
Documenting Employee Performance

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Supervisors have lots of responsibilities. One of their most important jobs is managing employees. This sounds like a simple and obvious statement, but supervisors often avoid actively managing employees because it often feels uncomfortable and time consuming, and supervisors often receive minimal training in employee management. However, supervisors who learn how to give honest, timely feedback and effectively manage employees discover that effective communication about performance actually makes their jobs easier and yields significant benefits for them and the employer. One major component of effective employee management is communicating and documenting employee performance. This article focuses on the why and how of documenting employee performance and explains how it benefits employees, employers and supervisors alike.

Why document performance

When a supervisor tells an employee they are meeting expectations, or tells them nothing, the employee will likely believe they are doing what is expected of him or her. Studies show that giving fair, honest, contemporaneous feedback about performance improves performance and builds a stronger relationship between the employee and the supervisor. Employees who respect their supervisor are less likely to quit, which also reduces the costs and delays associated with recruiting and turnover. Properly communicating and documenting performance also protects the employer from legal claims. Here's why:

(1) Improves Employee Performance. Most employees want to succeed at their jobs. Employees expect their supervisors to tell them if there is a

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problem with their performance. An underperforming employee's performance probably will not improve if a problem is never identified. However, an underperforming employee's performance may improve if the employee understands the problem with his or her performance and how to improve. Communicating performance issues helps an employee to understand the supervisor's (and the company's) expectations so that the employee can work on his or her performance.

(2) Communicates Expectations and Demonstrates Leadership. It is a supervisor's job to let employees know what is expected of them and whether or not they are meeting expectations. Written communication of performance expectations allows the employee to see what is expected and how to improve weaknesses in performance. Documenting communications about performance as you go demonstrates the supervisor's commitment to helping the employee perform to his or her potential and can eliminate doubt about

the standards and expectations in place. Although many supervisors are afraid to give feedback about performance deficiencies, research actually shows that employees are happier and more loyal to supervisors who give honest, fair feedback (positive and negative).

(3) Improves Supervisor's Job. When supervisors actively manage employees and performance issues by concurrently addressing and documenting issues, problems are resolved sooner than later, and as a result, there are fewer spreading effects of performance issues.

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Written documentation of performance helps supervisors organize their comments and might be used as a script for a counseling/coaching meeting. Reference to prior documentation of performance issues also makes it easier for supervisors to provide accurate and thorough

performance appraisals. In addition, if a legal claim is ever asserted by the employee, the supervisor can refer back to his or her written documentation rather than straining to recall events or issues that occurred months or years earlier.

(4) Supports Progressive Discipline. If an employee does not improve his or her performance, written documentation of past performance or disciplinary issues will support more serious future discipline.

(5) Helps New Supervisors. If an employee is assigned a new supervisor, accurate, factual documentation of the employee's past performance will potentially give the new supervisor insight into the employee's strengths and weaknesses. Documentation will also make it easier for the new supervisor to correct performance issues and apply progressive discipline, if necessary.

(6) Prevents Lawsuits. When an employer makes an employment decision that negatively affects an employee but has not taken the time or made the effort to properly communicate past performance problems, the employee may feel that the decision was unfair or illegally based on a protected trait, such as age, race, sex, disability, or having filed a workers' comp claim. These feelings could lead an employee to

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assert a legal claim against the employer. However, if a supervisor has fairly and accurately communicated with the employee about expectations and performance issues, the employee may be less likely to do so. If the employee's supervisor took the time to discuss performance problems with the employee and fairly document the performance issues and discussions, the employee is more likely to understand the reason for the decision and accept some responsibility for the decision.

(7) Supports Legal Defense. If an employee makes a legal claim against the employer despite communication about performance issues, the documentation will help establish that the employer made its employment decision for legitimate reasons and/or that there was a business basis for treating the employee differently from others. Documentation will make it difficult for an employee to prove that termination or another employment action was based on an illegal reason. When events, assessments or actions are fairly, factually and simultaneously documented, they are less likely to be disputed by an employee, and when they are called into question, they will be much easier to explain and prove. Conversely, the absence of contemporaneous documentation may cast doubt on the employer's explanation for its actions.

(8) Better Resolution of Legal Action. Because good documentation strengthens an employer's position if there is a legal claim, it can sometimes cause an employee and his or her attorney to be more willing to walk away from or settle a case before the employer spends significant amounts defending the claim. If a legal claim proceeds to trial, the employer will be more likely to obtain a positive outcome if the jury can see that the supervisor and the company made a good faith effort to communicate expectations and help the employee improve his or her performance. Jurors understand how it feels to be an employee, and they are more likely to treat the employer fairly if they see that the employer has tried to treat the employee fairly.



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How to document performance

To effectively improve employee performance and minimize legal risk, documentation should be factual, complete and accurate.

