



Presented by
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Bulleted proof Documentation

Proper documentation
and a fair and deliberate
procedure become the
best defense against
adverse jury verdicts.





Credibility



Support your
testimony with
documents.





What to Document:

1. Performance goals and objectives
2. Performance reviews
3. Violations
4. Attendance issues
5. Poor performance
6. Demotions
7. Promotions
8. Change in job duties
9. Training needs
10. Bonus and merit decisions



Document the
positive
and
negative.

Follow up by email.



Good Documentation

Was there a clear performance or conduct standard?

1

Was the employee given objective scrutiny?

2

Did the employee know what was required going forward?

3

Were other employees treated the same way?

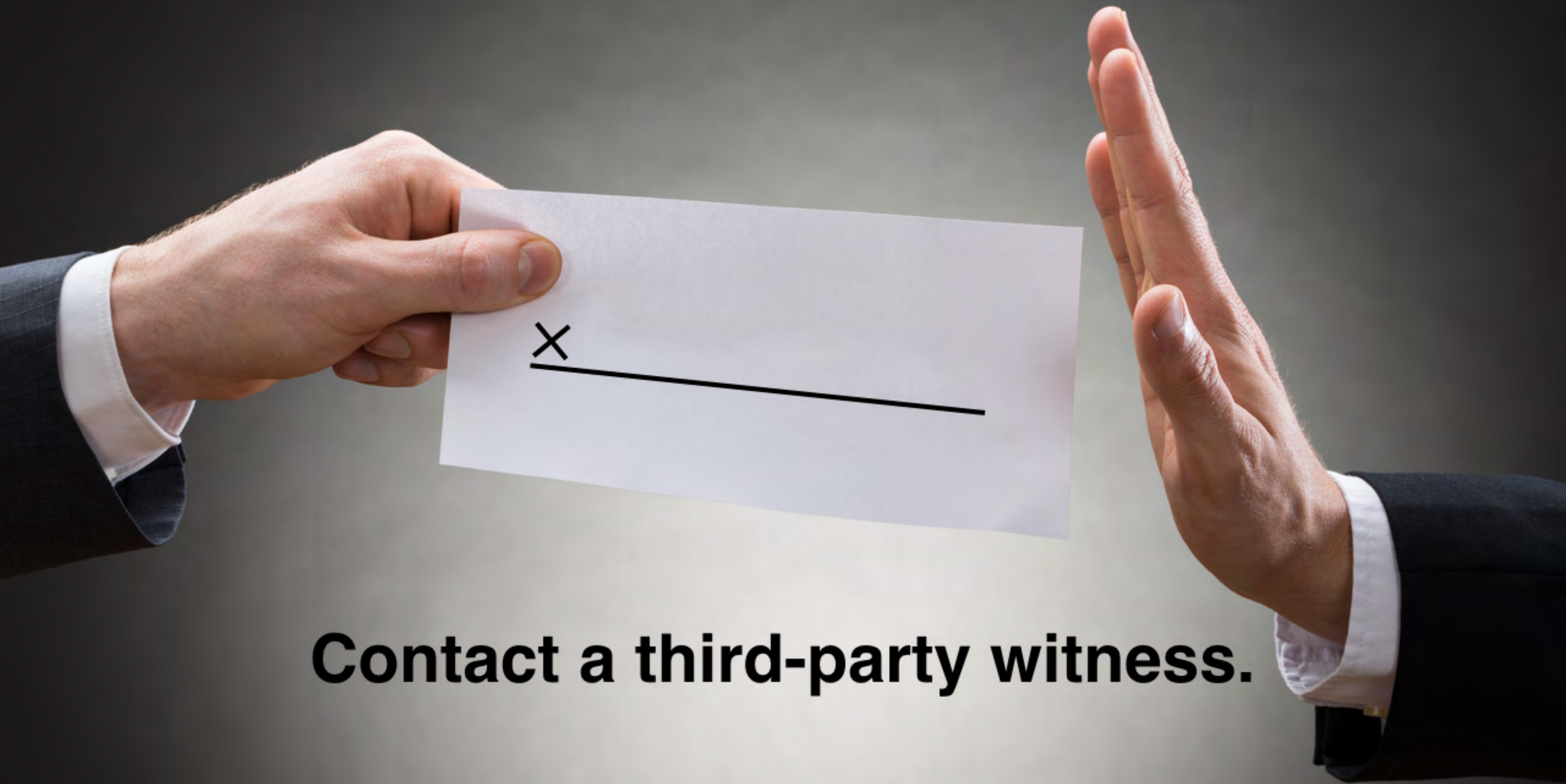
4



Pitfalls

1

No documentation



Contact a third-party witness.



