

A Step-By-Step Guide to Performance Documents

By Brent Roper

When it comes to reprimands and terminations, treat each employee as if he might file a lawsuit. Reason: He might. And while you cannot control the legal system or juries, you can control the facts.

Believe it or not, most cases turn on the facts. It is crucial to have facts that are in your favor and to establish the circumstances of the case in writing. In any employment lawsuit that arises out of a termination for poor performance, one of the most important factual elements is what is said between the manager and the employee. Unfortunately, in nearly every lawsuit of this type, there is a huge difference between the accounts of the two parties on what was actually verbally said.

That's why written documentation regarding employee performance is so crucial to defend yourself and your organization. When written documentation is done well, defense attorneys find it difficult to dispute.

At the same time, the purpose of all informal feedback, performance coaching and formal documentation of employee performance issues should be to rehabilitate the employee's behavior and to work with the employee to correct and raise his or her level of performance to an acceptable level. The purpose of feedback, coaching and formal documentation is never to punish the employee or to prepare documents for the sole purpose of terminating the employee.

A well-written appraisal of performance is the best way to get the employee's attention and warn him that a problem exists and he needs to correct it. The following guidelines should help you do just that.

- **Address the memo to the employee.** Include the current date and note the subject of the memo as "job performance." Employees should see the documents as coming from the manager.
- **Be courteous and professional.** It's fine to say that the employee's behavior is unacceptable or below standard, but managers should not use demeaning or hostile words. Stick to the facts and exclude your feelings about the matter. Again, you do not want to include anything that could inflame a jury.
- **Include a short introduction.** The introduction should state the purpose of the memo—that there are problems with the employee's performance and that corrective action is necessary.
- **Bullet each specific area of a performance problem.** Instead of randomly covering various areas of the employee's performance in the document, prepare a bullet point for each area where the employee's performance needs to improve. Then, elaborate as necessary under each bullet point regarding the specifics. By scanning the bullet points in the document the employee (or juror) can quickly tell what areas need to be

corrected. Doing this also makes the document easier to read and easier to later find information in the document. For each bullet point, state the following:

1. The behavior that needs to be corrected, specific examples of the behavior and any policy that was violated. Include as many facts as possible, be precise and when possible, include dates, times, names, specific facts, other people involved, etc. Also, if an employee has violated an organization's policy (such as a policy written out in an employee handbook), state the policy and how it was violated.
2. A brief history of past coaching or counseling—or how you got to this point. Include whether you have repeatedly spoken to the employee about a matter, wrote it up in a performance appraisal and otherwise coached the employee on the issue. That helps the employee, as well as a potential juror, understand that the problem has been occurring for a period of time and that you have been working with the employee to correct the issue.
3. Include the employee's side of the story and then evaluate the behavior. It is helpful to have spoken to the employee about the matter before actually writing the formal document regarding an employee's performance. This allows you to understand and consider the employee's side. Then, in the formal write-up briefly include the employee's view and a couple of sentences as to why or why not the employee acted appropriately. Many employees get upset because managers do not consider all of the facts of a situation or never ask them for their side. This technique forces you to talk to the employee, to consider the employee's side and then "evaluate" or decide if the employee's side has merit. Again, it helps the employee understand what he or she did wrong. This is also important when the document is given to a jury or fact-finder to consider. On the face of the document it appears that the manager acted fairly and appropriately and reasonably and was interested in the employee's side of the matter and considered it.
4. Include the impact of the employee's poor performance. For example, if you write, "Your lack of follow-up regarding a customer request led to the customer not making a \$20,000 order," it demonstrates how the organization was affected by an employee's poor performance. It also shows employees "why" they need to have good performance and sets forth the organization's business reason for taking action. It also shows the fact-finder that the performance was below standard. If this aspect is left out of the document, the fact finder does not fully understand the importance of the poor performance.
5. State exactly what behavior the employee must do to correct the problem. For example, by writing, "In the future you should not yell at customers and you must treat all customers professionally, courteously and

respectfully,” you set out exactly what the employee must do and show what good behavior “looks like.” Also, in thinking about corrective action, consider whether the employee can benefit from additional training, either internal or external. Training is another sign that fact-finders look to regarding whether a manager was really trying to help an employee or was actually trying to terminate them due to an ill motive. If you can give the employee additional training, do it; it demonstrates to the fact finder that you went above and beyond to try and help the employee.

6. State what will happen to the employee if the performance issues are not corrected. For example, if you write, “Failure to correct this will result in further disciplinary action up to and including termination,” the employee can’t fail to get the message. Sometimes, managers do not wish to include this language because it makes the document sound “hard.” The bottom line: Employees need to understand the importance of the issue. It is not fair to the employee to terminate them for something without appropriate warnings (unless the conduct is extreme such as stealing or some other clear and serious policy violation). This is also something that can inflame juries. To summarily terminate an employee without notice and without cause may swing sympathies toward the employee.
7. State when follow-up/feedback will occur. It is not fair to the employee to hang the performance issue over their head for an indefinite period of time. It is also important to periodically tell the employee where they are regarding their performance and to give them reasonable feedback. For example, you could say, “We will review your performance in 30, 60 and 90 days or as soon as necessary.” If you include the date of the follow-up, it is extremely important to perform and document the follow-up.

- **End the memo on a positive note and agree to answer questions or otherwise assist the employee.** You want to leave the reader with the impression that this is not personal and that the employee was treated professionally and with respect.
- **Require the employee to sign the document.** This establishes that he or she received it and cannot later claim that they did not receive it. If an employee refuses to sign, then just write “Employee received this document but refused to sign.”

