NEW YORK STATE OF OPPORTUNITY.

Office of Employee Relations



Supervisor's Guide to Counseling

SUPERVISOR'S GUIDE

Fourth Edition, 2022

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PURPOSE

This guide will provide instruction to state supervisors in proper counseling techniques. Specifically, it provides an overview of the counseling process, guidelines pertaining to both the counseling session and the counseling memo, and a summary of contractual provisions governing the counseling process.

It is not intended to be applicable to every situation, nor does it supersede the terms of the collective bargaining agreements or otherwise established policies or practices of state departments or agencies. Accordingly, each agency is encouraged to continue providing training and guidance in specific agency policy or procedures with respect to counseling.

In addition, supervisors are encouraged to discuss specific questions, problems, or unusual circumstances with appropriate level supervisors or their personnel or employee relations office.

Introduction

In the workplace, counseling is a discussion between a supervisor and an employee about an employee's performance. The discussion may focus on a specific incident, a particular aspect of an employee's performance which the supervisor has identified as in need of improvement, or in some instances, the employee's overall performance or behavior. The goals of the discussion are:

- to communicate the supervisor's concerns to the employee
- to determine the cause of the employee's actions
- to identify avenues for improvement and/or development
- to improve the employee's performance.

Counseling is a positive and constructive supervisory tool. Because it involves face-to-face communication between the supervisor and the employee, it is the most direct and the most efficient means available to a supervisor to have a positive impact on the performance of an employee.

Unfortunately, the terms “counseling” and “counseling memo” have become sensitive terms which stimulate strong reactions in both supervisors and employees. One reason for this is that counseling is often mistaken for discipline.

Counseling is not discipline. The primary difference between counseling and discipline is that counseling attempts to correct performance issues through the use of face-to-face communication and problem solving, while discipline attempts to do so through the imposition of a penalty. For most types of performance short comings, a supervisor should attempt to first deal with the issues through counseling. Disciplinary actions should be considered only when counseling fails.

Certainly, there are circumstances which require immediate disciplinary action. These include, but are not limited to, illegal, unethical, dishonest or highly inappropriate activities such as patient abuse, verbal or physical assault, accepting a bribe, insubordination, or theft or destruction of state-owned property. Supervisors confronted with such serious violations should immediately consult with their personnel and employee relations office.

The Counseling Session

Supervisors often avoid conducting counseling sessions with employees because the supervisors anticipate, sometimes correctly, that the session will be unpleasant. Most individuals simply do not enjoy confronting other individuals with judgments about performance. As is true of most people, supervisors have a need to be liked by members of the social groups with which they are associated. Counseling can disrupt the personal relationships within such groups. The supervisor often anticipates that this will occur, imagining that the subordinate will react to the session with hostility, or withdraw during the interview into a shell and thereafter ignore the supervisor's presence except when given direct orders. Such reactions by subordinates are not uncommon, causing the supervisor to avoid the discussion altogether.

Avoiding the discussion, however, will only result in the problem and the potential confrontation becoming worse. Counseling is an indispensable aspect of a supervisor's job which, if accomplished effectively, and early at onset of performance problems can resolve problems in a positive manner and ultimately help to strengthen the relationship between the supervisor and the subordinate.

It would be dishonest to assure any supervisor that there are techniques which will avoid the unpleasant aspects of counseling in every case. Like any aspect of supervision, counseling involves authority over and responsibility for the actions of other employees. It is precisely this authority over others' behavior that produces the potential conflict; however, such conflict can be *minimized.*

Supervisors considering counseling who are uncertain how to proceed or who face what they believe might be a difficult or sensitive issue should not hesitate to seek advice and assistance from their supervisor or personnel or employee relations office. Understanding how to conduct a counseling session will help supervisors feel confident and calm during that meeting and better prepared to handle conflicts or questions that may arise. There are numerous supervisory training courses available which can provide useful skills and tips for communicating with employees.

When to Conduct a Counseling Session

There is no hard and fast rule as to when counseling is appropriate. As a general rule, counseling is appropriate when the established standards for performance and conduct are not being met. However, the supervisor must exercise judgment and discretion when determining whether, and at what point, to counsel.

