

## **1.1. DISMISSAL BASED ON POOR WORK PERFORMANCE**

### **1.1.1. Clarifying poor work performance**

Poor work performance is due to incapacity when the employee is unable to perform to the agreed performance standards. The reasons for the unsatisfactory performance could be a lack of training, lack of clear work instructions, lack of guidance, misunderstanding due to poor communication, etc. Based on these circumstances, it is evident that the employee can not be blamed for performing below standard.

### **1.1.2. Unable or unwilling to meet performance standards**

An employee is not necessarily to blame for poor work performance. The employer first needs to ascertain the causes for the poor work performance through the company's performance management system that should provide for clear, outcomes based job descriptions including performance indicators, standards and measurements, regular performance feedback sessions and agreed performance improvement plans. If the employee is unable to meet the agreed performance standards, it should be treated as incapacity and consideration should be given to appropriate evaluation, instruction, training, guidance or counselling. If the employee is unwilling/negligent, it amounts to misconduct and may be treated as such.

### **1.1.3. Procedure for dealing with poor work performance**

#### **(a) Counselling**

When an employee's performance is not up to the standard required, the manager concerned will engage in a process of counselling the employee concerning his/her under-performance.

#### **(b) Review of performance standards**

The employee's job content and performance standards may be reviewed. The reasonableness of those standards should be confirmed and, if possible, agreed with the employee. If the employee does not agree that they are reasonable, the manager may nevertheless require performance to those standards if the latter is of the view that the standards are in fact reasonable.

#### **(c) Identify poor performance**

The manager should identify shortfalls in the performance using the performance indicators or measurements contained in the job description. These should be discussed with the employee.

**(d) Identify reasons for poor performance**

Reasons why the employee has fallen below the standards should be discussed and addressed.

**(e) Action plan**

If the reason for the non-performance lies with the employee, the manager should counsel the employee on how to achieve the standards and agree on an appropriate action plan. Agreement should also be sought from the employee that the action plan is acceptable and that he/she is capable of achieving the required standards if the action plan is complied with. If the action plan is reasonable but the employee without good reason does not agree with it, it may nonetheless be implemented.

**(f) Assistance**

Once the above counselling has taken place, the manager should provide all reasonable assistance which may include suitable training of the employee to enable the employee to achieve the required standards.

**(g) Review dates**

The employee should be given sufficient and reasonable time to improve. Review dates should be established to monitor progress.

**(h) Recording of counselling**

The contents of the counselling and the agreed action plan should be recorded in a written memorandum to the employee in the form of a counselling record. It should be signed by the manager concerned as a record to which either management or the employee may refer at a later stage if necessary. The memorandum could also provide proof of counselling.

**(i) Further counselling and cautioning**

If the employee does not reach the required standards within the time periods set, the manager should engage in further counselling if it is believed that the employee may still be capable of improving given further assistance and time. The manager should also caution the employee that his/her services may be terminated if he/she fails to perform to the required standards by the end of the set time period.

**(j) Inquiry and termination of employment**

If after further counselling and suitable training (if appropriate), and/or cautioning and a reasonable time period the employee still does not perform to the required standard, or proves to the satisfaction of the manager that he/she is not capable of achieving the standards, the manager should convene an incapacity inquiry to consider the case. The chairperson of the inquiry should not be the person to whom the employee directly reports, but should be at least one level higher than the supervisor or an independent external chairperson.

The employee should be informed in writing of the nature of the inquiry and also be informed that he/she may be represented by an available fellow employee of his/her choice. The employee should be given at least 48 hours to prepare for the inquiry.

After hearing the case, the chairperson may decide to take whatever action he/she considers appropriate which may include termination of the services of the employee on the grounds of incapacity, after taking into account the criteria set out in paragraph 4 below.

#### **(k) Payment termination**

If an employee's contract of employment is terminated on the grounds of incapacity/non-performance, it is appropriate to pay the required contractual notice.

