

# **DUE DILIGENCE, DOCUMENTATION & PROGRESSIVE DISCIPLINE**

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**“IF IT WASN’T DOCUMENTED, IT DIDN’T HAPPEN”.**



# DUE DILIGENCE



# DUE DILIGENCE

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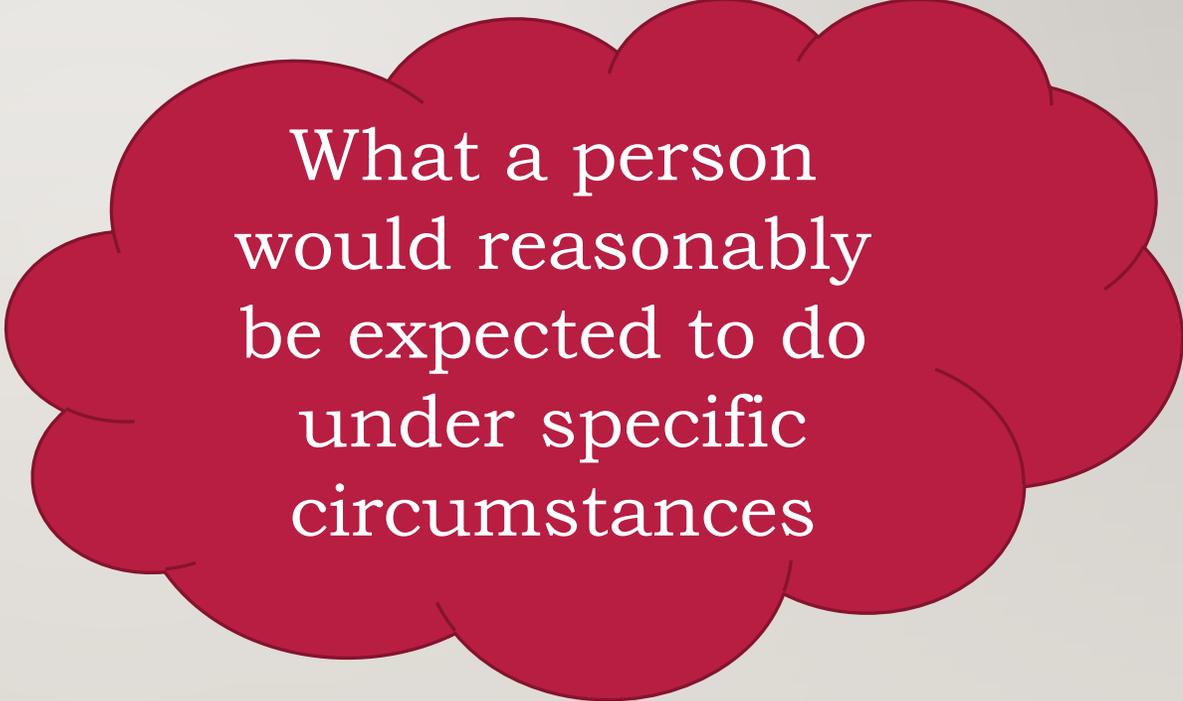
**"Due diligence"** is important as a legal defense for a person charged under occupational health and safety legislation. If charged, a defendant may be found not guilty if he or she can prove that due diligence was exercised.

# DUE DILIGENCE

**Due diligence is the level of:**

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- Judgement
- Care
- Prudence
- Determination
- Activity



What a person  
would reasonably  
be expected to do  
under specific  
circumstances

# DUE DILIGENCE

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- Applied to occupational health and safety, due diligence means that employers shall take all reasonable precautions, under the particular circumstances, to prevent injuries or incidents in the workplace.
- This duty also applies to situations that are not addressed elsewhere in the occupational health and safety legislation.
- Reasonable precautions are also referred to as reasonable care. It refers to the care, caution, or action a reasonable person is expected to take under similar circumstances.

## **“REASONABLY PRACTICABLE”**

- Reasonably practicable has been described as taking precautions that are not only possible, but that are also suitable or rational, given the particular situation.
- Determining what should be done is usually done on a case by case basis.

# **DUE DILIGENCE**

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- In other words, the defendant must be able to prove that all precautions, reasonable under the circumstances, were taken to protect the health and safety of workers.
- Due diligence is demonstrated by your actions before an event occurs, not after.