Certain types of behavior might be a problem after one incident, while others might not become a problem until a pattern develops. For example, an employee who has had excellent attendance for several years may not require counseling due to one day's tardiness. In fact, in such situations, premature attempts at counseling may create a defensive attitude on the part of the employee and negatively impact the employee's job performance. In other circumstances, however, the severity of a situation might warrant counseling following one incident, regardless of the employee's work history.

Determining whether counseling is appropriate in a particular situation requires that the supervisor carefully review the facts. Factors which the supervisor should consider in making such determinations include the severity of the incident or behavior and the impact it has on the workplace, the employee's work history, and, if available, the circumstances surrounding the incident or behavior. If, after a review and analysis of the available information, the supervisor continues to be concerned or have questions about the employee's conduct, behavior, or poor work performance, counseling is both necessary and appropriate. Supervisors are encouraged to consult with their supervisor or personnel or employee relations offices for guidance.

Once the supervisor has determined that counseling is appropriate, it should be conducted promptly. This is important for several reasons. First, it is best to discuss an incident when it is still fresh in the mind of both the supervisor and the employee. If the discussion is delayed, specific details of the incident may fade from memory and result in the discussion focusing only on what happened, rather than on why it happened and what corrective measures will be taken. Second, failure to act promptly may give tacit approval to the employee's behavior, thereby, encouraging the behavior to continue. Finally, an employee is more likely to question the importance of the matter if the counseling session is conducted long after the incident. In addition to minimizing the effectiveness of the counseling, this may cause the employee to be suspicious of the supervisor's motive in conducting the counseling and increase the potential for conflict.

How to Conduct a Counseling Session

When conducting a counseling session, there are several guidelines you should follow in order to minimize the potential conflict. Most importantly you should not view the session as an opportunity to scold the employee or as a means to threaten the employee with disciplinary action. Your purpose is not to punish or reprimand someone, but to determine the cause of the circumstances about which you are concerned. In this light, you should view counseling as a problem-solving exercise. For example: If the employee has been tardy, what prevents the employee from arriving at work on time? How can the employee remedy the problem? In this respect, it is the supervisor's job to set the tone of the meeting, putting the employee at ease as much as possible.

Certainly, where an employee's performance has consistently fallen below standards, it may be necessary for you to advise the employee that failure to respond to the counseling and perform adequately may result in disciplinary action.

Additionally, there are a number of other guidelines which are helpful to understand when counseling employees.

1. *Be prepared.* Spend time reviewing the facts and defining your objective for the session. You may find it useful to prepare a set of “talking points” in advance to help you be clear about the issues and point you wish to make. These talking points do not become the counseling memo.

2. *Counseling sessions should always be conducted in private.* If you have an office, perhaps that is the best place to schedule the meeting. If not, you should seek another private room away from an employee's co-workers or the people being served by the agency. Failure to provide a private surrounding is likely to create a feeling of humiliation for the employee, which may manifest itself in more, rather than fewer, violations of rules.

3. *Never schedule a counseling session with an employee when you are rushed with other duties.* It will leave the impression that your concern is minimal if you are frequently interrupted, must constantly look at your watch, or you rush the employee out after only a few minutes and before your discussion is complete.

4. When an employee enters your office, *act in a manner consistent with your normal demeanor.* If you are normally relaxed with an employee, be yourself. Otherwise, the employee will believe that the discussion implies a personal conflict. This should be avoided.

5. *Consider setting ground rules.* For example, tell the employee that you are hoping for a conversation to work out the issue. You may say something like “Please hear me out without interruptions, and then I will listen to you and your point of view without interrupting you.” If it is true, let the employee know you expect to be able to resolve the issue in a positive way.

6. *Be direct and candid.* After greeting and making the employee comfortable, go directly to the reason for the meeting. Do not make “small talk.” Avoid chatting or asking general questions like, "Anything interesting happen today?" Questions such as these simply make employees suspicious of your motives.

