Welcome to PMI’s Webinar Presentation

Brought to you by:
Practice Management Institute®
pmiMD.com

Meet the Presenter…

Linda D'Spain, CMPE, CMC, CMIS, CMOM, CMCO

On the topic:
Critical and Compliant Employee Documentation Skills
Welcome to Practice Management Institute’s Webinar and Audio Conference Training. We hope that the information contained herein will give you valuable tips that you can use to improve your skills and performance on the job. Each year, more than 40,000 physicians and office staff are trained by Practice Management Institute. For 30 years, physicians have relied on PMI to provide up-to-date coding, reimbursement, compliance and office management training. Instructor-led classes are presented in 400 of the nation’s leading hospitals, healthcare systems, colleges and medical societies.

PMI provides a number of other training resources for your practice, including national conferences for medical office professionals, self-paced certification preparatory courses, online training, educational audio downloads, and practice reference materials. For more information, visit PMI’s web site at www.pmiMD.com

Please be advised that all information in this program is provided for informational purposes only. While PMI makes all reasonable efforts to verify the credentials of instructors and the information provided, it is not intended to serve as legal advice. The opinions expressed are those of the individual presenter and do not necessarily reflect the viewpoint of Practice Management Institute. The information provided is general in nature. Depending on the particular facts at issue, it may or may not apply to your situation. Participants requiring specific guidance should contact their legal counsel.

CPT® is a registered trademark of the American Medical Association.
Critical and Compliant Employee Documentation Skills

Presented by:
Linda L. D'Spain, CMPE, CMC, CMIS, CMOM, CMCO, CMCA-E/M
Instructor / Consultant

Brought to you by
Practice Management Institute®

Overview

• This course will address the value of documentation to employee relations and human resources.
• We will discuss the critical elements of How, What, When, Where and Why regarding Best Practices for documenting workplace conflicts, incidents and employment issues.
• This program will prepare you to be ready to demonstrate that you have made good faith measures to live up to your obligations to your employees and that you are a fair and non-discriminatory employer.
Objectives

- Critical Elements in Human Resources
- Documentation – timing, purpose and content
- Common Challenges
- Retaliation Prevention and Motivating managers to document
- Compliance - Human Resource Files

Critical Elements in Human Resources

WHY?

- As an employer, you are legally obligated to treat your employees to the letter of federal and state laws.
- When an employee or a group of employees claim their civil rights were violated (or they were unable to complete their work in a fair and safe environment), their accusations may fall into one of these categories:
  - Wrongful termination
  - Wrongful discipline
  - Discrimination based on age, gender, religion, race or other protected classes
  - Emotional or mental distress
  - Sexual harassment
Critical Elements in Human Resources

Employment Practices Liability

• Employee lawsuits can be expensive:
  – The average Employment practice liability lawsuit settlement is $125,000.00
  – The median judgement against an employer is $200,000.00
  – 25% of judgements are more than $500,000.00

Source: HR Morning

Compliance with Current Employment Laws

• Educated managers are the front line of defense for a business
• Strong risk management skills are required to ensure that employees are treated fairly and legally to keep the business out of danger.
Federal Employment Laws

Anti-discrimination Laws

• Title VII of the Civil Rights Act has its main purpose in prohibiting discrimination in employment by employers based on race, color, religion, sex or national origin. Employers are prohibited from taking adverse employment actions based on these factors.

• Sexual harassment is also prohibited by Title VII of the Civil Rights Act.

• The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities and limits the questions employers can ask employees.

Federal Employment Laws

Anti-Discrimination Laws, continued

• Age Discrimination in Employment Act (ADEA) protects workers who are 40 years or older from discrimination based on age.

• Title II of the Genetic Information Nondiscrimination Act (GINA) guards against employer discrimination based on genetic information.

• The Uniformed Services Employment and Reemployment Rights Act (USERRA) prohibits discrimination based on military services and also provides job protection while individuals are serving, under certain circumstances.
Federal Employment Laws

Wage and Hour Laws

• Requirements for minimum wage, overtime, hours worked, child labor and meal and break time
• Fair Labor Standards Acts (FLSA) – a federal law that established minimum wage and overtime requirements, but many states have adopted more stringent requirements.

