



Employment Guide: Managing Underperformance

Note: This Employment Guide is intended to provide general guidance only. It does not constitute legal advice and should not be relied upon as doing so.

Overview

How employers manage employees who are under-performing is critical. Ignoring the problem, hoping it will go away, is not effective management, as issues will become more difficult to deal with if employers do not address them promptly.

Under the Employment Protection (Guernsey) Law, 1998, it is a potentially fair reason to dismiss an employee where it relates to the 'capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do.'

'Capability' covers the scenario where an employee is not performing to the required standard. 'Capability' can also refer to an employee's health – if they are no longer able, through illness or injury, to do the job which they were contracted to do.

'Qualifications' could mean that an employee is unable to do their job properly because they don't have the required qualification(s), or have lost / forfeited their qualification(s) e.g. an employee loses their driving licence. The reasons why an employee under-performs can be varied. The employer must be careful to deal with the problem fairly and reasonably, otherwise risk a potential unfair dismissal complaint (if the employee has one year's service or more).

Why Might an Employee Underperform?

- Technological changes e.g. the introduction of new computerised systems or other changes may mean an employee struggles to do their usual job in a different way.
- The employee may not understand what is expected of them; the timescale in which they are expected to do it and the standard required.
- The employee may never have been provided with a clear job description.
- They may be unclear as to their priorities and particular responsibilities.
- The employee may not have received adequate training, information and support to do their job properly.
- The employee may be stressed due to over-loading, or may have been given unreasonable, unrealistic task(s). They may not be able to do what is required, given the time, resources, budget and staff allocation.

- Staff relationships may be strained. There may be evidence of bullying or harassment which may affect performance.
- The employee may be overqualified, bored and lacking in motivation. Conversely, the job may be too much for them, perhaps if they have been recently promoted. They may prefer to return to their original role.
- Outside factors such as health issues, depression, a relationship breakdown or a family crisis, may have led the employee to fall below the usual standard expected from them.

Managing Underperformance: what can be done?

- **Invite the employee to meet to discuss the problem.** Emphasize confidentiality. Put the employee at ease by discussing their good points first before identifying where performance needs to improve.
- **Identify what might be causing the problem** – e.g. is it lack of training, lack of support, relationships between staff, the employee not putting in enough effort or some other reason? Encourage the employee to suggest how their own performance might be improved, e.g. do they think they need more training, more support from their colleagues or line manager, more directed tasks, or do they need closer management for a time?
- **Always listen to employees** – allow them to respond with any explanations for their performance which might be relevant. They may also have a good idea why something isn't working and may be able to suggest a better way of doing things.
- **Be clear that underperformance is not necessarily a disciplinary issue** - unless you have evidence to the contrary, such as carelessness or lack of effort. If it becomes a conduct (disciplinary) issue, deal with it as such. See Code of Practice 'Disciplinary Practices and Procedures in Employment' and Advisory Booklet 'Discipline at Work' for more advice.
- **Agree a written action plan.** Set realistic, measurable standards or targets and agree how each side will deal with the problem, setting reasonable timescales in which improvement should be achievable.
- **Monitor progress through regular review meetings.** If there is no improvement, the employee needs to be made aware of exactly where they are falling short. Keep file notes on action points discussed and any support you may be providing to the employee. Specify time frames for improvement and ensure that the employee is given reasonable time to improve. Include any action points and/or training and support which is offered to the employee.
- **Provide written confirmation to the employee of the consequences of failure to improve** and the possibility/likelihood of dismissal. A formal letter indicates how seriously the employer views the matter.
- **Consider suitable alternative employment** (dismissal should be a last resort), particularly if the employee is unable to improve, even if hours and pay are reduced. A job may be better for the employee than no job. However, alternatives may not be practical in all cases or for small firms.
- **If the employee is dismissed, offer an appeal.** If practical, an appeal should be heard by someone not involved in the original decision to dismiss.

Whilst this guide is primarily directed at employers, performance issues are the responsibility of both employer and employee. Solutions to poor performance should be viewed as a joint problem-solving exercise for the mutual benefit of the organisation. If communications between employer and employee are good, poor performance issues can often be avoided.

Contact Information

For further advice

- Check www.gov.gg/employmentrelations
- Email employmentrelations@gov.gg
- Contact the **Employment Relations Service**, Edward T Wheadon House, Le Truchot, St Peter Port, GY1 3WH
- Telephone number: **01481 220026**