



2026 ANNUAL CONFERENCE OAKLAND, JANUARY 11 - 13

AUXILIARY ORGANIZATIONS ASSOCIATION

THE NEXT ERA OF AUXILIARIES
SHAPING TOMORROW

Learning as Fast as the World is Changing

Effective Management of Evaluations and
Discipline While Avoiding Favoritism and
Claims of Discrimination



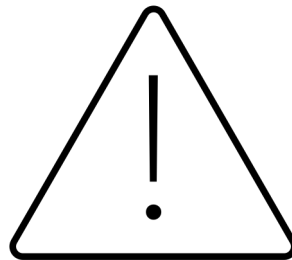
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Basic Overview of Training Presentation

- I. Employee Evaluation**
- II. Employee Discipline and Dismissal**
- III. Discrimination, Retaliation and Favoritism**

Disclaimer

This presentation is designed to be a general guide and should not be considered legal advice. For questions about specific situations, please consult an attorney.



I. Employee Evaluation



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INTRODUCTION

THE PURPOSE OF EVALUATION

Proper evaluations:

Are a valuable management tool.

Show a need for closer employee scrutiny and remediation.

Demonstrate which employees have the potential for leadership and advancement.

Provide employees with an accurate picture of where they stand.

Poor evaluations:

Allow poor employees to become part of the permanent landscape.

Are not documented.

Fail to document unsatisfactory behaviors and other concerns.

May lead to litigation and damages for wrongful termination.



INTRODUCTION

WHAT IS EVALUATION?

Evaluation is the careful, systematic appraisal of an employee's work effectiveness by measuring the employee's performance against the elements, objectives, and responsibilities of the position, as defined by the employee's job description.

The purpose of the evaluation is to develop, strengthen and maintain effective performance in all areas of responsibility in alignment with Employer goals.

While the evaluation may concentrate upon selected areas of performance, the individual employee is expected to maintain effective standards in all areas of responsibility as identified in the job description.

WHY SUPERVISORS DO NOT EVALUATE PROPERLY

1. Time consuming and requires constant vigilance.
2. To avoid discomfort.
3. Belief that one poor evaluation creates poor morale among all employees.
4. No knowledge that their professional survival depends upon a smooth operation.
5. Inadequate legal training.
6. Inadequate training in supervision.
7. Fear political problems – real and imagined.
8. Fear legal problems – real and imagined.
9. Lack of commitment to management in general.



THE PURPOSE OF EVALUATION

What Evaluation Should Do For the Employer

- ✓ Maximize efficiency in workforce utilization.
- ✓ Provide a profile of group performance.
- ✓ Provide insights into educational effectiveness.
- ✓ Serve as a basis for merit or step salary increases.
- ✓ Serve as a check on recruitment and hiring practices.
- ✓ Provide a basis for retention, transfer or dismissal of personnel.

THE PURPOSE OF EVALUATION

What Evaluation Should Do For the Administrator/Supervisor



- Identify employees in need of improvement, and employees performing at an exceptional level.
- Pinpoint weak spots in operation.
- Identify in-service needs of employees.
- Identify employees with leadership potential.
- Identify training needs.
- Provide a check on proper placement.
- Provide feedback on morale.
- Head off serious disciplinary problems.
- Encourage communication between administrator/supervisor and employee.

THE PURPOSE OF EVALUATION

What Evaluation Should Do For the Employee

- Let him/her know his/her strengths and weaknesses.
- Suggest ways to improve.
- Improve morale by providing feedback as to “where he/she stands.”
- Recognizes good work.
- Serves as a warning to below-standard work.



PREPARATION FOR EVALUATION



- ✓ Employee Handbooks
- ✓ Policies and Procedures
- ✓ Evaluation Forms
- ✓ Job descriptions
- ✓ Time and calendar requirements
- ✓ Management system

GUIDELINES FOR ADMINISTRATORS

RE: EMPLOYEE EVALUATION AND DISCIPLINARY PROCEDURES AND PRACTICES

A. Two purposes of employee evaluation and disciplinary procedures:

1. To improve unsatisfactory employee performance.
2. To document the basis for discipline of an unsatisfactory employee.



GUIDELINES FOR ADMINISTRATORS

RE: EMPLOYEE EVALUATION AND DISCIPLINARY PROCEDURES AND PRACTICES

B. In general, if a discipline is challenged, a hearing officer or judge will concentrate on the following in deciding whether there are or were grounds for discipline.