# COACHING AND PROGRESSIVE DISCIPLINE

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Under **NO circumstances**, can any supervisor take action to discipline or dismiss a Jeffery's Team member from their seasonal termed contract without authorization from Human Resources (Allison OR Gina).

**No Termination  
without  
Communication**



# DOCUMENTATION

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- You **MUST** document all significant conversations with your team members. This includes; coaching sessions, informal conversations and progressive discipline. Anything that might come up later in any manner.

# DOCUMENTATION

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Good practice is at the end of each day just take 15 minutes to document what occurred. This becomes your due diligence.



# WHAT DOCUMENTS WOULD BE ASKED FOR IN TERMINATION REVIEW?

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- That you were able to demonstrate;
  - Pattern of behaviour (both positive and negative)
  - Timeline of intervention
  - Evidence that you have made the team member aware of unacceptable behaviour or situations
  - Provides record of what behavioral changes the supervisor has requested and how long the team member had to make those changes.

## WHAT DOCUMENTS WOULD MOL ASK FOR AFTER A CRITICAL INJURY?

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- Preventative maintenance records for equipment
- Training Records of the injured worker (competency)
- Pre-Use Inspection Records (3 to 6 months worth at minimum)
- Write Ups - when was the last time you wrote someone up for safety?

# DOCUMENTATION –WHY?

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## **Why You Should Document Employee Performance**

- Documentation provides evidence that performance issues were discussed with the employee in a timely and concise fashion.
- Documentation offers a history of the employee's improvement or failure to improve performance over time. It is chronological and a precise description of the employee's actions, the manager's actions, and events as they occur.

## **DOCUMENTATION –WHY?**

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- Documentation provides evidence that supports management decisions to take unfavorable action such as discipline or termination with an employee or favourable actions such as promotions/pay increases.

# DOCUMENTATION –WHY?

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- In the event of a lawsuit, complete and thorough documentation protects an employer's interests as well as the supervisors.
- The documentation can support management's actions in terminating an unsuccessful employee.
- It also can prove that the employee was terminated for reasons that are legal as opposed to others such as illegal discrimination.

# DOCUMENTATION

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## **Properly documenting issues and retaining records.**

- Make records at the time of, or shortly following, an incident. Don't wait weeks or months to create your documentation.
- Focus on the facts, not generalizations or subjective comments.

# DOCUMENTATION

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- State performance expectations clearly.
- Avoid potentially discriminatory statements.
- Don't exaggerate or embellish.
- Site specific company policies, as applicable.
- Set specific deadlines for follow-up.

A PICTURE IS WORTH A  
THOUSAND WORDS, OR IS IT?  
PHOTOS WITHOUT WORDS MAY  
BE (ALMOST) MEANINGLESS



Therefore, think before you write!

# HOW TO DOCUMENT

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- Documentation should be written during or immediately following the meeting or conversation with the employee.
- One of the worst mistakes many supervisors make is to believe that they can reconstruct an employee counseling history as needed.

# HOW TO DOCUMENT

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- You need your documentation to appear professional, neat, and organized. Write documentation as if you are talking about the history to a third party.

# PREPARING EFFECTIVE DOCUMENTATION

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**Clearly state what you know—”FOF”**

(Focus on the Facts)

- ✓ Who was involved (witnesses)?
- ✓ What happened?
- ✓ Where did it happen?
- ✓ When did it happen?



# HOW TO DOCUMENT

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- Write documentation that is factual, fair, legal, objective, complete, and consistent.
- Avoid opinions.
- Avoid also trying to interpret the employee's behavior.



# PREPARING EFFECTIVE DOCUMENTATION

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Don't draw sweeping conclusions

- "I've had enough of her drama!"

- "His bad attitude has a negative effect on everyone".

- Instead, explain the facts to support those conclusions.

- "She slammed the door to my office as she left"

- "Two office assistants have expressed concern about working with him".

# PREPARING EFFECTIVE DOCUMENTATION

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- Identify the problem
  - Violation of Rule or Policy
  - Performance Standard not being met
- Identify how the employee can resolve the problem.
- Identify actions that you have and will take if the problem is not resolved.
- Reiterate performance expectations
- Date it, sign it and follow up.

# HOW TO DOCUMENT

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- In documentation, what is needed is an accurate record of the conversation. Stick with the facts and write down just what you said and what the employee said.
- Finally, document any agreements, commitments, timelines, improvements needed, check-in points, and other details that might slip from memory.