Federal Employment Laws

Family and Medical Leave Act (FMLA)

• A federal law that allows employees who have met certain requirements to take 12 weeks of unpaid leave each year without loosing their jobs.
• The leave is granted for:
  • Birth and care of an employees newborn, bonding time for an adoptive child or with a child from foster care.
  • To provide care of an immediate family member
  • Due to employee’s own serious health condition
Federal Employment Laws

Immigration Laws

• Laws to ensure that employers only hire candidates who are eligible to work in the United States.
  • Immigration Reform and Control Act of 1986 (IRCA)
  • The Immigration Act of 1990
  • The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA)

Federal Employment Laws

Immigration Laws, Continued

• Immigration is a hot-button issue for 2019. The Trump administration has promised increased workplace visits.

• Hiring managers will need to be sure that they are up on the I-9 processes and stay current on any changes to immigration requirements.
Federal Employment Laws

Benefits

- Affordable Care Act (ACA) – Obamacare
- Employment Retirement Income Security Act of 1974 (ERISA)
- Health Insurance Portability and Accountability Act (HIPAA)
- Consolidated Omnibus Budget Reconciliation Act (COBRA)

Federal Employment Laws

- Safety Laws

- The Occupational Health and Safety Act was created to ensure employees have safe working conditions and is administrated by the Occupational Health and Safety Administration (OSHA).
  - Safe Environment
  - Training
  - Record Keeping
Federal Employment Laws

Union Laws

• The National Labor Relations Act (NLRA) is made up of members appointed by the president, decides labor cases, and because of that, decisions can shift politically.
• Managers need to be aware that although your workplace in not unionized, employers can still face claims alleging that they interfered with employees rights to work together to improved their working conditions.

How To Reduce Your Risk of Employee Lawsuits

• How to minimize your risk for employment practice liability claims.
• Examples of Best Practices risk reductions for employee lawsuits.
  1. Create sound personnel policies and practices:
    - Employee Handbook
    - Job Description
    - Lines of Authority / Chain of Command
    - Policies
    - Procedures
    - Evaluations
    - Disciplinary Processes
How To Reduce Your Risk of Employee Lawsuits

2. Keep an “open door” policy
   – Open lines of communication for reporting grievances
   – Clear anti-retaliation policy

3. Documentation
   – Just as it is in medicine – if it is not documented, it did not happen.
   – Your HR files are the only defense you have in an employment lawsuit.

A million-dollar decision might be based on more than “he said, she said” testimony from you and the person suing you.

Best Practices in Documenting Employee Discipline

- In a perfect world, an employee’s personnel file should provide all of the information necessary to compare employee performance and productivity.
- Most employment cases are lost and the employee is rewarded damages due to personnel files that have been inadequately maintained, especially when it comes to:
  - Documenting employee discipline
  - Documenting employee misconduct
Best Practices in Documenting Employee Discipline

1. Have an employee discipline form
   - A pre-printed, fill in the blank form
   - Spaces to prompt the manager or supervisor for the basic information regarding the employee, date of incident, description of the incident
   - Work rule or policy that was violated
   - Action that will be taken against the employee
   - Follow up or time to correct behavior
   - Printed name and signature of person completing the form

2. Conduct an investigation.
   - A full and fair investigation of the events
   - Review discipline decision
   - Interview witnesses

3. Get the Facts
   - Information must be factual
   - Document a clear picture of the incident
   - Document clearly why the discipline was imposed

4. Be Objective
   - Manager needs to be objective in describing the incident
   - Manager should document the description of the conduct that led to the discipline
   - Manager should not document their personal views of the employee
Best Practices in Documenting Employee Discipline

5. Be Clear and Specific In Completing the Disciplinary form
   - State fact in specific detail
   - Document what the employee did or did not do that violated company policy or work rule.

Example: Jane failed to clock out on the end of the work day Monday, January 2, 2019. Jane has violated our time clock policy on two other occasions, December 1st, and December 15th, 2018. At the time of both of the previous violations, Jane was counseled on our expectations of her being compliant with our time clock policies and procedures. She stated that she understood and signed her written disciplinary action. Jane is now on final warning and the next violation of our time clock policy will result in immediate termination.

6. Complete the form promptly
   - Disciplinary forms should be completed immediate after the misconduct occurred for best recollections of the facts.

7. Obtain the Employees Acknowledgement
   - Review the completed form with the employee
   - Request an acknowledgement signature from the employee
   - If the employee refuses to sign o the manager should note "refused to sign" on the form
8. Allow the Employee to Explain the Conduct
- Record the employee’s version on the form
- The employee’s version should not change the disciplinary measure imposed
- Helps preserve the employee’s version of the events in case they change their version in the future

9. Be Fair
- Managers need to be fair and uniform in imposing discipline
- Managers need to be familiar with employee handbook, policies and procedures
- Discrimination in the disciplinary process can and will lead to employment lawsuits

10. To the Extent That is Possible, Use the Discipline Process as a Positive Experience
- Use disciplinary measures to salvage, not scrap your employees
- Provide reasonable solutions and resources to help the employee
- Map out next steps to help the employee improve conduct in the future
- Be consistent with all employees with performance issues
Documentation Examples

Wrong:
February 1, 2019. John continues to be absent and late to work. He is unreliable and hardly ever does what he had committed to do. Even though I have warned him several times that he is missing too much work and that this behavior will result in termination.

