

SUPERVISORY TRAINING: TIPS, TOOLS AND ACTIONS

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Information is intended to be educational in nature and doesn't constitute legal advice.

PERFORMANCE MANAGEMENT

VS.

DISCIPLINE

- Supervisory Notes
- Coaching and Counseling
- One-on-one Performance Meetings
- Performance Evaluations
- Etc.

- Formal Discipline as Described in the CBA or Policy:
 - Verbal Reprimand
 - Written Reprimand
 - Suspension
 - Demotion
 - Termination

SEVEN TESTS OF JUST CAUSE

Notice

Reasonable Rule or Order

Fact Finding (Investigation)

Fair Fact Finding (Investigation)

Proof

Equal Treatment

Penalty

PROGRESSIVE DISCIPLINE

Oral Reprimand

Written Reprimand

Unpaid Suspension

Demotion

Termination

CONSIDERATIONS WHEN DETERMINING DISCIPLINE

Gravity of offense or rules violated

Circumstances under which misconduct occurred (e.g., past practice)

Extenuating facts (e.g. medical)

Tenure

Employee's past record

SETTING REALISTIC GOALS AND EXPECTATIONS

- **Be specific**
- **Be realistic**
- **Include measurable outcomes**
- **Include deadlines**
- **Establish written documentation**

A photograph of several tall stacks of white paper, likely representing a large volume of documentation. The stacks are arranged in a row, with varying heights and some showing signs of being handled or stacked. The background is a plain, light-colored wall.

DOCUMENTATION OF EMPLOYEE PERFORMANCE

Examples

Supervisory Log

Coaching/Counseling

Notice of Expectation/Directive

Performance Evaluations

Performance Improvement Plan (PIP)

Disciplinary documentation

Keys to Effective Documentation:

Clarity, quality and appropriate quantity

General Problems with Documentation

Too little

Too much

Too confusing

SUPERVISORY LOG - SAMPLE

Employee Jane Larson
Supervisory Log

Date	Incident/Occurrence/Observation	Communication to Employee	Employee Response	Documentation
2/15/2017	Employee was tardy arriving to work by 10 minutes.	Informed employee observed her arriving at work 10 minutes late. Inquired as to reason.	Employee responded slept through alarm. Apologized. Said would do best to not let happen again.	Log entry
2/25/2017	Employee was tardy arriving to work by 15 minutes.	Informed employee observed her arriving at work 15 minutes late. Told her unacceptable. Inquired as to reason.	No response other than "sorry."	Emailed employee expectations. (Attached)
3/15/2017	Employee was tardy arriving to work by 20 minutes.			Documented oral reprimand (Attached)
4/1/2017	Employee very helpful in addressing client who was upset. Coworker had become impatient.	Informed employee appreciated her work, demeanor and gave her positive feedback.		Log entry

NOTICE OF
EXPECTATIONS – WHAT
SHOULD BE INCLUDED?

1	Confirm the applicable expectation.
2	Explanation of the applicable expectation.
3	Rules or policies the employee has received regarding the applicable expectation
4	Reference to prior notice employee has received of applicable expectation through prior coaching, discipline, etc.
5	Specific facts of what occurred and how employee violated that expectation.
6	Notify the employee their failure to meet expectation is serious and they are directed on an ongoing basis to meet that expectation in future.
7	If applicable, specific, quantifiable goals for the employee to meet the expectation.
8	If applicable, the support you will provide as a supervisor to assist the employee in meeting the expectation.
9	Notify employee their failure to comply with directive or if they engage in other misconduct in future, they will be subject to disciplinary action.
10	CC supervisory file (not personnel file).

NOTICE OF EXPECTATIONS - SAMPLE

Dear Employee:

- 1) This notice is to confirm the County's expectation that you report to work on time for your assigned shift.
- 2) The County has established hours of operation and employees are assigned specific shifts within those hours. Employees are expected to work their assigned shift. Your assigned shift Monday through Friday is 8:00 a.m. to 4:30 p.m. You are expected to arrive for work on time so that you can begin your shift promptly at 8:00 a.m.
- 3) The County's expectation with respect to hours of work and attendance are outlined in Policies 3.3 and 3.4 of the County's Personnel Policies.
- 4) You have previously been coached on the requirement to arrive to work on time for your regularly scheduled shift on December 13, 2023 and January 24, 2024.
- 5) On February 12, 2024 , you arrived 45 minutes late. You did this without a supervisor's permission.
- 6) Your failure to start and end assigned shifts as scheduled is serious. You are to work your assigned shift. Unless you have pre-approval from a supervisor, you may not deviate from the scheduled start and end time. This is an ongoing directive.
- 7) You are expected to comply with this directive immediately.
- 8) Please contact me if you have any questions about this matter.
- 9) If you fail to comply with this directive or engage in other misconduct in the future, you will be subject to disciplinary action.