**ALWAYS
NEVER**



Pitfalls

2

Using legally
explosive words



Pitfalls

3

Lack of follow-up

Behavior is:

- ◆ Observable
- ◆ Factual
- ◆ A choice

**Phrases
to Use and
to Avoid**



- ◆ Verbs
- ◆ Quotes
- ◆ Behavioral



- ◆ Adjectives
- ◆ “Attitude”

Phrases to Use and to Avoid

Avoid:



1. "Attitude"

2. Adjectives

3. Conclusions

4. Assumptions

5. Opinions

6. Statements about protected class status

7. Threats

8. Absolutes

9. Promises not carried out

Allow the juror to walk in your shoes.



Delayed Documentation

Managers ...

- ◆ Believe the problem will go away on its own
- ◆ Want to avoid conflict







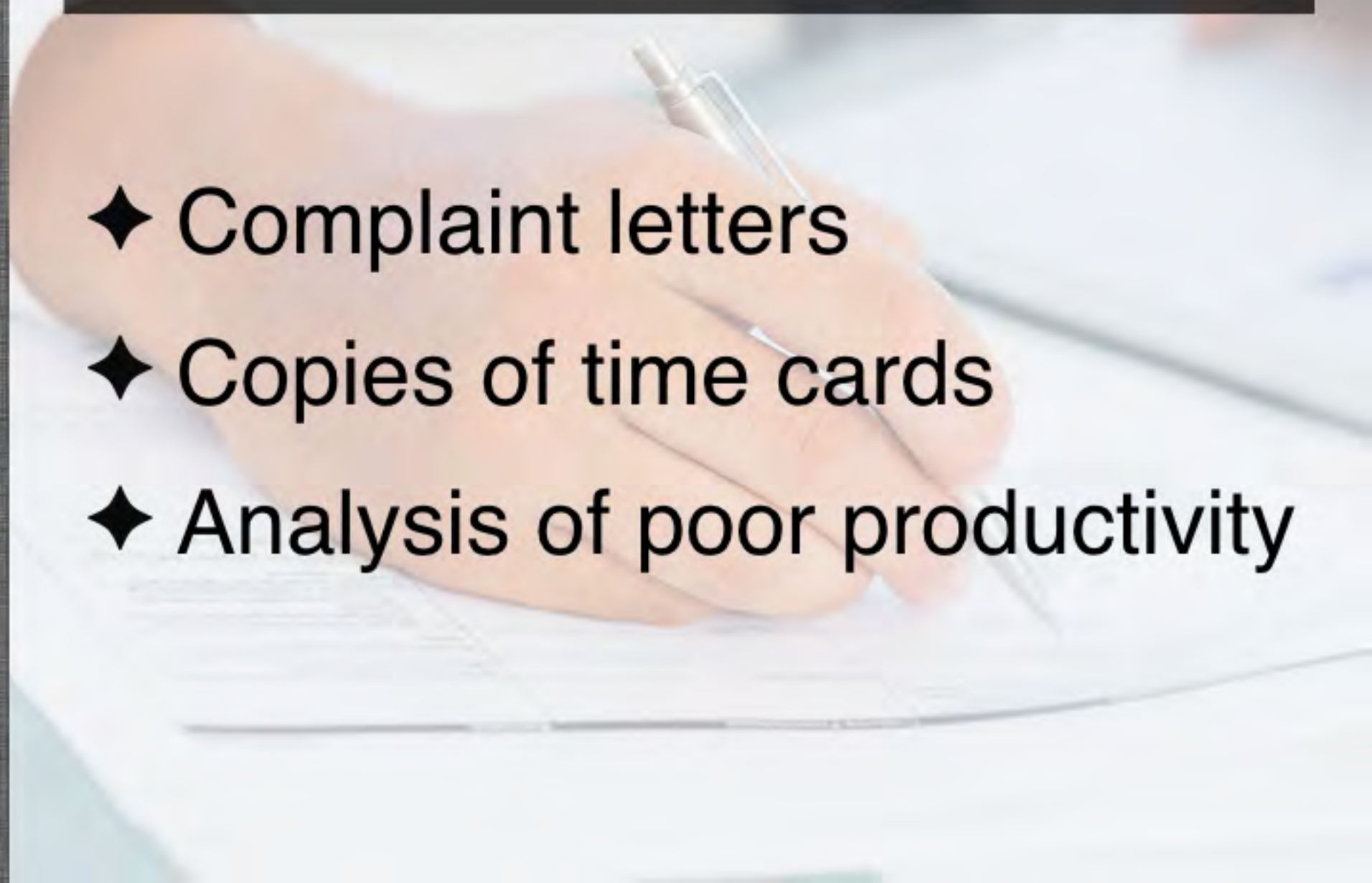
We Who Labor Here
Seek Only The Truth

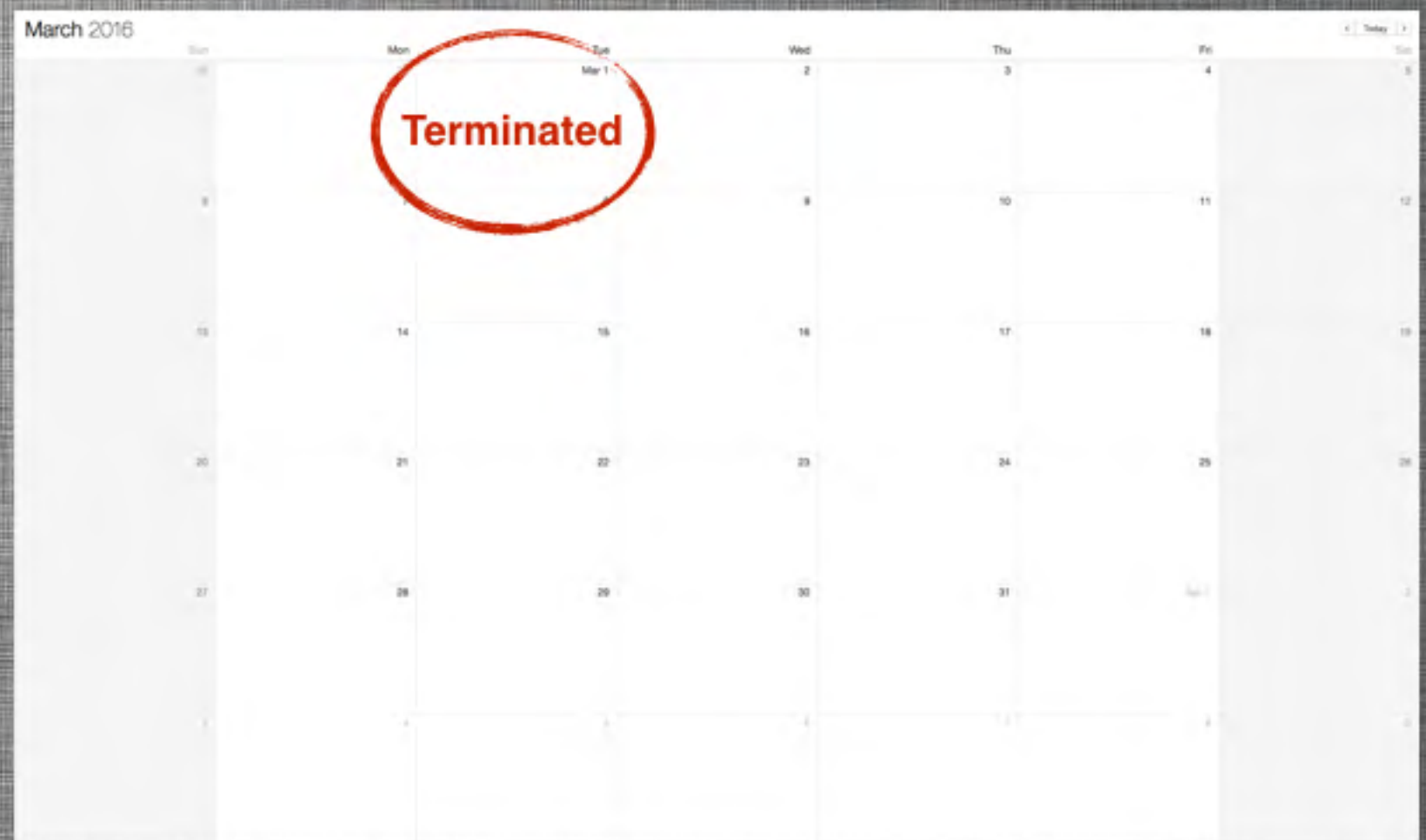
Give feedback at the first occurrence.