# THE SECRET DIARY

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If its important enough to discuss,  
its important enough to write down.



# **KEY AREAS NEEDING DOCUMENTATION**

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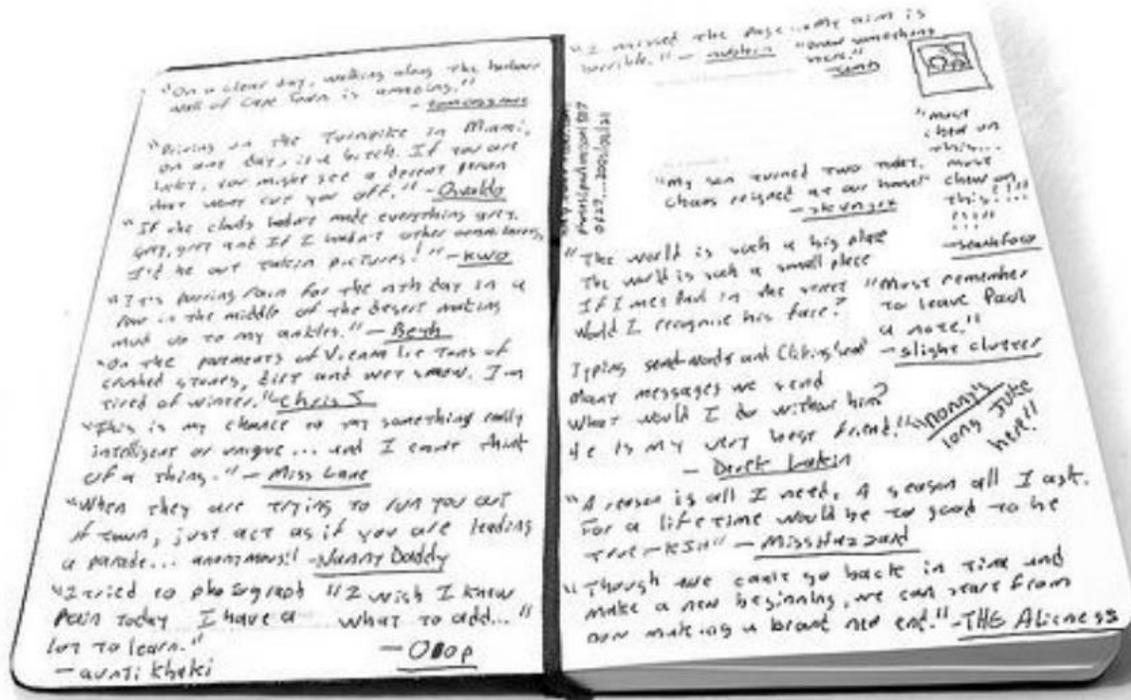
- Violation of Safety Rules
- Attendance Issues
- Harassment and Discrimination
- All verbal agreements made with employee.

