Drafting and Delivering Effective Written Warnings To Avoid Lawsuits

by

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I. EMPLOYMENT-AT-WILL DOCTRINE

A. Employment-At-Will And The Common Law

Under the common law, it was believed that since employees could quit their jobs whenever they wanted to for no reason, then employers should be able to fire their employees whenever they wanted regardless of whether or not they had "just cause" to do so. This philosophy was referred to as the "employment-at-will doctrine" and it was widely recognized as being the current status of the law regarding employment law for many years.

Additionally, in those states where the employment-at-will doctrine is still alive and well, there is often a strong presumption under the law that *all* employment relationships are terminable at will unless the terms of the employee's contract or other facts or circumstances clearly manifest the parties' intent to bind each other to the relationship or to change this relationship in some way. (Henkel v. Educ. Research Council (1976), 45 Ohio St.2d 249). Therefore, in many employment-at-will states, the law begins with the presumption that every employment relationship is at-will.

However, over the years, the employment-at-will doctrine has eroded to the point that it is now not nearly the "all-protecting" doctrine that it once was for employers. In fact, in some states, the employment-at-will doctrine does not exist at all anymore. In such states, employers may be required to have "just cause" for terminating an employee, which is commonly documented by using a progressive discipline procedure (i.e., verbal warning, written warning, termination).

In states where the employment-at-will doctrine still exists, it has been greatly weakened by legislation and various court decisions. Therefore, the best way to think of the employment-at-will doctrine is to envision a shield protecting the employer from wrongful discharge suits by employees; however, today, this shield is riddled with holes.

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B. Statutory Rights Exception

Today, many statutes exist that protect the rights of employees based upon their protected class status or based upon certain activities in which employees choose to engage. The employment-at-will doctrine will not protect an employer who has violated the statutory rights of an employee. Examples of such statutes include:

1. Title VII of the Civil Rights Act of 1964, **which now includes sexual orientation and gender identity,**

2. Age Discrimination in Employment Act of 1967,

3. Pregnancy Discrimination Act of 1978,

4. Americans With Disabilities Act of 1990 and The Rehabilitation Act of 1973,

5. Employee Polygraph Protection Act of 1988,

6. Family and Medical Leave Act of 1993,

7. Fair Labor Standards Act of 1938 (Wage and Hour),

8. Occupational Safety and Health Act of 1970,

9. National Labor Relations Act of 1935,

10. Uniformed Services Employment and Reemployment Rights Act of 1994,

11. Fair Credit Reporting Act,

12. The Opposition and Participation Clauses of these Acts

13. Electronic and Digital Communication laws, such as the Federal Wiretap Act ("FWTA") as amended by Title I of the Electronic Communications Privacy Act ("ECPA") of 1986, as well as the various state laws,

14. Freedom of Speech rights,

15. Various state discrimination laws, as well as various whistleblower laws, state laws which prohibit employers from taking any retaliatory acts against employees for filing Workers' Compensation claims, and so on.

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II. THE U.S. SUPREME COURT: THE REEVES DECISION

A. Juries May Now Infer Illegal Discrimination

Until recently, it was widely believed that in order to prevail in an employment discrimination case, the plaintiff must **prove** that:

1. The employer's alleged reason for taking the adverse action against the employee was false and

2. That the illegal discrimination alleged by the plaintiff was the real reason the employer acted the way it did.

However, in Reeves v. Sanderson Plumbing Products, Inc., 530 U.S. 133 (2000), Roger Reeves, 57, had worked for Sanderson Plumbing Products, Inc. for 40 years…most recently as a supervisor. Reeves was then terminated by the company for allegedly making timekeeping errors. Reeves, on the other hand, claimed he was terminated due to his age and sued the company.

At trial, Reeves offered evidence that he had properly maintained the company's timekeeping records and that any errors that were made were not his fault, which included showing that the time clock was not working properly.

Reeves also cast doubt on the reasonableness of the employer's legitimate business reason offered to the court for terminating his employment (poor timekeeping records) by introducing circumstantial evidence of derogatory, age-based comments directed at Reeves ("You're too old to do this job."). Reeves was also able to demonstrate to the court that he was treated more harshly than younger employees for committing the same types of alleged offenses.

The jury then returned a verdict for Reeves. Reeves was awarded $70,000 in damages.

However, on appeal, the 5th Circuit Court of Appeals overturned the trial court's verdict for Reeves and found for the employer. Specifically, the 5th Circuit found that Reeves had failed to carry his burden of proof in this case, since plaintiffs in employment lawsuits generally must carry the burden of proof.

The 5th Circuit Court of Appeals discounted this evidence presented by Reeves since only one decision-maker allegedly made the derogatory comments, and even then these comments were not made related to Reeves' termination but occurred in another context. No evidence was presented that indicated the other decision-makers were motivated by a prejudice against age.

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Further, the 5th Circuit found that when Reeves was terminated, many of the employer's management positions were filled were by individuals over the age of 50. Also, two of the managers who decided to terminate Reeves were also over the age of 50.

As a result, the 5th Circuit found that even though Reeves had cast doubt on the credibility of the employer's legitimate business reason offered to the court (pretext), as well as cast doubt on whether the employer's true motivation for terminating him was based upon his and not poor timekeeping records, Reeves had not **proven** these burdens. The 5th Circuit Court reasoned that since it was Reeves' burden to prove these points, and since he failed to carry this burden of proof, Reeves must lose this case.

The U.S. Supreme Court disagreed.

The Court reasoned that the 5th Circuit misconstrued Mr. Reeves' burden, and thus the plaintiff's burden, in such disparate treatment cases. The U.S. Supreme Court held that plaintiff's are not required to present **explicit evidence** to prove their cases to the jury, which includes proving that the employer's legitimate business reason offered to the court is unworthy of credence and that the employer was motivated by an illegal reason in making its decision adverse to the plaintiff.

Instead, the Court reasoned that many times, illegal discrimination is **subtle and difficult to prove…so plaintiffs are not required to present to the court a "smoking gun."** Many times, such direct evidence as a "smoking gun" will simply not exist. Therefore, plaintiffs are only required to present evidence that the jury could **infer** that the employer's legitimate business reason offered to the court is pretextual and that the true motivating factor behind the employer's decision was based on the plaintiff's protected class.

In this case, the Court found that Reeves had presented enough evidence that a reasonable jury could reject the employer's legitimate business reason offered to the court. Having presented this evidence, circumstantial or not, the ultimate questions of whether the employer terminated Reeves on account of his age should be a question left to the jury to decide.

The <u>Reeves</u> case is an important decision to employers and employees alike. Plaintiffs are now only required to present enough credible circumstantial evidence for the jury to **infer** that employer committed illegal discrimination. No direct evidence will be required from the plaintiff.

The problem for employers is that juries are inherently pro-employee.

Employers must therefore document their actions taken against employees now more than ever before. In reality, even though the ultimate burden of

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proof always remains with the plaintiff in disparate treatment cases, after Reeves, employers truly must be able to prove that they did not illegally discriminate against the employee.

