



THE PUBLIC SECTOR

Personnel file maintenance: the problem with keeping secrets

by Jeff Sloan and Eugene Park

A case just decided by the California Court of Appeal, *Poole v. Orange County Fire Authority*, emphasizes the perils of not giving employees an opportunity to respond to documentation of employment-related incidents. The case provides practical pointers applicable in all spheres of employment.

Facts

A fire captain at the Orange County Fire Authority (OCFA) maintained “station files” that included logs of firefighters’ daily performance. Station files were separate from the personnel files kept at headquarters. The captain regularly logged “any factual occurrence or occurrences that would aid . . . in writing a thorough and fair annual review.” The captain did not share over 100 log entries with firefighter Steve Poole, although he did share them with his battalion chief. Poole ended up with a substandard performance evaluation based on numerous critical comments in the log entries.

Poole’s union representative eventually received log entries that Poole had not previously seen. Poole requested that the negative comments be removed, but the OCFA refused, and he sued. The trial court ruled that the station files weren’t official “personnel files” under the FFBOR and therefore didn’t need to be disclosed or removed. It likened the log entries to sticky notes used merely to refresh the captain’s memory. Poole and his union appealed.

Bad facts make bad law

The court of appeal reversed the trial court’s decision, finding fault with the captain’s delay in giving Poole the opportunity to comment on the entries. The court ruled that the station files were subject to the specific disclosure requirements in the FFBOR.

Importantly, the court borrowed the rationale from a seminal case involving public schoolteachers, *Miller v. Chico Unified School District*, and concluded that an employee needs to be informed of any documentation of events that could lead to discipline.

Practice pointers

Here are five things you can learn from this case:

(1) Attorneys representing unions and individuals often protest supervisors’ practice of maintaining

“working files,” sometimes disparagingly referred to as the “secret file,” to temporarily lodge reminders of workplace events. There’s nothing wrong with maintaining a working file, but it’s essential that the supervisor transmute important working file content into formal documentation within a reasonable time after the events. After the evaluation period, supervisors can cleanse the previous year’s working file and initiate a new working file for the next evaluation cycle.

- (2) Rarely should the content of the working file be a surprise to employees. Supervisors need to document and discuss perceived poor performance and misconduct with the employee promptly. When clients ask whether they should share performance documentation with employees, we typically ask, “Why not?” Usually there isn’t a good answer.
- (3) Not every minor infraction needs to be the subject of a formal memo or anything more than a positive, corrective “shop floor” conversation. Rather than amassing paperwork, as Poole’s captain did, a supervisor can decide to document and confront the employee only after the performance issues reach a minimal critical mass.
- (4) Documentation of repeated or serious misconduct needs to be routed into the personnel file, with the employee being given the right to respond.
- (5) It’s equally important to recognize and document outstanding performance. Employees are most motivated and productive when their accomplishments are promptly and fully recognized.



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Bottom line

What was wrong with the picture in this case was that the captain missed the forest for the trees. He didn’t follow up the voluminous working file by counseling Poole and formally documenting repeated or serious conduct. In this instance, the content of his “working file” shouldn’t have been such a secret.

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