Sincerely,

Supervisor

10) cc: Supervisory File



IMPORTANCE
OF
PERFORMANCE
EVALUATIONS

Provide notice to employees of performance expectations, achievements, goals

- In the event of subsequent disciplinary action, performance evaluations may establish proof of “notice” as part of just cause analysis

Provide employee with information regarding deficiencies and need for improvement



PERFORMANCE EVALUATIONS

Content:

- Accurate, Objectively Verifiable and Factual
- Avoid broad generalizations – “always,” “never”
- Include specific accurate details and examples
- Do not soften criticism with unfounded praise
- Do not give mixed messages
- Include goals and establish deadlines for obtaining goals
- Do not give vague directives

PRACTICE POINTER!

- Rating an employee's performance requires supervisors to use their professional judgement and discretion.
- There is no formula for effectively evaluating and rating employee performance



PERFORMANCE EVALUATION EXCERPT (HYPOTHETICAL)

2) Standard: Punctuality/Timeliness

“Colin is always late to work. I have told Colin he needs to be on time, but he never listens. Colin does meet work deadlines and he shows up to meetings on time as long as they are in the middle of the day.”

Rating: Meets Expectations

PERFORMANCE EVALUATION EXCERPT (HYPOTHETICAL)

1) Standard: Relationships and Communications:

“Suzie communicates clearly and effectively orally and in writing. Suzie has had difficulty with some of the decisions that have been made in the Department. Recently, Suzie had a negative interaction with a coworker. That issue was unable to be resolved and had to be escalated to the Director of the Department, which resulted in Suzie moving offices. The office move seems to have had a positive impact on both parties and no additional action has had to be taken. Suzie and I have had multiple conversations over the past year about how she is perceived by others, gossip, and conversations that are being overheard by myself and others where she has been asked to take such discussions behind closed doors. Another supervisor has also spoken to Suzie regarding what could be portrayed as negative talk in the hallways/offices with open doors. Suzie has difficulty accepting constructive criticism regarding this matter and therefore the issue has been ongoing. With remarks in this section for the past 3 years on improving relationships with her coworkers, I have identified that Suzie needs improvement in her relationships and communication.”

Rating: Improvement Needed

PERFORMANCE EVALUATION EXCERPT (HYPOTHETICAL)

3) Standard: Work Quality

“Kate is a new employee and she has many ongoing projects. Kate needs to be more proactive about reaching out to her partners and community contacts to make sure she gets the feedback she needs prior to completing a project. Kate should be more assertive in her decision making. Kate will continue to learn about the community and gain confidence in her position. With that, some of these issues will resolve themselves. Being proactive, assertive, and consistent with decision making will help her build a good reputation in the organization and community.”

Rating: Meets Expectations

PERFORMANCE IMPROVEMENT PLAN

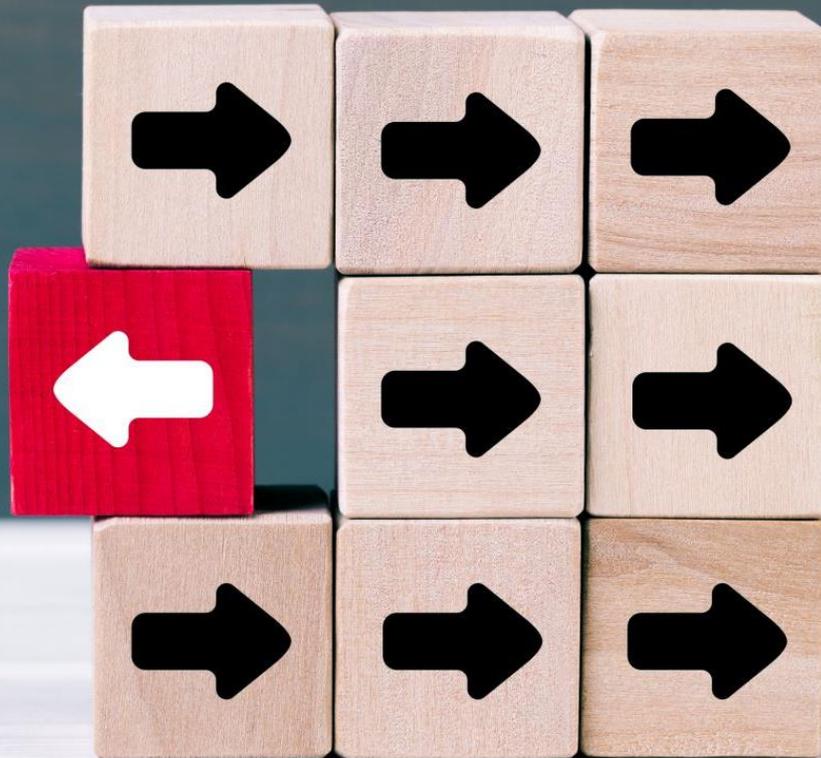
When is a PIP a helpful tool?