This is done through documentation. And remember…

"IF IT ISN'T WRITTEN DOWN…IT DIDN'T HAPPEN."

III. DOCUMENTATION

A. Various Types Of Documentation

Managers commonly document employee performance or behavioral problems in three ways, which include:

1. Informal notes,
2. Performance reviews, and
3. Written warnings

Occasionally, managers may also be asked to draft a formal written statement regarding an employee's behavior or performance. However, such documentation usually occurs only once the employer is engaged in some type of administrative proceeding (i.e., Ohio Bureau of Employment Services, Ohio Civil Rights Commission, Equal Employment Opportunity Commission, etc.) or in a civil trial.

B. Informal Notes

The entire process of formally documenting employee performance and behavior is based upon and begins with the informal notes taken by the employee's manager. These informal notes made by the managers regarding the performance and behavior exhibited by their employees, both the good and the bad alike, form the foundation of an employer's documentation.

The purpose of making these informal notes is to provide the manager with "total recall" when it comes time to formalize these notes, which may take the form of either performance reviews or written warnings. Without such notes, it is not realistic to believe that a manager will be able to accurately describe all of the events surrounding the employee's conduct.

Perhaps more importantly, when such informal notes do not exist, juries also question the accuracy of such recall. On the other hand, when such notes have been made soon after they occurred, juries tend to grant much more credibility to the accuracy of the employer's documentation.

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As with anything, it is always easier to remember to record the poor behavior or performance of employees than the good. However, delivering criticism on aspects of an employee's performance is always received in a more positive manner when couched with supportive comments.

Furthermore, even if these informal notes are never used to substantiate the negative behavior or performance of an employee, these notes will most certainly be used to compile the employee's performance appraisal. Therefore, managers should make a concerted effort to informally document the activities of their employees...both good and bad.

Managers may take these informal notes however they wish. They may be taken on notepads, attendance calendars, etc. Other managers prefer to keep an audiotape in their files regarding each of their employees and simply make their comments into a small hand held recorder. When it comes review time, or if a written warning becomes necessary, the manager retrieves the tape from his files and plays it back.

In short, it does not really matter what method managers use to informally document employee behavior and performance...only that it is done periodically. Additionally, these informal notes should be kept in a confidential and secured file.

C. Performance Reviews

These informal notes taken by the manager will *always* be used in formalizing the employee's performance review. Accurate and complete informal documentation will provide managers with several specific instances of employee behavior to draw upon and to use as examples in the employee's review.

It is also a good idea at the performance review to reiterate the standards required of the position, as compared to the employee's actual performance, and to set goals for the forthcoming review period. (i.e., Annual review, end of first 90 days, twice annually, etc.)

D. Written Warnings

Should a written warning become necessary, the manager's informal notes can be used to help provide instances of the employee's past performance or behavior to help substantiate the warning. Of course, past performance appraisals will also be used to substantiate, or contradict, the written warning.

Therefore, managers must make sure that all such documentation is in agreement with one another. Taking and reviewing informal notes should help keep managers more accurate and consistent in their documentation and the message they are sending to their employees.

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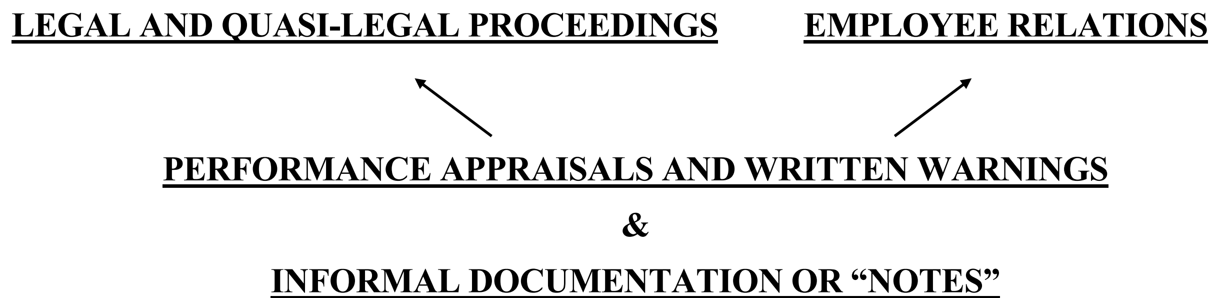
E. The Structure Of Documentation

As just explained, managers' informal notes and their formal documentation benefit the company in many ways and are used in a multitude of instances. In some instances, the documentation will be used in legal proceedings, such as in a civil trial, or in quasi-legal proceedings, as in the case of an administrative hearing. However, even if such documentation is not used in these types of proceedings, it will *always* be used as an Employee Relations tool when it comes time to review the employee's performance.

The structure of such documentation can be diagrammed as follows:



IV. HONEST BELIEF RULE

In Hitt v. Harsco Corp., 356 F.3d 920 (8th Cir. 2004), William Hitt was a 65 year old employee with Harsco. Hitt also worked with his son-in-law, Mark Odom, age 34. However, Hitt filed to gain legal custody of Odom's son, which was also Hitt's grandson. Since then, Odom denied Hitt any access to his grandson. As a result, there was a great deal of tension between Odon and Hitt.

On the morning of August 23, 2000, Hitt allegedly sought out Odom in the company's lunchroom. The discussion, which centered on Odom's son, became quite heated. Witnesses reported that Hitt told Odom that he was going to kick Odom's "ass." Odom then said they should "take it outside."

The two left the lunchroom. Witnesses reported that Hitt then took a swing at Odom and Odom kicked Hitt. Both men were terminated based on these eye witness accounts.

Hitt then filed suit against the company, claiming that he was fired in violation of the ADEA. Still, the court held for the employer, Harsco.

The court reasoned that the key question is not whether the plaintiff actually participated in the fight, but instead whether the employer **BELIEVED** that the employee had been a participant. Even though terminating an employee based on faulty information might be unfair, it is not illegal age discrimination.

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WHAT DOES THIS MEAN TO EMPLOYERS?

Employees should be instructed to tell the truth in all investigations. Lying subjects the company and the employee him or herself to liability for defamation. To lie in an investigation should result in the employee's termination. Human resource people should include in their policies that refusing to give full and honest responses in an investigation may result in immediate termination.

However, in order to protect themselves, employers should document such statements. This documentation is vital since it can later be used to show exactly what information the employer relied upon that in making its employment decisions.

V. CAT'S PAW: STUPID COMMENTS BY SUPERVISORS CREATE LIABILITY

In Hickle v. American Multi-Cinema, No. 18-4131 (6th Cir. 2019), Jared Hickle began his career at the theater in 2004 while he was still in high school. Two years later, he received a promotion to operations coordinator at the theater.

In 2008, Hickle joined the National Guard. Before he left for training, Hickle interviewed with Tim Kalman, the theater's general manager, for a management position. When Hickle mentioned that he would need a six-month leave of absence for military training, Kalman immediately ended the interview.

