

## FORMAL DOCUMENTATION

Formal documentation begins when a particular incident or series of incidents progress to the point that the facts should become part of an official personnel record.

Good documentation is a clarification of all events and should include the following:

1. **Salutation** - the memo should always be addressed to the employee, not “the file”. Personnel should be copied.
2. **Date of Incident(s).**
3. **The Problem** - What specifically occurred? If the employee’s view differs from yours, include it.
4. **Implications** - What happens as a result of the employee’s behavior?
5. **Prior Record** - only in occurrences of similar behavior. Have they done this before?
6. **Prior Conversations** - about the issue described as “the problem.” Specifics on improvement or lack of improvement after these conversations should be noted.
7. **Expected Solutions** - Be specific on what you and the employee have agreed upon as the course of action. Include time frames, etc.
8. **Disciplinary Action** - A specific statement of your immediate and future disciplinary measures.
9. **Consequences** - Exactly what will happen if the “expected solutions” do not occur?
10. **Follow-up** - If any kind of future meeting is scheduled on this problem it should be included.

## **THE DISCIPLINARY**

### **MEMORANDUM OR WRITTEN WARNING**

The mistakes more commonly made in writing disciplinary materials are:

1. Lack of clear, direct, relevant communications from the supervisor to the employee;
2. Reliance on general statements instead of specific factual detail; and
3. Reliance on conclusions without laying a factual foundation.

A disciplinary memorandum is written as a result of an employee's misconduct or deficient performance. The purpose of the memorandum is to put the employee clearly on notice that the conduct in question is unacceptable and to document the specific act or omission. These memoranda form an important foundation for disciplinary action such as dismissal. Because of its importance in any appeal from disciplinary action, the memorandum will come under very close scrutiny in an appeal or grievance process. Unfortunately, few Supervisors or managers have been trained to write a disciplinary memorandum that can withstand the assault of a skilled Attorney representing the employee.

Most employees will break a rule or commit an infraction from time to time. The manager or Supervisor should not overlook this, but it may not warrant a disciplinary memorandum. In many instances, the employee should receive counseling or an oral correction or warning to modify behavior. The date and nature of the discussion should be noted as an employee "file note" and retained in the Supervisor's working file. In this way the information can be recalled as detailed background information if problems with the employee continue.

The decision to write a disciplinary memorandum is sometimes subjective. A good Manager/Supervisor does not write up every minor infraction or mistake. Such a policy breeds poor morale and will alienate the good productive employee. A disciplinary memorandum placed in an employee's personnel file is a significant action that should not be entered into without considerable thought. As a general rule, a disciplinary memorandum must cover serious misconduct or repeated infractions. The written disciplinary procedures and guidelines indicate the point at which official written disciplinary warnings and notices are required in addition to the "file notes" maintained by the Supervisor.

The disciplinary memorandum should be neat, errorless and typed on a letter-size sheet of paper (8 ½ x 11"). Handwritten memos on half-sheets of paper lack an official appearance, and tend to be illegible and often do not reproduce well for use at a disciplinary proceeding. It should be double-checked for misspelled words, punctuation

and grammar. At a hearing, such minor errors often become the focus of attention while the substance of the memorandum is lost. A standardized format will add to the overall appearance of disciplinary memoranda when pulled together as part of the employer's disciplinary file.

The use of "Inter-Office Communications" memorandum forms have an added advantage in that they clearly show 1) who it is directed to, 2) who prepared it, 3) the date prepared, and 4) the subject. It is not unusual to have disciplinary memorandums offered as evidence with simple elements missing, such as the date prepared or the name of the employee to whom it is directed. This information must be clearly set forth in any disciplinary memorandum. Failure to do so detracts from its value as evidence and could result in the hearing officer excluding the document from the record.

