

# Florida Public Human Resources Association

## Best Practices for Documenting Performance

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## What are the relevant laws?

- Federal: Title VII; ADA; ADEA; FMLA
- State: Florida Civil Rights Act
- Local: County Ordinance

## **What actions violate anti-discrimination laws?**

A violation occurs if you treat a person less favorably than others with respect to employment decisions based upon a protected status or protected conduct.

## **What does “protected status” mean?**

race, national origin, religion, gender (this includes sexual harassment, pregnancy, same-sex harassment, and sexual orientation), age, disability, marital status

# What is protected conduct?

- Complaining about or filing an internal complaint alleging unlawful discrimination.
- Filing a charge of discrimination with the Equal Employment Opportunity Commission, filing a lawsuit in court, or assisting another employee in doing so.
- Requesting a reasonable accommodation for a disability or religious practice.
- Requesting leave under the Family and Medical Leave Act.

# Preventive Measures in General

- Keep up with changes in the laws.
- Review policies and employee handbooks on a regular basis and update as needed.
- Apply policies fairly and consistently.
- Investigate employee complaints immediately and thoroughly.

# Performance Evaluations



- **Actual quotes taken from employee performance appraisals:**
  - ☑ “Since my last report, this employee has hit rock bottom and has shown signs of starting to dig deeper.”
  - ☑ “I would not allow this employee to breed.”
  - ☑ “Works well when under constant supervision and cornered like a rat in a trap.”



- ☑ “She sets low personal standards and then consistently fails to achieve them.”
- ☑ “His men would follow him anywhere, but only out of morbid curiosity.”
- ☑ “He’s got a full 6-pack, but lacks the plastic thing to hold it all together.”
- ☑ “She would argue with a signpost.”
- ☑ “He has a knack for making strangers immediately.”

## Useful reasons for performance management process:

- ☑ Shape organization culture and values.
- ☑ Recognize excellent performance.
- ☑ Provide notice to employees who need to improve or develop.
- ☑ Identify a baseline for employment decisions.

☑ Evidence of notice or prior warnings or that this was not the first time that employee engaged in conduct (i.e., to rebut the “I didn’t know!” defense by employees).

☑ Good for establishing chronology/timeline -- helps later reconstruction of case or work history (assists attorney and other administrative officials).

- Strategic reasons for documentation:
  - ☑ For arbitration or to rebut a charge of discrimination in administrative or court proceedings.
  - ☑ Need proof of employee's misconduct.

☑ Important for establishing record to base future discipline upon (however, be careful to avoid being accused of “building a record” by issuing too many warnings, etc., in a short period of time - particularly where employee has a “clean” prior record).

- **General rules of thumb for sound documentation:**

- ✓ Be consistent:

If you would document a particular issue for one employee, then document that issue for all employees who engage in it, not just a certain group or individual. Otherwise, your documentation may appear discriminatory.



The purpose of documentation is not to “build a file” against someone, but to serve as a credible record of performance and conduct.



✓ Be objective:

Objective essentially means specific and limited to observable behavior -- that which can be seen, heard or measured.

Describe behaviors instead of using labels.



# Examples

## Subjective

“You were late.”



## Objective

“On Friday, February 15, 2014, you clocked in at 9:20 a.m.”

## Subjective

“You are a poor salesman.”



## Objective

“In the month of January, 2014, you sold a total value of \$50,000. Your volume was 40% below department average and 25% below the minimum standard. In November, 2013, we agreed that your goal for the first six months of 2014 would be \$5,000,000. You are now significantly behind that goal.”

✓ Be thorough:

To ensure accuracy, thoroughly investigate before you document, particularly when “hearsay” is involved. Give thorough and clear thought as to what and how you plan to document as others may need to read, understand, and act upon this information at a future time.

Always date and sign your documentation and include the names of other witnesses involved. Be sure to keep copies of memos, forms, rules, policies, or standards, and other pertinent correspondence regarding employee performance or conduct. Do not assume that someone else will keep their copies of this material for future reference.

