



EMPLOYEE RELATIONS BULLETIN

FEBRUARY 2003

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WELCOME TO THE FIRST ISSUE OF THE EMPLOYEE RELATIONS BULLETIN!

This Bulletin has been designed to keep you, the supervisor, current on employee relations issues, and to provide information that you can use to deal with conduct and performance problems such as poor attendance, unsatisfactory performance, verbal and physical abuse, failure to comply with instructions, medical accommodation, credit card abuse, workplace violence, and many others. We will address subjects such as how to document problems effectively, how to discuss problems with employees, how to select appropriate corrective actions, and perhaps most important, how to prevent problems from occurring in the first place. The Bulletin will be issued quarterly.

WHO ARE WE?

The **APHIS Employee Relations Branch** is staffed by Employee Relations Specialists (ERS) and support personnel located in Riverdale, Raleigh, Ft. Collins and Minneapolis. The **AMS/GIPSA Employee Relations Branch** is staffed by ERSs and support personnel located in Washington. **A list of ER personnel and the programs they serve can be found on the last page.**

One of our primary goals in developing this Bulletin is to maintain a continuous dialogue with you, the reader, so that we can better understand the problems you are encountering or anticipating, and address them. With this in mind, we welcome your comments and questions, and your ideas regarding topics that you would like to see addressed in future issues of the Bulletin.

We would also like your help with another project. We are currently developing an **Employee Relations Handbook for Supervisors** that will address subjects such as those listed above. It is important in regard to the development of this Handbook, that we know what subjects you would like us to cover. **We would, therefore, like your comments, questions and ideas, regarding both this Bulletin and the Handbook for Supervisors. Your comments, questions and ideas can be sent, via e-mail, to the following address: ERBulletin@aphis.usda.gov.**

We understand that dealing with problem employee situations is not a pleasant task. But it is a necessary task, and the quicker that a problem is addressed, the more likely that serious, long-term damage can be avoided. We hope that the information we have provided in this Bulletin, and that which will be provided in future Bulletins, will be useful, and will help you to carry out your employee relations responsibilities.

Ellen King
Assistant HR Officer

WHAT DO WE DO?

Each ERS typically services a particular program, and works closely with the managers and supervisors of that program to provide advice and guidance on how to best address employee performance and conduct issues. They also represent the Agency in third party hearings, such as those before the Merit Systems Protection Board (MSPB), and handle administrative grievances.



THE ROLE OF THE SUPERVISOR

What role, you say! Isn't taking care of problem employee situations the job of the Employee Relations folks? Well, yes, sort of, maybe. As some of you have undoubtedly discovered, you have a very large part to play in the process. In fact, the most successful employee relations programs are those where supervisors are knowledgeable, involved and committed to finding solutions.

As the supervisor, you will likely be the first person, or at least one of the first, to notice a conduct or performance problem involving one of your employees. Fortunately, most conduct or performance problems can be resolved or prevented informally by listening and talking to the employee, providing training or guidance, referring him or her to the Employee Assistance Program or Conflict Prevention and Resolution Program, and so on. Sometimes, however, employees do not respond to your informal efforts, or sometimes the problem is so serious that an informal resolution is not appropriate. Once it is clear that you have a conduct or performance problem that needs to be formally addressed, you need to do the following:

1. Identify and Document the Conduct or Performance

Problems. Good documentation is essential. It is the basis for all disciplinary and most non-disciplinary actions. It is also the basis for a successful discussion with the employee, since the more information an employee is given, the more likely that the discussion will be productive. Documenting can be a time-consuming process, but if you follow the guidelines in the article that follows, your task should be easier.

2. Discuss the Conduct or Performance Problems With the Employee.

Normally, you should discuss the problem with the *employee*. There are exceptions, such as in cases of *very serious* or *criminal* misconduct, but in most cases, discussion is vital. It is a way to ensure that the employee understands the problem(s) that have been observed and documented, and what will happen if they are not corrected. It gives the employee a *controlled* opportunity to express feelings, and provides for mutual feedback to clarify facts, issues and other matters. We will address the discussion process in the next issue of the Bulletin, and will provide you some ideas about how to make the process work for you.

3. Take Action to Correct the Conduct or Performance

Problems. Your success in carrying out steps 1 and 2 above will, to a great extent, determine how successful you will be in correcting the problem(s). You have many options. These options will be discussed in future issues of the Bulletin.

The role of the supervisor in solving conduct and performance problems is not an easy one. But by following the steps discussed in this and future issues of the Bulletin, the task should be much easier.