Correct:
January 2, 2019 – John called in sick with complaints of a headache and missed 8 hours of work
January 5, 2019 – John called in to notify us that he is going to be late due to a flat tire. He arrived at 10:00am, which is two hours late from his scheduled start time.
January 8, 2019 – John called in to report that he had a doctor’s appointment and then stayed home the rest of the day to have furniture delivered. He missed 8 hours of work.

John has been counseled on our attendance expectations and policies. Due to lack of meeting our attendance requirements per our employee handbook, further violations will result in immediate termination.

Best Practices for Retaliation Prevention and Motivating Managers to Document

- Leadership and accountability
- Anti-harassment policies
- Harassment reporting systems and investigations
- Compliance training
Best Practices for Retaliation Prevention and Motivating Managers to Document Leadership and Accountability

The first step for creating a best practice HR program is for the leadership of an organization to establish a culture of respect with a zero tolerance level.

- Leadership has allocated sufficient staff time for a harassment prevention effort
- Leadership has assessed harassment risk factors and has taken steps to minimize those risks
- A harassment prevention policy that is easy-to-understand and that is regularly communicated to all employees
- A harassment reporting system that employees know about and is fully resourced and which accepts reports of harassment experienced and harassment observed
- Imposition of discipline that is prompt, consistent, and proportionate to the severity of the harassment, if harassment is determined to have occurred

Leadership and Accountability, continued

- Accountability for mid-level managers and front-line supervisors to prevent and/or respond to workplace harassment
- Regular compliance trainings for all employees so they can recognize prohibited forms of conduct and know how to use the reporting system
- Regular compliance trainings for mid-level managers and front-line supervisors so they know how to prevent and/or respond to workplace harassment
- The organization conducts climate surveys on a regular basis to assess the extent to which harassment is experienced as a problem in the workplace
- The organization has implemented metrics for harassment response and prevention in supervisory employees’ performance reviews
Best Practices for Retaliation Prevention and Motivating Managers to Document

An Anti-Harassment Policy
An anti-harassment policy is a key component of a harassment prevention effort. An unequivocal statement that harassment based on any protected characteristic will not be tolerated.

• An easy-to-understand description of prohibited conduct, including examples
• A description of a reporting system – available to employees who experience harassment as well as those who observe harassment – that provides multiple avenues to report, in a manner easily accessible to employees
• A statement that the reporting system will provide a prompt, thorough, and impartial investigation
• A statement that the identity of an individual who submits a report, a witness who provides information regarding a report, and the target of the complaint, will be kept confidential to the extent possible consistent with a thorough and impartial investigation

Anti-Harassment, continued

• A statement that any information gathered as part of an investigation will be kept confidential to the extent possible consistent with a thorough and impartial investigation
• An assurance that the employer will take immediate and proportionate corrective action if it determines that harassment has occurred
• An assurance that an individual who submits a report (either of harassment experienced or observed) or a witness who provides information regarding a report will be protected from retaliation from co-workers and supervisors
• A statement that any employee who retaliates against any individual who submits a report or provides information regarding a report will be disciplined appropriately
• Is written in clear, simple words, in all languages commonly used by members of the workforce
Best Practices for Retaliation Prevention and Motivating Managers to Document

A Harassment Reporting System and Investigations

• A reporting system that allows employees to file a report of harassment they have experienced or observed, and a process for undertaking investigations, are essential components of a harassment prevention effort.

• A fully-resourced reporting process that allows the organization to respond promptly and thoroughly to reports of harassment that have been experienced or observed

• Employer representatives who take reports seriously

• A supportive environment where individuals feel safe to report harassing behavior to management

• Well-trained, objective, and neutral investigators

• Timely responses and investigations

Best Practices for Retaliation Prevention and Motivating Managers to Document

A Harassment Reporting System and Investigations, continued

• Investigators who document all steps taken from the point of first contact and who prepare a written report using guidelines to weigh credibility

• An investigation that protects the privacy of individuals who file complaints or reports, individuals who provide information during the investigation, and the person(s) alleged to have engaged in harassment, to the greatest extent possible