Hickle did not receive the promotion, but the person who did thanked him "for joining the military. I just got promoted."

Hickle received a promotion into management following his training and became kitchen manager in April of 2013. During that time, Hickle continued to serve, including a one-year tour in Afghanistan.

Senior Manager Jacqueline Adler, Hickle's immediate supervisor, made several comments over the years about how frustrating his time off was to her and that maybe he should be moved to the front of the house where there are more managers to cover for him when he is gone "and it wouldn't be such a [headache] to her."

In June 2014, Hickle was supposed to close on the Thursday night before his military obligation on Friday. However, the theater's closing occurred well after midnight which was when his orders could commence. Thus, Hickle informed Adler he could not close on Thursday. Adler responded by saying that he needed to find another job because he no longer met the defendant's minimum qualifications. Hickle told Kalman about Adler's comment. Kalman said he would take care of it.

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After returning from military duty, Hickle asked to meet with Kalman and Adler. During the meeting, Hickle provided Kalman with a pamphlet that provided a detailed explanation of an employer's obligations under USERRA. After the meeting, Adler continued to make comments suggesting that Hickle could, or should, be fired for taking time off for military service, including in February 2015 when Hickle asked for time off for military duty, and she suggested that they needed to replace him.

In April 2015, the theater defendant was expecting huge crowds for "Avengers weekend." Hickle reminded Adler that he would be gone that weekend for military service. Adler told him that he would be fired if he missed work that weekend. When Hickle reminded her that terminating him for military service would be illegal, she said "that's okay. We will find something else to terminate you on."

The defendant would later argue that Adler was just joking.

However, Hickle was fired in April, not long after she made that comment.

Hickle was fired because of the "chicken finger incident." Apparently, one of the employees told Hickle that Quinton Branham, an employee at the theater, had asked her to make extra food, so he could take it home at the end of the shift. She refused, but a "to go" box was found with 10 chicken fingers in it. This exceeded the amount an employee could take home for a shift meal.

Branham admitted that they were his but that they had been abandoned and would have been tossed out. Hickle told the employees that they could not take food home that night but would be permitted to eat their meal at the theater.

Another employee then began cursing at Hickle and acting disrespectful. Hickle wrote a statement concerning the incident and denied losing his temper or otherwise acting unprofessional in return.

The next day, an employee told Hickle that Adler was plotting to get rid of him. According to the employee, Adler was asking an employee to get into an argument with Hickle in front of other employees so they could then write statements against him. While Hickle gathered employee statements about Adler's plot, Adler was already investigating Hickle about the chicken finger incident.

Hickle's actions were viewed as impeding the investigation. Hickle was fired by Keana Bradley, a "corporate adjudicator" after reviewing findings by the defendant's corporate compliance office, which conducted the investigation with input from Kalman.

Under USERRA, employees who perform military service are protected from termination because of their military service. A plaintiff has to show by a preponderance of the evidence, which is a "more than not" standard, that his protected status was a "substantial or motivating factor in the adverse employment

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action." If the employee can prove that standard, then the employer needs to show by a preponderance of the evidence that it would have taken the same action without considering the military service and for a lawful reason.

The trial court found for the theater and dismissed the charges against it.

Hickle then appealed to the Sixth Circuit Court of Appeals, where the court reversed the lower court.

The Sixth Circuit found that the district court was wrong when it held that Hickle had not offered any direct evidence of the violation. The decision maker was well aware of Adler's persistent, discriminatory comments and threats and that Hickle was gathering evidence of Adler's plot to frame him.

The court, relying on the Supreme Court's decision in Staub v Proctor Hosp, 562 US 422 (2011), applied the "cat's paw" theory:

> "if a supervisor performs an act motivated by antimilitary animus that is intended by the supervisor to cause an adverse employment action, and if that act is a proximate cause of the ultimate employment action, then the employer is liable under USERRA."

Hickle presented evidence of Adler's comments, including that Adler stated she would find another reason to fire him, and of her plotting to get him fired. Therefore, an issue of fact existed that needed to be resolved by a jury to determine whether Adler may have influenced the decision.

The defendant tried to rely on a case where the investigator was not aware of the plaintiff's complaints about military leave and conducted a thorough investigation, terminating the employee solely for lawful reasons. However, the appellate court found the instant case to be distinguishable, stating:

> "[t]his was not a case in which the decisionmaker was acting on a clean record and in ignorance of lurking discriminatory motives. The decisionmaker was fully aware of the facts suggesting that the 'impeding the investigation' charge was pretextual."

However, Hickle was able to present evidence that ties some people involved in the termination decision to Adler's discriminatory comments.

Hickle offered evidence that Adler persistently made anti-military comments, up to and including threatening to get him fired for 'something else' when Hickle had to miss the Avengers weekend for military duty. He offered evidence that Adler was, in fact, plotting to get him fired. This evidence is more than sufficient for a reasonable jury to infer that Adler intended to cause Hickle's termination.

Also, the decisionmaker, Bradley, and those with direct input, including Kalman, all knew about Adler's persistent, discriminatory comments. Hickle repeatedly

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complained to Kalman, who had direct input into the termination decision, about Adler's behavior.

Further, the actual decisionmaker, Bradley, knew that Hickle had heard that Adler was conspiring to get him fired, and knew that Adler told Hickle to gather employees' statements.

Therefore, the decisionmaker knew that Hickle was told to commit a fireable offense, gathering statements and thereby impeding an investigation, by someone Hickle had repeatedly said had made discriminatory comments threatening his job. Still, the decisionmaker chose to fire Hickle.

The defendant also argued that it had never denied Hickle's request for time off, which the district court found to be persuasive evidence of a lack of anti-military animus. However, the appellate court said this was not "determinative, as there could be numerous situations in which an employer would grant requests for military leave, albeit grudgingly, for years and still wrongfully terminates an employee for taking such leave." While granting leave helps the defendant's case, it does not insulate it from liability.

WHAT DOES THIS MEAN FOR HR?

So, in the end, a jury will decide whether the defendant relied solely on the "chicken finger incident" in deciding to fire Hickle and whether it would have reached the same result absent the allegations that he had impeded the defendant's investigation.

This case clearly shows how vital it is to train and educate all supervisors in employment and labor law. Supervisors often incriminate their employers without realizing it, and some do not really understand the repercussions of making such comments. Being irritated with an employee is one thing. Making incriminating comments and engaging in illegal acts are another.

Also, beware of the "cat's paw theory." Supervisors who engage in such conduct as Kilman and Adler can invalidate your warnings if any of their "tainted" input becomes a factor in any employment decision.

Employers must choose their investigators carefully and keep the investigator far away from the opinions and taint of the supervisor who will be accused of committing the discriminatory actions or comments. Such strategy decisions may best be made with the assistance of legal counsel who specializes in these areas.

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VI. WARNINGS

A. Verbal Warnings v. Written Warnings

When an employee's substandard behavior is not serious enough to warrant issuing a written warning, yet the situation calls for the problem to be addressed with the employee, a verbal warning is in order.

