

Procedural Fairness: What does it involve?

What are underperforming employees costing your company?

Employee Motivation

Managing poor performance

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The Employment Relations Act 2004 introduced a statutory test for establishing whether or not dismissal is justified.

For the purpose of section 103 (1)(a) and (b), the question of whether a dismissal or disciplinary action was justifiable must be determined, on an objective basis, by considering the employer's actions, and how the employer acted, were what a fair and reasonable employer would have

done in all the circumstances at the time the dismissal or action occurred.

For an employer to discipline (including dismiss) an employee for misconduct, the following elements are required:

Substantive Justification – the employer must be able to justify that the employee's conduct warrants the disciplinary action: and

Procedural fairness – a fair process must have been followed in investigating the alleged conduct.

In order to be substantively justified, there must be a genuine reason for disciplinary or a dismissal. The test of whether the dismissal was justifiable and the procedure was fair is an objective one - namely, whether it meets the standard of what a fair and reasonable employer would have done in all circumstances.

The requirements of procedural fairness may vary depending on the circumstance, however the minimum

requirements of procedural fairness are that:

- The employee must be told of the specific allegations against them and advised of the consequences if those allegations are established.
- An opportunity, which must be real as opposed to a nominal one, for the employee to attempt to refute the allegation or to explain or mitigate their conduct.
- The employer must give unbiased consideration to the representations made by the employee with an open mind and must be free from pre determination and uninfluenced by irrelevant considerations.

If those allegations are established, impose a penalty that is within the range of reasonable responses for the misconduct that has occurred, in other words, the punishment must fit the crime.

If an employer issues a warning or dismisses an employee unlawfully, an employee can lodge a personal grievance claim with the Employment Relations Authority.

The employee can be awarded lost wages and damages for hurt and humiliation, also reinstatement.

It can be difficult for an employer to decide whether misconduct is serious enough to justify a summary dismissal or whether only a warning is justified. If a warning is given and the misconduct is repeated, an employer must still comply with the requirements of procedural fairness before taking any further action.

Every situation is different, it is therefore essential for an employer to obtain advice throughout the disciplinary process.

What are underperforming staff costing your company?

Most managers and leaders will, at some stage, have to deal with staff who underperform. Where demands are ever growing and budgets are tight, even one underperforming employee can put pressure on an organisation.

The impact has various degrees of severity; an underperforming staff member not only affects their own

productivity their failure puts more direct pressure on achievers and performers to compensate. This has a parallel affect impacting staff motivation levels, general morale, productivity and in turn business profitability. Typically, managers are hampered by the combined lack of a practical knowledge and training and a lack of courage in dealing with staff performance issues. This pattern of strategic avoidance can continue despite the knowledge of how staff underperformance may affect

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Employee Motivation

Effective performance management has been proven to increase employee morale and overall job satisfaction leading to higher productivity in the workplace.

Understanding the various motivational needs behind behaviors can give great insights.

An understanding how individuals differ in their prioritisation of needs will help you understand lack of motivation, lethargy and/or resistance or, on the other hand, enthusiasm, energy and/or commitment to tasks.

Look at your team members as individuals and determine their individual priority of motivational needs.

Staff will find certain incentives or tasks that fit their needs very motivational.

Incentives that may motivate or reward one person, may not work for someone else who has different needs. This must be recognized so that the one-size-fits-all approach is not used.

Motivational dos and don'ts

- Recognise a job well done in a variety of ways

- Make it easy for people to know what they are achieving (clear objectives & targets)
- Recognise that ultimately peoples ambition may take them beyond their current job, so providing opportunities for promotion is good in terms of long-term motivation
- Adopt a motivational management style – be accessible, consult, and develop people. Be decisive and yet always fair
- Communicate regularly and informatively. Be open and up-front
- Be aware of the interaction between work and personal life (if home, family or social life is upset in some way by pressure of work, motivation will always suffer)
- Never assume salary – or money in any form – will magically motivate. On its own, money can do little, except perhaps in the short-term
- Don't put up with friction in teams of people that must work well together. Try to identify and resolve disruptive issues quickly.

What are underperforming staff costing your company? Continued.

staff morale, customer relationships and general productivity levels. Thus some companies allow staff performance problems to carry on for months and in some cases years without doing anything constructive to address the issues. During this time the productivity impact on the company is multiplying, it's not just the loss from the underperforming employee impacting profitability; it's the parallel affect impacting the rest of the company.

One of the most significant steps in addressing underperformance is for the manager to be clear, on what the issues are and their expectations. Many managers are not clear on what they want from their staff, so how can employees read their minds and know what to expect if they are not clearly told?