• Mechanisms to determine whether individuals who file reports or provide information during an investigation experience retribution, and authority to impose sanctions on those who engage in retaliation

• During the pendency of an investigation, systems to ensure individuals alleged to have engaged in harassment are not “presumed guilty” and are not “punished” unless and until a complete investigation determines that harassment has occurred

• A communication of the determination of the investigation to all parties and, where appropriate, a communication of the sanction imposed if harassment was found to have occurred
Best Practices for Retaliation Prevention and Motivating Managers to Document

Compliance Training

- A harassment prevention effort provides training to employees regarding an employer’s policy, reporting systems and investigations.
- Supported at the highest levels
- Repeated and reinforced on a regular basis
- Provided to all employees at every level of the organization
- Conducted by qualified, live, and interactive trainers
- If live training is not feasible, designed to include active engagement by participants
- Routinely evaluated and modified as necessary

Content of Compliance Training for All Employees

- Describes illegal harassment, and conduct that, if left unchecked, might rise to the level of illegal harassment
- Includes examples that are tailored to the specific workplace and the specific workforce
- Educates employees about their rights and responsibilities if they experience conduct that is not acceptable in the workplace
- Describes, in simple terms, the process for reporting harassment that is experienced or observed
- Explains the consequences of engaging in conduct unacceptable in the workplace
- Content of Compliance Training for Managers and First-line Supervisors

- Provides easy-to-understand and realistic methods for dealing with harassment that they observe, that is reported to them, or of which they have knowledge or information, including description of sanctions for failing to use such methods
- Provides clear instructions on how to report harassing behavior up the chain of command, including description of sanctions for failing to report
- Encourages managers and supervisors to practice “situational awareness” and assess the workforces within their responsibility for risk factors of harassment
Compliance With Personnel Files

- Personnel files should be uniform, organized and current at all times.
- Examples of personnel file documents:
  - Interview notes
  - Hiring forms (I-9, W-2, W-4)
  - Application forms
  - Promotion / demotion records
  - Transfer / discharge
  - Pay Rate

Compliance With Personnel Files

- Examples of personnel file documents, continued:
  - Personnel tests / physical exams
  - Employee benefit plans
  - Performance reviews
  - Payroll deductions
  - Certificates
  - Request for time off
  - Civil rights investigations
Questions?

• Thank you for your attendance!

• Get your questions answered: info@pmimd.com
# Employee Write Up

## Employee Information

<table>
<thead>
<tr>
<th>Employee Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Employee ID:</td>
<td></td>
</tr>
<tr>
<td>Manager:</td>
<td></td>
</tr>
<tr>
<td>Date:</td>
<td></td>
</tr>
<tr>
<td>Job Title:</td>
<td></td>
</tr>
<tr>
<td>Department:</td>
<td></td>
</tr>
</tbody>
</table>

## Type of Warning

- [ ] First Warning
- [ ] Second Warning
- [ ] Final Warning

## Type of Offenses

- [ ] Tardiness/Leaving Early
- [ ] Absenteeism
- [ ] Substandard Work
- [ ] Violation of Safety Rules
- [ ] Violation of Company Policies
- [ ] Rudeness to Customers/Coworkers

## Details

**Description of Infraction:**

**Plan for Improvement:**

**Consequences of Further Infractions:**

## Acknowledgment of Receipt of Warnings

By signing this form, you confirm that you understand the information in this warning. You also confirm that you and your manager have discussed the warning and a plan for improvement. Signing this form does not necessarily indicate that you agree with this warning.

<table>
<thead>
<tr>
<th>Employee Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Manager Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Witness Signature (if employee understands warning but refuses to sign)</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Critical and Compliant Employee Documentation Skills

Human Resource Critical Elements Compliance Checklist

When is the last time your handbook has been reviewed and updated?

When was your last harassment / respectful workplace training?

Do you require restrictive covenants for key employees?

Do you have employees that work in states in which marijuana is legal?

Do you have federal contracts?

Are your employment law posters up to date?

Has your state or local minimum wage increased?

How are you calculating and paying overtime to non-exempt employees?

When did you last analyze your exempt employees?

Do you have independent contractors?

Is all of your workplace OSHA compliant?

Are your OSHA 300 logs up to date and your 300A form posted?

Are your FMLA forms up to date?

Are your managers trained on the ADA interactive process?

Are your job applications and workplace accessible for the disabled?

Do you know what devices are accessing your network?

Have you tested your network for security?

Are employees trained on cybersecurity compliance?

Do you have necessary and appropriate insurance?

- Employment practices liability insurance (EPLI)
- Cyber Liability Insurance
- Directors and Officer Liability Insurance