Proper Documentation



The ongoing increase in EEOC charges should motivate employers to review their recordkeeping practices. Human Resource records and documents are critical to defending wrongful termination and other employment claims. Any and all documents can be used as evidence in litigation.

Your review, thus, should not be limited to the official personnel file. If a plaintiff requests information in litigation, they are entitled to information maintained by the employer that is related to the matter at issue. For this reason, it is important that managers are trained regarding the type of information which should be retained, and how, where and for how long it should be retained. Human Resources should maintain employee medical benefit information in separate, confidential medical files. This is especially important to protect the employee's privacy and comply with the recordkeeping requirements of the Family and Medical Leave Act, the Americans with Disabilities Act, and the Healthcare Information Portability Act.

Without proper documentation of an employment decision, the employer has a more difficult time proving it was proper. Jurors tend to be skeptical of an employer's explanation of an employment decision in the absence of documentation. With documentation in hand, a decision is less subject to challenge. It can show that an employer treated an employee fairly. It can show an employee was given a warning and the opportunity to meet the employer's expectations. It also can demonstrate consistency of company practices. Examples of records which an employer should keep are: offer letters, performance evaluations, discipline memoranda (informal and formal), employment applications and notes regarding requests for accommodation.

There can be drawbacks if an employment decision is not documented properly. Any records of an employment action must be carefully drafted. Managers must be mindful of what they record. Managers should not just document the end result. The record should complete, direct, clearly written and concise. It must substantiate the manager's decision. Further, the practice of documenting must be consistent. For example, a manager should not document one employee's attendance and not others who are similarly situated. If the manager is documenting an investigation, the record should focus on the facts and avoid subjective or judgmental statements.