1. Has the Employer followed the required procedures?
2. Has the Employer documented, in writing, a consistent pattern of employee deficiencies?
3. Has the Employer documented, in writing, clear, unambiguous communication of the deficiencies to the employee?
4. Has the Employer documented, in writing good faith attempts to assist the employee in correcting the deficiencies?
5. Has the district documented, in writing, that the employee has been given fair notice of the consequences of failure to correct the deficiencies?
6. Has the Employer documented, in writing, that the employee has been given a reasonable amount of time to correct the deficiencies?



GUIDELINES FOR ADMINISTRATORS

RE: EMPLOYEE EVALUATION AND DISCIPLINARY PROCEDURES AND PRACTICES

C. Avoid the three most common errors

1. Be specific rather than general.
2. Be clear and direct rather than tactful and circumspect.
3. Set forth the facts forming the basis for the conclusion, include names of witnesses, dates, times and all other relevant facts.



GUIDELINES FOR ADMINISTRATORS

RE: EMPLOYEE EVALUATION AND DISCIPLINARY PROCEDURES AND PRACTICES

D. Four kinds of written evaluation and disciplinary documents are normally used.

1. Goals and objectives
2. Written reprimand (also called “incident report” or “corrective interview”)
3. On-the-job observation
4. Evaluation



GUIDELINES FOR ADMINISTRATORS

RE: EMPLOYEE EVALUATION AND DISCIPLINARY PROCEDURES AND PRACTICES

E. When to Consult with a Lawyer

1. It is advisable to contact the Employer's attorney early if there is a problem employee.
2. The attorney will be able to help the Employer plan an evaluation strategy for an employee—it will make the attorney's job easier in the event dismissal is eventually sought.
3. It is helpful to consult the attorney when drafting a reprimand, observation, or evaluation in a difficult case.
4. In general, attorney services early in the process will save much more in legal and other costs later.



COMPONENTS OF A PERFORMANCE OBJECTIVE

- **WHO?** The WHO relates to the person to perform an activity
- **DOES WHAT?** DOES WHAT is that which is to be known or done
- **WHEN?** WHEN relates to a specific point in time when something will have been learned or done:
- **UNDER WHAT CONDITIONS?** UNDER WHAT CONDITIONS relates to the program or activity
- **HOW MUCH?** HOW MUCH relates to the minimum level to be achieved
- **HOW WILL IT BE MEASURED?** HOW WILL IT BE MEASURED relates to assessment techniques



COMMUNICATING EXPECTATIONS OF PERFORMANCE

Duties and responsibilities

Objectives and goals

Accepted methods of performing duties and tasks

Specific duties and tasks that need improvement

How to improve

NARRATIVE EVALUATION



- Less structured
- Describes performance
- Informal
- Personal
- Dependence on writing skills

IDENTIFYING UNSATISFACTORY PERFORMANCE FAIR AND REASONABLY ONLY IF...

1. The employee clearly knows what is expected.
2. The employee has been given training and an opportunity to achieve the expected level of performance.
3. It is clear that the employee has failed to meet the expected level of performance.



UNSATISFACTORY PERFORMANCE OF AN INSTRUCTOR WILL TYPICALLY (BUT NOT EXCLUSIVELY) BE CATEGORIZED IN THE FOLLOWING AREAS

1. Observable Behavior in the Workplace.
2. Observable Non-Compliance with Rules, Policies, Regulations and Laws.
3. Observable Personal Behavior.



SUGGESTED CONTENTS (AND FACTORS TO CONSIDER) FOR ANY DOCUMENTATION OF MISCONDUCT OR UNSATISFACTORY PERFORMANCE

1. Report Factually
2. Cite Rule And Authority Violated
3. Instructional/Classroom Connection
 - A. Harm Caused
 - B. Notoriety Of Conduct
 - C. Proximity Or Remoteness
 - D. Extenuating Aggravating Circumstances
 - E. State Of Mind And Motive Of Employee
 - F. Prior Assistance Given
 - G. Likelihood Of Recurrence
 - H. Chilling Effect
4. Precise Areas To Be Improved
5. Specific Recommendations For Improvement
6. Definite Offers For Assistance (If Warranted)
7. Means By Which Improvement Will Be Measured
8. Schedule Of Subsequent Follow-Up By Evaluator



FURTHER THOUGHTS ON PROPER DOCUMENTATION

Proper documentation needs to include:

Specific guidance on how to fix the problems.

