

## Addressing Poor Performance

Performance management is a significant part of every manager's job and dealing with poor performance is inevitable. It is often viewed as a less desirable responsibility that comes with the job but dealing with it incrementally, at the first sign of any deviation from 'expected' behaviour can be less stressful and save time for all involved.

When poor performance is allowed to go unaddressed for long periods of time it can become a major problem and very difficult to manage. Importantly if poor performance is not addressed it may also be seen by other staff as being implicitly condoned that can lead to further performance issues.

### Dealing with Poor Performance

There are times when, despite the best efforts of managers, issues of inadequate performance need to be addressed. Ideally, managing the situation should begin as soon as concerns arise. This would include:

- Identify why the employee is underperforming
- Discuss the underperformance with the employee
- Redirect their behaviour to improve performance.

It is the responsibility of management to be aware of and understand the principles of fair counselling and due process, and that these are applied in the workplace.

Performance management processes need to include procedures that ensure all employees are treated fairly and equitably, but also protect the interests of the organisation from claims of unfair treatment or unfair dismissal. It is particularly important not to engage in behaviour that lays the manager and the organisation open to claims of 'constructive dismissal'.

Constructive dismissal is where an employee leaves because of things the manager does, says or fails to do or say, or by making the workplace so unpleasant that the employee decides to leave. In doing so, the manager could breach the contract of employment.

It is the manager's responsibility to recognise negative behavioural change in staff members in the early stages and intervene before the problem escalates. The level of intervention will depend on the seriousness of the problem.

Procedural justice requires issuing an informal warning that is followed by a formal warning before any steps towards the termination of an employee is considered. Before issuing even an informal warning, a conversation with the employee as soon as problems appear may be all that is necessary to manage the underperformance.

Before beginning the process, particularly if the issue could potentially lead to termination, it is advisable to check the Award and, if your organisation is signatory to an Enterprise Agreement (EA), the relevant section in the EA for guidance eg the number of warnings required, having a support person present, what must be documented and when, etc.

There are some instances where the behaviour is extreme and necessitates immediate action resulting in summary dismissal. For further information go to *Severe Behaviour and/or Incidents*.

## Counselling

Within the workplace there are a range of ways an employee can signal there is a problem including increased absenteeism or decreased output, isolation from co-workers, difficulties with concentration and failure to observe the organisation's regulations, policies and procedures. To manage the problem it is essential to identify the cause.

### Informal Counselling

In the first instance, the manager needs to ensure that the problem is not in the workplace and not the result of, for example, unclear performance standards, poor job design, insufficient experience or a lack of resources. Poor inter-staff relationships, including bullying and harassment can also impact on people's performance. Other causes that need to be managed or worked around include ill health or personal problems. If the worker has a personal problem, they may be referred to an Employee Assistance Program.

The employee also needs the opportunity to explain the difficulty from their perspective.

In some cases identifying these issues during a conversation (often referred to as informal counselling) with the employee is sufficient to resolve the underperformance or at the very least put in place strategies that will improve the situation.

A useful guide when discussing these issues with an employee is

- Never confront in anger – do not let it be an emotional situation.
- Do it immediately, when the issue first becomes apparent and before the behaviour or cause becomes entrenched.
- Do it privately – it doesn't need to be done in the office with the door closed but never within earshot of other staff. A less formal situation can avoid creating a tense atmosphere.
- Be specific, use data and factual information to state your case. Focus on the behaviour. Outline what they have done, how you feel about it and why it is a problem. Avoid hearsay and impressions, it can lead to disputing details rather than addressing the issue.
- Be clear about the purpose of the discussion and keep to the point. If other areas are going well discuss this at an alternative meeting focussing on that area.
- Work together to find solutions or strategies to improve and/or resolve the issue. Reach agreement on how to go forward.

This meeting should not result in a formal document placed on an employee's file however it is advisable to make a confidential note in your diary for future reference. It is important that any actions are documented and a date for a follow up meeting agreed on, to discuss progress on these actions.