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Sample Employee Performance Document

<i>Comments</i>	<i>Document</i>
<p><i>To the employee</i></p> <p><i>From manager</i></p> <p><i>The document should be close in time (not more than a few weeks) from when the poor performance occurred.</i></p> <p><i>Introduction – explain what the purpose of the memo is.</i></p> <p><i>Bullet each item where performance needs to improve.</i></p> <p><i>Brief history of the problem including when the manager previously has addressed the issue.</i></p> <p><i>State EXACTLY what the behavior is including all relevant facts (names, dates, times, behaviors, words, actions, etc.). Include policies that were violated if any.</i></p>	<p>MEMORANDUM</p> <p>To: John Doe, [Job Title]</p> <p>From: Sally Smith, [Manager / Job Title]</p> <p>Date: Current Date</p> <p>Subject: Job Performance</p> <p>Message:</p> <p>Recently, several areas regarding your job performance have come to my attention. It is absolutely necessary that your performance in the areas outlined herein immediately improve. This memo sets forth the specific problems, what affect they are having on the organization and what you can do to correct the problems.</p> <ul style="list-style-type: none"> • <u>Poor Communication/Poor Customer Service</u> <p>In your last performance appraisal of Jan. 1, 200X, the appraisal noted several problems regarding your lack of effective communication. The appraisal specifically mentioned customers complaining of how you treated them and problems getting along with several team members. You were rated a “Fair” under the Communication category. Since that time, I have spoken with you numerous times regarding communication problems, specifically on Nov. 15, Nov. 29 and Dec. 14. Unfortunately I have not seen significant improvement in this area and problems continue to arise.</p> <p>On Dec. 27, you took a call from Judy Edwards, assistant vice president for UID, Inc. Ms. Edwards requested that you send her information regarding the investment product you are working on. Ms. Edwards indicated that you told her that you were busy, that you did not have time to talk to her, that she would not understand the da#! product anyway, that she should contact someone else and then you hung up. Ms. Edwards indicated that she then left you three voice mails and two e-mails, to which you never replied.</p>

<p><i>Include the employee's side of events.</i></p>	<p>After I received an irate call from Ms. Edwards on Dec. 29, I spoke to you about it that same day. You indicated that you had spoken with her on Dec. 27, that you did tell her you were busy, that you may have cursed at her once and that she probably should talk to someone in her department. You indicated that you did not remember telling her that she would not understand the issue. You did remember hanging up on her and not returning her voice mails and e-mails.</p>
<p><i>Include organization policies that were violated.</i></p>	<p>The company's Employee Behavior policy (see the Employee Handbook at page 28) states: "It is the company's policy that certain rules and regulations regarding employee behavior are necessary for the efficient operation of the company and for the benefit and protection of the rights and safety of all employees. Conduct that interferes with operations or brings discredit to the company will not be tolerated.</p>
<p><i>"Evaluate" the behavior after considering the employee's side.</i></p>	<p>Even assuming your version is correct, your actions were unacceptable and violated the company's Employee Behavior policy. All employees must support our customers. It is extremely important that we give professional, courteous support to every customer. You admitted telling Ms. Edwards that you were too busy, cursed at her, hung up on her and did not return her calls or e-mails. These are all examples of poor communication, poor customer service and such conduct clearly brought discredit to the company.</p>
<p><i>State what the impact or consequences of the employee's behavior is.</i></p>	<p>The impact of your behavior is that Ms. Edwards has now pulled UID, Inc.'s business worth approximately \$25,000 a year with our company and is apparently moving their business to our chief competitor. Since UID is a long-timer customer of ours—having done more than \$200,000 worth of business with us over the last 10 years—this is extremely costly to the company. As you know, our marketing efforts seek to differentiate us from our competitors based on our outstanding customer service. If we are to survive in this competitive market we must deliver outstanding service to our customers. We can ill afford to lose good customers like Ms. Edwards due to your poor customer service.</p>
<p><i>State what corrective action is necessary to bring the performance issue up to an acceptable level.</i></p>	<p>Corrective Action on this will be for you to treat all customers (internal or external), particularly those from state insurance departments professionally, courteously and patiently. It is expected that you will return all customer voice mails and e-mails within 24-hours. If you cannot do this, you must contact me and let me know why. You must also refrain from cursing at customers and talking down to them in a demeaning manner. In the next 60-days you must attend either an internal or external seminar/training on communication/customer service. I also expect you to contact Ms. Edwards and apologize for your poor behavior.</p>
<p><i>Consequences if performance issue continues.</i></p>	<p>If your behavior regarding communication/customer service with internal and external customers does not drastically and immediately improve, you will be</p>

<p><i>If there were more bullet items regarding additional performance issues they would be included here.</i></p> <p><i>Follow-up/feedback</i></p> <p><i>Allow employee to ask questions and end courteously.</i></p>	<p>subject to further disciplinary action up to and including termination.</p> <p>I will review your performance in approximately 30, 60 and 90 days or sooner as needed. I will be sending you meeting notices for Feb. 1, March 1 and April 1.</p> <p>Please let me know if you have any questions. As you know, I have always tried to work with you in the past and look forward to working with you to resolve these issues. Thank you.</p> <p>Employee Signature (Indicating Receipt Only): _____ Date: _____</p>
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