



NORTH RISK PARTNERS®

WAGNER, FALCONER & JUDD, LTD.

**DOCUMENTATION BEST
PRACTICES: DIFFICULT
EMPLOYEES,
TERMINATIONS, AND
PERFORMANCE
MANAGEMENT**

SEPTEMBER 2024

NORTH RISK WEBINARS | 2024

PRESENTER



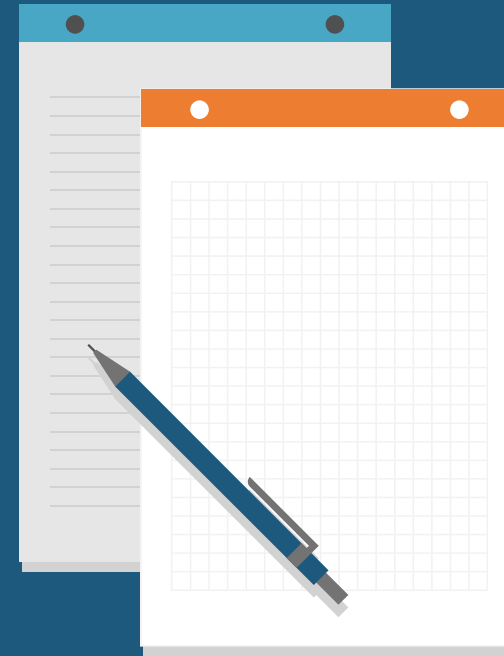
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AGENDA

- Why *Good* Documentation Matters
- Managing Difficult Employees
- Performance Management
- Termination Documentation
- Real-World Examples & Best Practices



WHY *GOOD* DOCUMENTATION MATTERS

Legal Protection:

- Helps avoid claims of discrimination or wrongful termination.
- Provides evidence in the event of litigation.

Employee Clarity:

- Clear expectations and performance feedback.
- Documented conversations and goals create accountability.

Risk Reduction:

- Reduces risk of disputes and inconsistencies in decision-making.

Regulatory Compliance:

- Meet compliance requirements (e.g., FMLA, ADA, etc.).

WHY *GOOD* DOCUMENTATION MATTERS

Case Overview: *Ossmann v. Meredith Corp.*

Timeline:

- **2012:** Paul Ossmann hired as a weekend meteorologist at a CBS station.
- **2017:** Promoted to Chief Meteorologist.
- **April 2019:** Terminated after repeated sexual harassment allegations.

Complaints:

- **1st Complaint (2017):** Inappropriate sexual comments to a female colleague.
- **2nd Complaint (2017):** Sent explicit Facebook messages to a news producer.
- **3rd Complaint (2019):** Made suggestive comments to another female colleague.

Company's Response:

- Issued warnings after each complaint.
- Ultimately, terminated Ossmann citing a "pattern of violating sexual harassment policy."
- Company completed a "EEO Analysis" form documenting the complaints but also listing Ossmann's race, sex, and age.



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WHY *GOOD* DOCUMENTATION MATTERS

Case Overview: *Ossmann v. Meredith Corp.*

Ossmann's Claim:

- Alleged his termination was due to race (filed under Section 1981).

Company Defense:

- Termination was based on repeated sexual harassment violations, not race.

Key Points from the Court:

- The **EEO Analysis Form** that included Ossmann's race was **circumstantial evidence**, not direct proof of discrimination.
- The court found no **pretext for bias** in the termination process.

Final Ruling: The termination was upheld, and the court ruled in favor of the company.



DOCUMENTATION GONE WRONG

Why Documentation Matters:

- Managers must document employee performance issues to justify terminations.
- Poor or inconsistent documentation can weaken an employer's defense in lawsuits.
- Lack of clear "receipts" can make it easier for employees to claim discrimination.



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DOCUMENTATION GONE WRONG

Case Overview: *Mendoza v. Foot Locker Retail, Inc.*

Employee: 59-year-old District Sales Manager with 35+ years of service.

Timeline:

- Positive performance reviews until 2018.
- 2018-2019: Received poor reviews, placed on Performance Improvement Plan (PIP), and terminated.

Age Discrimination Claim: Employee argued that poor reviews were a pretext for age discrimination, as he was replaced by someone younger.



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DOCUMENTATION GONE WRONG

Case Overview: *Mendoza v. Foot Locker Retail, Inc.*

Critical Documentation Issues:

- **Inconsistencies:** The employee was named District Manager of the Year just years before termination.
- **Contradictions:** Performance evaluations didn't align with the employee's prior records.
- **Flawed PIP:** Included references to meetings that hadn't yet occurred.

Outcome:

- Poor documentation discredited the company's reason for termination.
- The case advanced, and a jury could conclude age discrimination played a role.



