



# **HR** Specialist Summit

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## **Leadership Defense: Verbal & Documented Disciplinary Interventions**

**Paul Falcone**



**HR** Specialist Summit



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Paul is the former CHRO of Nickelodeon Animation Studios and head of international human resources for Paramount Pictures. He has also worked in healthcare/biotech and financial services across union, nonprofit, and international environments.

Paul is a long-term columnist for SHRM, an instructor in the UCLA Extension School of Business and Management, and he sits on the board of directors of the American Management Association.



# Today's Agenda

1. Verbal Disciplinary Feedback / Constructive Confrontation
2. Documented Disciplinary Warnings / Documentation Strategies
3. Termination

# Rules of Engagement

- The path of least resistance is avoidance.
- It's not what you say but how you say it that counts.
- It's all about the **RECORD** you're creating in your conversations and documentation.
- Perception is reality until proven otherwise.
- Hold people accountable for their own “perception management.”

# Before (in Public)

- Are you serious? Is this really what you were planning on putting in front of the client?
- What were you thinking?
- Did you even go to college?
- I'm serious. How ineffective can anyone be?



# After (in Private)

- Let's discuss something one-on-one that may be missing awareness.
- You know, they say the most important decisions about your career will be made when you're not in the room. There may be something that's missing awareness that could potentially hold you back without your even realizing it. And I think I can help with that. Do I have your permission to share?
- Allow me to coach you through this and have your back. But even if you don't see me as a coach, my expectations will remain the same. From this point forward, I expect you to. . .

# Before

August 2024	Documented Verbal Warning
October 2024	Written Warning
December 2024	Final Written Warning
February 2025	Annual Performance Review: "Meets Expectations"
March 2025	Request to Terminate



# After

August 2024	Documented Verbal Warning
October 2024	Written Warning
December 2024	Final Written Warning
February 2025	Annual Performance Review: "Fails to Meet Expectations"
March 2025	Request to Terminate





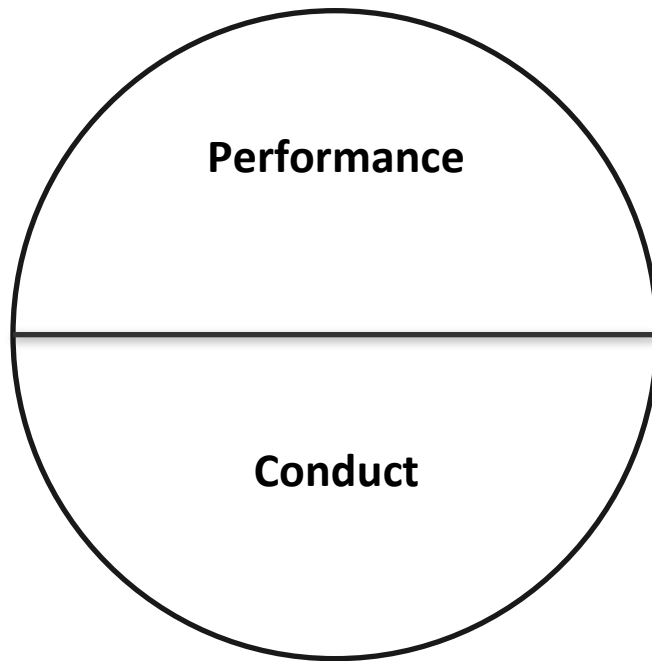
# Millennials and Gen Z Want:

1. **Career and professional development**
2. An ethical employer where managers care about them personally
3. Work-life-family balance/control/equilibrium
4. Corporate social responsibility, environmentalism, and sustainability
5. Diversity of thoughts, ideas, and voices

# 1. Verbal Disciplinary Feedback

- The formal first step in many organizations' progressive disciplinary programs is a “**documented verbal**” warning (AKA “first written warning”).
- Language: “Failure to demonstrate immediate and sustained improvement may result in further disciplinary action, up to and including termination of employment.”

# The Performance-Conduct Circle



# Example: Leering

- “Bill, there’s a difference between *perception* and *reality*: Reality is what you know to be true or what you do purposely; perception is what others see, regardless of your intentions.
- “As they say, perception is reality until proven otherwise, and perception is in the eyes of the beholder. So even if you don’t realize it, you may be creating a perception that’s offending others.”

# Leering (cont.)

- “From this point forward, I want you to think of it this way: ***You’ll need to hold yourself accountable for your own perception management.***
- In other words, you have to become sensitive to how you’re coming across to others. When you speak with someone else, especially a woman, make sure you look at them eye-to-eye, even if they’re much taller than you.”

