

Managing Performance – some tips.

Introduction:

Many small to medium-sized businesses are experiencing difficulties in an ever increasingly competitive environment; gaining and maintaining the best from your team is fraught with many challenges, some of which are explored here.

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Overview:

(from a legal perspective):

An employer has the option of setting out an employee's obligations in express terms in the form of a *common law labour contract*. However, regardless of whether such a document is produced and signed by both the employer and the would-be employee, there are certain fundamental duties imposed on all employees;

- *'obedience'* – an employee is obliged to comply with any lawful and reasonable direction;
- *'co-operation and proper conduct'* – employees are under a general obligation to co-operate with management and to behave appropriately at work (indeed, even misconduct away from work can be treated as a breach of the employee's obligations, provided it has a sufficient connection to the employment);
- *'exercising care and skill'* - employees can only be expected to perform tasks or comply with instructions which properly pertain to their job. Although, employers do have a degree of flexibility in varying an employee's duties provided they remain within the scope of the original job, (ideally, as detailed in both an offer of employment and a formal position description). In carrying out their duties, an employee is expected to achieve whatever standard of skill and competence can reasonably be expected of someone with their particular experience and training. However, all employees, whether skilled or not, are under a general duty to take reasonable care not to cause injury or damage in the course of their work.

(from a Human Resource Management/Workplace Relations perspective):

Effective performance management can have significant benefits for the business; it can lead to happier, more motivated and better performing employees. Conversely, employees that are performing well, can lose motivation if they have to carry the burden of poor performing colleagues, not to mention the potentially negative impact on clients or customers, arising from low staff morale and lack of application. Therefore, an effective and consistently applied system for managing underperformance is good for both a business and its employees.

Recent data suggests that there is a strong correlation between claims before the *Fair Work Commission* for alleged “*wrongful dismissal*”, “*bullying*” & “*general protections*” and the level of proper performance management, particularly in regard to being given an opportunity to respond to claims of poor performance or a chance to improve either performance and/or

conduct. It has been established that an employee is less likely to pursue an unfair dismissal claim if they have been taken through an objective performance management process.

Time and resources spent in properly managing an individual's performance potentially impose less of a burden on your business than defending "claims" before Industrial Tribunals, and in recruiting and training someone new to the job, as a replacement team-member.

What constitutes underperformance?

Underperformance (or poor performance) relates to:

- A failure to perform the duties of a role or perform them to the required standard, and or;
- Non-compliance with workplace policies and procedures; and or
- Unacceptable behaviour (either in the workplace, or a work-related environment, see above); or
- Disruptive or negative behaviour that impacts on co-workers or others (including the public), within a work context.

(N.B: Underperformance is not misconduct.)

Factors that may give rise to underperformance

There are many factors that give rise to under/poor performance, that may apply to an individual's circumstances (either in isolation or in a multi-factorial fashion) including:

- The employee not fully understanding what is expected of them, because goals and/or standards or workplace policies and consequences are not clear;
- A mismatch between an employee's capabilities and the role;
- Interpersonal differences;
- A lack of feedback, due no counselling or inadequate counselling;
- Personal issues arising from physical or mental health or problems with drugs, alcohol or gambling;
- Lack of personal motivation, low morale in the workplace and/or poor environment or workplace culture;
- Social isolation, due to cultural misunderstandings;
- Workplace bullying.

Some tips

- Underperformance should be dealt with promptly and appropriately, the longer underperformance is allowed to continue, the more difficult a satisfactory resolution becomes;
- Supervisors and managers must be given organisational support, including a clear policy framework to empower them with the courage and willingness to manage potentially difficult and hostile situations, to enhance the likelihood of satisfactory resolutions within a credible system;
- Engage in a system of continuous feedback; acknowledge and comment on both good and poor performance;

- Foster a workplace culture which encourages ongoing feedback and discussion about performance in open & supportive environments. A successful performance management process is one that is accepted and valued by employees;
- When devising a solution, make sure it is clear – use every day language to avoid alienating employees;
- Talk about the issue(s), not the person; explore the reasons, why there is an issue, clarify details at all points (if necessary, in writing);
- Should the circumstances require formal counselling of an individual, it is important that meetings take place in private and in an environment that is comfortable, non-threatening, and away from distractions and interruptions. The employee should be afforded the opportunity of having a support person present, as a matter of process;
- Employees should have an opportunity to have their point of view heard and duly considered;
- Where possible, it is important that a solution is jointly devised; an employee who has contributed to the solution will be more likely to accept and act on it (thereby gaining greater ‘ownership’ of the outcomes), than if it is imposed in an arbitrary fashion;
- Include timeframes for improvement; reinforce the worth of the role being performed;
- Small businesses (employing fewer than 15 employees); must take steps to ensure that they comply with the ‘*Small Business Dismissal Code*’ (available through the Fair Work Ombudsman at www.fwc.gov.au/termination/small-business-fair-dismissal-code).

Above all else, consistency, transparency and excellent communications are the keystones to managing performance in the modern workplace.