7. In broaching the issue(s), you should *explain the exact nature of your concern,* making clear what has been observed and why it is important. For example, you might say: "I received a report today that you were rude to two customers. Obviously, the report concerns me. I want to take this opportunity to discuss the report with you and hear from you what happened." If you already know the names of the two customers involved, you might have added that to the introductory remarks. You should present your concerns directly and openly to the employee.

8. *Where employees are cooperative, your job will be confined to determining what the employee's view of the incident is.* For example, if the employee responded to your statement, by saying, "Yes, that is true," you should follow-up by asking: "Could you give me the details from your point of view? How did this come about?"

9. *Some employees may be hostile. In those cases, you should remain calm, speaking in measured voice.* Because someone yells at you, it does not mean that you must yell back. You are the supervisor and to control the meeting you must control your emotions and reactions. Rather than reacting to the employee's hostility, you should redirect the employee's attention to your concern: “What occurred in the incident or issue being discussed?” “Why did it happen?” “How can we improve performance to ensure it does not happen again?” If the employee continues to behave in a hostile or abusive manner toward you, you should calmly advise the employee that such behavior may result in disciplinary action. If the behavior continues, you should halt the session and discuss the matter with your supervisor or the employee relations or personnel office. It should be noted that merely disagreeing with the facts as presented is not necessarily hostile behavior on the part of the employee.

10. *Focus on the behavior of the employee, not the employee's "character" or "morality."* An employee is more likely to understand that he or she has behaved incorrectly in a particular circumstance than to accept a supervisor's assertion that his or her basic character is unacceptable. For example, it is appropriate to say, “Your behavior on the ward today was rude,” but it is never appropriate to say, “You are a rude person.”

11. *Be a good listener.* Give the employee the opportunity to explain his or her version of the incident or circumstances about which you are concerned. Don’t interrupt the employee while they are talking.

12. *Keep an open mind* during the counseling session. If the discussion raises a question or reveals that your information was incorrect, or the

employee's explanation is satisfactory, say so to the employee. Even where the employee's explanation is not satisfactory, the employee is more likely to accept your judgment if you have given him or her the opportunity to explain.

13. In listening to the employee's version of the incidents, a number of possible explanations may emerge. *After hearing the employee's explanation, you must decide whether other actions may be appropriate in addition to reinforcing to the employee what the rules are.* For example, the employee may need additional training, or perhaps reassignment so a supervisor can give closer instruction. You may not wish to make those decisions at the time of the counseling, but ask to see the employee at a later date after you have considered the options with other supervisors in your unit.

14. If the employee indicates that the problem is personal, or if you have some indication that the problem is other than work related, *tell the employee about available assistance, such as the Employee Assistance Program (EAP),* which can help employees deal with personal problems.

15. *Reach an understanding* on the corrective action which will be taken and set a definite follow-up date.

16. At the conclusion of the counseling session, you should thank the employee for seeing you and extend yourself to the employee should further problems of this nature arise. *Ultimately you want the employee to know that you are available to assist in solving such problems* before they erupt into the types of incidents which prompted the counseling session.

17. *If you intend to confirm the session in writing, inform the employee that you intend to write a counseling memo and that a copy will be placed in their personnel file.*

Who Should Attend the Counseling Session

Because counseling is intended to be a discussion between a supervisor and an employee, it is generally best to confine attendance at the session to the supervisor and the employee. The presence of additional parties, whether they be additional supervisors or union representatives, may increase the perceived level of conflict and pressure one or both sides into posturing, thereby decreasing the likelihood for open and constructive dialogue. Supervisors should consult with their personnel or employee relations office for agency guidance on this topic.

Counseling is most likely to be productive when it is a private conversation with just the employee and their supervisor. Many employees will ask that they be accompanied by a union representative during a counseling session. The contracts do not provide for union representation in a counseling session, except for employees in the SSU and SSPU Bargaining Units. These employees are entitled to union representation in counseling situations where more than one supervisor is present.

Although it is not required, a supervisor may permit a union representative to be present at a counseling session. This is at the supervisor's discretion. It is not a good idea to permit union representation to become the norm rather than the exception. However, in some instances the supervisor may believe that the presence of the union representative will help to solve the problem.