Delivering a verbal warning should serve as a positive problem-solving session wherein the employee is confronted with the problem and a course of action is decided upon to solve it. Verbal warning sessions are commonly referred to as the "gentle nudges" that are given by management in an effort to help the employee improve, which is all the more reason to address employee problems early while they are still small. They are also sometimes referred to as "counseling" or "coaching" sessions.

Written warnings, on the other hand, are much more serious in nature. Typically, written warnings become necessary in two types of situations:

1. **Serious Offenses:** Written warnings become necessary when an employee has committed an offense that is so serious that it needs to be documented in a written form, but the employer feels it is not so serious that termination is in order. Therefore, more often than not, a written warning is delivered in lieu of terminating an employee, although either may be appropriate. **Example: Difficult behavior or insubordination.**

2. Of course, if an employer uses a "disciplinary point system," the number of points an employee has accumulated usually dictates determining when it is appropriate to deliver a written warning.

3. **Frequency Offenses:** Written warnings may also become necessary when the employee commits a minor offense so frequently that the problem should be documented in a written form. **Example: Tardiness**

Where verbal warnings have been referred to as "gentle nudges," written warnings constitute a "cold slap of reality." Whenever a written warning is delivered, if the employee has not committed a serious offense, then the employee was either unable or unwilling to improve his behavior and the situation has become serious.

Written warnings also document the fact that previous verbal warnings have been delivered to the employee. Whenever, a verbal warning is delivered, the question always arises as to how the manager should document the fact that the verbal warning has been delivered. Since verbal

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warning sessions should be kept as positive as possible, having the employee sign a document verifying that the session occurred can be viewed by the employee as intimidating and therefore unproductive.

One method of verifying that such sessions occurred is to have a witness present, such as another member of management. However, this too can be intimidating to the employee and destructive to the process.

On the other hand, there is really no reason to formally document a verbal warning session, unless the employer has adopted a warning point system which requires a written warning to be delivered only after a verbal session has been held. However, most employers leave it up to management's discretion as to when a written warning is appropriate.

Under such a progressive discipline system, the verbal warning can be documented as having been previously delivered to the employee on the written warning form. As shown on the "Employee Warning Notice" form at the end of this chapter as "Exhibit B," a proper warning form includes a section that indicates what steps in the process have been used up to this point. All previously delivered verbal warnings can be documented as having been delivered to the employee in this section.

B. Coaching/Problem Realization/Solving Process

It is also important to remember that even though a written reprimand/warning session takes on a more intense and serious tone than the verbal warning session, since the employee was either unable or unwilling to improve his behavior or performance, both verbal and written reprimand/warning sessions must be conducted in a manner that strives to solve the problem at hand. Therefore, managers should be aware of and use a proper Coaching/Problem Realization/Solving Process.

In order for employees to solve their problems, they must be made aware of the problem(s) and resolve to correct them.

In getting the employee to recognize and then solve the problem, the following procedure should be followed:

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Verbal Jeet Coaching Process

Problem Recognition Stage

1. Empathic Listening

If the person doesn't know why he is there, tell him. Then ask the other person his side, get into your best Verbal Jeet stance, and shut up!

2. Parrot It All Back

"OK. Now, let me make sure I've got this. You're saying that …"

3. "Reward"

"I understand what you are saying and why you feel that way … but you cannot make those types of comments to others. It is very offensive."

4. If it appears as if the other person is at fault, then make sure the person is held accountable.

a. Make sure the person understands that the problem exists.

KEY: What if *EVERYBODY* did this?

KEY: "What would the '*REASONABLE PERSON'* think if this was on the front page of *USA Today*?

KEY: "Would you treat a *CUSTOMER* like that?"
(If the person was being a BULLY or an ATTACKER)

KEY: "Do you think saying these things behind her back is going to solve anything … other than make you look bad?" (If the person was being a RETREATER)

b. Now… inform the person that this is their problem to solve, not yours.

If the person can see where he was wrong, you can move out of the **Problem Recognition Stage** and move onto the **Problem Resolution Stage**.

Problem Resolution Stage

MAGIC BULLET: "How can I HELP YOU?"

5. Discuss possible solutions to the problem. Adopt the most viable ones as goals. Partner up and devise a plan to alleviate the problem and meet these goals.

6. Agree on the right course of action and the appropriate follow-up measures to be taken. Get the other person to agree to take accountability for this action plan.

7. Monitor progress in some manner and follow up with the other person.

8. Recognize and/or "reward" achievement. Revisit the issue if improvement is not seen.

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Of course, as part of this process, it is usually a good idea to discuss with the employee whether he/she is interested in meeting these standards and putting forth the effort to succeed. Is the employee happy at the company, or is there just a bad match? It is best to discover any mismatches now rather than put forth all of this effort only to fail. Is the employee a better match with another vacant job? (Employees should not be transferred to other positions if the problem is attitude.) Does the employee dislike the company? If so, then perhaps an exit strategy from the company is the best solution in order to avoid inevitable termination.

C. Games…

Too many people in this world fail to take accountability for their actions. This lack of accountability has grown into a national and worldwide epidemic. This issue lies at the core of all the problems managers have with their employees in the workplace.

Dr. Phil has fostered a very successful daytime "self-help" television show based upon this spreading "disease."

Actually, having managers watch "Dr. Phil" every so often is great free training. It is absolutely amazing to see Dr. Phil's guests play all kinds of "games" with him in order to avoid taking accountability for their actions.

Do employees play these games? **EVERYDAY!!!** Most of these games take the following forms:

1. Deflection

"Deflection" occurs when the individual tries to blame **YOU** for their problems. Managers hear this game being played when they hear such phrases as:

- **"It's NOT my fault! You yelled at me and made me mad."**
- **"You are harassing me! You are creating a HOSTILE WORK ENVIRONMENT!!"**
- **"You're just doing this because I am ____ (fill in your favorite protected class.)**
- **"You're not FAIR!"**
- **"You don't listen to us!"**
- **"This place stinks…and management is filled with idiots!"**

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The strategy here is clear.

If I can put you on the defensive, then you will stop bothering me and lower the standard…which lets me off the hook.

2. Diversion (or "Look over here")

"Diversion" occurs when employees blame others for their problems. Managers hear this game being played when they hear such phrases as:

- **"What about everyone else? Fred is doing this too!"**
- **"It's NOT my fault! They did this to me…"**
- **"He made me mad."**

The strategy here is clear.

If I can get you to "look over here" and blame others, then you will stop looking at me! You will then lower the standard and I get off the hook.

3. Stonewalling

"Stonewalling" occurs when the individual simply denies your point of view. The person just simply disagrees, and says such things as:

- **"The company is WRONG! It should NOT be done that way."**
- **"That's not MY job. I don't have to do that."**
- **"I don't see it that way!"**
- **"You're just wrong!"**

The strategy here is clear.

