

An Ounce of Prevention: Documenting Employee Performance

By Stephen Marmaduke, Esq.

A mutual goal of employers and employees should be a good place to work. Clear expectations and communications can facilitate this goal while protecting employers from liability, providing employees assurances that they are working effectively, and permitting employees to correct perceived shortcomings before they become significant problems. This article focuses on documenting job performance issues from the employer's perspective with an emphasis on discipline and termination. A sequel appearing in the next edition of *California Veterinarian* will examine workplace communication and documentation from the employee's viewpoint.

Although unpleasant, there are times when employment relationships need to end. An employer is often at risk, however, when it takes action to terminate or discipline an employee even if the reasons for termination seems justified. To reduce the risk of liability, employers should clearly communicate their employment-related expectations and policies, and document issues arising during the employment relationship. This article highlights the importance of maintaining proper documentation for the duration of an employment relationship.

Good documentation requires planning. The documentation process starts well before a problem exists and should reflect that an employee has been treated fairly from the time employment commenced to the time of discipline or discharge. Simply put, good documentation starts at the time—if not before—an employee is hired.

For the benefit of employers and employees, written job descriptions and performance standards which accurately reflect the expectations of employers are very important. These may be contained in an employee handbook or may be separate documents. There should be evidence that these documents were given to the employee. As expectations and responsibilities change, the written descriptions should change as well so that employees have a clear sense of those expectations and responsibilities, and a fair opportunity to satisfy them. If an employee fails to meet clearly-presented employment obligations or benchmarks, that failure can justify disciplinary action and, ultimately, termination.

Fundamental to effective discipline is a policy which sets forth the discipline and termination process. This policy should make it clear that conduct and job performance below expectations will be documented. It should also provide that employees will have the opportunity to present their side of the story when appropriate. The discipline process should have a balance of *structure*, so that it can be fairly applied, and *flexibility*, so it can be adjusted on a case-by-case basis. So-called "progressive discipline" policies were once favored, but are now discouraged as they could be viewed as providing a "right" that the progressive process be followed when it is not always appropriate to do so.

The importance of regular performance reviews and documentation of the reviews cannot be overemphasized. The documentation should make it clear that failures to meet job requirements and areas for improvement have been clearly and fairly explained.

There may be circumstances when a single act justifies discipline or termination even though poor performance and job issues are not documented. Theft, substance abuse, physical altercations, and/or forms of harassment and discrimination could support immediate termination. In most instances, however, prior to determining the appropriate discipline, the employer should balance the egregiousness of the misconduct or job failure and the clarity of the supporting evidence against the employment history as well as the longevity of the employee being disciplined.

The basis for discipline or termination is often the result of continued job performance issues or misconduct. As these situations arise, the employer should meet with the employee; explain to the employee why their performance or misconduct fails to meet expectations and standards; give the employee an opportunity to explain their perspectives and raise grievances; and advise the employee that there could be discipline or termination if corrective action is not taken. The content of the meeting should be summarized in writing (the "write-up"), with the summary placed in the employee's personnel file and given to the employee, who should be asked to sign and return a copy acknowledging receipt. If the employee refuses to sign the copy, a note should be included in the personnel file that the write-up was presented to the employee and that the employee refused to sign and return it.