

# ***Getting the Most Out of Your Municipal Staff: Best Practices for Evaluating Employees and Administering Effective Progressive Discipline***

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& COMLEY<sub>LLC</sub>**  
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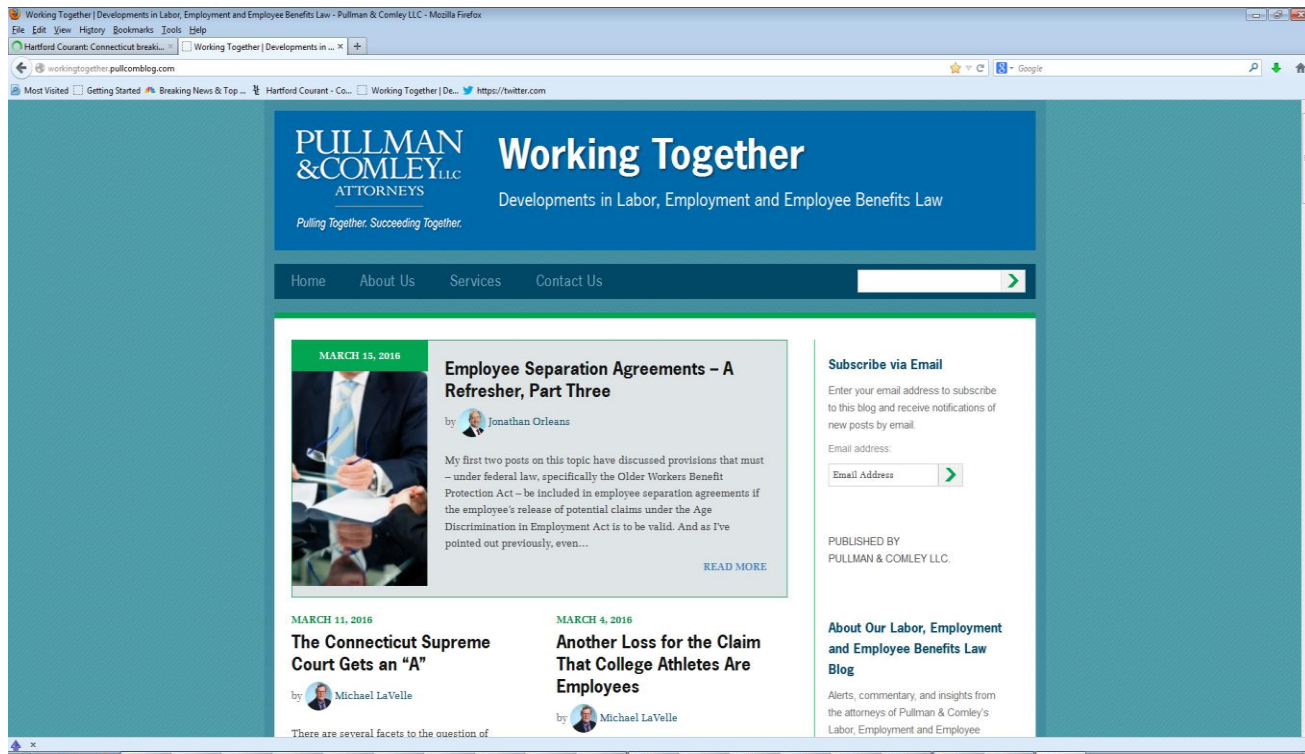
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# Program Overview

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- As part of its statewide Human Resources Portal Demonstration Project, the Capitol Region Council of Governments (CRCOG) partnered with Pullman and Comley, LLC to create a compendium of model HR documents.
- The Pullman and Comley team developed HR-related guidelines on key topic areas, including Progressive Discipline and Employee Reviews and Evaluations, to provide localities direction in order to make informed personnel decisions and avoid unnecessary legal exposure.

# Outline of Presentation

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- Highlight prescriptive best practice guidelines for establishing employee goals and performance standards, preparing performance evaluations and written reviews and conducting a performance evaluation meeting.
- Provide a step-by-step review of effective progressive discipline. Communication, counseling and documentation protocols will be addressed, as will the successive steps of verbal warnings, written warnings, suspension and termination.

# Learning Objectives

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- Gain insight into how to *effectively* communicate with employees
- Gain valuable knowledge regarding how to effectively evaluate employee performance
- Understand proper progressive discipline techniques
- Learn how to avoid making mistakes in the discipline and evaluation process

# Supervisor Responsibilities

## - a credo

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“... (I)t's a great mistake, when you are in a leadership position, to want to be like everyone else. Because that, actually, **is not your job**. Your job is to be better, and to set standards that those below you have to reach to meet. And you have to do this even when it's hard, even when you know you yourself don't quite meet the standards you represent.”

