AUTHOR OF...

- 101 Sample Write-Ups for Documenting Employee Performance Problems: A Guide to Progressive Discipline and Termination (one of SHRM's “Great 8 of 2008”)

- The Performance Appraisal Tool Kit: Realigning Your Performance Review Template to Drive Individual and Organizational Change (May, 2013)

- 101 Tough Conversations to Have with Employees: A Manager’s Guide to Performance, Conduct, and Discipline Challenges (April, 2009)

- 96 Great Interview Questions to Ask Before You Hire (2nd edition)

- 2600 Phrases for Effective Performance Reviews

- The Hiring and Firing Question & Answer Book
FUNDAMENTAL ELEMENTS OF WORKPLACE DUE PROCESS

- **Rule 1**: The employee needs to know what the problem is

- **Rule 2**: The employee needs to know what she needs to do in order to fix the problem (a measurable standard must be known in advance)
Rule 3: The employee needs to have a reasonable time period in which to fix the problem

Rule 4: The employee needs to understand the consequences of inaction
TO MEET THESE FOUR CRITERIA:

- You and your company have to be consistent in the application of your own rules. Therefore, look to your past practices.

- The discipline must be appropriate for the offense. Beware of over-emphasizing *de minimis* infractions.
Consider prior service, overall performance, and prior performance appraisal and disciplinary records so that you’re not administering discipline in a vacuum.

Give employees an opportunity to respond formally in writing.
GOLDEN RULES OF THUMB

- Seldom will disciplinary transgressions be identical.

- For progressive discipline to progress, there must be a link or nexus between events in order to move to the next stage.

- Otherwise, you’ll end up with a series of “first” warnings rather than a progression of first, second, and/or final written warnings.
RULES OF THUMB (CONT.)

- **Litmus Test**: How would you respond to this particular issue if your best-performing employee made the same error?

- HR should be present (a) as a witness and (b) to ensure the employee is treated with *dignity and respect*. 
The key to successful progressive discipline lies in shifting the responsibility for improvement away from the company and toward its employees!

Achieve this by “meeting the employee half way” in the process and making your company part of the solution.
WHAT IS PROGRESSIVE DISCIPLINE?

- A series of one or more formal (documented) notices that an employee’s performance and/or conduct doesn’t meet standards.

- A progressive system of notification where each step contains some added element to impress upon the employee the growing sense of urgency.
CRITICAL ISSUES TO CONSIDER

- Summary Dismissals
- Employment at will vs. “employment with termination for just cause only”
- Probationary periods: a false sense of security for many employers
CRITICAL ISSUES (CONT.)

- Issuing a “final written warning” for a first-time offense: performance vs. conduct infractions

- Removing disciplinary warnings from an employee’s personnel file after one year: proceed at your own risk!
NUMBER OF STEPS

- Follow the verbal > written > final written warning paradigm unless starting with anything less than a final written warning could make you, as an employer, appear irresponsible.

- Accord more due to process to longer-term workers (via decision-making leaves and letters of clarification).
A repeated violation of the same rule or the same type of rule is key to progressing through the steps of progressive discipline.

Remember to view behavior in terms of overall responsibility rather than as isolated behavioral acts.
TWO KEY CATEGORIES

- **Performance Transgressions** (including policy and procedure violations and attendance/tardiness) -- Follow all regular steps of disciplinary process.

- **Behavior/Conduct Infractions** -- Move to immediate termination or a final written warning, if necessary.
I. INCIDENT DESCRIPTION DO’S AND DON’TS

Rule 1: Employ the traditional who - what - where - when - why paradigm when drafting narratives

Rule 2: Use your senses when describing events, and paint pictures with words
Rule 3: Turn subjective evaluations into objective, concrete facts

✗ Don’t state: “You left your work area untidy again.”

✗ Do state: “An eight inch stack of incoming work orders was piled on your desk, and A/C parts were lying on your typing table.”
Don’t state: “You appeared at the customer’s home under the influence of alcohol.”

Do state: “The customer reported that he heard you slurring your words and saw that your eyes were glassy. He stated that he smelled alcohol on your breath.”
Rule 4: Document the negative organizational impact that resulted from the employee’s actions

“Your failure to collect these accounts receivable could negatively impact our company’s cash flow.”
“I found inconsistencies throughout your calculations and had to correct them myself before they could be processed. As a result, . . .

