

Rightful Discharge: Making “Termination” Mean It’s REALLY Over Part 2—Proper Documentation

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The importance of proper documentation when taking any type of disciplinary action, particularly a termination, cannot be overstated. Proper documentation is a fundamental requirement placed upon employers by the courts when determining whether a termination is “legal.” The following sample forms do not encompass all types of documentation that may be required for a given set of circumstances; they do provide the framework for health care managers to fashion their own forms to fit their employer’s needs. Key words: *discharge, discipline, documentation, termination*

THE DECISION TO terminate an employee should be reached only after a careful and thorough review of all relevant facts and all documentation. Care should be taken to ensure that information regarding employee performance is consistent on all forms. It is not uncommon for a plaintiff who was fired for poor performance to show up in court with past performance appraisals from his employer indicating that the employee “meets expectations” in all aspects of job performance.

Proper documentation of an employee’s poor performance is required by courts when determining if a termination is “legal.” It is one measure of fairness; it indicates proper notice was given to the employee. Without notice, how could the employee have been expected to improve?

Nothing in this article should be construed as legal advice. All policies, practices, and forms that impact employment decisions, particularly those dealing with termination,

should be reviewed by qualified legal counsel. Because laws may vary substantially from one state to another, managers should seek the advice of a knowledgeable attorney concerning any specific information that should be included on a particular form.

Poorly documented events and discussions can create legal “landmines” from which the employer may not recover if the employee sues. All language in the documents should be clear and accurate. They should contain no inflammatory language that could come back to haunt the employer later in court.

Forms must be completed at the appropriate time. Do not reconstruct documentation after the fact in an attempt to create a “paper trail.” If caught doing so, this could provide evidence that the employee was the victim of illegal discrimination.

Proper documentation lays the groundwork for a “legal” termination. Documentation should provide compelling evidence of fairness, notice, and consistency—the hallmarks of any legally sound employment decision. While it is impossible to create an all-inclusive list of everything, an employer should include in documents supporting an employee’s termination, the guidance included in this article should help health care managers properly document and defend a rightful discharge and reduce the risk of facing expensive, time-consuming litigation.

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Following are samples of documentation formats that may apply in instances of separation from employment.

SAMPLE COUNSELING REPORT 1

Memorandum

March 23, 2016
To: John Employee
From: Fred Manager
Subject: Job Performance Issues

John, this is to follow-up on our conversation today concerning your job performance.

As I told you, we are confident that you have the ability to be successful here, but you need to make a commitment to address the concerns that we have raised with you over the last few months. When we spoke, I told you that I was going to give you this memo and ask for your input on the issues of concern to us. Please review this memo carefully and give some thought to each of the concerns we have listed below. Then write 3 things you commit to do, beginning tomorrow, to change your past behavior, and to address our concerns.

Please return the completed memo to me by tomorrow morning. I will review it, and then we will meet again and I will let you know if your commitments are sufficient to keep you here.

We have received a complaint from a patient who told us that you were rude to her and did not seem to care if she was ever helped. Well-cared-for patients are critical to our success as a health care provider. Please list 3 things you will do in the future to keep our patients properly cared for and to avoid any more complaints.

- 1. _____
- 2. _____
- 3. _____

Your attendance has been less than satisfactory. I showed you a listing of all your absences and tardiness over the last 3 months. Your record is the worst in the department. You have missed considerable time for personal issues. In addition, you have failed to follow our policy that requires employees to call their manager

personally if they are going to be late or absent for any reason. Please list 3 steps you will take in the future to make sure that you are here at work on time every day and that your manager is properly informed of your whereabouts.

- 1. _____
- 2. _____
- 3. _____

Your coworkers have complained that they feel you are not doing your fair share of the work. This is not a case where one coworker is critical of you. It appears to us to be a common feeling. They report that you do not respond to their questions and that you do not seem to want to be a part of the team. Please list 3 things that you will commit to do to improve your relationship with your coworkers.

