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NEWSLETTER

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Managing a Difficult Employee: What Every Employer Needs to Know... and Do!



January is a time for reflection and resolutions. With the holidays over and a new year beginning, now is the time to tackle some of the toughest employment issues, starting with the effective performance management of underperforming employees.

The poor performer

Poor performers exist in every workplace. Easy to identify, a poor performer is the employee who does 'just enough, but never more', is often the root of workplace 'gossip', gripes about 'unfairness' but rarely offers a solution, undermines or challenges management inside and outside of the workplace (often on social media), has spotty attendance (mysteriously on Fridays and Mondays), and isn't engaged in what he or she does.

Why tackle poor performance?

We know from experience that a poor performer reduces productivity, has a negative impact on the motivation and retention of other staff, and undermines management's credibility. We also know that many employers don't deal with poor performance as soon as they should, because managers are uncomfortable giving negative feedback and hope the problem will resolve itself with time. How, then, do we tackle this thorny issue?

Why is the employee performing poorly?

The first step is to identify why the performance of an employee may not be up to scratch. Meet with the employee and find out if he or she:

- ◆ Understands the performance expectations for the position.
- ◆ Has the skill and knowledge to perform at the level required.
- ◆ Is distracted by a non-work related problem which may be impacting performance.
- ◆ Requires additional training or resources to improve performance.

After the meeting:

- ◆ Take steps to put into place the framework necessary for success.
- ◆ Monitor the employee's progress daily.
- ◆ Conduct regular 'review' meetings to take stock of how and to what extent performance is improving.

If there is no, or insufficient, improvement, it may be time to terminate the employment relationship.

Best practices for effective performance

By implementing an effective performance management strategy an employer can help improve an employee's performance, while at the same time gather the evidence needed to defend a decision to terminate the employment relationship (should this be necessary).

Consider the following best practices:

Set the ground-rules: A written job description, code of conduct, attendance and performance management policy will help ensure managers and employees know what is expected of them and what steps will be taken to respond to performance issues or employee misconduct. Take the time to explain these codes and rules, and have each employee sign off.

Train supervisors: Frontline supervisors should receive training on how to identify, investigate and manage problem behaviour. Provide them with the tools to perform these important functions, including regular training on how to communicate expectations, determine the root of the problem, have difficult conversations, de-escalate conflict between employees, and set and implement a performance management program.

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Use probation periods wisely: If performance is a problem from the very start of the employment relationship consider whether it is reasonable to expect improvement with the benefit of additional time. If not, consider ending the employment relationship during the probationary period when exposure to liability will be at its lowest (if any).

Actively performance review: Conduct performance reviews early and often – don't wait until a "year-end review" to communicate poor performance to a difficult employee. Not dealing with a performance problem may also suggest to the employee the employer condones the behaviour, making it more difficult to explain and correct later. Instead, conduct periodic, written performance evaluations which clearly identify performance standards and consequences if those standards are not achieved. Be sure to provide a copy of the review to the employee and implement a timetable for improvement of any deficiencies.

Accommodate: Where it is appropriate to do so (e.g., where underperformance is caused by disability or another protected ground under the *Human Rights Code*) an

employer will need to explore accommodation options to help the employee succeed. This may include changes to job duties, shift times, and performance standards.

Keep a record: Every meeting, benchmark set, and disciplinary action taken (if any) should be recorded in writing and a copy provided to the employee.

End it: Don't be afraid to end the employment relationship when necessary. But before you do, it is always prudent to consult with experienced employment counsel to understand the associated risks (if any) and best practices.

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"Conduct performance reviews early and often – don't wait ..."