If I can just deny what you are saying, then maybe you will question the standard you are trying to enforce…and then, again, then you will stop bothering me and lower the standard…which lets me off the hook.

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4. Victim Mentality

"Victim Mentality" occurs when the individual simply tries to play the martyr, or victim. The person just simply falls on their own sword and says such things as:

- **"Well, I will just work until I fall over to get it all done…"**
- **"I just won't talk to anyone anymore…"**
- **"You are all against me."**
- **"So, we should just tell the client that we can't do that…"**

The strategy here is clear.

If I can take this situation to the absurd, I can play the victim and get you to lower the standard.

All of these "games" are used to accomplish the same end result:

To get the manager to lower the standard that is being imposed, which the employee does not like, and therefore avoid accountability.

Unfortunately, too many managers fall for these various games…and the employee wins. As a result, the company is "overthrown." The employees end up running the place, and management rarely recognizes how such a coup ever happened.

The secret to regaining a workplace lies in identifying all of these various games that employees play, naming the game, then enforcing the company's standards.

D. Drafting The Written Warning

1. Managers should use the employer's standard written warning form and make sure it is completed entirely (See Exhibit B for an example), which includes:

a) The employee's name, department, and position,

b) Date the warning is delivered,

c) Date of the offense, which may be a specific date or an on-going violation and

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d) If the employee has been previously warned, either verbally or in writing, include when these previous warnings were delivered and who delivered them.

NOTE: It is in this section where the previously delivered verbal warnings should be listed. Even though they were not written, they were still warnings and should be cited as sessions which the manager held with the employee in an effort to bring the problem to the employee's attention. A description of these verbal sessions should also be included in the "Comments" section of the Written Warning Form.

2. Specifically state the offense or offenses.

When completing the warning form, the exact violations committed by the employee should be clearly marked so there is no confusion whatsoever regarding the nature of the employee's offense.

(Ninety-nine percent of the time, "attitude" should be marked beside whatever other offense has been committed, since most violations or offenses are purposely initiated and purposely continued, especially if the employee has failed to improve his behavior or performance after having already received a verbal warning, or "counseling" session.)

It is also important for managers to remember who their audience is when they write written reprimand/warnings.

The audience is NOT the employee.

Instead, the audience is someone who is not at all familiar with the employer's business…such as an unemployment hearing officer, civil rights officer and so on. Therefore, managers should not include any jargon in their written reprimand/warnings, they should explain who the parties are, and so on. Even though the employee will be given a chance to improve, managers should still prepare themselves and this documentation should the employee continue to fail in his job.

3. Clearly describe the offense committed and cite the acceptable standard.

A clear description of the employee's offense, presenting the employer's supporting evidence, citing what the acceptable standards were that the employee violated and informing the employee of what is expected of him in the future.

When writing the warning and describing the offenses, **NEVER** say "I think" or "I believe" or "I felt." **STATE THE FACTS**! State what the person did and what facts support their offense.

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You account of what happened should be very clear and precise. State step-by-step what happened based on the facts.

- **DO NOT USE JARGON,**
- **DO NOT USE ADJECTIVES TO DESCRIBE THE EMPLOYEE (i.e., “She was cranky,” etc.), STATE THE FACTS,**
- **STATE WHO EACH PERSON IS YOU ARE REFERRING TO, INCLUDING THEIR TITLE AND**
- **KEEP THE PRONOUNS TO A MINIMUM.**

Anyone off the street should be able to pick up this warning. Read it and know exactly who everyone is, what happened and what needs to be done to correct it going into the future.

4. **Present the evidence collected to support the charge.**

5. **What action will be taken against the employee for committing this offense or offenses?**

6. **Obtain the proper signatures.**

NOTE: One phrase that may be almost universally inserted in this section is the following:

> “Should employee fail to attain and maintain the standards set forth in this warning, further disciplinary action will be taken as deemed appropriate by XYZ management (i.e., further warning, suspension, probation, termination, etc.)”

E. Delivering The Written Warning

1. **Inform the employee of the purpose of the meeting.**

   When it becomes time to present the written warning, the employee should be called into a private office, informed of the purpose of the meeting, and given a copy of the completed warning form. (Managers always retain the original.)

2. **Read through the entire warning and THEN discuss it.**

   The manager should review and read out loud to the employee the warning form in its entirety, discuss the situation, which includes reviewing the standards that have been breached, and then problem solve with the employee.

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3. **The employee must sign the written warning form.**

Once the session is competed, the employee should then be required to sign the warning form, indicating that he has received it. It is important that the form clearly states that signing the form only indicates that the employee received the document and that the session occurred. The form should specifically state that signing the form does not indicate that the employee agrees with its contents.

In order to help ensure that employees sign this form and acknowledge its receipt, it is helpful for an employer to include in its handbook a phrase telling employees that they will be required to complete all required company documentation upon demand, such as I-9 forms, tax forms, biographical forms, written warnings, etc., and failure to do so may result in some form of disciplinary action being imposed against the employee as deemed appropriate by the employer, which may include immediate termination.

Refusing to complete all documentation required by the Company immediately upon request, including, but not limited to, I-9 Forms, Fair Credit Reporting Act Forms, tax forms, background check release and/or authorization forms, biographical forms, performance appraisals, agreements, written warnings, and so on.

A section in the handbook which defines "Insubordination" as the refusal to follow the directives of a superior will also suffice in this situation.

4. **The employee should also be given the opportunity to respond in writing to the written warning.**

After the warning is presented to the employee and all of the problem-solving and various discussions have taken place, the employee must then have an opportunity to respond to the written warning in writing. Of course, the employee may respond verbally in the warning session, but the employee must also be allowed the opportunity to attach a written statement to the warning as documentation of his opinions. Management should never refuse such a request.

It is customary to allow the employee at least 48 hours to draft a response, but this time frame may vary from instance to instance depending on the individual circumstances. Still, the company should try to be as consistent as possible and not let the process "drag out" for too long.

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5. What if the employee decides to resign?

Many times, once the situation has gotten to the stage where a written warning becomes necessary, the employment relationship is in reality unsalvageable. It is always a good idea to ask the employee point blank in the written warning session if he/she can meet the standards established for the position. It is also a good idea to simply ask the employee is he/she likes working for the employer and if he/she wants to put forth the required effort to make this relationship work.

If the answer to any of these questions is “no,” then perhaps it is best to suggest to the employee that he/she resign and part company in an amiable manner. Some companies prefer to even offer the employee a severance package at this point to help make it easier for the employee to leave.

From a financial standpoint, this may not be a bad idea. The company is going to invest more in this employee one way or another…either in time or in severance. At least with a severance package, a formal agreement can be obtained that releases the employer form all civil liability from the employee.

From the employee’s perspective, if he/she is not going to be able to meet the standards of the position anyway, why wait around to be fired and have a black mark in his/her file? Sometimes, it can be very convincing for employees to understand that they can keep their record “clean” if they do resign.