#### **1.1.4. Considerations for dismissal for poor performance**

In consideration whether or not to dismiss an employee for poor performance, the chairperson should take the following factors into account:

- **Knowledge of performance standards**

Are the performance standards known to the employee?

- **Proof of not meeting performance standards**

Is there proof that the employee did not meet the required performance standards?

- **Reasonable opportunity for improvement**

Has the employee been given a reasonable opportunity (including reasonable support) to meet those standards, considering the period given for improvement and the employer's needs?

- **Impact of the incapacity**

Is the extent and degree of the employee's incapacity serious enough to warrant termination of employment, considering factors such as the employee's status and the nature of the employee's job?

- **Likelihood of improvement**

Is there a reasonable likelihood of future sustained improvement?

- **Alternatives to dismissal**

What alternatives to dismissal are there and are these reasonable, considering the nature and extent of the incapacity and the employer's operational needs?

- **Sufficient opportunity for improvement**

Has sufficient training and support been provided, again considering the nature of the job, the employee's status and the employer's operational needs?

### **1.1.5. Parties involved**

The initial counselling sessions should be facilitated by the employee's supervisor/direct manager. External experts may provide assistance, depending on the circumstances. The employee's trade union representative or fellow employee may assist the employee during the process.

After a series of sessions (including performance evaluation, instruction, training, guidance or counselling) and after affording the employee various opportunities to improve his/her performance without the desired results, a formal investigation is embarked on. The procedures to be followed in this investigation would be very similar to that of a disciplinary enquiry. An independent chair committee should be appointed as would be the case with a disciplinary enquiry, to investigate the matter. The supervisor and other persons involved up until then would act as witnesses in the investigation.

### **1.1.6. Probationers and poor work performance**

1.1.6.1. The Labour Relations Act of 1995 provides that all newly appointed employees may be placed on a probationary period that is reasonable given the circumstances. The specific period will depend on the nature of the job and the time it takes to determine the employee's suitability for continued employment.

1.1.6.2. The following provisions will apply in respect of any probationary period to which an employee may be subject.

The employee's appointment will be confirmed during or at the end of the probationary period only if:

(a) The employee's work performance and conduct meet the standards stipulated in this policy, job description and the employment contract, or such other reasonable standards which the employer may determine from time to time; and

(b) The employee's work performance and conduct demonstrate that the employee is competent to fulfil the duties associated with the post.

- 1.1.6.3. The employee's work performance will be assessed by Management during the probationary period. Management must give the employee reasonable evaluation, instruction, training, guidance or counselling in order to allow the employee to render satisfactory service during the probationary period.
- 1.1.6.4. If Management determines that the employee's performance or conduct is below standard, Management must advise the employee of any aspects of the employee's conduct or performance which, in Management's opinion, fail to meet the required standards. If Management believes that the employee is incompetent, Management must advise the employee of the aspects in which the employee is not competent.
- 1.1.6.5. If Management, during or at the end of the probationary period, decides that the employee is incompetent or has failed to meet the required standards or performance or conduct, the employer may, instead of confirming the employee's appointment, dismiss the employee, provided that, before making or implementing a final decision to dismiss:
- (a) The employer must first invite the employee to make representations concerning the proposed dismissal.
  - (b) The employer must permit the employee to be assisted in making those representations by a fellow employee.
  - (c) The employer must consider any representations made by or on behalf of the employee.
- 1.1.6.6. The employer may decide, instead of dismissing the employee for incompetence or failure to meet the required standards of performance or conduct, to extend the probationary period, on condition that:
- 1.1.6.7. The extension must be implemented and advised to the employee during or upon the expiry of the probationary period. The duration of the extension may not exceed the length of the original probationary period.
- 1.1.6.8. Before extending the probationary period, and before dismissing the employee during or at the end of any extension of the probationary period, the employer must have advised the employee as contemplated in clause 1.2.6.4, and must have invited and considered representations in the manner contemplated in clause 1.2.6.5.
- 1.1.6.9. If the employer decides to dismiss an employee, the employer must advise the employee of his/her rights to refer the matter to a council having jurisdiction, or to the Commission (i.e. the CCMA).