Include exhibits and other support, including ...

- ◆ Complaint letters
- ◆ Copies of time cards
- ◆ Analysis of poor productivity





A close-up photograph of a person's hands typing on a white laptop keyboard. The person is wearing a white sleeve. The background is blurred, showing a computer monitor and a white mouse on a desk.

Set a realistic time frame.

7 Steps:

1. Clearly communicate expectations
2. Describe what to change or continue
3. Include the employee's explanation
4. Detail the action plan and goals
5. Describe the consequences
6. Include time expectations
7. Follow up



Fair, Consistent and Objective Documentation

- ◆ Use firsthand information
- ◆ Explain why earlier information is now incorrect
- ◆ Use plain, commonsense language
- ◆ Start documentation on the employee's first day

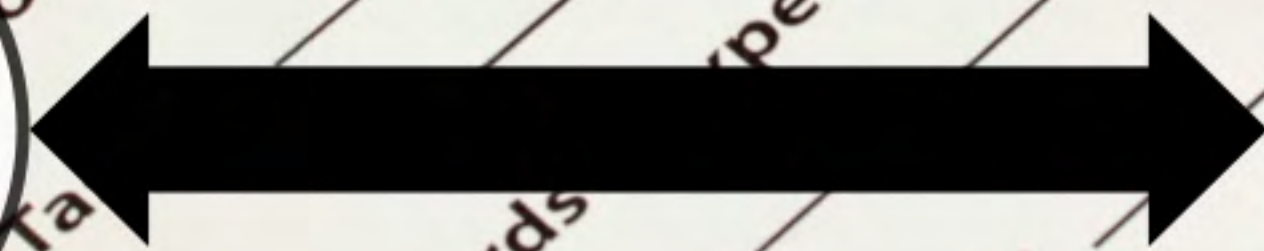


Emplo

OFFICE
PROFESSIONAL
Immediate Start
Experienced professional required for b
... Duties include administration, sta
... accounting. Minimum of
... required. Excellent salary
... in writing op

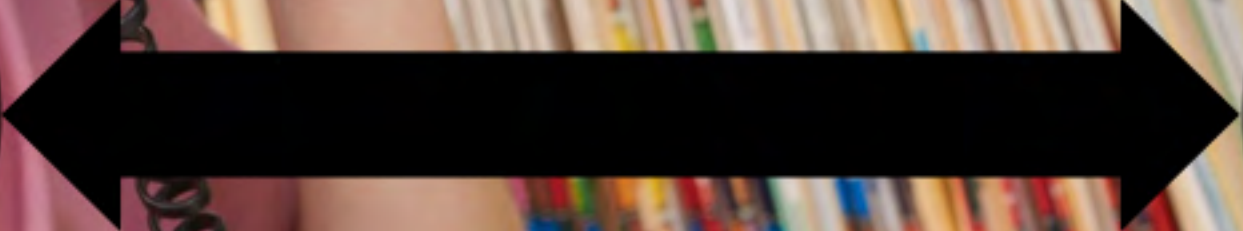
JOB DESCRIPTION

Have employees regularly audit and update their job descriptions.





