

## SAMPLE

### Counseling Memo with Bazemore Language

#### Is It Counseling or Punishment?

When you give an employee a counseling memo it is not formal discipline. If you want to be able to take formal discipline against the employee later based on the **same** misconduct or performance deficiencies you identified in a counseling memo, then you must notice the employee in the counseling memo that you are reserving the right to take formal discipline on the incidents in the memo at a later date should the misconduct or poor performance continue.

As the State Personnel Board noted in its precedential decision *Carla Bazemore* (1996) SPB Dec. 96-02: “Ideally, if a department intends to document an incident of misconduct or poor performance short of taking formal adverse action, but wants to leave the door open for formal action based on the same incidents in the future, then it would clearly inform the employee of its intent. Thus, in such a case, a department might inform the employee in a written memorandum that:

Your conduct on this occasion was unacceptable and will not be tolerated by this department. If you engage in similar conduct in the future, the department will take adverse action against you based on the incidents cited in this memorandum, as well as any future incidents.”

This is referred to as the “Bazemore warning” and it provides notice to the employee that the counseling memo is not the final action the employer will take regarding the matters covered in the counseling memorandum in the event that further misconduct continues or performance problems persist.

TO: EMPLOYEE

FROM: SUPERVISOR

This memorandum commemorates our discussions on Tuesday and Wednesday, October 6, and 7, 2012.

On Tuesday, October 6, 2012, I attempted to talk to you about two deadlines you missed on the State project. You became so upset and angry that we agreed to take a break and attempt to resume our discussion the next day.

On Wednesday, October 7, 2012, I again attempted to talk to you about the missed deadlines. During this second conversation you became very angry, hostile, and resistant to any discussion of your performance. You ultimately walked out of the room even after I asked you to remain to complete the meeting.

As I stated on Wednesday, it is very important that you maintain your composure when I am discussing your performance with you. It is not acceptable to raise your voice, to be rude or abruptly leave meetings before they are completed. The discourteous behavior you engaged in during our meeting will not be tolerated.

I am giving you a new deadline for the two State projects. Both projects are now due on October 30, 2012. This new deadline is reasonable in light of your other work load. In addition, as I reiterated on Wednesday, and have told you before, you are required to tell me in advance if you are going to miss an assignment deadline. As we discussed, I am holding you responsible for deadlines that you have previously agreed you can meet.

*Your conduct on this occasion was unacceptable and will not be tolerated by this department. If you engage in similar conduct in the future, i.e. missing assignment deadlines and rude and discourteous conduct in our meetings, the department will take adverse action against you based on the incidents cited in this memorandum, as well as any future incidents.” [See box.]*

As we have previously discussed, as a State employee you are entitled to Employee Assistance Plan benefits. I have included information on these benefits with this memo.