Underperformance can be caused by various factors, lack of skills, lack of motivation, lack of alignment or poor structures within company. Structure and alignment are

easily fixed and skills can be improved with training; however it is a common mistake for managers to mistake lack of skill for a bad attitude, or lack of motivation. Motivation is the hardest factor to address as most people do not go to work to do a bad job they go to work wanting to achieve.

If a person has the skills and resources to perform their job and chooses not to do it then a formal performance management process would be required. If the employees' performance doesn't improve then you may need to commence a formal disciplinary process.

Ensure whichever process you follow it is documented and that the employee has a clear understanding.

Remember: Underperforming and disengaged employees impact and infect the entire organisation and many of those within it in a variety of ways, all of them negative. Address situations when they arise to enable productivity and profitability of your company.

Introductory Offer

1 hour Free Consultation. Call today to arrange an appointment.

(Conditions of use: Offer Valid until 31st May 2009, one consultation per company)

Managing poor performance

When managing a staff member for poor performance it is the employers responsibility to ensure that they have at least:

- Set clear standards of performance
- Made sure the employee is aware of the consequences of not reaching those standards
- Ensured that the expected standards are reasonable and achievable
- Provided the employee with appropriate training and support to achieve the required standards; and
- Provided the employee with a proper opportunity, for example training, support and time, to achieve the required standard.

Performance managing staff is relatively time consuming. However, for the process to be considered fair and reasonable there needs to be **genuine opportunity** for the staff member to improve their performance.

By taking shortcuts in the process of performance management, an employer runs the considerable risk of being held that the process "was not what a fair and reasonable employer would have done". The sustentative reason of underperformance could also be undermined, if no chance has been provided to the employee to meet the set objectives and improve their performance to the desired level.

HR and Business Consultancy Services Offered

<p>Employment and Industrial Relations Provide support and advice on workplace relations and the relevant legislation that affects the employer-employee relationship. Development of employment agreements and documentation that best suits your relationship and situation with your employee.</p>	<p>Change Management A structured approach to transitioning individuals, teams, and organisations from a current state to a desired future state. Change is a part of every project we undertake, encompassing a number of techniques to achieve sustained improvement through change management.</p>	<p>Psychometric Assessments The strength and productivity of successful organisations lies with people. We use a range of assessment tools to accurately identify an individual's talents, strengths and weaknesses, and to diagnose organisational problems.</p>
<p>Performance Management Designed to be future-focused, support pay for performance programs, monitor milestones of goal achievement, and systematically improve the measured results of your employees and organisation. We facilitate the development of core organizational competencies, influence SMART goal setting, and clearly articulate expectations in order to have a measurable results-oriented tool for effective implementation.</p>	<p>Project Management Training, and resources to help organisations improve performance and deliver critical projects successfully. Project management is the discipline of planning, organising and managing resources to bring about the successful completion of specific project goals and objectives. The primary challenge of project management is to achieve all of the project goals and objectives while honoring the project constraints.</p>	<p>Process and Systems Development Professional human resource advice, policy solutions and job description writing and evaluation services. Development of employment policies and procedures and employee handbook. Provide practical guidance on administration of policies and pre-employment or post-employment duties required of the company.</p>
<p>Talent Management Developing and integrating new workers, developing and keeping current workers and attracting highly skilled workers to work for your company. Companies that are engaged in talent management are strategic and deliberate in how they source, attract, select, train, develop, retain, promote, and move employees through the organisation.</p>	<p>Health and Safety Offering both practicable and achievable health, safety and environmental Sustainability solutions to suit your organisation. from a wide range of experience in health, safety, quality, environmental and sustainability (HSQE) management.</p>	<p>Professional Supervision and Mentoring A customised programme for Managers and Team Leaders to provide practical hands-on guidance as well as theoretical knowledge in relation to all aspects of management including leadership, performance management, delegation, communication & effective time management.</p>
<p>Career Transition/Outplacement and redundancy Managing change and redundancy in a fair and procedurally correct manner. Management Coaching through restructure and redundancy; Managing Change Workshops; Internal and external Job Search, CV Preparation and Interview Coaching; Budgeting and Financial Planning; On site consultation and redundancy support; Identifying the 'at risk' employee.</p>	<p>Investigations We investigate and report on the facts of a case to the person or body charged with making a decision, under the procedure relevant to the case and to the member of staff concerned. Any serious allegations or formal complaints require investigation to attempt to determine as objectively as possible the relevant facts on which decisions can be based. Ensuring that the investigation process is completed correctly enables you to make the right decision with continued support thou ought the process to reduce the risk to your company.</p>	<p>HR Audits Comprehensive report of the audit findings with recommendations prioritized, actionable work plan. Improves compliance, reviews ROI with Human Capital. Targets the organisational development and human resource practices including: Staffing and Hiring; Benefits Administration; HR Administration; Employment Practices; Education and Training; Time Off and Leaves; Health and Safety; Performance Management; Compensation; Terminations.</p>