**Abolish Performance Appraisals – The question of Legal Proceedings**

For defending wrongful discharge the employer must prove:

1. notice of expectation (given notice of expectation and consequences of not meeting that expectation)
2. reasonableness
3. evidence (employee failed to meet the standard)
4. fair investigation
5. consistently applied standards
6. discharge is a fair penalty.

In lawsuits, appraisal usually is more favorable to the employee (p. 232)

More appropriate is accurate and continued documentation on part of the supervisor and this provides foundation for accurate information in counseling memos and for legal documentation, if needed.

Means of meeting documentation requirements without an appraisal

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| Lawsuit Defense Requirement | Means of meeting documentation requirements without appraisal |
| 1. Notice of expectation, standard or rule
 | Employee policies and handbooks, orientation checklists, training documentation, job descriptions, meeting agendas and minutes, e-mail, and memoranda to employees. |
| 1. Necessity of expectation, standard or rule
 | The rule either speaks for itself (sleeping on the job) or is demonstrated through industry standards, safety laws, organizational objectives and goals, financial and efficiency data, and notices and memoranda to employees, among other evidence.  |
| 1. Employee failed to meet expectation, standard or rule.
 | Memoranda, counseling documentation, and formal notice of warnings, reprimands, discipline, and discharge may describe deficiency, along with corroborating evidence from innumerable sources, such as production and efficiency data, the employee’s work products, records of critical incidents, customer and co-worker complaints, signed statements and witness notes, and time and attendance records. |
| 1. Fair and objective investigation was conducted
 | Investigation diaries, meeting notes, notes of interviews with the affected employee and witnesses, and the like are preserved and dated. In notice of discharge to the employee/file, determining factors are recounted. |
| 1. Expectation, standard, or rule is consistently enforced
 | Records of all similarly situated employees with the same degree of performance deficiencies or who committed similar infractions are preserved for a reasonable period of time (several years). |
| 1. Recourse of discharge is fair and consistent with treatment of others
 | Seriousness of deficiency can be demonstrated by actual or possible impact on the organization (losses, exposure to liability, etc.) Discipline and discharge records document how the employer treated others with similar deficiencies or infractions |