(1) Explain the Problem. If the employee is not meeting performance expectations, explain the employer's expectations and how the employee has fallen short. Do it as it comes up—don't wait six months to tell the employee about it. If there are several current performance problems, list all of them, but if it looks like you are piling on, the employee likely will not view it as fair. If discipline is required, state the factual reason for discipline. Explain which rules, policies or procedures were violated. If the employer's rules, policies or procedures are in the company handbook, cite the handbook. This is your opportunity to tell your story to the employee (and a future jury).

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(2) Communicate Expectations. Assume employees do not understand supervisor or company expectations unless they are clearly communicated. If there is a performance issue, the employee likely does not understand expectations. Performance issues will not improve unless the supervisor tells the employee what the expectations are, how the employee is falling short, and how the employee can meet expectations going forward.

(3) Be Honest and Accurate. Don't tell an employee his performance is good when it is not. Supervisors frequently withhold negative feedback to avoid hurting feelings and creating conflict. Employees generally believe the feedback they are given. If told that performance meets or exceeds expectations, most employees will continue performing at the same level. If the supervisor gives an overly positive assessment, the employee's performance will not improve, and as a result, the employer's business suffers. In addition, if unsatisfactory performance later results in a demotion or termination, the employee will not understand why he or she is being demoted or terminated, and he or she may be more likely to think the employer has acted unfairly or illegally.

(4) Document Timely. Document employee misconduct or performance issues as soon as possible. An employee should not find out about a performance problem for the first time at his or her annual performance appraisal, or worse, termination. Specifics of incidents or issues that are not noted or recorded may later be forgotten. Timely documentation gives the employee an opportunity to correct the issue immediately. Even if an employee will not be counseled for a lesser problem, the problem should

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be documented in some way in case it is repeated or a pattern of behavior develops.

(5) State Facts, Not Conclusions. Documentation should be based on objective facts, not conclusions. It should describe actual events, not feelings or opinions. For example:

- Instead of noting that an employee is "perpetually late," note the specific dates that the employee arrived late and specify how many minutes late: "Bob was 15 minutes late on Tuesday the 22nd."

- Instead of describing an employee as "insubordinate," explain, "I told him to clean up his area. He refused."

- Instead of "disrespectful," state "Sarah told her co-worker I am an idiot."

- Instead of "doesn't follow procedures," state "Jeff did not wear safety glasses at the worksite."

- Instead of "not doing her share of work," state "Carol did not complete the project that she was assigned. She asked her co-worker to complete the project for her."

Provide as much factual detail as possible, explaining who was involved, what happened, and where and when it happened. Employees, judges, and juries are more willing to understand and accept objective, detailed facts than feelings, opinions, or characterizations.

(6) Explain How the Problem Affects Others. Explain how the employee's performance issues impact the employee's co-workers and the organization. If the

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employee understands how the problem is affecting others, he or she may be more motivated to improve his or her performance.

(7) Explain How to Correct the Problem. Provide a course of action for the employee to correct his or her performance. Give specific suggestions on what actions the employee should take to meet expectations.

(8) Explain the Consequences. Explain what will happen if the employee does not correct his or her performance issues.

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(9) Get Employee Signature. If you present the employee with a formal disciplinary document, ask the employee to review and initial or sign the document. Employees often get jumpy about documents going into their personnel file, so be prepared to explain that the document is intended to make sure you and the employee are “on the same page” regarding expectations.

(10) Be Consistent. Be consistent about what you document and when you impose discipline to avoid claims of discrimination or retaliation. For example, if Sally is late Monday through Wednesday, and Bill is late Thursday and Friday, counsel both employees and address the lateness of both employees. Addressing the lateness of just one employee will seem unfair to other employees and the employee whose lateness is

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documented may assume he or she is being treated differently for improper reasons.

(11) Be Professional. Documentation may later be used as evidence in litigation. A judge or jury may look to the documentation to decide whether the company is liable to the employee for wrongdoing. Write a professional and complete account of the issue

or incident so that it will make sense to an outsider months or years later. It might feel good to write “acted like a moron” on the disciplinary form (and may even be true), but it won’t look good in the context of a legal claim.

(12) Manner of Documentation. Performance management and issues can be documented in lots of ways: memos, emails, reports, notes, calendars, and meeting agendas. It can be as simple as meeting with an employee to talk and sending an email to human resources or another manager about it. Or it can be more comprehensive, as in the preparation of a performance improvement plan or a written disciplinary warning. Most often, it happens in connection with annual or semi-annual performance appraisals. Because performance appraisals are commonly used in connection with salary decisions, promotions, training, and other opportunities, employees tend to be more defensive about what is included in their appraisal. So there are no surprises, it is better to address performance on an ongoing basis, as opposed to waiting for an annual performance review.

Good communication and documentation of performance is critical to active employee management. Dealing with performance issues in a fair, balanced, and timely way will improve performance, increase productivity, and reduce turnover. Legal risk is also reduced as proper communication and documentation decrease the number and threat of employee lawsuits. Ultimately, the employer, employees and the supervisors benefit from proper communication and documentation of employee performance issues. 📌

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