DOCUMENTING CONDUCT AND PERFORMANCE PROBLEMS

When Do We Document?

Documenting conduct and performance problems is a critical step in the process of dealing with a problem employee. However, not every problem needs to be documented. Some are minor and can be corrected by counseling. For example, an employee's tardiness may be corrected simply by advising the employee that tardiness is unacceptable. But if informal counseling does not get the intended result, or the problem is serious, effective documentation is a must.

How Do We Document?

We obtain documentation from a number of sources. These include (1) public complaints, (2) formal investigations, and (3) supervisory inquiry and discussion with the employee. Most documentation is obtained by supervisory inquiry and discussion. Most often, the documentary record will include information documenting the particular incident(s) and a record of the supervisor's discussion with the employee regarding the incident(s). NOTE: If a situation involves serious or possible criminal behavior, you should simply document what you know (which may not be much) and then consult with your supervisor and Employee Relations before proceeding any further.

What Do We Document?

With the exception of those serious/criminal incidents noted above, the supervisor should obtain statements from persons who were involved in or witnessed the incidents. Agency employees are required to provide information regarding what they have heard or seen. Non-agency personnel are not required to provide such information, but may do so voluntarily. If a problem arises in regard to non-Agency personnel refusing to provide needed information, consult your supervisor for guidance and assistance. Your documentation should include the following:

Describe What Happened. Your documentation should include **dates, times, locations, full names (and work titles, if known) of the persons involved, the observations of witnesses, hours of duty, a full description of the incident(s), and all other pertinent information** – in other words, the **who, what, when, and where** details of the incident. When documenting these facts, remember the following:

- ✓ **Be accurate.** Do not rely on memory, but record details as soon as possible.
- ✓ **Document facts, not opinions.** Describe actual behavior. Avoid vague terms such as "threaten," "harass," "obnoxious," and "obscene" (unless they are simply being used to describe your feelings or beliefs). To the best of your ability, indicate what the employee said (using actual words) and did (citing actions observed).
- ✓ **Include** copies of all **documents** pertaining to the incident(s).
- ✓ If documenting **exact quotations**, use quotation marks.
- ✓ If you have discussed the incident(s) with the employee, **include the employee's explanation**, if any, and **your analysis** of the explanation.

Indicate Why the Behavior is Unacceptable

- ✓ **Note the rules or instructions violated.** Although Employee Relations Specialists will be familiar with the laws and regulations pertaining to various conduct and performance problems, they may not be familiar with a local work rule (e.g., a local leave policy), or with a program policy or procedure (e.g., a certain format or process that must be followed). These documents should be referenced and included in the case materials.
- ✓ **Explain the consequences** of the employee's behavior. Examples may include the impact upon the supervisor's time, the work of other employees, or the Agency's ability to carry out its program mission.

Describe the Background

- ✓ **Explain any technical processes involved.** Such explanation is important since it may help avoid needless delay or misunderstanding.
- ✓ **Summarize prior training and counseling.** Include any written documents pertaining to training, counseling and other discussions with the employee. If the employee provides an explanation for his/her conduct or performance, include this in the documentation, as well as a statement from you regarding the appropriateness of the employee's explanation. If the employee notes any extenuating or mitigating circumstances, they should be noted. If the employee has been referred to the Employee Assistance program, this fact should also be noted (include details regarding the referral).
- ✓ **Include copies of previous letters of caution and instruction.**

NOTE: Once you have gathered your documentation, try to put yourself in the shoes of a person who is unfamiliar with the incident(s) described, and perhaps unfamiliar with your program, and ask yourself, "Would such a person understand the incident(s) and the environment in which they occurred?" If not, make certain that additional, clarifying information is provided.

What About E-Mail Documentation?

There has been, in recent years, a growing use of e-mails to document conduct and performance problems. This use has created certain problems. For example, e-mail messages are normally not as well thought out as traditional documentation, and they often involve long exchanges, much of which may be only indirectly related to the situation, or may not be related at all. The result is confusion and delay. When using e-mail messages, keep the following in mind:

- ✓ Be certain to limit the e-mail exchange to the person(s) and incident(s) involved.
- ✓ Do not include opinion or other thoughts that you do not want to share with the employee.
- ✓ Separate messages concerned with internal communication about a situation from those actually documenting it. For example, you would not want to include a series of e-mails that simply discuss how you want to go about gathering information.
- ✓ If the number of e-mail messages is extensive, prepare a short summary memorandum to tie the various messages together and to identify the specific performance and conduct deficiencies involved. Sometimes, in a long exchange of messages, the problems can be lost or obscured.