MANAGING DIFFICULT EMPLOYEES

Common Red Flags:

- **Absenteeism:** Frequent tardiness or unexcused absences.
- **Missed Deadlines:** Inconsistent performance or failure to meet expectations.
- **Negative Attitude:** Persistent unprofessional or disruptive behavior.
- **Resistance to Feedback:** Ignoring or arguing against constructive criticism.
- **Policy Violations:** Repeatedly breaking company rules or standards.

Why Early Documentation Matters:

- Helps track patterns and trends in behavior.
- Provides a factual basis for future conversations and corrective actions.
- Sets the groundwork for fair and consistent treatment.

THE ROLE OF DOCUMENTATION IN PERFORMANCE MANAGEMENT

Why Document Performance Reviews:

- Provides a record of employee progress and feedback.
- Ensures consistency and fairness in evaluations.
- Helps track long-term development and improvement.

Key Elements to Document:

- **Clear Performance Goals:** Be specific about what success looks like.
- **Measurable Outcomes:** Use quantifiable metrics to assess progress (e.g., sales targets, project completion, etc.).
- **Constructive Feedback:** Include both positive achievements and areas for improvement.
- **Actionable Next Steps:** Outline what the employee needs to do to improve, with specific deadlines.
- **Employee Acknowledgment:** Ensure the employee signs off on the review to confirm they understand expectations.



THE ROLE OF DOCUMENTATION IN PERFORMANCE MANAGEMENT

Example of Performance Documentation:

- **Employee:** Sarah B. (Marketing Associate)
- **Date:** March 1, 2024
- **Reviewed by:** John D. (Marketing Manager)
- **Performance Summary:**
 - **Goal:** Increase lead generation by 15% over the next quarter.
 - **Outcome:** Leads increased by 12%, slightly under the target.
 - **Strengths:** Demonstrated strong creative thinking in campaign design; contributed positively to team collaboration.
 - **Improvement Needed:** Needs to improve on meeting lead generation targets. Suggest more focus on targeted outreach strategies and refining follow-up process.
 - **Next Steps:** Develop a detailed outreach plan by March 15, 2024. John and Sarah will meet bi-weekly to review progress toward lead generation goals.
- **Signatures:**
 - **Manager:** John D.
 - **Employee:** Sarah B.



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PERFORMANCE IMPROVEMENT PLANS (PIP)

Employee improvement

- According to wethrive.net, 58% of employees improve after a PIP.

Employee engagement

- A 2021 Gallup study found that organizations that implement PIPs effectively see a 30% increase in employee engagement.

Productivity

- A 2021 Gallup study found that organizations that implement PIPs effectively see a 20% increase in productivity.

Employee performance

- A case study from a Fortune 500 tech company found that employee performance metrics improved by 30% within six months after implementing a PIP.



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PERFORMANCE IMPROVEMENT PLANS (PIP)

Creating a Strong PIP:

- Identify specific areas needing improvement.
 - The PIP should be achievable
- Provide actionable steps to reach performance goals.
- Include timelines and measurable benchmarks.
- Document each meeting and progress review.

TERMINATION DOCUMENTATION

Build a Strong Paper Trail:

- Document warnings and PIP outcomes thoroughly.
- Include any final incidents or policy violations.
- Prepare a detailed termination report (dates, discussions, actions).
- Maintain neutrality in language, and avoid emotional language.

Legal Considerations:

- Ensure compliance with employment laws.
- Consider risks of wrongful termination claims.
- Only give written termination letter when necessary.

TERMINATION DOCUMENTATION

Best Practices:

- Be thorough and specific about the reasons for termination.
- Include all supporting documents (e.g., performance reviews, warnings).
- Avoid surprise terminations - document all warning steps.
- Conduct exit interviews and document them.

REAL-WORLD EXAMPLES AND BEST PRACTICES

Case Study 1: Addressing Absenteeism

- Problem: Chronic absenteeism from an employee.
- Approach: Document all tardies, conversations, and final warnings.
- Result: Proper documentation prevented a wrongful termination claim.

Case Study 2: Performance Improvement Plan

- Problem: Underperformance in a sales role.
- Approach: A clear PIP with measurable goals.
- Result: Improved performance or justified termination based on documentation



DOCUMENTATION STRATEGIES TO CONSIDER ADOPTING

Develop Documentation Protocols:

- Create templates for performance reviews and PIPs.
- Standardize procedures for documenting difficult behavior.

Train Managers:

- Ensure consistency across departments for how documentation is handled.
- Educate managers on employment law to avoid pitfalls.

Audit Existing Documentation:

- Review current employee files to ensure documentation is complete.
- Cull old documentation

QUESTIONS?



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