Employees must also understand that such information as written warnings, the fact that they were terminated from their positions and any other information in the personnel file may be released to potential employers in the form of a reference. Many states now have laws that grant employers tremendous protection from defamation suits for releasing this information.

If an employee does decide to resign, managers must always remember to:

GET THE RESIGNATION IN WRITING!

A simple statement that the employee resigns as of a certain date with the employee’s signature will suffice. The resignation need not be elaborate.

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EMPLOYEE WARNING RECORD

Employee's Name: Jannell Burton

Department: Inventory/Production Position: Inventory Control Clerk

Date of Warning: June 11, 1998 Date of Offense: On-Going

Violation: ☐ Attendance **X Attitude** **X Carelessness** **X Conduct** **X Substandard Work**
☐ Tardiness **X Other: Insubordination**.

COMPANY REMARKS

Has employee been warned previously? ☐ No **X** Yes

	1st Warning	2nd Warning	3rd Warning
Date	Oral: May 29, 1998	Written June 11, 1998	
Person giving Warning	Sandy Tomm	Sandy Tomm Tom Maniac Scott Warrick	
Offense	See Above	See Above	

Comments: (Attach separate sheets if necessary.)

SEE ATTACHED

Action to Be Taken: Employee has been advised of the next steps in the process, should behavior not improve.)

SEE ATTACHED

______________________________ ______________________________
Supervisor/Date Manager/Date

______________________________ ______________________________
Director of Human Resources/Date Employee/Date

Employee's signature above indicates only that he/she has received this warning, not that he/she agrees with it.

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Supervisor's Comments

Jannell's conduct towards her superiors and co-workers is unacceptable. She has frequent outbursts of temper in the office area, which includes yelling, slamming of reports and files, refusing to answer direct questions and giving her co-workers and superiors hateful glares, all of which disrupts the work environment greatly. She has become so rude and abusive toward others that some employees simply avoid her. (i.e., George Buff, Todd Lynn, etc.) Jannell also frequently treats Violet Lee, ABC COMPANY'S receptionist for over 15 years, in a rude and domineering manner by shouting at her, being short, rude and curt with her.

Jannell's defiance also extends to the point of insubordination. For quite some period of time, Jannell has refused to comply with her superiors' specific directions to cross-train other employees in some of Jannell's duties. Specifically, on June 8, 1998, Sandy Tomm, Jannell's direct superior, asked Jannell to show Kim Atkins, a new employee with ABC COMPANY, how certain aspects of Jannell's job are performed. Jannell refused to show Kim how those duties were performed.

On June 9, 1998, Sandy again asked Jannell to let Kim watch Jannell work so Kim might learn a few of the tasks Jannell performs. This time, Jannell yelled at Sandy, telling Sandy that she was busy and did not have time to do this.

On another occasion, Jannell was denied the use of vacation time by Sandy. In response to this denial, Jannell told Sandy that Jannell would call off from work when it was busy and that there was nothing Sandy could do about it.

Jannell's behavior in this area directly violates ABC COMPANY policy. (See attached Exhibit 1).

Jannell also continuously commits errors in reconciling ABC COMPANY's inventory numbers, even though reconciling these numbers is her responsibility. Instead of researching the situation whenever the figures do not reconcile in order to discover the problem, she allows the discrepancy to continue. Such problems also exist with payables, invoices, etc.

Jannell also makes changes to inventory numbers and does not communicate these changes to the Accounting Department or to other relevant parties, such as to ABC COMPANY's customers.

Jannell also fails to consistently send inventory backup reports to ABC COMPANY customers, which results in more complaints.

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Jannell’s behavior and performance directly violates ABC COMPANY policy. (See attached Exhibit 1.)

Jannell’s behavior has also extended to ABC COMPANY customers. Jannell is consistently short and rude to Classic Foods, which results in many complaints to ABC COMPANY management. (See attached complaints)

Many other examples of Jannell’s abusive and rude attitude and conduct exist, as do many examples of her substandard work performance and insubordination. (See attached Exhibits 2 and 3).

On May 29, 1998, Kevin Quid, General Manager of ABC COMPANY, discussed with Jannell her poor attitude, the customer complaints ABC COMPANY management has received regarding her abusive demeanor and her substandard work performance (i.e., Not providing the necessary reports to ABC COMPANY customers.)

Jannell admitted that she could be a little “short” with others. Kevin informed Jannell at that time that her behavior and performance must improve. As of the date of this written warning, neither have improved at all.

Action To Be Taken

Jannell’s displays of temper must stop. She must also treat her co-workers and superiors with respect and in a friendly and supportive manner. Jannell’s rude, domineering and condescending attitude and behavior must end immediately.

Jannell must begin following the directives of her superiors immediately, regardless of whether the request is to train other employees, to produce certain reports, or so on.

Jannell is to thoroughly and competently complete the duties of her position, which includes reconciling any reports she must draft, communicating pertinent information to the proper parties and so on.

Jannell must immediately correct her performance and her behavior and meet the standards set forth in this written warning.

Should Jannell fail to attain and maintain the standards set forth in this warning, further disciplinary action may be taken as deemed appropriate by ABC COMPANY management (i.e., suspension, probation, termination, etc.)

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EMPLOYEE WARNING RECORD

Employee's Name: John Travis

Department: Accounting Position: Accountant

Date of Warning: March 5, 1999 Date of Offense: On-Going

Violation: ☐ Attendance ☐ Attitude **X Carelessness** ☐ Conduct **X Substandard Work**
☐ Tardiness ☐ Other: ____________________

COMPANY REMARKS

Has employee been warned previously? ☐ No **X** Yes

	1st Warning	2nd Warning	3rd Warning
Date	Oral: 11-14-98	Oral: On-going	Written: 3-5-99
Person giving Warning	Barbara Mays	Barbara Mays	Barbara Mays Tim Piper Scott Warrick
Offense	See Above	See Above	See Above

Comments: (Attach separate sheets if necessary.)

SEE ATTACHED

Action to Be Taken: Employee has been advised of the next steps in the process, should behavior not improve.)

These careless errors must end immediately. John is to take much greater care in completing his work. Such errors as described in this Written Warning are not to occur in the future. John's performance will be assessed frequently across the next 90 days. Should John fail to attain and maintain the standards set forth in this warning, further disciplinary action may be taken as deemed appropriate by ABC COMPANY management. (i.e., suspension, probation, termination, etc.)

Supervisor/Date ____________________ Manager/Date ____________________

Director of Human Resources/Date ____________________ Employee/Date ____________________

Employee's signature above indicates only that he/she has received this warning, not that he/she agrees with it.

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Supervisor Comments

On Saturday, November 14, 1998, Barbara Mays, John Travis' direct supervisor and CFO of ABC Company, spoke to John regarding the many errors he was committing in his work. As examples of the many errors John had been committing in his work, Barbara discussed with John:

1. The $10,800.00 error he made on the August 1998 financials by simply entering the wrong number,

2. The $4,399.00 entry error he made on the September 1998 financials by forgetting to debit an amount the company had spent on payroll, an error in which John accidentally reversed his debits and credits and

3. The $1,997.74 error he made on the September financials by making the entry backwards.

(See attached examples of errors in the general ledger marked as Examples A.)