A reasonable amount of time to fix the problems.

Follow up on whether the problem is fixed.

Documentation and imposition of sanctions for un-remediated problems.

One type of documentation is not acceptable.

Documentation should be throughout the year.

PREPARATION FOR POST-EVALUATION INTERVIEW



- Privacy Considerations
- Center on employee work performance.
- Give a copy of the form to the employee.
- Use a positive approach.
- Listen to Employee's response
- Two-way communication
- Put employee at ease.
- Don't interrupt.
- Avoid argument.
- Praise good performance.
- Indicate how to improve.
- Make plans.
- Don't rush.
- Focus on timely remediation
- Invite employee to comment orally or in writing

RECORDKEEPING

1. Accurate
2. Behavioral
3. Consistent



II. Employee Discipline and Dismissal



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GROUNDS FOR DISMISSAL

Employer Rules

- Workplace violence policy
- Drug and alcohol policy
- Harassment/discrimination policy
- Physical/mental policy

Performance Concerns

INCOMPETENCE v. UNSATISFACTORY PERFORMANCE

What's new and different?

<u>Unsatisfactory Performance</u>	<u>Incompetence</u>
Employee not performing adequately.	Employee not qualified or able to perform
Employee not meeting established standards of performance.	Employee beyond remediation.
Includes incompetence in most extreme examples.	Higher standard than unsatisfactory performance.



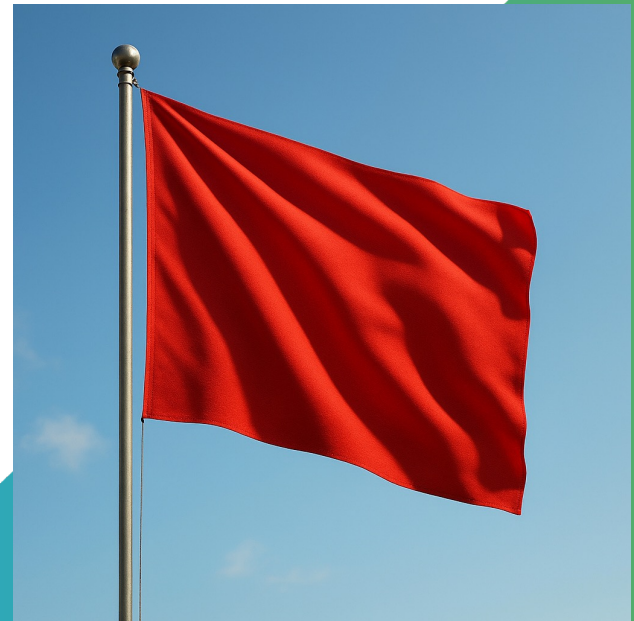
COMMUNICATING EXPECTATIONS OF PERFORMANCE

1. Duties and responsibilities
2. Objectives and goals
3. Accepted methods of performing the duties and tasks
4. How to improve



TYPES OF PROGRESSIVE DISCIPLINARY ACTIONS

- Counseling
- Oral warning
- Written reprimand
- Suspension
- Discharge



LEGAL CONSIDERATIONS

Seek advice from Human Resources or Legal Counsel if you wish to discipline an employee and they have:

Expressed matters which may be of public concern.

Been active in any employee organization activities.

Sustained a work injury or reported a work injury recently or have a pending claim.

Put the Employer on notice of a disability.

Required or used Family Medical Care Leave within the prior year.

Engaged in conduct which occurred off the job for which discipline is being considered.

Engaged in conduct similar to other employees who were not subjected to disciplinary action.

THE APPROPRIATE ACTION TERMS THROWN ABOUT

Fundamental Fairness

Good Cause

Reasonableness

Just Cause

Progressive Discipline



WHAT IS APPROPRIATE RESPONSE?