An employee is entitled to representation when the employee is the "target" of a disciplinary investigation. When counseling an employee, the supervisor has determined that discipline is not appropriate; therefore, the employee is not a "target of discipline" and does not have the right to representation**. Nonetheless, if during the counseling session the employee does disclose information which would warrant disciplinary action, the supervisor must halt the session, advising the employee of the right to representation before continuing. If you are unsure what action to take, it is usually best to halt the session and seek advice.** Questions concerning this issue should be directed to your supervisor or the personnel or employee relations offices.

The Counseling Memo

In some instances, the supervisor may feel it is appropriate or necessary to formalize the counseling session with a memo. As with the counseling session, there are no definitive rules as to when it is appropriate to issue a counseling memo. Each case must be handled individually, and a determination made based on the facts and circumstances surrounding the case.

Prior to issuing a counseling memo, the supervisor should carefully consider the need for such action. For most persons - supervisor and subordinate alike - the written record may represent a higher level of conflict than the actual interview. Many employees will become defensive upon receiving one. Therefore, it is best to reserve sending memos for those situations which warrant it.

Generally, a memo is both appropriate and necessary when:

1) previous counseling has failed to result in improvement

2) you do not have confidence that the employee will correct the improper behavior without further encouragement

3) the seriousness of the situation requires documentation that the session was held

4) a multi-part plan for improvement was discussed during the session and the memo serves as written confirmation and a reminder of the plan or to document specific instructions given to the employee during the session.

If at the end of the counseling session you have determined that a counseling memo is necessary, you should tell the employee of your decision before concluding the session. Giving the employee such notice can help to blunt a hostile reaction, at least to the extent that the employee is not surprised by the written summary. If in doubt as to whether a memo is appropriate, you should confer with the personnel and/or employee relations offices either before or after the session.

When a counseling memo is sent, it should be sent as close to the counseling session as possible. Otherwise, both the supervisor and the employee are likely to forget important aspects of the discussion. Additionally, the purpose in sending the memo is to reinforce understandings reached during the counseling session, it is also widely accepted that such learning takes place more effectively when the reinforcement (i.e., the memo) is close to the initial event (i.e., counseling session).

Writing a Counseling Memo

In several ways, writing a counseling memo is not dissimilar from conducting the counseling session itself. First, a counseling memo is a summary of the counseling session which should be addressed and delivered (or sent) to the employee. Second, the memo should be similar in tone to the session. It should not be punitive. In this respect, it should not be characterized as a disciplinary notice or letter of reprimand, it is neither.

When writing a counseling memo, the following guidelines should be followed:

1. Write the memo to the employee.

2. Be concise and clear.

3. The memo is a summary of your counseling session. Include the following sections:

    a. A statement of the reason for and the date, time, and place of the meeting. Be as complete as possible in describing the problem.

    b. The employee's response to your concerns. This is important as it demonstrates to the employee that you were actually listening during the counseling session.

    c. The manner in which the employee is expected to improve performance. Also, clearly provide your expectations for future performance or behavior.

    d. Provisions for follow-up consultations, if any.

    e. If situation warrants, recommend Employee Assistance Program to employee to handle personal problem interfering with work performance or behavior.

    f. Do not include other matters in the memo which were not discussed during the session.

4. Do not characterize the memo as discipline or as a penalty.

5. The tone of the memo should be supportive and factual. Avoid labels or conclusive language. Do not write it in a punitive or derogatory manner. Avoid inflammatory language.

6. Show on the memo the names of those persons who will receive a copy of the memo. Also make sure to indicate right on the memo that a copy will be place in the personal history folder.

7. The memo should not be widely distributed. Generally, only individuals who absolutely need to know would be copied. Supervisors should consult with the personnel or employee relations office for agency policy regarding distribution.

If you need assistance in constructing the memo, do not hesitate to speak with the personnel or employee relations office. Some agencies require supervisors to consult with these individuals before the issuance of a counseling memo.

What the Contracts Say About the Counseling Memo

There are contractual provisions associated with the issuance of counseling memos.