*“The Captain and the King”*– Peggy Noonan (WSJ 01-07-2011)

- This credo applies to all Supervisors and Managers.



# Management Responsibilities

- Productivity
  - Effective delivery of services
  - Maintaining efficiency
- *Effective Communication* [Discussed on next slide]
- Honesty, Integrity and Morality
- Leadership
  - Training and instruction – “Mentoring”
  - Motivation
  - Instilling loyalty
  - Maintaining employee moral
- Discipline (when needed)
- Avoiding legal exposure





# Effective Communication

- Open, effective communication is a duty owed to both your employer and the employees working under your direction.
- Effective communication will in many instances avoid or limit costs related to mistakes, inefficiency and misunderstandings.
- Effective communication will maintain employee moral by putting each employee on notice of what is expected of him or her.
- Effective communication helps eliminate poor productivity, deal with problem employees and avoid legal exposure.
- **Comes in the form of proper, regular guidance, counseling, performance reviews, evaluations and appropriate discipline.**

# Avoid Legal Exposure

- Avoid legal claims!
  - That is part of your job too.
- Harassment
- Discrimination
- Bullying
- Invading Employee Privacy
- Breach of Contract
- Other legal matters



# No Prototype Problem Employee

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Nearly every manager confronts one (or more) employee(s) who:

- Performs poorly; or
- Is difficult to deal with; or
- Has a hard time getting along with others; or
- Means well but just doesn't ever quite get it.

# How to Avoid the Problem Employee:

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## **DON'T HIRE THEM IN THE FIRST PLACE!**

- CAREFULLY AND THOROUGHLY:
  - CHECK REFERENCES
    - This is the first line of defense!
  - INTERVIEW THE APPLICANT

# YOU GET WHAT YOU TOLERATE:

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Don't get held hostage by problem employees by spending a disproportionate amount of time, thought, emotion and energy on them.

- Don't vacillate over personnel decisions.
- A disease within the organization must be cured (and usually will not cure itself).

# Listen to All Concerns

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- Pay attention to what's actually going on.
- Figure out why an employee is not doing well.
- Sometimes clearly listening will lead to a quick resolution.
- The problem employee may start improving once his/her voice is heard.
- Legitimate issues may need to be addressed – they may not just be “gripes.”

# Give Clear Feedback & Direction

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- Employees crave mentoring, training, direction and feedback.
- Being honest and providing tough feedback are hard, but necessary tasks.



# Establish Employee Goals and Performance Standards

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- A. Start with Appropriate Job Descriptions**
- B. Develop Written Performance Goals or Objectives**
- C. All Reviews and Evaluations (formal & informal) must be Purposeful.**

# Establish Employee Goals and Performance Standards

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## **D. Perform Ongoing, Informal Performance Reviews**

- Weekly -- if not daily -- you should apprise your direct reports of what is expected of them, how they are performing, what they do well and what they do poorly.
- If improvement is needed the employee should be advised of the precise issues and what is expected in that regard. It is inappropriate to wait for a situation to escalate to where it becomes a serious problem.
- By effectively communicating disciplinary issues with a direct report early, it could lead to a resolution of the matter before it escalates into a larger problem.

# Performance Reviews and Evaluations

- **During Performance Review Process always:**
  - Be Fair
  - Be Objective
  - Be Honest
  - Be Thorough
  - Avoid Legal Exposure



# Formal Performance Reviews and Evaluations

- Written performance reviews must be truthful, carefully considered and **supported by facts**.
- Don't rush through the drafting and preparation of the written review without giving thought to the impact it may have on the employee *and* employer.
- Sometimes, in an effort not to hurt or embarrass the employee the reviewer simply crafts a review *that extols every possible virtue without mentioning obvious defects*. This causes more harm than good: it creates a false impression that the employee is perfect, when in fact the supervisor knows of performance problems. This type of review also creates difficulties in any subsequent disciplinary action and/or litigation because the employee was never put on notice of any performance problems and the record is not clear.

# Formal Performance Reviews and Evaluations

- The other improper type of employee review is one that fails to provide any praise at all. This type of review -- *when unwarranted* -- demoralizes the employee and will cause dissention.
- Recap: Performance evaluations should be fair, honest and factually demonstrable.