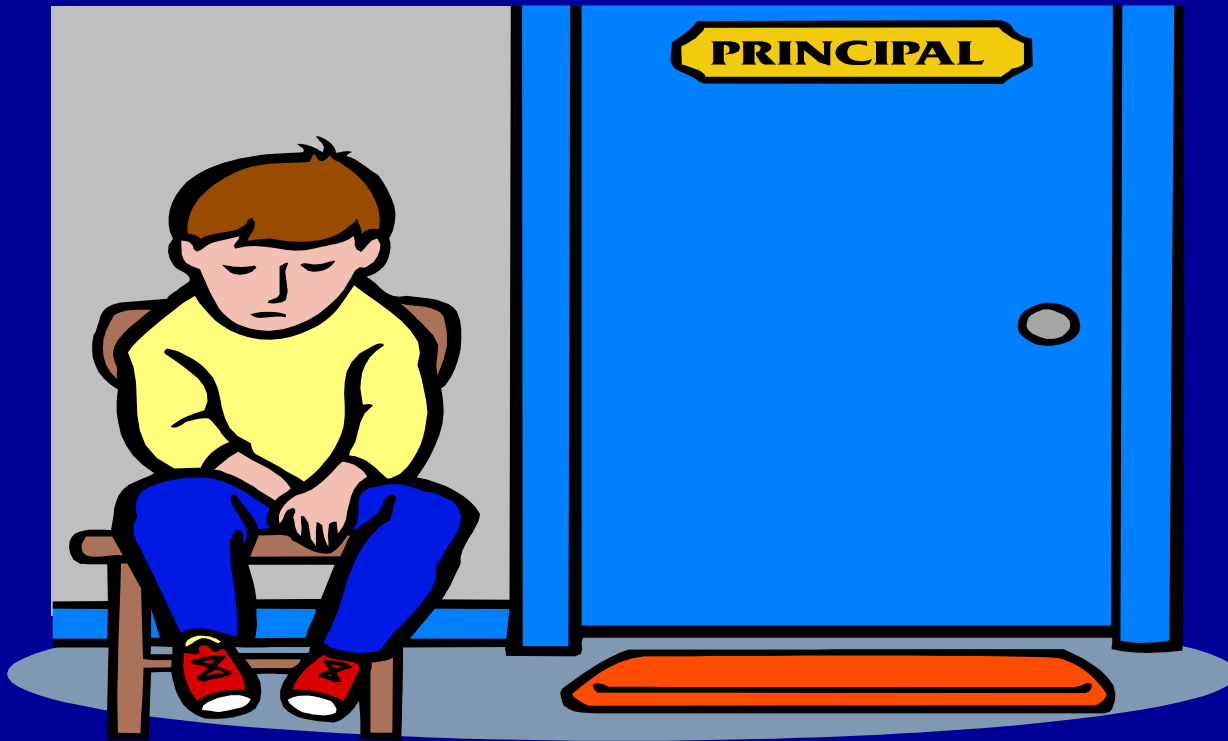
# Performance Evaluations

- ❑ **Specific Guidelines for Performance Evaluations:**
  - ❑ **Develop a regular schedule for formal evaluations.**
  - ❑ **Conduct evaluations in accordance with schedule.**
  - ❑ **However, document performance (good and bad) throughout the year.**
  - ❑ **Be honest and candid.**
  - ❑ **If employee is not performing satisfactorily, promptly advise the employee of the problem(s) and how to correct and improve (do not wait for the annual performance evaluation!).**

# Performance Evaluations

- ❑ **Specific Guidelines for Performance Evaluations (continued):**
  - ❑ **Do not feel the need to be untruthfully kind; be honest and be prepared to defend your evaluation at a later date.**
  - ❑ **If you are not going to use performance evaluations properly, do not use them at all.**
  - ❑ **Do not focus on intent or effort as opposed to results.**
  - ❑ **Do not use words like “never” and “always.”**
  - ❑ **Consistency between numerical rankings and comments.**
  - ❑ **No stereotyping (“too emotional”, “too rigid.”)**

# DISCIPLINE



# Purpose of Discipline

**Discipline is a means by which an employer can assure that its employees understand the nature of their mistakes, and thereby work to correct those mistakes and prevent them from occurring in the future. Most often, the goal of discipline is rehabilitation, not punishment.**



# Guidelines For Discipline

1. Where possible, give the employee prior notice, forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct.
  - Can be oral or written
  - Employer determines rules
  - Exception -- very serious offenses where employee should know on his or her own (e.g., stealing, fighting)

## **Guidelines For Discipline**

- 2. When possible, assure the employer's rule or managerial order reasonably relates to the orderly, efficient, and safe operation of employer's business.**
- 3. Before administering discipline to an employee, attempt to make an effort to discover whether the employee actually violated or disobeyed a rule or order of management.**

# **Guidelines for Discipline**

- 4. Investigate the alleged misconduct fairly and objectively.**
- 5. As a part of the investigation, the decision-maker should obtain proof or evidence that the employee engaged in the alleged conduct.**

# Guidelines For Discipline

6. **Apply the employer's rules, orders, and penalties consistently and evenhandedly.**
  
7. **When possible, assure that the degree of discipline administered by employer is reasonably related to:**
  - **the seriousness of the offense; and**
  - **the employee's service record (has employee committed similar acts in the past?).**

# Considerations and/or mitigating factors that may suggest a lesser penalty:

- Provocation.
- Contribution by management to misconduct.
- Condonation (employee has engaged in same conduct before but nothing done about it).
- Absence of intent to commit serious misconduct.
- Language difficulties.
- Personal problems.

## Considerations for more severe penalty:

- Highly dangerous activity.
- Prior similar misconduct.
- Additional misconduct which compounded original offense, or shows malicious intent.
- Lack of truthfulness or failure to cooperate with employer's investigation.

# Progressive Discipline



# PROGRESSIVE DISCIPLINE

- Purpose: Notice to employee of and an opportunity for employee to improve, together with the imposition of increasingly severe disciplinary penalties.



## PROGRESSIVE DISCIPLINE

- a) Based on premise that both employer and employee benefit where employee can be rehabilitated and retained as a productive member of work force.
- b) Gradually increase level of discipline with the goal of bringing about a correction.

■ **Steps of progressive discipline:**

<b><u>Accepted:</u></b>	<b><u>Not accepted:</u></b>	<b><u>Other possibilities</u></b>
<ul style="list-style-type: none"><li>• oral warnings</li><li>• written warnings</li><li>• suspensions</li><li>• discharge</li></ul>	<ul style="list-style-type: none"><li>• wage deductions (reimbursements, etc.)</li></ul>	<p>(alternatives to progressive discipline)</p> <ul style="list-style-type: none"><li>• demotion</li><li>• transfer</li></ul>

# QUESTIONS?

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