- I had to work until 10:00 PM last night.
- We’ll have to hire a temp.
- We’ll need to push back the go-live date.”
Rule 5: Whenever possible, include the employee’s response in the warning to document that you listened to the individual’s side of the story before taking disciplinary action.

“When I asked you how this occurred, you told me . . . .”
II. MEASURABLE AND TANGIBLE IMPROVEMENT GOALS

- For progressive discipline to work, it’s got to have a concrete outcome (e.g., increased production numbers, decreased errors, improved interpersonal communications, or a tardy-free attendance record).

- State your **expectations** clearly:
“*I expect you to* complete your recruitment statistics by the fifth of the month and tell me in advance if you will be unable to collect the data from HRIS to meet this goal.”
MEASURABLE GOALS (CONT.)

“*You are expected to* meet our organization’s guidelines regarding attendance and punctuality for the remainder of your introductory period and thereafter.”

“*I expect you to* always treat your coworkers with respect and to foster an inclusive work environment.”
Whenever possible, address a problem with positive tools and encouragement in order to “meet the employee half way.”

Discipline should always be delivered hand-in-hand with training and other “affirmative” employer efforts.
“I will meet with you in your office every Monday for the next four weeks to . . .”

“In an effort to sensitize you about how your behavior might impact others, you will be scheduled to attend a one-day workshop on dealing with interpersonal conflict in the workplace.”
“I will send you an Excel reference book on spreadsheet basics. Please familiarize yourself with the essential functions you’ll need on a daily basis.”

“I suggest you take a time management course at a local college.”

“A copy of our attendance policy is attached. Please read it immediately.”
IV. DOCUMENTED CONSEQUENCES

Catch-All: “Failure to provide immediate and sustained improvement may result in further disciplinary action up to and including dismissal.”
Consequences with no time limits:

“If you *ever again* engage in conduct with a supervisor, coworker, or customer that could be considered hostile or offensive, you may be immediately dismissed.”
Consequences using active time windows:

- **30 days**: To closely monitor poor performance, use a short window that will allow you to determine if the individual can meet the essential functions of his job.
60 days: Salespeople who aren’t meeting expectations often are placed on 60-day notice periods in order to allow them to make a sale, close the deal, and wait for receivables to cash in.
CONSEQUENCES (CONT.)

- **90 days**: To keep employees “clean” for the longest period of time (for example, with tardiness and attendance problems), use a 90-day window.

- Remember, you’re not guaranteeing 90 days of employment if you write the consequences this way:
“If at any time within this 90-day period you incur two more incidents of unscheduled absence, you may be immediately dismissed.”
LETTERS OF CLARIFICATION

- An alternative to formal written warnings ("acknowledgment")

- Best used for longer-term workers who may be entitled to greater due process

- "This is not a disciplinary document. Please sign to acknowledge your commitment to fixing the *perception problem* at hand."
DECISION-MAKING LEAVE

- Best used for longer-term workers who may be entitled to greater due process

- “Last Chance Agreement”

- Day off with pay to rethink your commitment to the company and to your position

- A “once in a career” benefit
Structure

“If you choose to resign because you no longer feel that working for XYZ company benefits your career, I will understand your decision and support you in any way I can.”
“On the other hand, if you choose to return to work the day after tomorrow, I expect you to provide me with a one-page statement confirming your level of commitment to the company along with your assurance that we will never have to discuss this issue again. This letter will be placed into your personnel file . . .”
AVOID THESE 2 MISTAKES!

- Avoid documenting “state of mind” offenses: do not use words such as “willfully, maliciously, purposely, deliberately, or intentionally” (mental qualifiers).

- Do not “codify the damage.” Remember, these documents are all discoverable (e.g., “Sexual Harassment” is considered a legal conclusion).
Have a question for the speaker? Press “Star” and then “1” on your phone to enter the queue.

If, during the Q&A, your question has been answered, or you wish to remove yourself from the queue, press “Star” and then “1”.

The moderator will open your phone line when it is your turn to speak.

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Thank you for attending!
DOCUMENTING EMPLOYEE PERFORMANCE: STRATEGIES AND 101 SAMPLE WRITE-UPS

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