- 1. _____
- 2. _____
- 3. _____

If there is anything else relevant to our concerns about your performance, or anything else that you want to tell us, please note it below.

I commit to doing each of the things that I have indicated above.

Signature _____ Date _____

SAMPLE COUNSELING REPORT 2

Employee name: _____ Date: _____

Why you are receiving this report (what you did or failed to do):

How we expect you to correct this problem:

Employee's Commitment:

I commit to do the following things to correct the problem(s) described above:

(Employee may make any additional comments on back)

If you do not fulfill your commitment and correct this problem, this may lead to further counseling or disciplinary action. This could include termination of your employment.

Manager signature Date Employee signature Date

Witness signature Date
 (If employee refuses to sign)

SAMPLE EMPLOYEE SEPARATION INFORMATION FORM

Employee name:	Date:
Date of termination:	
Type of separation:	Resignation Dismissal Other
Reason for dismissal:	
Employee signature:	Date:
Employee comments:	

SAMPLE SEPARATION CHECKLIST
 Name of employee:

Effective date of separation:

In connection with the separation of your employment, you have the following obligations: (Please mark all that apply)

- Return all employer materials, documents, data, and so on, whether in paper or electronic form
- Return all employer equipment and property, including, but not limited to:
 - Keys to employer property
 - Parking/building access card
- Computer equipment:
 - Computer, model _____
 - Laptop, model _____
 - Printer, model _____
- Cell phone
- Employer credit cards
- Other (specify)

Repay any outstanding advances owed to the employer. Expense advances, vacation advances, and debts owed by the employee to the employer that are subject to repayment through payroll deductions will be deducted from the final check to the extent permitted by law.

Comply with the employer's [trade secret and confidentiality agreement], including your continuing obligation to maintain the confidentiality of employer proprietary information.

Your access to the employer's computer ends on: _____

Password: _____

Your access to the employer's voice mail ends on: _____

Your access to the employer's property ends on: _____

Your ability to act for the employer ends on: _____

Your health/dental/vision benefits will terminate on: _____

You were informed about your COBRA Insurance rights on: _____

Your final pay in the amount of \$ _____

Received on: _____

Other checks received _____ \$ _____

Received on: _____

Please sign below indicating that you agree and accept the information above.

	Employee signature
	Print name
	Employer signature
	Print name

SAMPLE EXIT INTERVIEW FORM

We ask all employees who are leaving us to complete the following exit interview. The information you provide will help us make this a better place to work. We want you to be candid, and we assure you that nothing you say will affect the reference we give. Thank you.

Name _____
 Department _____
 Supervisor's Name _____ Date Hired _____ Date Term _____
 Stated reason for separation:
 (Please circle the applicable reason(s))
 Resignation Discharge Layoff Other
 How do you feel about your supervisor?

Was the quality of supervision adequate?

Was the amount of supervision adequate? Have you had any problems with your coworkers? Yes _____ No _____

If yes, what were they and how were they handled?

Did you take any complaints to your supervisor or anyone else in management? If yes, what were they and how were they handled?

Were you satisfied with the way they were handled? If not, what could we have done differently?

Have you had any problems or uncomfortable situations with your supervisor or members of management? Yes _____ No _____

If yes, what were they and how were they handled?

What did you like *best* about working here?

What did you like *least* about working here?

Are there any personal reasons for your leaving? Yes _____ No _____

If yes, you have the option to explain:

Would you recommend this employer to others as a place to work?

Yes _____ No _____

Comments:

Do you believe you received fair pay for the work that you were doing?

Yes _____ No _____ If no, why not?

Do you feel that our employee benefits, such as vacation, holidays, medical insurance, and so on, are competitive with other employers like ours?

Yes _____ No _____

If no, why not?

If you could change one thing about this employer, what would it be?

Name of interviewer (if not filled out by employee):

Employee: I have reviewed the remarks and they accurately reflect my feelings. I would _____ would not _____ like to meet with _____ or some other member of management to discuss these matters.

Date

Employee's signature