



Poor Work Performance Policy and Procedure

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1 Policy Objective

This policy/process is put in place to ensure the equal and fair treatment of staff in performance-related issues and to govern the poor work performance process in the workplace.

2 Application

This policy is applicable to all company employees.

3 Underlying Principles

- 3.1 Every employee has a common law duty to perform competently and maintain reasonable efficiency in terms of the execution of his/her duties. The setting of standards is the employer's prerogative and in terms of labour legislation, no employer is obliged to retain an employee who does not perform according to set standards.
- 3.2 In terms of Item 9 of Schedule 8 of the Labour Relations Act (LRA), any person determining whether a dismissal for poor work performance is unfair should consider:
 - 3.2.1 Whether the employee failed to meet a performance standard; and
 - 3.2.2 If the employee did not meet a required performance standard, whether:
 - 3.2.2.1. The employee was aware, or could reasonably be expected to have been aware, of the required performance standard;
 - 3.2.2.2. The employee was given a fair opportunity to meet the required performance standard; and
 - 3.2.2.3. Dismissal was an appropriate sanction for not meeting the required performance standard.
- 3.3 As stipulated in Schedule 8, no disciplinary process is recommended. A process of counselling sessions with the intention to remedy the situation is recommended. It is only once the employer has counselled the employee without success, and in the absence or failure of reasonable alternatives, that the employer may terminate once due process has been observed.
- 3.4 For this procedure to be effective and for the employer's reason for the dismissal related to poor work performance to be accepted, the duty rests on the employer to ensure that an objective and fair means to monitor the employee's performance is applied.
- 3.5 It must be remembered that actual poor performance must be proven by the employer against an existing standard. The standard must be clear and known to employees in terms of the employee's employment contract/job description and key performance areas. When setting a performance standard, the employer should ensure that:
 - 3.5.1 The standard is measurable.
 - 3.5.2 The standard is attainable.
 - 3.5.3 The standard is consistent.

4 The Poor Performance Process

4.1 The following steps act as a summary of the relevant process to be followed:

1. Informal counselling.
2. First formal poor work performance counselling session.
3. Evaluation/period for improvement.
4. Evaluation at the end of the improvement period.
5. Final poor work performance hearing.

4.2 Informal counselling:

- 4.2.1 When an employee commences employment, he/she must clearly understand what is expected of him/her. Before any counselling session is therefore held with a non-performing employee, the employer/applicable manager must first establish whether the employee was aware of the requirements and standards associated with the position, and that these standards have not been met.
- 4.2.2 Should the employer/manager believe that the employee's performance is not up to standard, the employer/manager should bring this to the employee's attention immediately and attempt to establish reasons as to why, with the purpose of assisting the employee. Should this not have the desired result, the employer should contemplate more formal steps.

4.3 First formal poor work performance counselling session:

- 4.3.1 Should the employee continue with the non-performance, the employer/applicable manager must establish the necessary facts to convene an initial poor work performance counselling session. It is recommended that a LabourNet consultant assists with this process.
- 4.3.2 The employee must be given sufficient prior written notice of the convening of a counselling session, the purpose of the counselling session, and notification that he/she may be assisted in the counselling session by a representative.
- 4.3.3 During the counselling session the following must be discussed:
- 4.3.3.1. The required performance standards.
 - 4.3.3.2. The current performance problems.
 - 4.3.3.3. The reasons for the performance problems.
 - 4.3.3.4. Assistance that the company will afford the employee to improve performance.
 - 4.3.3.5. A reasonable period for improvement.
 - 4.3.3.6. A clear and unambiguous ultimatum explaining to the employee that continuous poor work performance may result in termination of employment.
- 4.3.4 The employer/manager must either forward the employee minutes of the counselling session or forward correspondence outlining what was discussed in this session.

4.4 Evaluation/period for improvement:

- 4.4.1 This period should be a reasonable time for the employee to improve and will be determined with regards to the nature of the job.

4.4.2 During this period, the employer/manager must do everything in their power to assist the employee to rectify their performance. This would include affording the employee evaluation, training, instruction, assistance, and guidance required to improve the employee's performance.

4.4.2.1. If the employee requests certain assistance which is practicable and reasonable, the employer must assist the employee with his/her request i.e. where a person requires information or assistance regarding the business procedures, systems training, or product knowledge.