The process is aimed at changing behaviour and understanding any underlying issues. In some situations (ie specific incident or pattern of unacceptable behaviour) a timely, thorough and sensitively managed

investigation many need to be completed. The primary purpose of counselling is to help staff achieve the desired performance or improve their conduct to acceptable standards.

The purpose of the follow up meeting is to ensure what has been agreed to is happening and is working. If there has been positive change, reinforce it by telling them what you have seen them do differently, how that makes you feel and why you feel that way. Ensure they understand the impact of their improved performance and that it is noted and valued.

#### Formal counselling- First Warning

Not all underperformance will be resolved as a result of an informal conversation. In some circumstances the initial conversation will need to be followed up with a meeting which includes a first warning explaining the consequences if the behaviour or situation does not improve. There are also cases where the seriousness of the situation requires a formal response.

Formal Counselling refers to a session resulting in a written record of the incident/s and its outcomes.

The purpose of formal counselling is to notify the employee there is a serious concern about their performance or behaviour that they risk disciplinary action if they do not amend their actions to comply with expected standards of performance and/or behaviour or risk.

Such a meeting can be very stressful for an employee. It is best practice and some Enterprise Agreements require that the employee can choose to be accompanied by a union delegate or support person present during the discussion.

The manager must clarify reasons for poor performance or unacceptable behaviour, outline to the employee the allegations or concerns, the expected standards of performance or behaviour, and include the possible ramifications of not complying with these standards. The manager should remind the employee of any commitments made in the informal counselling session and set a review date by which time the problem must be remedied or continuing employment will be seriously questioned. The employee must be given the opportunity to respond to the concerns and provide their perspective.

This meeting must be documented in a formal Performance Improvement notice, signed by both parties and placed on the employee's file. The Performance Improvement notice, written by the manager, is concise and directly relates to the conversation with the employee. Dates to review the situation will also be agreed on.

#### Formal Counselling – Second Warning

A second formal warning session is conducted by the manager if the unacceptable behaviour or performance continues and a current first warning exists. The details of the interview should be recorded. At the second formal counselling session, the employee is again entitled to have a union delegate/ support person present.

It is important to inform the Board (via the Executive) that it is possible a staff member may be terminated and the reasons for the decision. Board members are responsible to check that due process has been followed. The privacy of the employee needs to be protected and the Board should only be given information relevant to the decision to terminate the employee's services.

### Final Warning

If, after first and second warnings have been given, the performance or behaviour does not improve to an acceptable standard, a Final Warning is appropriate. The purpose of a Final Warning is to notify the employee that the behaviour is now of such concern that if it is not amended to comply with expected standards, employment will be terminated.

A final counselling session will follow this warning. The manager should arrange a private interview with the employee, again providing him/her with the opportunity to nominate a third party to be present and act as a witness, ensuring a fair hearing is given. The employee must understand that if they do not comply with expected standards, their employment will be terminated within a specified timeframe – possibly two to four weeks. It is also advisable that a senior staff or board member is present during this interview to protect the manager and the organisation from allegations of bullying or unfair practice.

A Final Warning notice, witnessed by all parties, should be issued following this meeting. A warning should not be used unless the manager is prepared to follow through with terminating the employee's services.

### Termination

If, after all of the above steps have been taken, the performance or behaviour does not improve to an acceptable standard, termination of employment may be the final step.

Termination needs to be carried out with compassion and comply with all relevant legislation (eg Fair Work Act (Cth) 2009), the conditions of the relevant Award, organisational policies and where there is an EA, any requirements it outlines.

Ensure the Executive of the Board is fully aware of the process to date and of the intention to dismiss. The termination will be made formally by the Board as the employer, not the manager.

When a decision has been made to terminate an employee, all necessary documentation, payments and other issues need to be fully prepared to ensure the action is taken with as little difficulty as possible. It is common practice, in a situation where a worker is dismissed, for the notice period to be paid out rather than worked. If there are negative feelings between the employee and the manager and/or organisation it is important to protect the interests of the organisation (eg change security access to buildings and confidential data).

It is wise to include a Board Member or CEO in the termination interview so that it is clear that the Board approved this action.

