



# HRxaminer

*Examining practical HR issues business owners  
and managers encounter every day*

## Some Summer Tips

July 2010

### Arlene's HR Resources

This month I was part of a panel that provided various HR resources to a group of HR professionals at the Minnesota Council of Nonprofits.

This was a fun project for me. As soon as I knew I'd be presenting, I started accumulating a list of local and national newsletters, associations, local attorneys,

## When Documentation Creates More Problems

This edition of HRxaminer is a mix of semi-random thoughts inspired by client questions, consulting projects and the wealth of information coming to me from a wide variety of resources.

**90-Day Warnings:** Let's say you have a poor performing employee. You decide to give the employee 90 days to figure it all out. So you write a warning letter, thoroughly documenting the problems, and let the employee know that you'll be checking on job performance each month for the next three months, with the last review on October 25, 2010.



- **What's wrong with this picture?** First, it's great that you documented and were thorough. But while the 90-day follow up review is a common practice, it's not necessarily always a good practice. What we've basically done above is guarantee our employee 90 days of employment, which could violate our "at will employment" rights. We also did not protect ourselves if

fellow consultants, and websites that would benefit the group. I know there are 1000's more, but I thought this list of resources could also be useful to **you**.

**If you're interested in receiving a list of "Arlene's Favorite HR Resources", send me an email at [Arlene@ArleneVernon.com](mailto:Arlene@ArleneVernon.com) and I'll forward it to you!**

## FMLA Keeps on Changing

There's a new definition of son and daughter under the FMLA when we're considering whether an employee is eligible for FMLA to care for a son or daughter with a serious health condition. See 29 U.S.C. § 2612(a)(1)(A) - (C); 29 C.F.R. § 825.200.

▶ The FMLA defines a "son or

the employee behaves for 90 days, and then on the 91st day the performance problem (or policy violation or other behavioral issue) reappears.

- **What should we do?** Be thorough in your disciplinary documentation, but always leave your follow up schedule and how long the employee is accountable for appropriate behavior open. I recently included the following clause in the disciplinary letter I wrote for a client:

*"Should performance continue to decline or any other performance issues or policy violations occur during or following this period, we reserve the right to continue disciplinary action up to and including immediate dismissal."*

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## When Documentation Solves Problems

**Unemployment Success:** I know that sounds oxymoronic, but I recently read in an HR newsletter that in May 2010 a Minneapolis employer challenged, through the court system, an unemployment claim based on employee misconduct and actually won!

While most of us can't afford the legal costs of taking on unemployment denials in the courts, it gave me hope for future rulings when the court ruled in the employer's favor.

- **Case highlights:** In Goble v. Speedway SuperAmerica, Goble was terminated for making inappropriate comments on the store's intercom following a negative verbal interaction with a customer. He had been warned (orally and in writing) for similar behavior years before, and an open-ended "if this ever happens again it will be grounds for termination" warning was

daughter” as a “biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is (A) under 18 years of age; or (B) 18 years of age or older and incapable of self-care because of a mental or physical disability.”

▶ Two examples I've found in various articles that fall into this new definition would include (1) grandparents caring for a child would be eligible, and (2) same sex partners where only one may be the legal guardian, the other would be considered in loco parentis.

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included in the written documentation.

- **It worked!** Based on this employee’s work history and the employer’s right to expect professional behavior from an employee, the court upheld that the termination was legitimately due to employee misconduct and the employee was denied unemployment.

It’s SO important that we (a) document all warnings thoroughly with a clear statement that dismissal for any future misconduct will result in dismissal, and that we (2) contest unemployment when policy violations have occurred.

Here’s a link to more information on the case:

<http://www.jacksonlewis.com/legalupdates>

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## About Arlene Vernon

Arlene has provided HR consulting and management training services to over 300 organizations since starting HRx, Inc. in 1992.

If you’re seeking a hands-on, practical HRxpert to assist your organization with employee relations, policy development, strategic HR activities or fun/doable management training, call on Arlene – Your HRxpert.

If you’re planning a conference, seminar or special event, Arlene specializes in keynotes, seminars and workshops to meet your talent management needs. And if you’re seeking a more lively entertaining activity, Arlene’s custom songs and musical-inspirational keynote may be perfect for your organization!

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