

THE LEGAL RECORD®

Investigating and Documenting



module overviews

INTRODUCTION

Purpose:

This overview module establishes the rationale for the class through highlights of current business reasons, a review of the Prescriptive Rules®, introduction of a model for finding facts, and an introduction of the case simulation.

Topics:

- Program objectives
- The Prescriptive Rules®
- Litigation trends
- Case introduction
- LPDWO Model

Learning Points:

- The Prescriptive Rules® continue to apply in the day-to-day management of the workplace.
- The LPDWO Model can be used to investigate, gather facts, and document workplace events.
- Understanding employee issues saves time and reduces frustration.
- Knowing the information juries look for helps an organization uncover relevant facts about an event and better prepares them for legal action if it occurs.
- An organization that goes to trial without sufficient evidence is more likely to lose in a jury trial than a plaintiff without sufficient evidence.
- Juries are unpredictable.

WHY DOCUMENTATION IS IMPORTANT

Purpose:

This module presents a case study designed to establish the importance of documentation in managing legally and objectively, and being able to prove it.

Topics:

- Using existing documentation
- Review of courtroom exhibits
- Summary of evidence

Learning Points:

- Prior to creating new documentation, consider what already exists.
- Consider what you put in writing during the ordinary course of business.
- When interviewing witnesses to an event, always ask if they possess any relevant documentation. Their credibility alone is not enough, and their documentation may be just as powerful when discovering what occurred.

PURPOSE OF DOCUMENTATION

Purpose:

This module demonstrates how records can be used, how they should be prepared, their purpose, and their impact.

Topics:

- Direct observation exercise
- Establishing witness credibility
- Recollection of an event
- Testimony of an absent witness
- Record statement in meetings

Learning Points:

- Because it is hard to remember the exact details of an event one has witnessed, prepare documentation as soon after the event occurred as possible. This ensures accuracy and saves time in the long run.
- Third-party statements need to be factual and prepared in the ordinary course of business; they are often used to replace live sworn testimony.

ELI® Does your learning make a difference?®

Copyright © December 2008
Employment Learning Innovations, Inc.
All Rights Reserved • Atlanta, Georgia

www.eliinc.com

CREATING NEW DOCUMENTATION

Purpose:

This module shows why following certain rules helps ensure that records are accurate, fair, and useful. Knowing the purpose of records allows someone to use them to explain what occurred.

Topics:

- Facts versus speculation
- Writing facts
- What to include in documentation
- Obtaining signatures
- Summary of documentation

Learning Points:

- Facts are circumstances, events, or occurrences that have actually taken place and can (usually) be verified through some type of evidence.
- Subjectivity should not be included in any form in one's documentation.
- Documentation should be supported with statements of facts, not conclusions.
- Follow your organization's policy regarding obtaining signatures on documents related to disciplinary action.

GATHERING FACTS AND/OR CONDUCTING AN INVESTIGATION

Purpose:

This introduction to the Investigation part of the course shows how to deal fairly and evenly with matters uncovered during the inquiry.

Topics:

- Internal investigator's duties
- How to begin an investigation
- Determining whether a fact is relevant
- Creating an investigative strategy

Learning Points:

- A shoddy, bad-faith, or incomplete investigation may be worse than no investigation at all because it can lead to, or dramatically increase, liability or penalties.
- After reviewing a complaint, develop goals of what you want to accomplish for the investigation.
- Create an investigative strategy to ensure that your investigation is thorough, timely, and complete; ensure that all parts of the LPDWO Model are answered.

INTERVIEWING WITNESSES AND OBTAINING STATEMENTS

Purpose:

This module includes exercises that teach participants how to find out what people saw and remembered and record their recollections.

Topics:

- Conducting an interview
- Creating a discussion guide
- Investigation strategy
- Using a witness interview form
- Finalizing an investigation

Learning Points:

- Preparing for the interview, building rapport, and summarizing the key points of the interview are critical to maximizing its success.
- When asking questions during an interview, use simple, direct open-ended questions; avoid asking leading or hypothetical questions, and use close-ended questions sparingly.
- Avoid stopping the interview prematurely or interrupting a witness. Remember that periodic silence during the interview is productive.
- When making credibility assessments of your witness, pay attention to both verbal and nonverbal information.
- Ask questions to uncover the critical elements (who, what, when, where, why, and how).

FROM THEORY TO PRACTICE

Purpose:

The final part of the case provides participants with the opportunity to apply what they have learned.

Topics:

- Application exercise

Learning Points:

N/A