



## Terminating an employee for poor work performance

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As most employers can attest, terminating employees for poor job performance is not easy. But it is legally possible, so long as specific precautionary measures are taken. If such measures are not taken, an employer may find itself either stuck with an incompetent employee, or on the losing end of a lawsuit for unfair termination.

If an employer cannot provide proper justification and evidence for termination, a labour court will award an employee compensation for unfair dismissal. Long-term, highly paid managers can receive significant awards for damages.

Unsatisfactory work performance can consist of a variety of behaviours, including the following:

- unwillingness to work towards assigned goals;
- inability to complete work assignments or correct errors in a reasonable amount of time;
- inability or unwillingness to learn new tasks or skills or to work collaboratively;
- inability to exercise good judgement.

An employer can terminate an employee who exhibits any of the above behaviours, if the proper procedure is followed. To protect themselves, employers generally have to give employees ample opportunity to correct their behaviour before dismissal. Below is a summary of steps an employer should take:

**Communication of expectations:** An employer's expectations should be communicated clearly to the employee at the start of employment. This means providing the employee with a complete description of the position and duties.

**Training:** Both new and existing employees need training. The right training gives employees the necessary skills and knowledge to carry out their work to the best of their ability. Training also increases productivity and work quality. Training should be provided to employees periodically.

**Performance evaluations:** A performance evaluation is a two-way communication between a supervisor and an employee about performance, opportunities and challenges. The supervisor may give feedback on areas for improvement. The employer may also provide goals for the employee to work towards over a period of time.

The evaluation should be conducted periodically, depending on the type of work. For example, factory work may require quarterly or half-year evaluations, whereas evaluations for office work are often conducted once a year.

**Identification of unsatisfactory performance:** Unsatisfactory work performance can be identified during an evaluation or through specific behaviour. When such conduct is identified, the supervisor should clearly communicate to the employee the need to taking corrective action. The supervisor should also give the employee guidance on resolving the problem. These communications should be made in writing.

**Performance improvement plan:** The employer should establish a formal evaluation period, and put in place a performance improvement plan (PIP), so the employee has the chance to correct his or her performance. The PIP should clearly let the employee know the following:

- explanation of why the employee's performance is unsatisfactory;
- explanations of what improvements are expected;
- defined and measurable objectives; time period and frequency of PIP review;
- information on training;
- the resulting disciplinary action if the employee fails to improve.

**Post-PIP evaluation:** At the end of the formal evaluation period, the supervisor should determine whether the employee's work performance meets the established standards. If the performance still does not meet the objectives, the employer should consider providing another evaluation period. However, if there is clear evidence that the employee cannot or will not improve, the employer may consider termination.

If the employer decides to retain the employee after the PIP, the employer should give the employee written notice of the decision. It is also vital for the employer to give the employee a clear statement of his or her performance expectations for the future.

**Termination of employment:** If the employer decides that termination or another serious disciplinary action is the best option, additional factors should be considered. These include, but are not limited to:

- the length of time the employee has been employed or has been in his or her position;
- the seriousness of the unsatisfactory performance;
- the impact or damage the unsatisfactory performance has had on the employer's operations.

Generally, well-paid managers are considered to be in a position to cause more damage to the employer than lower-level, non-managerial staff.

It is important to note that the courts typically do not consider termination for poor performance as termination for a "serious cause," and as such, the terminated employee is entitled to receive severance payment under the law.

**Documentary evidence:** Although severance payment still needs to be made, if all of the above steps are taken, termination of employment for unsatisfactory work performance should not be treated by the court as unfair dismissal.

Employers should meticulously document the entire termination process. This means that all communications, reports, evaluations and PIPs should be in writing, dated and saved. These documents will serve as valuable evidence if the employee files an unfair dismissal claim. Indeed, from the court's perspective, the most reliable evidence to show fair dismissal is an unbroken chain of documents showing each step of the process.

Therefore, while it is not easy to terminate employees for poor performance, it is entirely possible if the correct steps are taken and meticulously recorded.

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