Look at

- Offense
- Longevity
- Prior discipline
- Performance record
- How others are treated for the same or similar offense

Examine

- Extenuating Factor
- Impact on operations
- Degree of orientation to expectations

PARTICULAR DISCIPLINE PROBLEMS



Potential “One-Strike” Offenses

- Falsification of employment applications
- Falsification of time and production records
- Theft
- Assaults on supervisors
- Fighting between employees
- Sleeping
- Criminal conduct

OTHER PARTICULAR DISCIPLINE PROBLEMS

Absenteeism and Tardiness

Abuse of Sick Leave

Incompetence

Insubordination

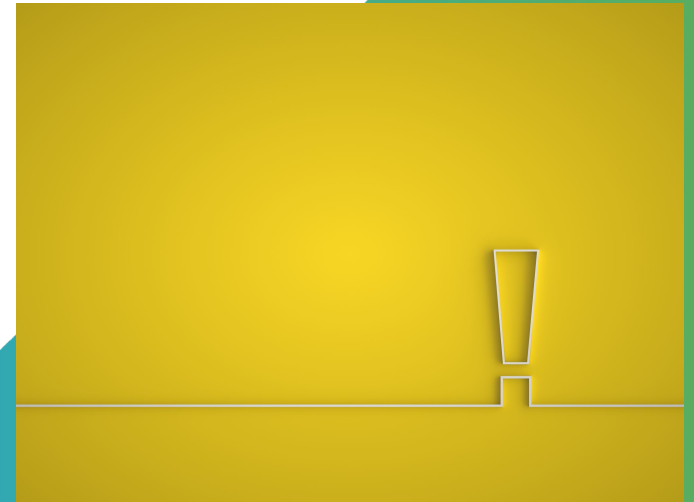
Violation of Employer rules

Misconduct outside working hours

Horseplay

INSUBORDINATION

- Order
- Order must be lawful and safe.
- Order must be communicated to the employee.
- Employee must have understood the order.
- Person giving the order has the authority to do so.
- Refusal to comply



INSTITUTING EMPLOYEE DISCIPLINARY ACTION WHICH WILL WITHSTAND CHALLENGE

Proper, sufficient
and timely
documentation.

Proper and timely
placement of
documentation in
the employee's
personnel file.

Due process/just
cause



TOP 10 ERRORS IN EMPLOYEE DISCHARGE



1. Too many issues and causes for discipline.
2. Failure to comply with evaluation requirements.
3. Failure to file documents in the personnel file.
4. Inconsistency in the treatment of others in similar situations.
5. Failure to provide progressive discipline.
6. Causes which appear to be mixed motive of discrimination.
7. Failure to show the harm to the institution.
8. Inconsistent evidence and witness testimony.
9. Lack of preparation
10. Lack of will to discipline/discharge.

III. Discrimination, Retaliation, and Favoritism



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WHAT IS UNLAWFUL DISCRIMINATION?

When an individual is subject to an adverse employment action on the basis of:

- Sex
- Gender
- Ethnic Group Identification
- Race
- National Origin
- Religion
- Color
- Mental or Physical Disability
- Sexual Orientation



WHAT IS UNLAWFUL DISCRIMINATION?

An adverse employment action can be anything an employer does which affects a term or condition of their employment including:

Job Advertising		Use of company facilities
Recruitment		Training programs
Hiring		Transfer
Position		Promotion
Compensation		Hours
Assignment		Vacations
Job classification		Use of disability leave
Title		Layoff
Testing		Recall
Benefits and perks		Firing

TIPS ON HANDLING COMPLAINTS OF DISCRIMINATION

- Know the Employer's policy on discrimination and complaint procedures.
- Know state and federal regulations regarding discrimination
- **Take persons aside and speak to them individually and in private.**
- Listen attentively as the victim answers the following questions:
- **Insure person that efforts will be made to protect confidentiality.**
- **Provide the individual with a copy of the Employer's discrimination policies/regulations and review the policy with the individual.**
- **Document your initial interaction with the person raising concerns.**
- **Refrain from determining guilt or innocence "on the spot."**
- **Obligation/responsibility – report allegations to the Employer's designated officer for such complaints.**
- **Stop the flow of conversation by re-directing the subject of the conversation.**
- **Express your concern and demand that the behavior stop.**
- **Provide suggestions for the future.**
- **Report the complaint to the immediate supervisor or human resources department.**
- **DOCUMENT EVERYTHING!**



