

# POOR WORK PERFORMANCE

## INTRODUCTION

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), in terms of monthly or quarterly targets, 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 ensuring farm animals are fed according to schedule.

## 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, relative to the level of seniority of the employee, the employer should —

- inform the employee that his/her work performance does not meet the required standards;
- discuss possible causes of the poor performance and rectify any workplace based causes such as an unreasonable workload or broken equipment;
- decide on ways in which the performance can be improved, including further training, guidance and counselling sessions; and
- set realistic time periods for the achievement of the performance standard(s).

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 a formal poor performance inquiry will be held (where relevant) that could potentially lead to the employee's dismissal;
- the employee will be given an opportunity to respond to the allegations of poor performance;
- the employee may be assisted by a fellow employee or a union member;
- the employee may call witnesses or bring other proof in support of his or her case; and
- the employee has a right to an interpreter, if needed and where possible.

The purpose of the poor performance inquiry is to determine, amongst other things —

- whether or not the employee failed to meet a performance standard; and
- if the employee did not meet a required performance standard whether or not –
- the employee was aware, or could reasonably be expected to have been aware, of the required performance standard;
- the employee was given a fair opportunity to meet the required performance standard; and
- alternatives short of dismissal.

In line with the spirit of corrective and progressive approaches to poor performance, it is suggested that employers explore alternatives to dismissal, such as changing some aspects of the job, offering the employee another position (where possible and feasible), or linking the employee to an internal mentor who may be able to assist the employee to improve his or her performance.

Employers and employees also have the option of requesting, by mutual consent, the CCMA or a Bargaining Council to appoint an arbitrator to conduct inquiry into allegations of poor work performance, in terms of Section 188A of the Labour Relations Act (as amended). The outcome of the arbitrator's inquiry is final and binding and is reviewable only by the Labour Court.

An inquiry by arbitrator eliminates the duplication of proceedings involved in having both an internal inquiry followed by a referral to the CCMA or

Bargaining Council for conciliation / arbitration (in the event that the finding of the chairperson of an internal inquiry is challenged by the employee). 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 info sheet on INQUIRY BY ARBITRATOR.

## 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 such an employee or extend the probationary period after the 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 the employee's probationary period only after the employee's representations have been properly considered.

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 conducted in accordance with a fair procedure.

For more information, refer to the CCMA's PROBATION information sheet.

## RELEVANT LEGISLATION

Section 188A of the Labour Relations Act 66 of 1995 as amended, and items 8, and 9 to the Code of Good Practice: Dismissal.