

Letters of Clarification: Between Coaching & Formal Written Warnings



By Paul Falcone

As a manager in corporate America, you've no doubt been frustrated at times by employees whose problematic job performance or behavior falls just below the threshold of violating a specific company policy. And because you can't pin the problem to an existing policy violation, you tend to let it go or tolerate it for far longer than you should.

If that's ever happened to you, you're not alone. In our busy days as managers, we don't often have the time or opportunity to address minor concerns before they become major impediments. And let's face it: We're human and will tolerate and turn a blind eye toward others' imperfections in an effort to keep the peace. As the saying goes, the path of least resistance is avoidance, and we often steer clear of confrontation if we can help it, often hoping the problem will fix itself.

Still, it's important to remember that a formal company policy doesn't have to be broken for you to address problems effectively with a member of your team. In reality, you've got a lot more discretion and flexibility here than you think, especially when dealing with an employee who appears to be apathetic about his work, condescending toward others, disinterested in making firm eye contact with customers and greeting them with an appropriate amount of energy and enthusiasm, or who appears to have a negative thing to say about everyone else on the team.

Step 1: Verbal Coaching and Counselling

Addressing your concerns verbally is a logical first step. Sharing your concerns in a constructive manner, alerting the employee to the issues at hand, and creating the beginning of a record that could later help the company justify the necessity for taking adverse employment actions like termination are logical outcomes of verbal interventions. But what happens when your conversations don't work and you find yourself on a roller coaster, re-addressing the same issue every few months?

Step 2: Formal Corrective Action

Of course, written warnings are available to help you communicate the severity of a situation and lay the groundwork for a tidy dismissal. Most companies rely on a three-step system that includes first written, second written, and final written warnings to document substandard job performance or inappropriate workplace conduct. But what if you feel that formal corrective action may be overkill or otherwise too heavy-handed for the situation?

Step 3: Letter of Clarification to the Rescue!

The interim step between verbal counselling and formal written warnings eludes many managers in corporate America when, in fact, they could issue a documented letter of clarification as an alternative to formal corrective action. First, because it's in writing, it steps up the perceived level of severity and helps the employee realize that you're serious about the issue and want to escalate beyond verbal discussions. Second, letters of clarification are not part of your company's formal corrective action program. As such, they lack the "shaming" element that's so often associated with being "written up."

In essence, you're escalating the matter without any of the negative trappings of progressive discipline. What might a letter of clarification look like on paper? While the technique can be used to address all sorts of job performance and workplace misconduct issues, here's a common example illustrating negligence and carelessness:

Mary, over the past three weeks, I've shared with you my concerns regarding your overall job performance. Specifically, I've notified you that you are not handling patients' files correctly: Items are being misfiled, and files are being left in the offices without being returned to the central filing area. In addition, a patient complained that you delivered a wheelchair that was still wet from the rain to the patient pick-up area. Finally, on multiple occasions you have failed to use the magnetic location board to show when you were on break or lunch. As a result, the schedulers were not able to locate you in a timely fashion.

This isn't a disciplinary document, Mary. It will not be placed in your formal personnel file and will not be shared with other members of management at this time. However, I have put my concerns in writing to impress upon you the seriousness of these multiple, smaller errors. My greatest concern lies in the fact that you appear to be less focused on your work or concerned about others' needs. You also appear to be apathetic about the outcome of your assignments, and several of your coworkers have noticed a change in your work as well and shared their concerns with me.

I want you to know that I'm here to support you in any way I can. However, I am also holding you fully accountable for meeting all hospital expectations regarding your performance and conduct. I recognize that you may have your own ideas for improving the situation at hand. Therefore, I encourage you to provide your own suggestions to turn around these specific performance areas as well as the overall perception of your lower commitment level.

Please sign this document to evidence not only that you received it but also that you agree to accept full responsibility for addressing these concerns and changing the perception problems that exist. Understand that if these issues are not resolved on an immediate and sustained basis, this document may be attached to a formal disciplinary notice in the future confirming our discussion today. Thank you.

Employee Signature

Date

The Legal Record

Note the language in the sample above: While this isn't a formal disciplinary document and will not be placed into the individual's personnel file at this point in time, it "may be attached to a formal disciplinary notice in the future" as evidence that the conversation took place and that expectations were reset. Further, in cases of litigation, the letter of clarification is a formal part of the employer's record to show that the individual was aware of the problem and informed about how to improve performance. Therefore, the letter of clarification codifies the problem for the record and is typically used as an evidentiary element to demonstrate that the company acted responsibly in according the employee with "workplace due process."

One Caveat about Letters of Clarification

As practical as this new tool may sound, you won't want to issue letters of clarification every time someone does something wrong. If these letters become your active practice and you issue them all the time, then you may end up inadvertently turning your three-step corrective action process into a four-step program (i.e., by insisting that letters of clarification be issued prior to corrective action under all circumstances for all employees)—or so might argue a plaintiff attorney in the wrongful termination litigation arena.

Simply realize that a letter of clarification, viewed by many employees as a precursor to formal discipline, typically has the same prophylactic effect as formal discipline without the negative trappings. Added to your performance management toolbox, this alternative could get the desired results you're looking for without any of the drama or angst that comes from issuing formal corrective action.

Paul Falcone is a human resources executive in Los Angeles and has held senior-level positions with Nickelodeon, Paramount Pictures, and Time Warner. He is the author of a number of AMACOM and SHRM bestselling books, four of which made SHRM's prestigious "Great 8" list: 96 Great Interview Questions to Ask Before You Hire, 101 Sample Write-Ups for Documenting Employee Performance Problems, 101 Tough Conversations to Have with Employees, and 2,600 Phrases for Effective Performance Reviews. His latest AMACOM book, 75 Ways for Managers to Hire, Develop, and Keep Great Employees, was released in the spring of 2016. Follow Paul on Twitter at @PaulFalconeHR and his website and blog at www.PaulFalconeHR.com.