Effort



Results



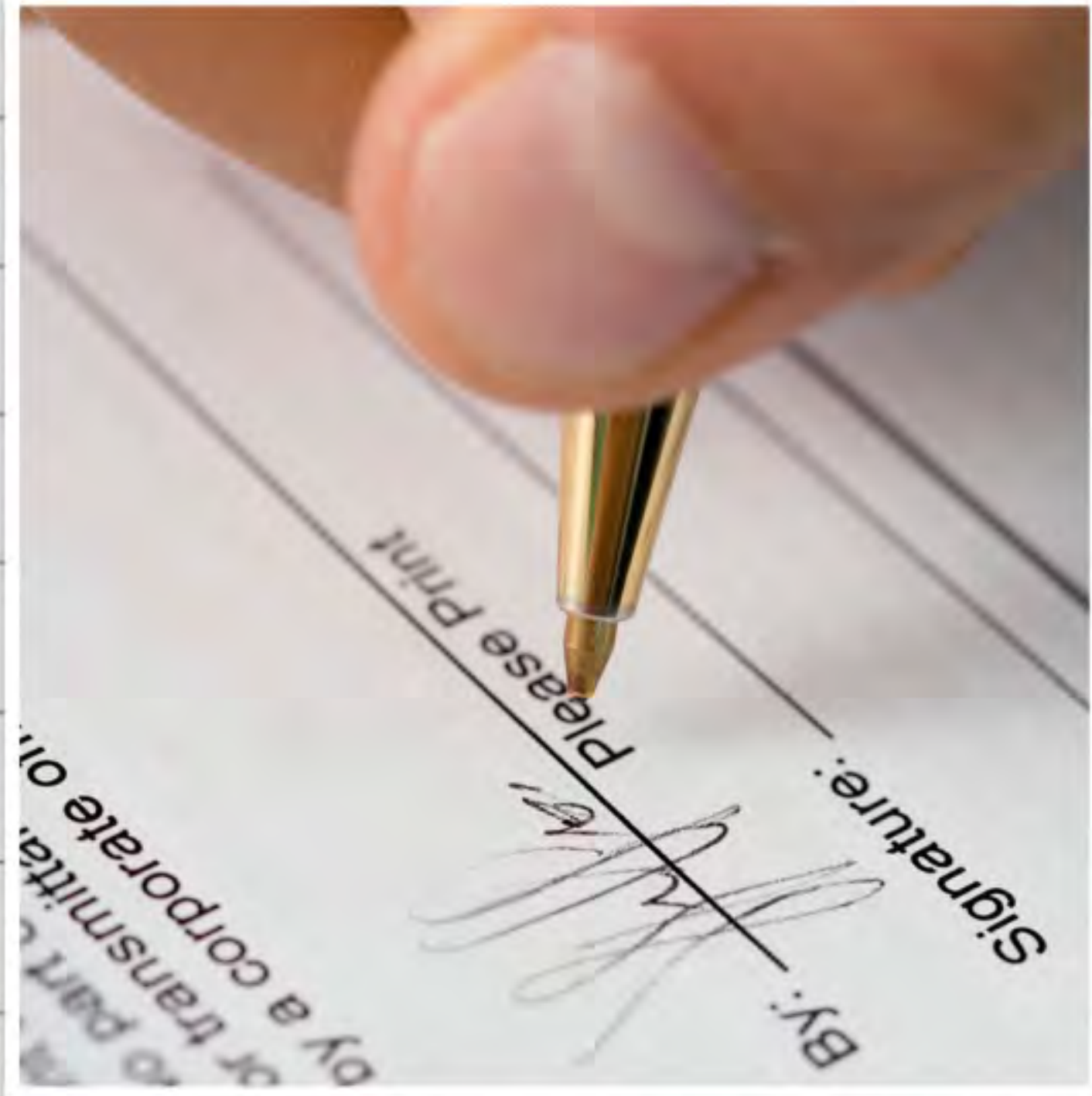
Have employees rate themselves on a quarterly basis.

Annual Acknowledgment

Should have a preamble

Should cover:

- ◆ Receipt of the employee manual
- ◆ At-will employment relationship
- ◆ Lack of promises
- ◆ Lack of uncompensated overtime
- ◆ Amount of accumulated leave
- ◆ Lack of discrimination or harassment





- Receipt of manual
- Agreement to abide
- Subject to change
- No promises made
- At-will employment
- Overtime and leave
- Discrimination and harassment



Have your lawyer prepare and review your form acknowledgment.

Examples



Fine v. Ryan Int'l Airlines

Examples



Geen v. Safeway Stores

Examples



National Education Corp.

**It is the fairest
thing to do for
your employees.**