(NOTE: No examples of substandard work, e-mails or work product are actually included in these materials.)

Barbara also discussed with John the $33,240.00 error John made on the September financials. This extremely large error was not caught before the financial statements were finalized and distributed. Barbara then had to go to Mark Smith, the President, and explain that her department's financials for the month of September were off by over $33,000.00. (See attached Example B.)

When confronted with these careless errors, John explained that he was rushing to get his work done since that was how he operated for over thirty years with Dave's Music, who recently went bankrupt. Barbara explained that no one was forcing John to rush through his work. Instead, Barbara explained how important it was that these careless errors stop. Barbara also informed John that if she had to constantly monitor and correct his work, then he was the wrong person for the job.

Other errors made by John include simply entering the wrong figures into the general ledger. (See attached Example C.)

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However, in spite of this conversation with John, his work has not improved. He has continued to make careless errors.

On February 9, 1999, John was supposed to give another accountant in the office, Dick, who had recently been hired by ABC Company, the Distribution Ledger covering a debit entry of $86.99 for a payment made to Qwest/LCI. John gave Dick a copy of the Distribution Ledger. However, Dick could not find the $86.99 entry made to Qwest/LCI on this report.

Dick went back to John for more help. John simply told Dick that the reason Dick could not find the entry was because "it was a system problem" and that Dick should go ask Barbara Mays about it.

When Barbara returned from her meeting, Dick told her of the problem. Barbara looked at the Distribution Ledger John had given to Dick and saw the problem immediately. John had not given Dick the correct page of the report. John had given Dick page five and not page four, which was where the entry had been made. (See attached Example D.)

This careless error by John wasted a tremendous amount of administrative time and was greatly frustrating to the training of a new employee, Dick. John's lack of attention to detail caused this problem, not ABC Company's systems.

On February 10, 1999, another error came to light. In the December, 1998 General Ledger, John made another entry error. Instead of entering $680.00, John entered $122.00. (See attached Example E.)

These are only some of the careless errors made by John since he started with ABC Company in July of 1998.

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EMPLOYEE WARNING RECORD

Employee's Name: Tammy Smith

Department: Education Position: Education Customer Service Representative

Date of Warning: January 22, 1999 Date of Offense: On-Going

Violation: **X Attendance** ☐ Attitude **X Carelessness** ☐ Conduct **X Substandard Work**
☐ Tardiness **X Other: Working on personal matters on company time.**

COMPANY REMARKS

Has employee been warned previously? ☐ No **X** Yes

	1st Warning	2nd Warning	3rd Warning
Date	Written: 1-11-99	Written: 1-22-99	
Person giving Warning	Tim Piper	Scott Warrick	
Offense	Attendance and Unsatisfactory Work	See Above	

Comments: (Attach separate sheets if necessary.)

SEE ATTACHED

Action to Be Taken: Employee has been advised of the next steps in the process, should behavior not improve.)

SEE ATTACHED

Supervisor/Date

Manager/Date

Director of Human Resources/Date

Employee/Date

Employee's signature above indicates only that he/she has received this warning, not that he/she agrees with it.

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Supervisor's Comments

1. Substandard Performance

Tammy's primary responsibility as Education Customer Service Representative is to record and send confirmations for those training sessions ABC COMPANY insurance agents register to attend.

However, on several occasions, Tammy has sent the wrong confirmation to these insurance agents. (i.e., Sending a confirmation to attend a Continuing Education Class held on February 17 when the agent signed up for a class that was to be held on February 18. Other examples of such errors are attached.)

As part of these confirmations, Tammy is to send to the agent a map that explains how to get to the hotel where the session is being held. However, Tammy sometimes sends the agent incomplete information. (i.e., Tammy sent an agent a map explaining how to get to the Independent Insurance Agents of Indiana office. However, Tammy only sent one side of the map to the agent. Since the map was supposed to be two-sided, and Tammy only copied one side of the map, the agent only received half of the information he needed. As a result, the directions sent to the agent were totally worthless.)

Also, when agents pay for these seminars by credit card, Tammy is supposed to enter their credit card approval number onto the registration form and into ABC COMPANY's computer system. Entering this approval number does two things: it shows that the agent has paid for the session and that it was paid for by credit card.

Tammy has failed to enter these approval numbers. As a result, it appears as if the agents have not paid for their sessions when they have paid. This has caused much distress on the part of ABC COMPANY and the agents registering for these classes.

Tammy has also been careless with her training notes since she has lost them on various occasions and has to borrow other employees' notes.

Such conduct is in clear violation of company policy. (see attached)

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2. Absenteeism

Tammy has missed January 4, 8, 18, 19, 20 and 21 in 1999. None of these days were pre-approved days off.

3. Conducting Personal Business on Company Time

Tammy has been spending too much time at work conducting personal business when she should be paying more attention to the performance of her duties. Tammy has been overheard on several occasions making personal phone calls and the record shows that she has spent a significant amount of time sending numerous personal e-mails on company equipment during her working hours. (see attached e-mails and company policy violations)

NOTE: The company retrieved Tammy's e-mail messages from her hard drive. What they found explained a great deal.

Tammy was corresponding by e-mail with the man she was having an affair, even though both Tammy and this other man were married to someone else. She was downloading obscene cartoons and sending them back and forth, in addition to writing highly explicit e-mail letters to one another.

Interestingly, many of the days Tammy called off sick corresponded with the same days she was meeting this other man at local motels, according to these e-mails.

According to the data in her hard drive, Tammy was spending two to five hours a day sending these e-mail messages back and forth.

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Action to be Taken

From Monday, January 25, 1999 through Friday, January 29, 1999, Tammy is to serve a five (5) day suspension from work without pay. Tammy is expected to return to work promptly on Monday, February 1, 1999 and fulfill the requirements of her position, some of which are outlined in this Warning.

When Tammy returns from her suspension, she must concentrate on her work and ensure that the correct registrations for the seminars insurance agents enroll in are recorded accurately and completely.

Tammy is to also ensure that the correct confirmation information is sent to every agent who enrolls in a session.

Tammy must also ensure that whenever an agent pays by credit card that the approval information is accurately recorded.

Tammy must also keep track of her training notes so she can use them in her job.

Tammy is to also not have any unscheduled absences through April 23, 1999.

Further, due to Tammy's recent abuse of her telephone and e-mail privileges, Tammy is to obtain permission before she conducts any personal business while on company time until the company decides otherwise. If she receives a personal e-mail, she is to report it to her supervisor or a manager of ABC COMPANY if her supervisor is unavailable.

