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# DOCUMENTING EMPLOYMENT DECISIONS

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# **HOW GOOD DOCUMENTATION CAN HELP YOU**

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- CREATE A TIMELY RECORD**
  - NOTICE TO EMPLOYEE**
  - MAKE WELL-INFORMED DECISIONS**
  - EVALUATE FUTURE CONDUCT**
  - WIN CASES**
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# HOW DOCUMENTS CAN HURT YOU

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LIMIT OPTIONS

DAMAGE CREDIBILITY

GIVE BASIS FOR ADDITIONAL CLAIMS

APPEARANCE OF IMPROPER MOTIVES

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# WHAT TO DOCUMENT

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## PERFORMANCE EVALUATIONS

- Evaluation should be specific enough to support future action.
- Evaluation should not include any personal feelings.

## PERFORMANCE COUNSELING

- Oral, informal counseling should be noted.
  - Written, formal counseling should contain no notes, but should include the date, topic, and goals for improving and placed in employee's personnel file.
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# WHAT TO DOCUMENT CONT'D

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## □ INVESTIGATIONS

- Start new page for each interviewee.
  - Write down questions and responses verbatim.
  - Record only facts, not opinions or conclusions.
  - Review the facts with the interviewee.
  - Finalize your notes, type them yourself if necessary.
  - Store notes in file specific to the investigation.
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# WHAT TO DOCUMENT CONT'D

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## DISCIPLINARY DECISIONS

## TERMINATION

- Make a detailed record of the termination meeting.
  - Limit dissemination of information
  - Maintain employee's personnel and other files for sufficient time.
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# HOW TO DOCUMENT

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## □ DOCUMENTING INTERNAL ACTIONS: The Elements Of A Good Document Regarding A Discipline Decision

- It uses plain, nontechnical language that a jury can understand.
  - It does not use hyperbole, or conclusory, inflammatory language.
  - It is factual and is based upon verified (through other documentation) facts.
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# HOW TO DOCUMENT CONT'D

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- It tells the whole story.
  - It identifies the author and the date of the document.
  - It has a place for the employee to sign (although the employee may refuse) and date the document.
  - It is treated confidentially.
  - It is supported by signed and dated statements from witnesses, where appropriate.
  - It does not contain casual or shorthand notes.
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# HOW TO DOCUMENT CONT'D

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- DOCUMENTING FOR THE DOL AND OTHER GOVERNMENT AGENCIES
    - Fair Employment Practices
    - Equal Opportunity
    - Wage and Hour
    - New Hire Requirements
    - Employment Eligibility: I-9 Forms
      - U.S. Citizenship and Immigration Services (USCIS)
    - Tax Information (IRS)
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# HOW TO DOCUMENT CONT'D

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## □ I-9 Forms

- USCIS has instructed employers that they may use a Form I-9 that has one of the following edition dates: "(Rev. 8/7/09)" or "(Rev. 2/2/09)."
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# HOW TO DOCUMENT CONT'D

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## □ BASIC GUIDELINES FOR DOCUMENTING

- Honesty
  - Review Yourself
  - Review by Someone Else
  - Destroy Drafts
  - Prepare Proximate to Event
  - If Time has Passed
  - Avoid Legal Terms and Conclusions
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# **PRE-EMPLOYMENT MATTERS**

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- JOB-RELATEDNESS REQUIREMENTS**
  - JOB DESCRIPTIONS**
  - WHY TO MAINTAIN A POLICY REGARDING ACCEPTANCE AND RETENTION OF APPLICATIONS**
    - Sets forth applicant expectations
    - Minimizes failure-to-hire claims
    - Eliminates wasted managerial time
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# **POST-HIRE: INITIAL EMPLOYMENT MATTERS**

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- DISTRIBUTION OF HANDBOOK AND  
ACKNOWLEDGEMENT**
    - Handbook Disclaimer
    - Acknowledgement Form
  - REVIEW OF JOB STANDARDS AND WORK  
RULES**
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# EVALUATIONS

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## □ PREPARING THE SUPERVISOR

## □ PREPARING THE EVALUATION ITSELF

- Review the job requirements.
  - Determine how well person is satisfying those requirements.
  - Define expectations against which judged.
  - Recall problems with employee.
  - Recall jobs done well by employee.
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# EVALUATIONS CONT'D

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- Think about results.
- Look at last years evaluation.
- DO NOT transfer problem employees.

## □ THE IMPORTANCE OF HONESTY AND ACCURACY

- Avoid Inflation
  - Be Clear
  - Additional Concerns: consistency, contradictory remarks, inaccurate drafts, implied promises.
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# EVALUATIONS CONT'D

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- COMMON CHARACTERISTICS THAT WEAKEN EVALUATIONS
    - Untimely
    - Inconsistent with Discipline/Performance
    - Over Broad
    - Excessively subjective
    - Overly Stereotypical
    - Unreviewed with the Employee
    - Inadequate development plan (where appropriate)
    - Failure to have the employee acknowledge poor performance
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# EVALUATIONS CONT'D

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- COMMUNICATING THE EVALUATION WITH THE EMPLOYEE
    - Set aside a sufficient amount of time to meet with the employee with as few interruptions as possible.
    - Encourage discussion.
    - Try to come up with a joint plan for improvement.
    - Take a positive approach, even if the review is negative.
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