- If an employee has a performance issue that they need ongoing guidance and support to improve on.
- If an employee has multiple performance issues that need to be addressed and improved on.
- New employees in the probationary period who need additional guidance and support to meet expectations.
- When the employer wants to (or should) give the employee an opportunity to improve their performance before moving to formal discipline.

PERFORMANCE IMPROVEMENT PLAN/CORRECTIVE ACTION PLAN

What Should be Included in a PIP?

- Clear and specific explanation of performance issue(s) (with examples).
- Clear and specific explanation of directive on how employee should correct performance issue(s)
- Quantifiable goals for meeting performance expectations.
- Notification that failure to satisfactorily address performance issue(s) will be grounds for discipline, including termination.
- Duration of the PIP (3 months, 6 months, etc.)
- Scheduling of ongoing follow up meetings with supervisor to review employee's progress in meeting performance expectations.
- Any tools the employee can refer to or rely on to assist them in meeting the performance expectations (i.e. training manuals, policies, rules, etc.)



DIFFICULT PERFORMANCE OR BEHAVIORAL PROBLEMS

- Ignoring or failing to follow directives
- Not accepting constructive criticism
- Allowing problem to fester with gunnysack effect
- Refusal or inability to cooperate with other employees
- Nice employee who tries hard but is not cutting it
- Shuffling employees to new supervisor
- Change of expectations
- Technically competent employee who doesn't get along

HANDLING RECURRING PROBLEMS

Raise the
Issue

Describe
Specifics

Require
Change in
Behavior

Establish
Action Plan

Follow Up

THE CORRECTIVE PERFORMANCE MEETING

Arrange for privacy

Plan in advance

Keep meeting impersonal

Do not make accusations

State the problem specifically

Avoid “softening up” praise

Listen

Share blame gracefully if you are also at fault

Set a deadline

Prepare a written summary

Follow up

FACT FINDING RE: EMPLOYEE MISCONDUCT



What happened

When it happened

Where it happened

Who was involved

How it happened

Why it happened

THE IMPORTANCE OF FACT FINDING

SEVEN STEPS OF JUST CAUSE

Notice

Reasonable Rule or Order

Fact Finding (Investigation)

Fair Fact Finding (Investigation)

Proof

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IMPORTANCE OF
FACT FINDING

Problems Can Escalate

Legal Obligations to
Investigate

Proving Just Cause



DUE PROCESS

- **Weingarten**– right to union representation
- **Tennessen advisory** – Data Practices
- **Garrity warning** – privilege against self-incrimination



**DUE
PROCESS:
WEINGARTEN
RIGHTS**

RIGHT TO UNION REPRESENTATION

- Private sector employees have a right to union representation during an investigatory interview in accordance with National Labor Relations Board v. J. Weingarten, Inc., 420 U.S. 251 (1975).
- An employee's exercise of right to have union representative present during an investigatory interview may not interfere with legitimate employer prerogatives.
- Collective bargaining agreements frequently contain language regarding employee's right to have union representative present during questioning.
- In the absence of such language, if employee requests presence of union representative during questioning that could lead to disciplinary action, employer should grant employee's request.
- Right does not apply during performance evaluation meetings or supervisory directive meetings when an employee is not being questioned about a matter that reasonably could lead to disciplinary action.

PERFORMANCE MANAGEMENT/DISCIPLINE (HYPOTHETICAL)

One of your direct reports, Sam, has two months left in his probationary period. Sam is not getting his work done on time, and the quality of work is not at the standard you would expect. Additionally, you walked past Sam's cubicle a couple of days ago and you noticed that he appeared to be shopping online during work hours on his work computer. What steps will you take to address these issues?

PERFORMANCE MANAGEMENT/DISCIPLINE (HYPOTHETICAL)

You were recently promoted to a supervisory position. One of your direct reports—John—is a 20-year employee who has been working in the same position for a long time. You start to notice some significant performance concerns with John. When you review his prior performance evaluations and personnel file, however, you see that John has always been rated well in his performance evaluations and does not have any prior discipline or coaching. John has told you he is going to retire in a couple of years, but nothing is set in stone. What should you do?

PERFORMANCE MANAGEMENT/DISCIPLINE (HYPOTHETICAL)

Two members of your team, Tom and Jane, had a falling out outside of work. While they used to work closely together to meet program goals, they now refuse to work with each other and it is impacting the team. They are also starting to speak to their coworkers about their falling out and you have noticed that other members of your team are starting to take sides. What steps will you take to address these issues

GRIEVANCE
PROCEDURE IN
CBA

Importance of grievance meetings

Analysis of just cause tests

Use grievance meetings to gather facts

Follow up on Union claims

Offers of compromise

Grievance responses

WHY IS DISCIPLINE
NOT UPHELD IN
ARBITRATION?

Insufficient Evidence in the Investigation

Procedural Errors

Disproportionate Punishment

Mitigating Factors (Past Practice,
Positive Performance Evaluations, etc.)

THANK YOU

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