

Challenging a Performance Evaluation

PERFORMANCE evaluations should be objective and consistent. Ideally, evaluations should boost morale and, when needed, encourage the employer to offer needed training. However, too often, evaluations are biased and used as a means to demoralize employees. Indeed, some supervisors use performance evaluations as a precursor to more formalized discipline. That is why it is critical that members know their rights.

A member's rights, with regards to performance evaluations and personnel folders are provided in Article X, Evaluations and Personnel Folders, of the Citywide Agreement. Article X provides that an employee is required to accept an evaluation of the employee's work performance ("performance evaluation" or "evaluation") if the evaluation is to be placed in the employee's permanent personnel folder. Prior to being given a copy of a performance evaluation, the employee is required to sign a form which only indicates that they have received a copy of the evaluation. The employee's signature

does not mean that the employee necessarily agrees with the contents of the evaluation. Therefore, members can sign an evaluation when presented a copy without fear that their signature indicates acceptance of the evaluation's content. In the event an employee is not provided a copy of a performance evaluation, the employer is prohibited from using that evaluation in a subsequent disciplinary action.

Critically, an employee has the right to submit an answer, meaning a response, to any evaluation. The employer is required to attach the employee's response to the evaluation itself. It is therefore critical that members provide a detailed substantive rebuttal to any and all claims alleged in a negative evaluation. A detailed and contemporaneous response makes it easier to argue that the evaluation itself is flawed.

An employee is permitted to view her personnel folder once a year and or when an adverse personnel action, such as disciplinary charges, are initiated by the employer. The viewing of

said personnel folder shall be in the presence of a designee of the employer. Members are encouraged to avail themselves of this right and should periodically review their personnel files to both be aware of its contents and, potentially, take action to remove documents improperly submitted.

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