# Guidelines for Preparing Formal Written Reviews

1. Consider the *ENTIRE* Time Period Covered by the Review.
2. While unusual or isolated incidences may be mentioned, they should be taken into consideration as part of the entire review period.
3. Determine whether the employee has improved, or failed to improve, in areas that have been previously identified to him/her.
4. Do not compare employees.
5. Each employee performance review should be compared against global standards for all employees. Do not take into consideration issues such as pregnancy, race, religious activities, age, or anything other than work performance.
  - Do not rush through the preparation of the evaluation.
6. Be honest.

# Guidelines for Preparing Formal Written Reviews

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**State law requires that every employee who receives a performance evaluation be advised in writing on the document that he/she has the right to seek the removal from personnel file or may provide a rebuttal to the document.**



# Guidelines for Preparing Written Reviews

During the Performance Evaluation *meeting* follow the following guidelines.

- The meeting should be private with no interruptions. You and one other member of management (preferably human resources), should be present. If compensation issues are to be discussed they should be discussed after the performance evaluation.
- Be honest, open and considerate.
- Listen to what the employee says in response.
- Be clear in what areas are needed for improvement.
- Reinforce positive aspects of employment.
- Avoid stating anything that could be construed as discriminatory or involving an illegal inquiry.
- If appropriate, end the meeting on either a positive note or a threatening note regarding the need for improvement.

# Appropriate Personnel Documentation

## The Importance of Documentation

Documentation serves to demonstrate objective evidence that an employee:

- Had or should have had knowledge of the employer's expectations,
- Was advised that his/her conduct was unacceptable and
- Was provided the opportunity to correct deficiencies and advised that failure to do so would result in additional discipline up to and including termination.
- Puts employee on notice of problem.
- Explains to employee how to correct conduct.
- Avoids legal exposure.
- Assists in any future dispute – including litigation.

# Appropriate Documentation

## ■ Guidelines for Appropriate Documentation

1. The danger of forms.
2. Include date and, if appropriate, time.
3. List all persons involved.
4. Describe conduct involved.
5. Describe method of curing issue.
6. Usually avoid time limitations for improvement in performance.
7. Be as thorough as necessary.
8. Avoid promises and words that create false expectations.

# Appropriate Documentation

- **Comply with Collective Bargaining Agreement and Town Governance documents – if applicable.**
- **Comply with All Laws**
  - State law requires that every employee who receives a performance evaluation or written discipline be advised in writing that he/she has the right to seek removal from personnel file or may provide a rebuttal to the document.
  - Don't include statements that may be discriminatory.
  - Don't include words that may create contractual obligations.

# *Effective* Discipline

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## **A. Purpose**

- The primary purpose of effective discipline is to improve unacceptable conduct involving the employee's performance, productivity, communications, interactions with coworkers, or any other work related matter.
- You are (usually) not an employee's parent, guardian or relative and therefore private issues relating to the employee's lifestyle or private affairs should not be the subject of discipline -- unless those private matters spill over into the workplace and are the cause of the problem.

# *Effective* Discipline

- Discipline should be corrective and not punitive.
- Discipline should be reasonable and not arbitrary or capricious.
- Discipline should be purposeful, effective and not meaningless.



# Procedures for Effective Corrective Discipline

## 1. Counseling

An effective supervisor counsels an employee in an ongoing fashion. Counseling should not be done in a negative or demeaning fashion.

- Example: you notice an employee arriving ten minutes late to work on several occasions.
- Advise the employee that he/she is expected to arrive on time.
- Ask whether there is a problem that you need to be aware of that is causing the employee to arrive in an untimely fashion.

Regarding work product or productivity, employees should be advised of any issues regarding work product or productivity immediately in a clear constructive fashion.



# Procedures for Effective Corrective Discipline

## Counseling (cont.)

- Performance Improvement Plans:
  - If an employee's performance can be improved over time and with appropriate training/mentoring, then a PIP may be appropriate at this stage.
  - Generally, a PIP should not be used as punishment, but rather as a means for the employee to demonstrate growth in the position and real improvement – ultimately to demonstrate that he/she can actually perform the job.
  - If discipline is the goal at this stage then a PIP is usually not the device to employ – progressive discipline may be required (next slides).

# Procedures for Effective Corrective Discipline

## 2. Verbal Warning

- If informal counseling is not effective in eliminating or altering inappropriate employee behavior, formal discipline may be warranted.
- A verbal warning should be provided with a manager present.
  - Advise the employee that he/she is receiving a verbal warning for specific deficiencies in performance.
  - Advise the employee that continued problems will result in further disciplinary action and possibly termination.
- A written record of the verbal warning should be prepared, dated and signed by the supervisor (the employee need not sign it) and placed in the employee's personnel file and provided to the employee.
  - Employee must be told of right to rebut documentation.

