

How to Document an Employee File

*PRACTICAL TIPS FROM AN
EMPLOYMENT ATTORNEY'S
PERSPECTIVE*

WHAT IS SO IMPORTANT ABOUT AN EMPLOYEE FILE?

- From an employment attorney's perspective, documents are everything
- The employee file tells a story
- Current employees may not know the whole story
- If it is not documented, it may not have happened
- If it is not documented, the story may get much worse

THE INITIAL EMPLOYEE FILE

Application Materials
 Application Form, Resume, Cover Letter, References

Job Description
 Position Description, Job Offer Letter, Offer Letter Acceptance

Background & Credit Checks
 Background Check Report, Credit Check Report

Terms and Conditions of Employment
 Employment Contract, Offer Letter, Employee Handbook

Handbook and Policy Acknowledgments
 Employee Handbook Acknowledgment, Policy Acknowledgment

MEDICAL INFORMATION SHOULD BE STORED SEPARATELY IN LOCKED CABINET

THE CHANGING RELATIONSHIP

Rule #1: Document EVERYTHING

Ordinary Changes

- Marital Status
- Benefits
- Promotions
- Transfers
- Status
- Exempt/Non-Exempt
- Job Duties

• Indefinite Periods
 • 90-Month
 • Give Specific Instructions for Transference
 • Schedule a Plan
 • Regular and Routine

Extraordinary Changes

DISCIPLINE AND FACTUALITY
 Document:
 • incidents
 • responses

WATERPROOF
 Document:
 • with witness and address
 • with date
 • with specific action

EMERGENCY
 Document:
 • in case of emergency
 • with specific instructions
 • with specific contact information

STATE OF AGENCY
 Document:
 • with specific instructions
 • with specific contact information

WAGE AND HOUR ISSUES

Wage & Hour Penalties can be Compounding

Overpayment
 • California Labor Code
 • California Labor Code, Section 203
 • California Labor Code, Section 203.1
 • California Labor Code, Section 203.2
 • California Labor Code, Section 203.3
 • California Labor Code, Section 203.4
 • California Labor Code, Section 203.5
 • California Labor Code, Section 203.6
 • California Labor Code, Section 203.7
 • California Labor Code, Section 203.8
 • California Labor Code, Section 203.9
 • California Labor Code, Section 203.10
 • California Labor Code, Section 203.11
 • California Labor Code, Section 203.12
 • California Labor Code, Section 203.13
 • California Labor Code, Section 203.14
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 • California Labor Code, Section 203.16
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 • California Labor Code, Section 300

Things to Look For and Document

Exempt v. Non-exempt
 Meal and Rest Breaks
 Timekeeping

DISCIPLINE AND SEPARATION

Progressive Discipline?

Oral Warning
 • Clear Expectations
 • Document Everything
 • Include Supporting Documentation

Written Warning
 • Be Specific
 • Be Fair
 • Be Supportive
 • Document Everything

Separation
 • Notice Period
 • To the Point
 • Be Supportive
 • Address Other Options

THE INITIAL EMPLOYEE FILE

Application Materials

Application form, resume, interview and other initial materials

Job Description

Describes job duties, essential functions, and reporting among other things

Background & Credit Checks

Signed permissions, results, and reports

Terms and Conditions of Employment

Exempt/non-exempt status, compensation, benefits

Handbook and Policy Acknowledgments

Important policies should be acknowledged separately

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WAGE AND HOUR ISSUES

Wage & Hour Penalties can be Compounding

One example:

- California employer
- Employee earns \$10/hour, works 40 hours/week
- Employee missed a single meal break before quitting.

California Wage and Hour Penalties:

Missed meal break: **\$10** (1 hour's pay)

Inaccurate wage statement: **\$50**

Waiting time penalties: **\$2,400** (30 days' pay)

Attorney's fees and costs: **\$50k-200k**

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Evaluations/Reviews

Be **Honest**

Give **Specific** Benchmarks
for Improvement

Establish a **Plan**

Regular and Routine

Extraordinary Changes

ATTENDANCE AND PUNCTUALITY

Document

- deviations
- responses

INVESTIGATIONS

Document

- witnesses and evidence
- conclusions
- corrective action

DISABILITY

Document

- interactive process
- accommodations requested and offered
- agreement

LEAVES OF ABSENCE



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ATTENDANCE AND PUNCTUALITY

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LEAVES OF ABSENCE

- responses

- conc
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LEAVES OF ABSENCE

Pre-Leave

- Document Request for Leave**
 - Email, Memo, Letter
- Document Response to Request**
 - FMLA Paperwork
 - Internal Paperwork
 - Plan and Expectations



Leave

- Document Leave**
 - FMLA/Internal Paperwork
- Document Communications**
 - Return to Work?
- Document Plan**
 - Temporary Replacement?
 - Shifting of Duties?



Return to Work

- Document Communications**
 - Request for Accommodations
 - Interactive Process
 - Expectations
- Document Return**
 - Return to Work Memo
 - Fitness for Duty
 - Internal Paperwork

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Document Request for Leave

- Email, Memo, Letter

Document Response to Request

- FMLA Paperwork
- Internal Paperwork
- Plan and Expectations





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Document Communications

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LEAVES OF ABSENCE



DISCIPLINE AND SEPARATION

Progressive Discipline?

Oral Warning

Casual Approach

Document counseling
Email or memo to self

Include Supporting
Documentation

Written Warning

Memo Format
To Employee,
Supervisor and File

Be Specific
Identify Problem, Plan
and Consequences

Attach Supporting
Documentation

Separation

Memo Format

To the Point

Exit Interview

Administrative Paperwork

Oral Warning

Casual Approach

Document counseling

Email or memo to self

**Include Supporting
Documentation**

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