## **WHERE TO DOCUMENT & STORE**

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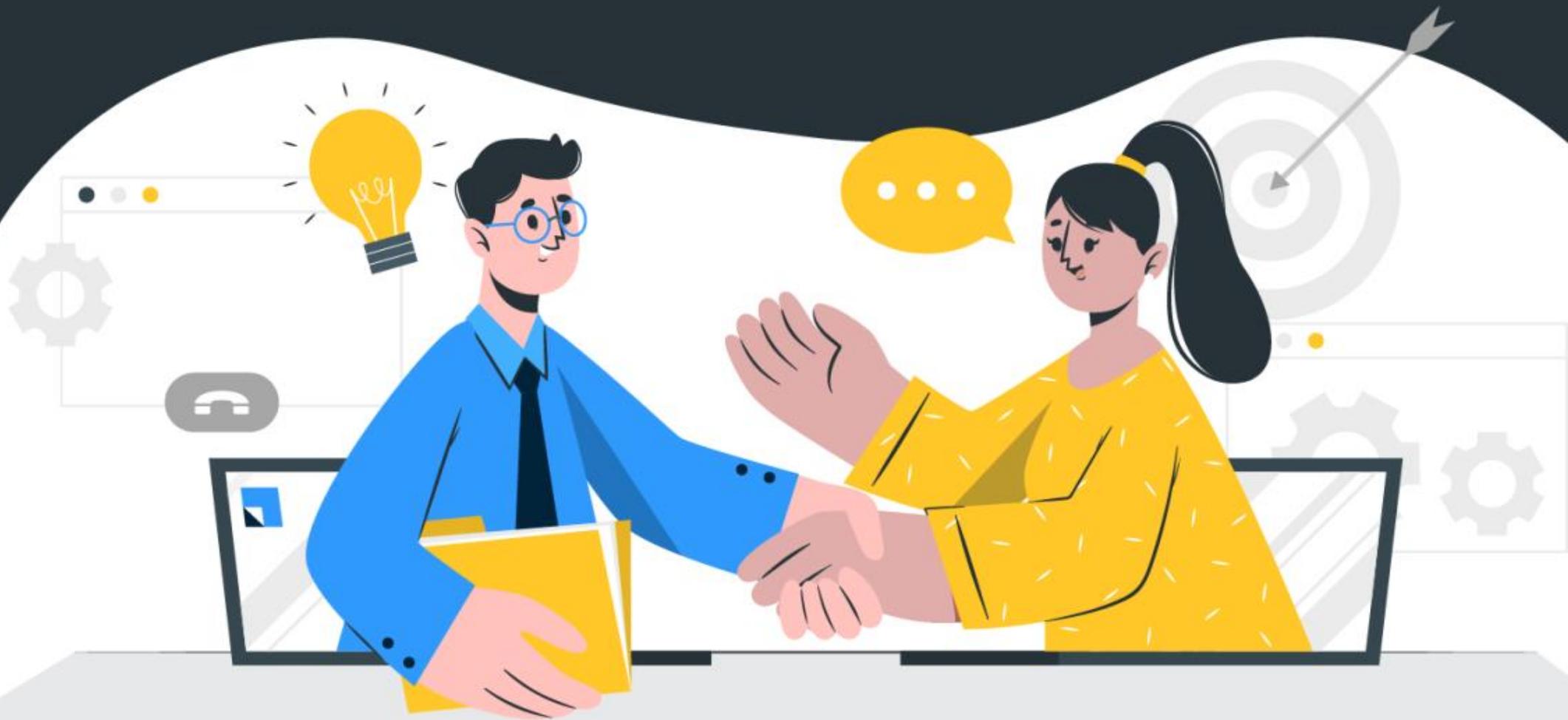
- Since documentation about employees is confidential and private to the employee, you need to take care that any documentation remains confidential to the supervisor and HR,
- All formal documentation discussed with an employee is stored by HR in locked files and on a secure computer server.
- A supervisor's handwritten documentation is best kept in a locked drawer, or secure area or hand it into HR to archive at end of the season.

don't forget to *document*



**KEEP  
CALM  
AND  
DOCUMENT  
EVERYTHING!**

# *The Art of Following Up*



# Follow Up

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- The ultimate goal is to correct the unacceptable behaviour or situation and improve the team member's performance.
- It is recommended and best practice to work closely with the team member to ensure positive outcome.
- Its usually not a one and done conversation.

# FOLLOW UP

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- Coaching/Progressive Discipline is a process, not a single meeting or document.
- It requires staying involved until the situation is resolved and/or the behaviour has been corrected.



# COACHING

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- Coaching focuses on building upon the member's strengths, helping them improve their performance, and develop problem solving skills.
- The supervisor's role is to provide an environment that supports learning, development and continual improvement.



# COACHING

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## **Objectives accomplished through coaching;**

1. Improvement on individual & overall performance
2. Use coaching to validate, support, and empower your employees, improving employee engagement and commitment levels.
3. Encourages communication, reflection, and self-correction

# PROGRESSIVE DISCIPLINE OVERVIEW

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- Officially puts employee “On Notice.”
- Imposes increasingly severe sanctions for repeated infractions.
- Is always used except for very serious incidences of misconduct.
- Timing in implementing further steps in progressive discipline for repeated infractions depends on the nature of the individual performance problem.

# PROGRESSIVE DISCIPLINE

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- Gather Information
- Determine the Correct Response (Review with HR)
- Assess the Severity
- Prepare to Talk to the Member
- Meet with the Member
- Documentation

## **Follow Up**

- “The Consequence Must Match The Behavior”

# PROGRESSIVE DISCIPLINE

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1. Informal Discipline (Document)
2. Formal Discipline 1<sup>st</sup> Oral Warning (Form)
3. Formal Discipline 2<sup>nd</sup> Written Warning (Form)
4. Formal Discipline-2<sup>nd</sup> Written Warning (Form and sometimes letter), Suspension or Dismissal

**Note:** Some actions such as theft, insubordination, fighting MAY be eligible for immediate dismissal but due diligence and consultation with HR is still required.