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EFFECTIVELY DOCUMENTING & WARNING EMPLOYEES

by

Scott Warrick, JD, MLHR, CEQC, SCP

Human Resource Consulting & Training Services

Mighty Mouse and Mickey Mouse Exercise

Mickey Mouse is chemist working for ABC Company. However, Mickey is the worst chemist in the place. His reports are late, they are wrong, he fills the beakers with some disgusting-looking liquid no one is quite sure about and he is generally a pain in the neck. No one likes him because he is incompetent and mean.

Mickey's supervisor, Mighty Mouse, has finally had enough. He has not addressed these issues specifically with Mickey, but Mickey "should know he is screwing up and that no one likes him." Mickey's co-workers are short and rude with him and they have ostracized Mickey from their various cliques. Mickey should have gotten the hint by now that he does not fit in with the others because he is rude and does not do a good job. Mighty Mouse has not wanted to say anything too directly since he did not want to unnecessarily upset Mickey.

Mighty Mouse now wants to fire Mickey.

When Mighty Mouse told Mickey that he was fired, Mickey blew a gasket.

"You are just doing this because I am a Mouse," screamed Mickey.

"That's ridiculous," Mighty Mouse replied. "What do you think I am?"

"That doesn't matter! You are also trying to fire me because I am an atheist! You fired Charlie Brown because he was an atheist too!" Mickey retorted.

"Charlie Brown! That loser? He was an idiot! He was fired because he was incompetent … just like you. Now get out of here before I have Magilla Gorilla throw your worthless butt out into the snow."

Mickey is now suing ABC Company for race (Mouse) discrimination and religious discrimination and harassment. Does Mickey have a case? If so, why? If no, why not? Mighty Mouse claims Mickey was employed "at-will." Does that help?

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Tweety Bird Exercise

Tweety Bird is usually a very gracious and friendly employee that everyone likes. However, recently, Tweety has been causing problems. Employees are starting to complain.

Last week, Betty Boop had to give a file back to Tweety that had some mistakes in it. Tweety got very upset and snapped back, "Get off my back, you skinny little ##$!!@@%. Everyone makes mistakes!"

Three weeks before that, Jessica and Betty were in the lunchroom, and Tweety apparently made some very rude and off-color remarks.

Further, Minnie Mouse has been complaining that Tweety has been leering at her from his cage. It is also rumored that Tweety has made some sexually suggestive gestures at Minnie with his pencil and inkpad … whatever that means.

Tweety has now started wearing his "I'm With Stupid" T-shirt to work on dress down day. It is rumored he has something "special" in mind for Halloween.

George has tried to talk with employees, but many "clam up" since Tweety has threatened many co-workers with lawsuits.

George Jetson is concerned. Tweety was once a very positive and valuable employee. All of this has started to occur just within the last six months. What should George do?

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Marge Simpson Exercise

Marge Simpson's primary responsibility as Education Customer Service Representative is to record and send confirmations for those training sessions ABC COMPANY insurance agents register to attend.

However, on several occasions, Marge has sent the wrong confirmation to these insurance agents. (i.e., Sending a confirmation to attend a Continuing Education Class held on February 17 when the agent signed up for a class that was to be held on February 18.)

As part of these confirmations, Marge is to send to the agent a map that explains how to get to the hotel where the session is being held. However, Marge sometimes sends the agent incomplete information. (i.e., Marge sent an agent a map explaining how to get to the Independent Insurance Agents of Indiana office. However, Marge only sent one side of the map to the agent. Since the map was supposed to be two-sided, and Marge only copied one side of the map, the agent only received half of the information he needed. As a result, the directions sent to the agent were totally worthless.)

Also, when agents pay for these seminars by credit card, Marge is supposed to enter their credit card approval number onto the registration form and into ABC COMPANY's computer system. Entering this approval number does two things: it shows that the agent has paid for the session and that it was paid for by credit card. However, Marge has failed to enter these approval numbers. As a result, it appears as if the agents have not paid for their sessions when they have paid. This has caused much distress on the part of ABC COMPANY and the agents registering for these classes.

Marge has also been careless with her training notes since she has lost them on various occasions and has to borrow other employees' notes.

Marge has also missed a lot of work lately. Actually, she has missed February 4, 8, 18, 19, 20 and 21, and she has missed March 4, 5, 8, and 12.

Marge has already been coached in all of these areas. Upper management wants to you to deliver a written warning? How would you put it together? What are the offenses? What are the supporting incidents for these offenses?

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1.5 Credit Hours

SHRM Activity 22-5GGZF

Drafting and Delivering
Effective Written Warnings To Avoid Lawsuits

HRCI Program ID: 584897

Drafting and Delivering
Effective Written Warnings To Avoid Lawsuits

Start Date: 3/30/2022
End Date: 12/31/2022

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Scott Trains Managers & Employees ON-SITE in over 50 topics, all of which can be customized **FOR YOU!** Scott travels the country presenting seminars on such topics as Employment Law, Conflict Resolution, Leadership and Tolerance, to mention a few.

LET SCOTT DESIGN A PROGRAM FOR YOU!

Scott combines the areas of law and human resources to help organizations in "Solving Employee Problems ***BEFORE*** They Start." Scott's goal is ***NOT*** to win lawsuits. Instead, Scott's goal is to ***PREVENT THEM*** while improving ***EMPLOYEE MORALE***.

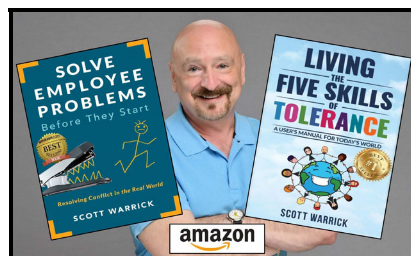
Scott's first book, ***Solve Employee Problems Before They Start: Resolving Conflict in the Real World***, is a #1 Best Seller for Business and Conflict Resolution on Amazon. It was also named by EGLOBALIS as one of the best global Customer and Employee books for 2020-2021. Scott's most recent book, ***Living The Five Skills of Tolerance: A User's Manual For Today's World,*** is also a #1 Best Seller in 13 categories on Amazon, including Business Leadership, Minority Studies, Organizational Change, Management, Religious Intolerance, Race Relations and Workplace Culture, to mention a few.

Scott's ***MASTER HR TOOL KIT SUBSCRIPTION*** is a favorite for anyone wanting to learn Employment Law and run an HR Department.

Scott has been named one of Business First's 20 People To Know In HR, CEO Magazine's 2008 Human Resources "Superstar," a Nationally Certified Emotional Quotient Counsellor (CEQC) and a SHRM National Diversity Conference Presenter in 2003, 2006, 2007, 2008, 2010 and 2012. Scott has also received the Human Resource Association of Central Ohio's Linda Kerns Award for Outstanding Creativity in the Field of HR Management and the Ohio State Human Resource Council's David Prize for Creativity in HR Management.

Scott's academic background and awards include Capital University College of Law (Class Valedictorian (1st out of 233) and Summa Cum Laude), Master of Labor & Human Resources and B.A. in Organizational Communication from The Ohio State University.

For more information on Scott, just go to www.scottwarrick.com.



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