

Strength in Structure: Job Descriptions, Performance Evaluations, and Disciplinary Writings

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(by **Morgan Madden** and **Steve Antonelli**)

In the ever complex and evolving landscape of employment law, some of the most effective compliance tools are not found in case law or federal regulations but in routine and consistent documentation. Job descriptions, performance evaluations, and disciplinary writings are three foundational tools that can play a crucial yet often underestimated role in shaping and defending employers' decisions. These documents are not standalone checkboxes, rather their effectiveness lies in their interconnectedness. Job descriptions lay the groundwork for expectations, performance evaluations track whether and how those expectations are met, and disciplinary writings memorialize any shortcomings or failures to meet them.

The proper use and maintenance of these documents can bolster compliance with key employment statutes. In the event of litigation, these records almost always become central to the body of evidence considered by a factfinder. Employers that use them regularly and consistently are often in a far stronger position to defend against claims and to demonstrate legitimate, nondiscriminatory reasons for adverse employment actions.

Job Descriptions: The Foundation of Employment Expectations

Job descriptions are more than administrative formalities—they define the who, what, and why of a role. A well-crafted job description outlines an employee's essential functions, required qualifications, and reporting relationships. As an employer's expectations change, so too should corresponding job descriptions. For example, how many employers allowed remote/hybrid work before March 2020?

Accurate and up to date job descriptions benefit both employers and employees because they help guide hiring decisions, compensation structures, and employee development. They can also play a pivotal role in litigation. They help delineate essential job functions and impact whether an employee's accommodation request is reasonable in an ADA case, and they have a significant bearing on whether a position is exempt from overtime laws in a wage and hour case, to name a few examples.

To be legally useful and operationally effective, job descriptions should: (1) use objective, clear language that describes observable duties and requirements; (2) align with actual work performed, not just idealized roles or inherited templates; and (3) be updated regularly to reflect pertinent changes in the role.

Written Performance Evaluations: The Roadmap of Employee Progress

Performance evaluations are the primary method by which employers track and communicate an employee's progress toward fulfilling the expectations set forth in the job description. Just as is the case with job descriptions, specificity and consistency in evaluations and performance reviews are critical.

Evaluations that praise (or criticize) an employee in vague or overly broad terms can create problems later when and if disciplinary action becomes necessary. Specific feedback about an employee's performance is worth far more than general qualifiers – both in terms of employee engagement and success, and potential claim defensibility. For example, if a performance review simply states that an employee is “exceeding” or even “meeting” expectations, it could become difficult to justify a subsequent adverse employment action absent a clear record of interim performance problems. Instead of general praise, or criticism, employers should aim to evaluate performance as specifically as they can.

While formal performance reviews occur periodically (often annually), evaluation of employees' performance should be fluid and ongoing. Informal or interim reviews, which can provide a more dynamic view of performance, are particularly useful when issues arise mid-year. It is possible for an employee to have a strong annual review followed by a drop in performance, and employers should refrain from waiting for the balance of the year to address the regression. An informal or interim review (and documentation thereof) can help right the proverbial ship by helping the employee to address the shortcoming and improve their performance and by putting the employer in position to support a negative review or defend an adverse employment action that follows a positive formal review.

In litigation, inconsistent performance evaluations can damage an employer's credibility and can even allow a plaintiff to argue that an employer's stated reason for an adverse employment action is pretextual.

To ensure evaluations serve both legal and operational goals, employers should: (1) tie evaluation criteria to the duties in the job description; (2) train managers on how to write effective evaluations that are honest, objective, and constructive; and (3) complete evaluations promptly and review them for consistency with other employment records.

Disciplinary Records: The Anchor of Employment Decisions

In the event of litigation, whether before a judge or an arbitrator, disciplinary documentation is often the most scrutinized aspect of the employment record with exceedingly high evidentiary value. It serves as the employer's front-line defense as to both the explanation for and timing of the adverse employment action, as well as the evidence of any prior notices and opportunities to improve. Disciplinary records can also play a key role in other adversarial proceedings such as unemployment compensation hearings and union grievances, where the employer may have to justify that a termination or suspension was for either willful misconduct or just cause, respectively. In those settings, disciplinary records should be especially robust and involve specific language and allowances as the supporting documentation often serves as the tipping point in these matters.

Progressive discipline policies are an excellent tool in guiding disciplinary decisions. They allow employers to document each step taken – verbal warnings, written warnings, improvement plans, and suspensions – to demonstrate fair and consistent disciplinary actions.

Effective disciplinary documents should follow some basic principles. They should be issued promptly following the performance shortcoming or incident giving rise to the discipline. They should also: (1) refer to expectations set forth in the job description and/or previous performance evaluations; (2) contain details and be free from emotional or subjective language; and (3) demonstrate consistency across employees in similar circumstances.

Each of these three tools – job descriptions, performance evaluations, and disciplinary records – serves a distinct purpose. When aligned, they form a comprehensive and cohesive employment record that benefits both employers and employees by setting expectations, tracking performance, and documenting corrective actions. Strategically aligning these tools establishes a fair and transparent employment framework. For employees, it promotes understanding of expectations and how performance is measured. For employers, it builds a documented history that is invaluable both in day-to-day management of an operationally effective workforce, and in the event of litigation.

Employers should not wait for a lawsuit to evaluate their HR documentation practices. Instead, they should regularly review their job descriptions and align those documents with current duties and expectations so that performance evaluations can be conducted consistently.

By treating these basic HR documents as a strategic defense rather than administrative chores, employers can significantly reduce legal exposure while promoting a culture of clarity, fairness, and accountability.

Morgan M. Madden is an associate in Babst Calland's Public Sector, Energy and Natural Resources, and Employment and Labor groups and focuses her practice on land use, zoning, planning, labor and employment advice, and litigation. Contact her at mmadden@babstcalland.com.

Stephen A. Antonelli is a shareholder in the Employment and Labor and Litigation groups of Babst Calland. His practice includes representing employers of all sizes, from Fortune 500 companies and large healthcare organizations to non-profit organizations and family-owned businesses. He represents clients, in all phases of employment and labor law, from complex class and collective actions and fast-paced cases involving the interpretation of restrictive covenants, to single-plaintiff discrimination claims and day-to-day human resources counseling. Contact him at santonelli@babstcalland.com.

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