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graph LR; A[Verbal Warning] --> B[Written Warning]; B --> C[Suspension]; C --> D[Termination]
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Verbal  
Warning

Written  
Warning

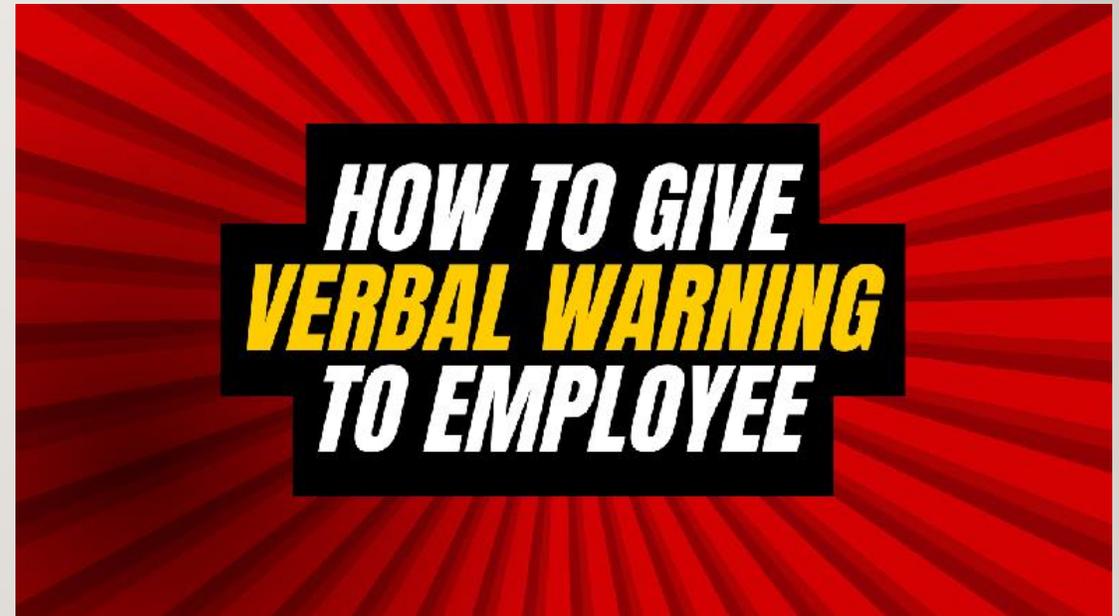
Suspension

Termination

# VERBAL WARNING

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- Verbal warnings must **STILL** be documented. If it is not properly documented then it simply didn't happen.
- Use the written warning form and just document that it's a verbal warning with what was said and follow up steps **OR**
- Summarize your conversation to the employee in an email and copy HR. Allow them opportunity to refute any statements or add their own.



# WRITTEN WARNING

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- A written communication to the employee.
- Generally written by the employee's immediate supervisor (in consultation with HR)
- Is given to the employee personally by the supervisor (or manager).
- Is issued to employee as the first formal corrective action when informal coaching and counseling (documented) has not been successful.

# JUST CAUSE TERMINATIONS

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“guilty of serious misconduct, habitual neglect of duty, incompetence, or conduct incompatible with his duties, or prejudicial to the employer’s business, or if he has been guilty of wilful disobedience to the employer’s orders in a matter of substance.”