# Leering (cont.)

- “Likewise, don’t stare at anyone’s chests under any circumstances—men or women—so that no one could accuse you of inappropriate behavior. Does that make sense?”
- “Finally, Bill, like I said, I have no reason to doubt your sincerity. However, I also have to take other peoples’ complaints seriously. As a result, **I need a commitment from you right now** that you’ll be very conscious of the perception you’re creating at all times and, more importantly, that **after today we’ll never have to have a conversation like this again**. Agreed?”
- “I’m counting this as a formal Verbal (First) Warning, Bill. I’ll have something to you in writing by day’s end. Let me know however I can help in the future to avoid any misunderstandings or misperceptions.”

## 2. Documented Disciplinary Warnings

- Core goal = turn around flagging performance or inappropriate workplace conduct
- Core defense mechanism to fend off wrongful termination legal challenges (which typically lead to discrimination and harassment claims)
- Trial Standard: “termination for just cause only”

# What is Progressive Discipline?

- A series of one or more formal (documented) notices that an employee's performance, attendance, and/or conduct does not meet company standards.
- A progressive system of notification where each step contains some added element to impress upon the employee the growing sense of urgency and severity of the situation.



# Critical Issues to Consider

- Summary Dismissals
- Employment at will vs. “employment with termination for just cause only”
- Probationary periods: a false sense of security for many employers

# Number of Steps

- Follow the verbal > written > final written warning paradigm unless starting with anything less than a final written warning could make you, as an employer, appear irresponsible.
- Accord more due to process to longer-term workers (via decision-making leaves and letters of clarification).

# Overall Structure & Flow

- Incident Description (Who-What-Where-When-Why-How)
- Performance Improvement Plan (PIP)—Company expectations and attempts to help support/train the individual
- Outcomes & Consequences (It's critical to get this right!)
- Employee Acknowledgment / Rebuttal

Read Chapter 5 of 101 *Sample Write-Ups* for tricky Q&As here:  
<https://www.paulfalconehr.com/books>



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# Incident Descriptions

- Don't state: “You appeared at the customer’s home under the influence of alcohol.”
- Do state: “The customer reported that he heard you slurring your words and saw that your eyes were glassy. He stated that he smelled alcohol on your breath. I witnessed those same things when I arrived.”

# Incident Descriptions (cont.)

## **Describe the Negative Organizational Consequences:**

“I found inconsistencies throughout your calculations and had to correct them myself before they could be processed. As a result, . . .

- I had to work until 10:00 PM last night.
- We'll have to hire a temp.
- We'll need to push back the go-live date.”

# Incident Descriptions (cont.)

Whenever possible, include the employee's response in the warning to document that you listened to the individual's side of the story before taking disciplinary action.

*“When I asked you how this occurred, you stated. . .”*

# Performance Improvement Plan

State your expectations clearly:

- “I expect you to complete your recruitment statistics by the fifth of the month and tell me in advance if you will be unable to collect the data from HRIS to meet this goal.”

# PIP (cont.)

- “I will meet with you in your office every Monday ***for the next three weeks*** to review. . .”
- “In an effort to sensitize you about how your behavior might impact others, you will be scheduled to attend a one-day workshop on dealing with interpersonal conflict in the workplace.”



# PIP (cont.)

- “Please find an Excel reference book on spreadsheet basics and familiarize yourself with the essential functions you’ll need on a daily basis.”
- “I suggest you take a time management course at a local college.”
- “A copy of our attendance policy is attached. Please read it immediately and see me with any questions.”

# Outcomes & Consequences

Catch-All: “**Failure to demonstrate immediate and sustained improvement may result in further disciplinary action, up to and including dismissal of employment.**”

# Consequences (cont.)

- “If you ***ever again*** engage in conduct with a supervisor, coworker, or customer that could be considered hostile or offensive, you **may/will** be immediately dismissed.”
- Last-Change Agreement Language: “This is your last chance. Your position is now in immediate jeopardy of being lost” (for Final Written Warnings only!)

# 5. Termination

- Early in the day, early in the week
- Empathy: “I’m sorry it’s come to this. I want to thank you for your efforts and appreciate all you’ve done for us. And I’m here to help you with your resume, unemployment claim, COBRA, or anything else that you might need. I’ll always prioritize your call.”

# Avoid These Two Mistakes!

- **Avoid documenting “state of mind” offenses:**  
Do not use words such as “willfully, maliciously, purposely, deliberately, or intentionally” (mental qualifiers).
- **Do not “codify the damage.”**  
Remember, these documents are all discoverable (e.g., “Sexual Harassment” is considered a *legal conclusion*).



# Thank you!

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