

Employment Lifecycle Series

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You have [successfully recruited the right candidate](#) and prepared the new recruit for success through your [effective and structured induction program](#). Unfortunately, employees do not always perform to the standard that is required or expected, or you may receive complaint about an employee regarding an incident which can be regarded as misconduct. At this stage it will be necessary to manage the performance and/or behaviour of that employee. This next instalment in our Lifecycle Series considers the risks involved and what is best practice for managing employee performance.



Managing employees' poor performance



The success of any enterprise can be dependent on the manner in which it engages with its employees, performance is managed and disciplinary action is taken. However, performance management can be risky if handled poorly and employers may be vulnerable to the risk of claims or bullying complaints being brought by the employees. An employee may succeed in an unfair dismissal claim even if there is a valid reason for termination, if the employer fails to adopt a fair and proper procedure to manage performance or if the process as a whole is flawed.

Solutions

As an employer, you can use the process of performance management in order to maintain and improve employee performance so that it aligns with the goals and objectives of your business or workplace. We outline some concepts which will help you gain a broader understanding of the process of performance management.

Set expectations

It is advisable that from the beginning, an employer carefully outlines the duties and responsibilities of an employee in a position description [attached to an employment contract](#). Communicating the goals and objectives of the business or enterprise at the outset of the employment can help the employee engage in their responsibilities with a purpose.

Probationary period

We generally recommend that employers utilise probationary periods for all new employees, with a period of three to six months. During this period the employer should assess the performance of the new employee to determine their fit with organisational culture and the duties required of the role.

Best practice

Best practice suggests that those employers who proactively manage underperformance by putting effecting management processes in place reap the rewards in the form of more motivated employees and enjoy the perks of higher retention rates.

Some of the steps that an employer can take to assist their employees to perform as per their job duties at a standard expected (or higher) include:

- clear communication of the duties and responsibilities of the role;
- ensuring that employees have the necessary skills to perform their role and are fully supported to do so;
- if commencing a performance management process is necessary, then there needs to be clear communication of the objectives and goals of the process, and that if the employee does not improve their performance, that disciplinary action may be taken up to termination of employment;
- set a clear time frame for the performance management process and review performance at regular intervals and use this opportunity for giving and receiving feedback;
- if the performance of the employee has not improved after a reasonable period, it might be better to seek external advice;
- always consider whether personal injury, illness or some other external factor is a cause of the underperformance and take steps to support the employee during the performance management process; and
- if the employee's performance has not improved after engaging in a formal performance management process, the employer may consider terminating the employment, ensuring that they provide appropriate notice and due process.

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SMART objectives

Employers should set effective performance goals and objectives for any performance management process by using the 'SMART' guide. Each letter in the acronym represents the main element for each objective as follows:

- **Specific:** specify the goals and objectives in clear and simple language;
- **Measurable:** quantify the goals so that progress can be tracked and measured;
- **Achievable:** set goals that are attainable and within the abilities of an employee to achieve it;
- **Realistic:** set realistic expectations; and
- **Time-Bound:** set a time-frame to achieve the goals.

If the employee has acted improperly or breached the organisation's policies and procedures, an employer may need to consider undertaking an investigation. We will look at considerations for conducting workplace investigations in the next article in the Lifecycle Series.

Continuous process

Performance management should generally be ongoing, be undertaken throughout the year and be embedded in the human resources practices of the organisation, as opposed to merely being undertaken as part of traditional yearly reviews.

Recent surveys of workplaces have demonstrated that employees feel better valued and their performance level increases in organisations where the practice of regular "check-ins" with employees is incorporated into management practices. Employees may feel more engaged when employers set time for regular one-on-one meetings to provide ongoing feedback on job performance. Consequently, continuous performance management will also assist in avoiding potential performance management issues.

Gadens can assist employers by reviewing their performance management systems policies and procedures, and by providing advice in relation to performance management issues more generally.

CAUTIONARY EXAMPLE

Have performance management processes in place but could not be bothered to follow them? Reconsider your decision!

If an employer identifies performance gaps for an employee, its needs to engage in a proper performance management process. As we can see in the case example below, employers who do have proper performance management systems and processes in place but fail to adopt them in practice may suffer consequences.

In this case, the employee commenced as a Business Development Manager at a bank, and was later promoted to the position of Branch Manager. A year into the employment, the employer conducted a performance appraisal of the employee's performance and the feedback was very positive. No performance appraisal was undertaken the following year, and at the three year mark, the employee's manager commenced but did not complete the performance appraisal.

Unfortunately the Bank branch had continued to report increasing losses since the employee had been in the position of Branch Manager. In December of the third year, the employee's manager asked the employee to prepare a business plan for the next twelve months and to present ideas to address the financial losses. When the employee presented the business plan to the manager, the manager determined that the employee lacked the necessary drive and enthusiasm to engage in the tasks required to turn the branch around. The manager decided to terminate the employee's employment with immediate effect.

The employee commenced unfair dismissal proceedings in the Fair Work Commission. The Commission found that there was a valid reason for the termination of the employee, on the basis that the employee managed an underperforming branch and did not have the leadership skills required for the role to turn that branch performance around. However, the termination was nonetheless found to be unfair. In particular, the Commission found that despite having proper appraisal and performance management policies and systems in place, the employer did not follow a proper process, by failing to warn the employee that his employment was at risk and by failing to provide an opportunity to the employee to respond the performance issues raised by his manager.

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