## Severe Behaviour and/or Incidents

Poor performance is not necessarily the result of a poor attitude or a behavioural issue. The reasons will be varied as the solutions. Very occasionally a behaviour or incident will be extreme. These cases require a rapid response which may lead to summary dismissal or proceed immediately to the second or final warning. Examples of severe behaviour include theft, sabotage of the organisation (such as interference with the computer system) and violence.

In these situations it is advised that legal or industrial advice is sought to ensure a fair and reasonable process. It is also important that the matter be investigated, ideally by an objective outside body, ensuring

all relevant facts are uncovered. If the matter is criminal it should be reported to the police. In cases where termination of employment is the likely outcome, it may be appropriate to stand down the employee with pay while the investigation is underway.

## Mopping Up

When an employee is terminated, it invariably impacts on other employees in the organisation. Often employees know if there is a performance issue with one member of the team. Despite this, employees can become insecure about their own positions. They may be angry with the manager and/or feel that the employee has been dealt with unfairly.

The privacy of the employee whose work has been terminated is of paramount importance and it is essential for the manager not to engage in gossip. Other team members do need to know that the employee has left the organisation and a general message can be given. A statement such as “We had differences that could not be resolved” which acknowledges that there was a difficulty may be appropriate.

It is also important to acknowledge the feelings of remaining employees. They may feel sad a colleague has left, anxious about the implications for their positions or the potential impact on their workload. These issues may be addressed through individual discussions with team members where they can express their feelings. Positive feedback can be given. However, as long as the organisation is healthy, with fair and effective processes and good relationships with staff, any tension remaining after the termination of an employee will soon dissipate. Then it is time for team building.

## Review and Planning

As the manager, you need to take time to reflect on this difficulty in staff management and examine what lessons can be drawn from this experience. A debriefing session for staff involved in the termination process is essential. Immediate plans to address the imminent vacancy and associated workload issues will also need to be developed.

## In conclusion

Managing staff requires good recruitment and strong management systems to work to and the ability to convert clear staff principles into actions.

AFEI developed the following principles<sup>1</sup> for strong staff management. Consistent application may reduce the need to have to manage most underperformance. The basic principles are:

1. A common sense of purpose. Often the reason staff are there is not discussed and they are not regularly reminded of the history and accomplishments of the organisation.
2. Well thought-out values, such as honesty, respect, etc that are discussed with staff and used as the foundation for any actions or reactions of management.

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<sup>1</sup> The principles were adapted from [The principles of managing staff](#) by Australian Federation of Employers and Industries (AFEI)

3. Simple rules or policies that are accessible and in plain English, providing information about actions and behaviour that are required and those that are not.
4. Everyone knows exactly why they are there, what has to be done, how to do it and when it is done properly.
5. Clear signs that staff members are valued, including reasonable working conditions, market rates of pay, respectful, client focused and staff supportive management.
6. Trust is developed in each staff member and in turn each staff member can have trust in the leadership. Honesty and integrity are at the centre of all relationships in the organisation.
7. Clarity in what is negotiable and what is not negotiable for staff as a whole and what each staff member is allowed to do, as well as what independence he or she has in each situation.
8. Clear goals for what the organisation wants from its staff as a whole, each team and each individual.
9. A simple approach to managing staff based on a coaching model where team leaders and managers work with and not “on top of” staff.
10. Problems are dealt with immediately but within the values and guidelines of the organisation.

## Resources

### NCOSS Resources

- [Templates and Resources](#)
  - [Recruitment – Good Practice](#)
  - [Managing Staff Performance](#)
  - [Annual Performance Review](#)

### Fair Work Ombudsman

- [Managing performance and warnings](#)
- [Flexibility in the workplace](#)
- [Bullying and harassment](#)

### Fair Work Commission

- [Dismissal, termination and redundancy](#)
- [Best Practice Guide Managing Underperformance](#)

### The NSW Industrial Relations Commission

- [Unfair dismissal](#)

### The Human Rights and Equal Opportunities Commission

- [Legislation](#) information on legislation relevant to discrimination in employment

NB: The above websites were accessible on 1 Feb 2016. If the links do not work search on the title of the document or go directly to the organisation’s website.