# Procedures for Effective Corrective Discipline

## 3. Written Warning

- Written warnings are provided for continued deficiencies in performance and/or one time errors in conduct.
- The content of the written warning should be the same as the verbal warning:
  - What the problem is, further transgressions may lead to further discipline and/or termination.
  - It is not always appropriate to put a time deadline for "completion" of a written warning.
  - Usually, do not use the term "probation" within any type of progressive discipline, as that has a specific contractual meaning.
  - The employee should be asked to sign the written warning. A copy of the written warning is given to the employee and placed in his/her personnel file.

# Procedures for Effective Corrective Discipline

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## **4. Suspension**

## **5. Demotion**

– Often demoralizing, so typically only to be used when the position is not a good fit and employee needs to return to prior position (cases of “Peter Principle”)

## **6. Termination – when all else fails...**

**REMEMBER:**

**FOLLOW YOUR CONTRACTUAL OBLIGATIONS TO A “T”**

## Be Consistent

- If you say that the employee needs improvement, don't reverse course later.
- Only set standards you will maintain – and then hold the employees to them.

## Be Careful What you Say

- Don't make promises you cannot or will not keep.

## Be Decisive

- Make the hard decision that is correct for the organization
- Get guidance from superiors
- Make sure it is the correct decision
- And make it quickly and decisively



## Get Legal Advice

- Duh.



# Specific Union Considerations

## ■ Weingarten Rights

- Upon demand, unionized employees have a right to union representation at an interview requested or demanded by the employer when the employee reasonably believes that the interview will result in a disciplinary action.
- Weingarten is applicable only when the following elements are present:
  - the employer seeks facts or evidence in support of disciplinary action;
  - the employer tries to induce the employee to admit wrongdoing; or to sign legal waivers or other documents implicating rights; **and**
  - the employee requests representation; **and**
  - the employee reasonably believes that the interview will result in disciplinary action or jeopardy to his or her job.

# Specific Union Considerations

- **Garrity Warning:**

- An employee may be compelled to respond to questions about the performance of his duties if his answers **cannot** be used against him in subsequent criminal prosecutions. As long as an employee is not compelled to waive his privilege against self-incrimination by the threat of using his statement against him in a subsequent **criminal** proceeding, a public entity is permitted to discipline or even dismiss an employee upon his refusal to answer the questions relating to performance of his official duties.

# Specific Union Considerations – Garrity Warning

- Sample:
  - You have all the rights and privileges guaranteed by the Laws and the Constitution of this State and of the United States, including the right to remain silent in a **criminal** proceeding. You do **not** have the right to remain silent during the present investigation and interview; indeed, you may be subject to disciplinary action, including termination of your employment with the \_\_\_\_\_, for the failure to answer relevant and material questions in proceedings regarding your employment. However, the answers you give to the questions in this interview, or any information or evidence which is gained by reason of your answers, may **not** be used against you in a criminal proceeding.

# Special Disciplinary Problems

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## **A. Serious misconduct**

1. Health and safety of employees must be protected.
2. Criminal issues should be evaluated.

## **B. Insubordination**

## **C. Alcohol or Drug Use/Abuse**

## **D. Disabilities**

## **E. Workers' Compensation**

# Discipline Do's and Don'ts


- **DO** communicate with your superior (and/or human resources) regarding any disciplinary problems.
- **DO** effectively document disciplinary problems.
- **DON'T** rely on FORMS without thinking through the purpose and effect of the disciplinary documentation.
- **DON'T** conduct a disciplinary interview without prior approval by management and/or human resources director.
- **DO** handle all disciplinary actions privately and confidentially.
- **DO** handle all disciplinary interviews privately and confidentially and interviewees should be advised of the confidential nature of the investigation.
- **DO** allow union member to have representation for a discipline meeting.
- **DON'T** tolerate behavior that negatively impacts the work environment and productivity.

# Evaluations Do's and Don'ts

- **Do** perform ongoing, informal performance reviews.
- **Don't** rush through the drafting and preparation of the written review without giving thought to the impact it may have on the employee and Employer.
- **DO** be honest during evaluation process – to yourself and the employee.
- **DO** consider the entire evaluation period not just the most recent event.
- **DON'T** simply use a form as a crutch without giving thought to the purpose and effect of the document.
- **DO** consider extenuating circumstances, e.g. absence due to illness, pregnancy.
- **DON'T** make promises that you cannot or will not keep.
- **DON'T** make statements that may be deemed discriminatory.

# CRCOG's new HR Portal website: [www.Nutmeghr.org](http://www.Nutmeghr.org)


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### HR Automation Tools



Coming Soon

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build: 1.883-alpha.dev | core: 16.12.5



# Questions?

# Contact Information

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