BASIC OBLIGATIONS WHEN A COMPLAINT IS FILED



- ✓ **Conduct a fair and impartial investigation of complaint.**
- ✓ **A conclusion should be reached as to whether unlawful discrimination, retaliation or favoritism occurred.**
- ✓ **Communicate results to those who have a “need to know.”**
- ✓ **Take appropriate corrective action to remedy the victim and to prevent future discrimination, retaliation, and favoritism.**
- ✓ **Impose appropriate discipline.**
- ✓ **Assure no retaliation**

USE NON-TRADITIONAL METHODS OF OBTAINING INFORMATION ABOUT POSSIBLE PROBLEMS

1. Implement a way that employees can anonymously alert the Employer to any problems.
2. As part of any transfer request, ask the employee “is there anything about your present job that you find offensive?”
3. Include questions on discrimination as part of evaluation questions asking “Have you ever experienced any difficulty in your work environment? “ and “If so, do you want an appointment scheduled with the Human Resources Department”
4. Include questions on discrimination as part of exit interviews. Consider asking questions such as “During your employment, were you ever discriminated against? And “Has anyone done or said anything to you during your employment that you find offensive?”



RETALIATION IS STRICTLY FORBIDDEN

Employers cannot retaliate against employees for their exercise of rights under the U.S. Constitution, federal law, and California law. Retaliation occurs when an employer takes an adverse action against a covered individual because he or she engaged in a protected activity. Retaliation is prohibited against the victim, as well as the witnesses. The same laws that prohibit discrimination prohibit retaliation on the same basis.

Adverse Actions for Retaliation is the Same as for Discrimination



RETALIATION

Examples of Protected Activities:

Threatening to file or assist in filing a grievance or lawsuit alleging discrimination.

Picketing in opposition to discrimination.

Complaining about discrimination.

Opposing discrimination or discriminatory practices.

Organizing or participating in a group that which has objectives which include opposition to unlawful employment discrimination.

Refusal to obey an order because he or she reasonably believes it constitutes unlawful employment discrimination.

Participating in an investigation or serving as a witness.

RETALIATION

Examples of Unlawful Retaliation



- Threatening a victim or witness.
- Trying to coerce a victim not to cooperate in the investigation.
- Taking an adverse employment/academic action against the victim.
- Denying or impeding a victim's right to oppose discrimination or participate in a grievance process.
- Harassment, threats, coercion and intimidation.
- Denial of employee benefits.
- Employment actions such as hiring, discharge, discipline, demotion, and reassignment.
- Unjustified evaluations or reports.
- Accelerated disciplinary actions.
- Threats.
- Negative references.
- Increased surveillance.
- Any other action which would deter a reasonable person from pursuing their rights.

FAVORITISM

Favoritism occurs when someone appears to be treated better than others for no valid reason such as their superior work performance. To protect against favoritism the best employee should be treated the same as the worst employee.



EQUALITY

FAVORITISM

Examples of Favoritism

- Being promoted faster than others unfairly
- Other employees are denied raises or promotions
- Being paid more to do the same job as others
- Given more leeway in their job duties

FAVORITISM

Risks

- Decreased morale which may lead to decreased productivity
- Resentment
- It can be seen as a form of discrimination

POTENTIAL CONSEQUENCES OF UNLAWFUL DISCRIMINATION, RETALIATION AND FAVORITISM

- Employee Discipline – Decided on a case-by-case basis.
 - Can include: verbal warning, reprimand, suspension, termination, or any other appropriate discipline.
- Money Damages – particularly severe for managers, but can affect any employee who engages in such conduct.
- Criminal Charges – in extreme cases, generally for physical conduct.



AVOIDING DISCRIMINATION, RETALIATION AND FAVORITISM



- Prevention is the best way to eliminate discrimination, retaliation and favoritism in the workplace.
- Treat the best employee the same as the worst employee.
- Take all complaints seriously.
- Realize anyone could be the victim or the harasser.
- Investigate every complaint.
- Maintain a record of a complaint and your investigation of it.
- Take proportional disciplinary action consistent with Employer practice.
- Don't make light of the Employer's policies.
- Don't apologize for the Employer's policy in interviewing or disciplining employees.
- Refrain from joking.
- Ensure employee privacy and confidentiality.
- Encourage employee to bring complaints of discrimination to you.
- Report any conflict of interests to the Employers attention.
- Identify offensive behavior.
- Pay attention to how others respond to what you say and do.

Any Questions?





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**THANK
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