.e. hitting your supervisor
- ▶ Repeated offenses of lesser acts can move to discipline, i.e. repeated insubordination.

Discipline Designee

The Campus President has designated the HR Director to act as his representative for all issues relating to discipline.

There are very specific contractual rules surrounding issuance of a Notice of Discipline.

Discipline Process

- ▶ The manager of a department alerts Human Resources to a possible disciplinary infraction and requests an investigation
- ▶ Human Resources interviews all witnesses
- ▶ Human Resources gathers any material evidence
- ▶ The employee is interrogated with representation
- ▶ A decision is made whether to discipline the employee

Arbitration Standards

- ▶ Was there a rule/policy forbidding the misconduct?
- ▶ Was the rule/policy communicated?
- ▶ Was the rule/policy reasonable?
- ▶ Was the rule/policy uniformly applied to all similarly situated employees?
- ▶ Did the employer conduct a complete and objective investigation?
- ▶ Does the evidence support the charges?
- ▶ Is the proposed penalty appropriate to the level of misconduct?

Fairness

- ▶ Rules must be consistently applied to all employees
- ▶ Existence of a rule is of no value if there is evidence that it has been generally ignored
- ▶ Progressive Discipline, i.e. counseling first, discipline second, is weighed heavily in arbitration decisions

Some Common Pitfalls

- ▶ Supervisor/Campus has not clearly communicated standards
- ▶ Employee hasn't received any feedback in regard to their performance
- ▶ Employee has a personnel file filled with positive feedback only
- ▶ Employee doesn't have knowledge, skills or resources to perform job

Insubordination

- ▶ An employee is expected to follow a direct order
- ▶ The employee can file a grievance after the fact
- ▶ An employee does not have to follow a direct order if it is illegal or dangerous

Circumstances for Immediate Suspension

- ▶ There is probable cause that such employee's continued presence on the job represents a potential danger to person or property or would severely interfere with its operations.
- ▶ When the employee is charged with the commission of a crime, which is defined as a felony or misdemeanor.

Contract Grievance

- ▶ Union members can initiate a contract grievance
- ▶ This is a remedy for employees who believe some aspect of the contract has been violated by management
- ▶ The employee must state the exact article of the contract which has been violated
- ▶ President's Designee hears Step 1 contract grievance
- ▶ A decision is rendered whether or not there is any merit

Contract Grievance

- ▶ If a determination is made that the grievance is unfounded, the union has the option of taking the case to System Administration Employee Relations for a Step 2 hearing.
- ▶ If the determination at Step 2 is unfounded, the union has the option of moving the case to arbitration

Improper Practice

- ▶ The union can initiate an Improper Practice Grievance if they believe management has violated civil service law
- ▶ Civil Service law covers many areas including time and attendance rules as well as bargaining unit roles