Ontario Court of Appeal

# SEVEN ELEMENTS OF “JUST CAUSE”

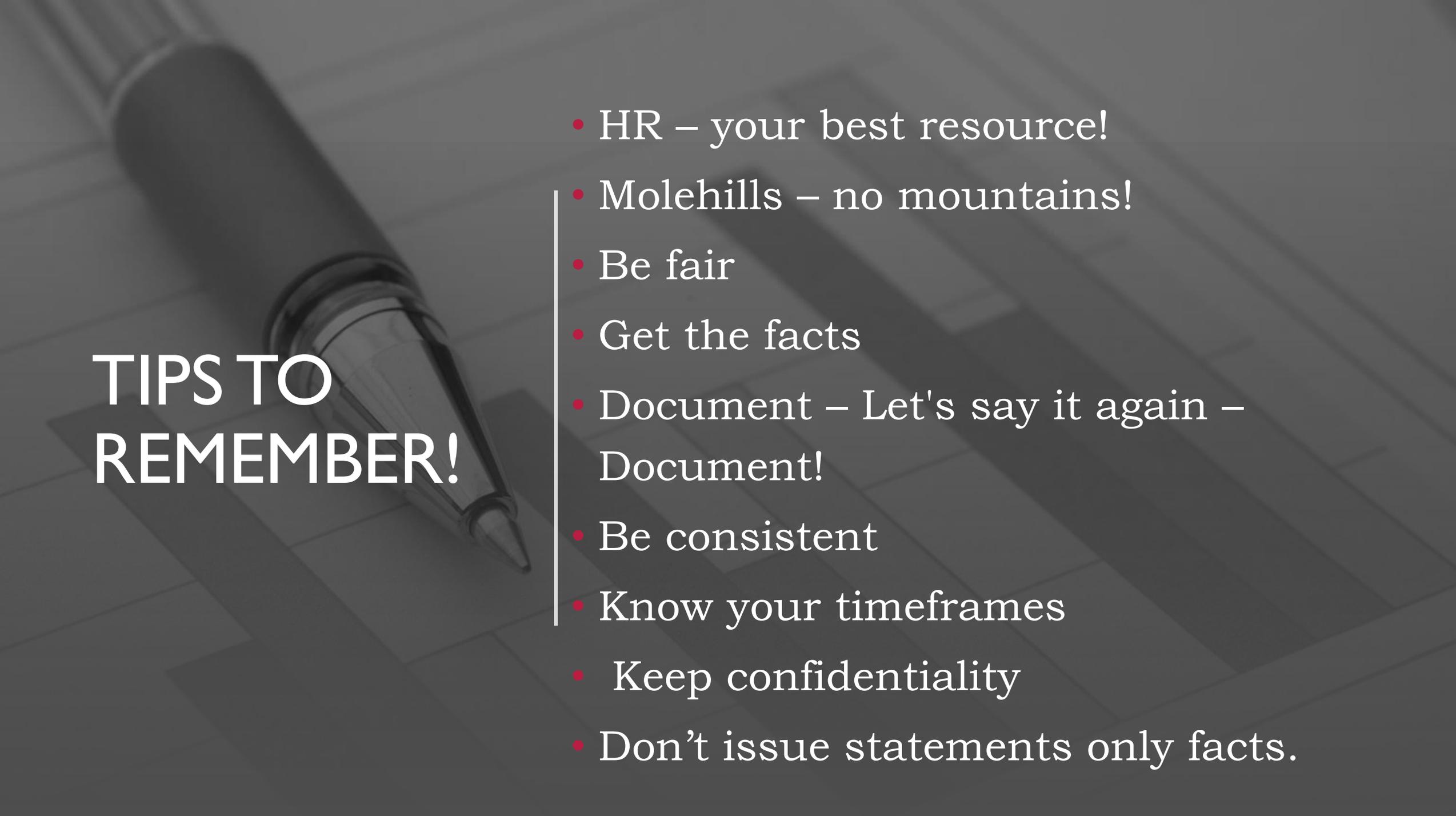
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1. “Reasonable Rule or Work Order. Is the rule or order reasonably related to the orderly, efficient, and safe operation of the business?”
2. Notice. Did the employee receive adequate notice of the work rule or performance standard and the possible consequences of failure to comply?
3. Sufficient Investigation. Did you conduct an investigation before making a decision about taking disciplinary action?

# SEVEN ELEMENTS OF “JUST CAUSE”

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4. Fair Investigation. Was your investigation fair and objective?
5. Proof. During your investigation, did you find proof of misconduct or of a performance discrepancy?
6. Equal Treatment. Have you dealt with your employees equally, without discrimination?
7. Appropriate Discipline. How do you decide what's appropriate?"



# TIPS TO REMEMBER!

- HR – your best resource!
- Molehills – no mountains!
- Be fair
- Get the facts
- Document – Let's say it again – Document!
- Be consistent
- Know your timeframes
- Keep confidentiality
- Don't issue statements only facts.

# Thank You

Remember: When done properly, documentation and progressive discipline procedures are your tools that allow you to do your job right the first time.