4.4.2.2. In certain situations, a request for assistance may not be a reasonable request e.g., where an employee is employed as a skilled and experienced salesperson and now claims he/she requires sales technique training. One can reasonably expect that someone with sales experience would not require training from the employer on how to sell a product or how to negotiate a deal with a client. The employer could then deny the employee's request for sales training on the grounds that the employee is supposed to be a qualified salesperson.

4.4.3 It is imperative that employers/managers make a concerted effort to monitor and minute the employee's performance on a regular basis to have a record of the employee's performance during the review period, and to be able to indicate shortfalls in performance to the employee to afford him/her the opportunity to rectify it.

4.5 Evaluation at the end of the improvement period:

4.5.1 Should there be a satisfactory improvement in the employee's performance, it would not be necessary to undergo the final poor work performance session.

4.5.2 Inform the employee that his/her current performance is satisfactory, but should the employee not maintain the current level of performance, the employer may immediately convene a final poor work performance session and the employee may be dismissed.

4.5.3 Should the employee's performance not be to the required level, then the employee should be served with a notice to attend a final poor work performance hearing.

4.6 Final poor work performance hearing:

4.6.1 If the employee does not achieve the required standard, despite the employer's attempts to assist and evaluate the employee, the employer has no other option but to hold a final poor work performance session. It is recommended that the session be chaired by a LabourNet consultant or third party.

4.6.2 The employee must be informed of his/her right to a representative and to bring forward any evidence or witnesses in support of his/her case.

4.6.3 During this investigation, the employer will present particulars on what transpired in the various counselling sessions, the operational job requirements for the position, the employee's results in achieving said requirements, and the evaluation of the employee. The employee will be given an opportunity to respond.

5 Alternatives to Dismissal

- 5.1 An incapacity because of poor work performance is a no-fault dismissal and because Schedule 8 of the LRA stipulates that dismissal should be explored only as the last resort, employers are encouraged to consider alternatives to dismissal.
- 5.2 Alternatives to dismissal could include the transfer or the demotion of an employee, adapting the employee's duties, or alternative employment, subject to the employee's consent.
- 5.3 While employers need not create positions, they must show that there was consideration of any possible alternatives to avoid dismissal. If none are available, the employer may then terminate on the grounds of incapacity due to poor work performance.

6 Probation

- 6.1 When considering dismissal for an employee who is still within their probationary period because of poor work performance, the employer may provide less-compelling evidence of non-performance than those required for a permanent employee. However, as outlined in Item 8 of Schedule 8 of the LRA, employers must evaluate the employee's performance, and if required, provide the employee with the necessary training, guidance, instruction, and counselling to give the employee an opportunity to improve their performance.
- 6.2 If the employee on probation fails to perform satisfactorily thereafter, the employer still needs to observe a fair process before considering dismissal.
- 6.3 As an alternative to dismissal, an employer can consider extending the probation period, but only for purposes of the probation. The extension period should be proportionate to the legitimate purpose of what the employer is hoping to achieve by extending the probation period.
- 6.4 When considering either dismissal or extension of probation for a probationary employee, the employer must afford the employee the same rights afforded to a permanent employee given notice to attend a final poor work performance hearing.

7 General

- 7.1 It should be noted that the aim of managing performance is to improve an employee's performance to contribute to business objectives.
- 7.2 Performance is a critical component of contributing to organisational success, and therefore managers, including employees, should take performance seriously.
- 7.3 Management should exercise their discretion in determining whether non-performance is attributed to misconduct (employee can do the job and wilfully chooses not to or is being negligent) or incapacity (an inability to do the job) in order to follow the correct recommended procedures.
- 7.4 It is important to note that a dismissal due to poor work performance is a no-fault dismissal therefore such a dismissal will be with notice.
- 7.5 This policy is set up in compliance with the amended LRA 66 of 1995. Should any changes or amendments to this act come into effect, management will inform employees thereof.

8 Agreement and Compliance

It is the employee's responsibility to contact management should he/she have any queries.

I, _____ (name), hereby agree that I have read and understood the contents of this policy and agree to comply with the provisions herein.

Employee signature as receipt hereof	
Date	