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# EFFECTIVE DOCUMENTATION SPEAKS VOLUMES...AND PROTECTS YOUR HOSPITAL

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Document, document, document. Although this adage is second nature to human resources professionals, it is often not as important to front-line supervisors. Unfortunately, the key to maintaining an effective paper trail rests with those supervisors, who need to recognize what, when, and how to document. Shortcomings on these fronts can be as disastrous as having no documentation at all. Sometimes, it can even be worse. On the other hand, *effective* documentation can be invaluable when dealing with the EEOC or a lawsuit.

## “KITCHEN-SINK” LAWSUIT BY FLEX-POOL NURSE

A recent Tennessee case illustrates how good documentation helped a hospital defeat a kitchen-sink full of allegations by a former employee. *Counce v. Ascension Health*

Sandra Counce worked in Baptist Hospital’s nursing flex pool. She was not guaranteed hours or a scheduled shift, but was called to fill staffing shortages as needed. Without creating the appearance of an employment contract, the hospital documented this arrangement when it hired Counce. That documentation helped defeat her wage and hour claim.

Also, Counce received several performance evaluations during her orientation period. Though generally positive, the

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evaluations showed that the hospital discussed several aspects of her performance “in depth.” After a year of employment, the hospital initiated a formal performance management plan to clearly document her specific performance issues and what she needed to do to improve. And it had Counce sign the documentation. She was terminated two months later for failing to meet her performance goals.

## **EFFECTIVE PAPER TRAIL DEFEATS NURSE’S CLAIMS**

When Counce sued, the court found for the hospital because it had thoroughly and clearly documented its decisions, creating proof about its actions. Counce, on the other hand, produced no evidence (other than speculation) to support her allegations. This provided a solid record from which the appellate court affirmed the hospital’s victory. But even in this case, the court found it “troubling” that the hospital did not address Counce’s performance problems in more detail early-on. Ultimately, the performance improvement plan that she signed and the hospital’s timely follow-up saved the day.

Additionally, the hospital showed that during Counce’s internal grievance, the reviewing managers took the time to evaluate whether the termination was indeed justified. When Counce claimed that she had been discriminated and retaliated against, the hospital documented that those allegations were new – she had never raised them during her performance reviews or to anyone else in management. The reviewing managers also asked Counce in writing for any supporting documentation or evidence in her possession. She produced none.

After a thorough review, the hospital determined that the termination was justified, based upon Counce’s poor job performance, especially as it affected patient care. Moreover, the hospital demonstrated that it took its grievance procedure seriously.

Of course, some of the documentation in this case could have been better – that’s almost always the case. Nevertheless, the hospital demonstrated consistency, sufficient attention to detail and a commitment to fairness, all of which proved to be important.

## **MAKING SURE YOUR DOCUMENTATION IS EFFECTIVE**

It's not easy to create effective documentation. Supervisors are busy and may not feel comfortable confronting a problem. Then, when the situation becomes intolerable, documentation is too often rushed, inadequate or barely done at all. Or, in an effort to expedite the process, the supervisor presents concerns that are vague or have gone stale.

To be effective, documentation must be timely. It must identify what the employee did wrong or needs to do differently. Needless to say, this description must be accurate and honest. Remember, documentation that is not honest may do more harm than good. For example, do not tell employees that their performance has improved unless it truly has. The documentation should describe what conduct or action the supervisor expects in the future, and the possible consequences of noncompliance. Finally, supervisors must follow up after addressing a problem. Silence looks like tacit approval of the employee's performance, whether it has improved or not.

As the Counce case illustrates, taking the time to think through and complete these simple steps can make all the difference when litigation arises. Even though there may be two sides to every story, the side that wins is usually the one who can support its explanation with solid evidence. For employers, that evidence almost always takes the form of effective documentation.