1. All major state contracts require that counseling memos be placed in an employee's personal history folder and set forth specified periods of time after which the memos may be removed, if appropriate.

2. Some of the contracts require that the employee sign the memo to show receipt, or that it be sent to the employee's address of record, return receipt requested. Even where this is not required, the supervisor should request that the employee sign the memo to acknowledge receipt (not necessarily agreement); if the employee refuses to sign, it should be noted on the memo.

3. Finally, employees have the right to respond to the memo in writing. If the employee chooses to file a response, such response must be placed in the personal history folder with the original memo.

Supervisors should contact their personnel or employee relations office when specific questions of this nature arise.

Bargaining Unit Abbreviations

ASU: Administrative Services Unit, composed primarily of office support staff and administrative personnel.

ISU: Institutional Services Unit, composed mostly of employees responsible for providing therapeutic and custodial care in the state's institutions.

OSU: Operational Services Unit, composed of craft workers, maintenance and repair personnel, and machine operators.

DMNA: Division of Military & Naval Affairs Unit, composed of employees of the Division of Military & Naval Affairs.

M/C: Managerial/Confidential employees, those who formulate policy, assist the State in preparing for collective bargaining or have a major role in administering contracts or in personnel administration requiring the exercise of independent judgment, or act in a confidential capacity to a managerial employee working in a personnel or labor relations position.

PS&T: Professional, Scientific and Technical Services Unit, composed primarily of professional personnel, often with professional experience or a college degree prerequisite.

RRSU: Rent Regulation Services Unit, composed of employees of the Division of Housing and Community Renewal with responsibility for rent-controlled or rent-stabilized housing in New York City.

SSU: Security Services Unit, composed of security personnel such as correction officers and institution safety officers.

SSPU: Security Supervisors Unit, composed of security supervisors mostly corrections lieutenants.

ALES: Agency Law Enforcement Services Unit, composed of police officers working for the State University of New York, the Department of Environmental Conservation, and the Office of Parks, Recreation and Historical Preservation.

PSNU: Professional Services Negotiating Unit, composed of academic and professional employees of the State University of New York.

Summary of Contractual Provisions and Employee Rights

1. Counseling Session

A. Union Representation

SSU, SSPU and ALES: If a counseling situation warrants that more than one supervisor be present, the employee is entitled to union representation.

2. Counseling Memo

A. Personal History Folder

All Units & M/C: Copies of counseling memos must be placed in an employee's personal history folder.

B. Employee Receipt/Signature

ISU: An employee may be given the opportunity to acknowledge receipt of a counseling memo by signing it prior to its placement in the employee's personal history folder. Where such signature is not obtained, the memorandum must be mailed to the employee by certified mail.

OSU: Where practicable, the employee must be provided the opportunity to read a counseling memo before placement in the personal history folder. The employee must acknowledge that he or she has read the memo by signing it. Where prior reading and signature is not practicable, two copies of the memo shall be sent to the employee by certified mail, return receipt requested. The employee shall acknowledge receipt by signing one copy and returning it to the employer for filing.

SSU, SSPU and ALES: Employees may not be required to sign a counseling memo. However, they may be asked to acknowledge receipt of the memo by signing it prior to its placement in the official personal history folder. Such signature does not necessarily indicate agreement with the content of the memo.

C. Employee Response

All Units & M/C: Employees may file a response to a counseling memo in their personal history file.

D. Removal of the Memo

ASU, ISU, OSU, and DMNA: Upon written request, a counseling memo over two-years-old must be removed from the employee's personal history folder.
In addition, a counseling memo may be removed at any time upon mutual agreement of the employee and the agency.

PS&T and RRSU: Upon written request, counseling memorandum over three- years-old must be removed from an employee's personal history folder.

SSU, SSPU and ALES: Upon written request, a counseling memo over three-years-old must be removed from the personal history folder of an employee, provided that the employee has received no additional counseling memo or Notices of Discipline during that period. In addition, a counseling memo may be removed at an earlier date if agreed to by the agency.

M/C: As a general rule, employees should be treated comparably to the above bargaining units, but remains at the agency's discretion.