In writing the body of the memorandum the Manager/Supervisor must address the following questions:

1. **When Did It Happen?** The disciplinary memorandum must indicate when the act or omission occurred. Dates are very important. Time is often a critical factor. Without the time, a question could be raised at a hearing months or even years later concerning whether or not the incident occurred during the employee's lunch period or other non-duty time.
2. **Where Did the Incident Occur?** The place is oftentimes a critical element which must be set forth in the written disciplinary action. The place of the infraction is an important detail because it answers the question of whether the infraction occurred at the work site or workstation or off the premises.
3. **What Happened?** A specific narrative of what happened or a description of the incident must be set forth in detail. In the case of an incident of "sleeping on the job", details such as the distance the observer was located from the "Sleeper" and the total length of time the observation took place should be included. These details satisfy questions such as: Did the observation of the sleeping condition take place over four (4) seconds or four (4) minutes? Could the "Sleeper" have been just resting his eyes? Such questions must be answered in the memorandum. What happened in full and specific detail must be answered.
4. **What is Wrong?** Even though it may seem obvious, the disciplinary memorandum must give the employee notice of his/her infractions or deficiencies. Oftentimes this includes a reference to a rule, policy or contract provision that has been violated as a result of the employee's conduct. The rule of policy violated should be cited or a copy attached. If there have been previous infractions which have been brought to the employees attention, this fact should be included. Once the employee is

specifically advised of his/her shortcomings he/she cannot successfully claim lack of fair notice at a subsequent disciplinary hearing.

5. **What Must Be Done?** The employee must be given direction as to proper conduct or performance that will be required in the future as well as the consequences of the present and future violations or infractions. Such directives must be clear and leave no room for interpretation on the part of the employee. Permissive terms such as “request”, “hope”, “ask”, etc., have no place in a written disciplinary action. The “What Must Be Done” must be clearly written as a directive and not as a request.

Each memorandum should conclude with a statement about placement of the disciplinary memorandum in the personnel file and a space for the employee to sign that he/she has read and understands the disciplinary memorandum. The employee should also be afforded the opportunity to offer or attach any comments he/she wishes to make. Most experts recommend that all such documents be signed by the employee to establish a clear record that the employee received a copy. The major problem with this is that an employee may refuse to sign the document. In such cases the Supervisor should write on the document “employee refused to sign” then date and initial the comment.

The disciplinary memorandum should be clearly written, specific, direct and to the point. Indirect or subtle comments run the risk of being misunderstood. Even if not misunderstood, the basis for a defense will arise when there is any room for interpretation. The well-written memorandum will be self-explanatory, standing on its own without additional explanation. The problem and what the Manager or Supervisor is doing in response will be clear by simply reading the memorandum.

**ARKANSAS DEPARTMENT OF VETERANS AFFAIRS  
MEMORANDUM  
(DISCIPLINARY - FOR OFFICIAL RECORD)**

**TO:** (Should always be addressed to the employee)  
**FROM:** (Name, Title, Location of initiating supervisor or manager)  
**DATE:** (Currently dated)  
**SUBJ:** (Written warning/reprimand for specific infraction or rule violation)

1. **What Happened?** (A specific narrative of what happened must be set forth in detail.)
2. **When Did it Happen?** (The exact date and time the infraction occurred should be stated.)
3. **Where Did It Occur?** (The place of the infraction is an important detail which should always be included.)
4. **What Is Wrong?** (The specific rule, policy, procedure violated, or other deficiency in the employee's conduct must be cited to ensure fair notice to the employee.)
5. **What Must Be Done?** (The expected conduct or performance required in the future must be clearly stated as a directive and not as a request.)
6. **Consequences?** (The consequences of the present as well as future infractions should be clearly stated.)
7. **Acknowledgment -** The memorandum should contain a statement and space for the employee to acknowledge receipt and understanding of the written warning as follows:  
  
"I have read and understand the above disciplinary warning and have been given an opportunity to attach my comments as a part of the record."

\_\_\_\_\_  
Employee signature

\_\_\_\_\_  
Date

(If the employee refuses to sign, indicate such, date and initial.)

**Distribution:** Signed copy to other Management Levels as appropriate.  
Signed copy to Central Office Personnel Records.