

Performance Management

How to protect your position and prepare for a performance improvement plan



Overview

Being subjected to a formal process at work as a result of alleged poor performance can be a very stressful and uncertain time, particularly if you feel your employer is not able to properly substantiate those allegations. Employees often find themselves subject to a formal performance improvement plan (sometimes called a PIP) and preparing for this process can be daunting especially as this can lead to a sanction or dismissal.

Your right to a fair process

Before deciding to discipline or dismiss you for performance related reasons, an employer should follow a fair procedure and the ACAS Code of Practice on Disciplinary and Grievance Procedures. Often employers have their own policy in place, and you should be provided with a copy of this. This may be a disciplinary policy or a specific capability or performance policy.

A fair procedure normally includes a number of stages. At each stage, you should be given the opportunity to provide an explanation and to make representations to your employer. You should be allowed to be accompanied at formal meetings by a work colleague or a trade union representative and be given appropriate notice of the meeting. Your employer should clearly explain and set out their alleged concerns in advance of those meetings. You should be clear about what is being alleged.

The different stages

Each employer may have their own specific procedures in place, but generally speaking, set out below, is what we often see happen in practice.

Informal Stage

The process often starts with an initial informal meeting, at which you may first be told what the employer's alleged concerns are about your performance. You will normally be informed of the nature of the performance issues and you should be given an opportunity to improve over an agreed period of time. This is a good opportunity to request any support or training that you may need and ask for clear objectives to achieve. If you dispute the alleged concerns or you feel that there are other motives for the process allegations (such as discrimination, victimisation or bullying), or where there are health considerations which may have affected your performance, you may wish to consider raising these concerns by an informal or formal grievance for instance. You might also have complaints about your working conditions and the impact these conditions may have had on your health. It is important to protect your position early on in the process so you should raise any issues at this early stage. (Please see our factsheets on **Bullying and Harassment and Discrimination** for further information).

Formal Stage

Following this period of time, if your employer decides that you have not shown the required improvement or if the poor performance is sufficiently serious, your employer might start a formal process. You might be issued with a formal written warning and a final opportunity to improve, with a warning of a possible final written warning and/or dismissal should improvements not be made.

In some circumstances, if the concerns about performance are very serious an employee could find themselves issued with a formal written warning or final written warning straight away. However in all but exceptional cases, some form of warning and reasonable opportunity to improve should be given before dismissal is contemplated.

If you are issued with a warning or you are dismissed, you should be given a right of appeal.

Contact us:

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Email: enquiries@slatergordon.co.uk

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What support can I request?

Whilst you have an obligation to perform your job competently, your employer has an obligation to provide adequate resources and support to enable you to do so. This should include adequate training.

It may be unfair to dismiss an employee for failing to perform a job adequately when they were not given sufficient training or other resources to do that job.



What if I am unwell?

In some cases, an employee may be struggling with their job as a result of ill health. If you suffer from a disability you may be protected from disability discrimination and/or have a right to reasonable adjustments under the Equality Act 2010. (Please see our factsheet on **Disability Discrimination** for further information).

In this type of scenario it is therefore important that your employer takes steps to understand your medical condition and the likely prognosis. It might be reasonable to allow you more time to improve or allow you enough time to recover before continuing with the formal process. There may also be a need to obtain medical evidence and/or recommendations from Occupational Health.

A decision should not be made until these steps are taken and you are provided with the required support or adjustments you might need.

If you are dismissed you might have a claim for unfair dismissal and depending on the circumstances possible discrimination, harassment or victimisation. (Please see our factsheet on **Unfair Dismissal** for further information).

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