



# POOR WORK PERFORMANCE

## GENERAL

South African labour laws recognise that an employer may require work performance of an acceptable standard, and that employees should be protected against unfair treatment. The principles outlined here serve as a guideline only, as workplaces differ in size and nature, and these aspects may determine the appropriate steps to be taken in cases of poor work performance.

## SETTING STANDARDS

An employer may set performance standards that an employee is required to meet. Standards must be both reasonable and relevant to the workplace. More than one performance standard may be required, depending on the job.

The performance standard should be known to an employee (or he/she should reasonably be expected to know it). The standard may be communicated verbally (for example during a meeting with a manager), in writing (for example, in a memo or letter of appointment) or may have become known through practice and custom.

Performance standards will vary according to the nature of the business, for example, taking accurate messages, reaching a sales target, meeting a budget deadline or feeding the pigs twice daily.

## ASSESSING EMPLOYEE PERFORMANCE

The employee's work performance may now be measured against the set of known standards. If the employee fails to meet the standard, the employer should —

- Inform the employee that his/her work performance does not meet the required standards;
- Give the employee feedback. Depending on the nature of the job, evaluation, training, instruction and guidance aimed at improved performance and/or meetings, discussions and/or counselling should take place;
- Given the introduction of the above measures to improve performance, an employee should be given a reasonable time to improve. It is recommended that a programme of regular feedback sessions (for example weekly) with a supervisor be introduced for this period. The level of performance achieved during the shorter periods under review may be recorded for future reference.

## FURTHER ACTION REQUIRED

If performance is still poor after a reasonable time, the employer should communicate the following to the employee —

- That the expected standard has still not been met;
- The seriousness of the matter and that the employee may be dismissed for poor performance.

The employer should then launch an investigation, with the purpose of determining —

- The reasons for the poor performance;
- Whether any alternatives exist, for example, changing some aspects of the job or offering the employee another position (where possible and feasible).

During the investigation, the employee must get an opportunity to state his/her case. If the employee so wishes, a fellow employee or trade union representative may assist in this regard.

In line with the spirit of corrective and progressive discipline, the employer may take the following steps (in order of severity, keeping in mind that all these steps do not have to be followed): informal discussions, counselling, verbal and written warnings to emphasise the seriousness of the problem.

Should the employer contemplate dismissal, a hearing may be held during which —

- The charge must be put to the employee;
- The employee must be given an opportunity to state his/her case;
- The employee may be assisted by a fellow employee or a union member.

It is important, at such a hearing, to establish whether dismissal is the appropriate penalty or whether any alternatives exist.

Employers and employees now also have the option of requesting, by mutual consent, the CCMA or a bargaining council to appoint an arbitrator to conduct a final and binding disciplinary enquiry, in terms of Section 188A of the Labour Relations Act (as amended).

This will eliminate the duplication of proceedings involved in having both an internal enquiry and arbitration at the CCMA or a Labour Court

hearing. The employer would be required to pay a prescribed fee and the employee would be required to give consent in writing to such an enquiry.

Also see infosheet on PRE-DISMISSAL ARBITRATIONS (DISCIPLINARY ENQUIRIES).

## EMPLOYEES ON PROBATION

The purpose of probation is to determine whether the employee is suitable for the job. The probation period should be reasonable. Should an employee on probation perform poorly; evaluation, instruction, training, guidance or counselling should be provided to assist him/her in improving his/her performance.

An employer may dismiss an employee or extend a probationary period after an employee has been invited to make representations regarding his/her inability to perform according to the required standard. The employer should make a decision to dismiss or extend an employee's probation period only after the employee's representations have been properly considered.

The amendments to the Labour Relations Act now provide that, in any dispute about the fairness of a termination of employment of a probationary employee, any person making a decision about the fairness of such a dismissal ought to accept reasons for dismissal that may be "less compelling" than would be the case in dismissals effected after the completion of the probationary period.

In other words, the employer now has to meet a lower burden in establishing the substantive fairness of a dismissal on the grounds of incompatibility or a failure to meet work standards. Such a dismissal will however still have to be effected in accordance with a fair procedure.

For more information refer to the PROBATION info sheet.

## RELEVANT LEGISLATION

Labour Relations Act, as amended, Schedule 8, items 8, 9 and section 150