PERFORMANCE v. CONDUCT

Bill has worked for you for several years. Until recently, he has been an excellent employee. In recent months, however, his performance has deteriorated significantly. If you were to rate him today, you would have to conclude that his performance is unsatisfactory. What seems strange is that Bill's duties have not changed, only his ability to perform them. Would you characterize Bill's behavior as a conduct problem or a performance problem?

Deciding if a problem is a performance or conduct problem is sometimes a difficult task. To determine the difference between the two, it is helpful to remember that **performance problems** are those related to an employee's ability to do the job at an acceptable level. The acceptable level is usually documented in written performance standards, and is typically defined in terms of quality, quantity, and timeliness. If an employee cannot meet your expectations in regard to the quality, quantity and speed of work, no matter how hard he or she tries, it is a performance problem. **Conduct problems** are those related to obeying the rules of the workplace, written or unwritten. If an employee does not comply with these rules or standards, the failure to do so would be considered a conduct problem.

In the case cited above, Bill's behavior obviously affected his performance since his work was either not being performed, or was being performed incorrectly. From

the standpoint of how we would deal with the behavior, however, it is likely that we would treat it as a conduct issue. In this case, the key to making this determination is the fact that Bill has already demonstrated that he is able to perform the duties in question at a satisfactory level. This would lead one to conclude that Bill has the ability to do the work (based on past performance), but for whatever reason, be it lack of motivation, a medical problem, or some other cause, is not *now* doing it satisfactorily.

If we determine that a problem is a **conduct problem**, corrective action is taken under **5 CFR, Part 752** of the regulations. If, on the other hand, we determine that a problem is caused by an employee's **inability to perform** the critical duties of his/her position, we can either take corrective action either under **5 CFR, Part 752** or under **5 CFR, Part 432**, the part of the regulations that deals with performance issues. There are advantages and disadvantages to each approach. In the next issue, we will look at these advantages and disadvantages, and at the special process we use to deal with performance issues under Part 432. If you have questions regarding what process to use, contact your ERS.

One final point. When you, as the supervisor, deal with either a conduct or a performance problem, your initial role remains the same – to identify and document deficiencies, and to discuss them with the employee. It is not until you are ready to take corrective action that the process, and therefore your role, changes.

REASONABLE ACCOMMODATION

Recently, a Federal employee told his supervisors that he had a health condition that required him to use supplemental oxygen. He asked if he could bring an oxygen tank to work and take five minutes every couple of hours to obtain oxygen. His supervisors consulted a safety officer who told them that it would be a safety hazard to allow a tank in the facility. He was permitted for a time to go to his car to obtain oxygen, but it was rare when he could find a parking space close to the building. Sometimes it took as long as 20 minutes to travel to his car for oxygen. His supervisors then stopped him from doing that because they felt that he was away from his duty station too long. His health deteriorated, and he filed an EEO complaint against his agency for denying him time to obtain oxygen. Before his case was heard before a judge, he passed away. The EEOC ruled that the agency was guilty of disability discrimination and awarded hundreds of thousands of dollars to the deceased employee's estate. Had his supervisors sought advice from a knowledgeable human resources specialist, this situation could have been avoided.

While there is no legal requirement to accommodate employees who do not have disabilities (and it can set bad precedents to do so), the law requires agencies to explore **reasonable accommodation** for disabled persons. Important steps in the reasonable accommodation process include:

- **Obtaining adequate medical information from the employee.**
- **Establishing an individualized assessment of the essential job functions.**
- **Engaging in an interactive dialogue with the employee.**
- **Exploring accommodation options.**
- **Determining an appropriate accommodation, or**
- **Determining whether accommodation would create undue hardship for the agency.**

Properly handling these steps requires a person who is knowledgeable in EEO law. Supervisors should be careful not to ignore situations that involve health problems. Supervisors and managers should seek advice from their servicing human resources and/or employee relations specialists whenever the following situations exist:

- **An employee asks for assistance or special consideration because of a medical or health problem or limitation.**
- **The employee is not asking for help, but a supervisor or manager feels that a health or medical problem is keeping him/her from functioning in the workplace.**
- **An employee asks for special consideration such as having certain days off for religious reasons. (Although this factor does not pertain to disabilities, reasonable accommodation efforts are still necessary.)**

Whenever you encounter a situation involving the possible accommodation of a medical problem, you should contact an Employee Relations Specialist as soon as possible to avoid subsequent problems.

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