

Formal Review for Unsatisfactory Performance

Preamble

A formal review for unsatisfactory performance serves two purposes. Most importantly, it provides a further process for genuinely helping the employee improve their conduct, capacity or performance to a satisfactory level and it ensures that legal requirements relating to due process and documentation are complied with.

When an employee's conduct, capacity or performance is unsatisfactory or deficient, the following steps should be undertaken by the employer.

This formal review will take place after departmental review/in-house evaluation and where appropriate, the provision of professional development to address any perceived unsatisfactory performance.

This Annexure B (Formal Review for Unsatisfactory Performance) does not apply to probationary employees.

1. Investigation

A proper investigation of the circumstances should be carried out. It is insufficient merely to rely on the fact that allegations have been made.

An investigation may include the following:

- (i) assessing any relevant documentation, including a personnel file;
- (ii) interviewing persons who may have (or should have) knowledge of the employee's performance;
- (iii) assessing statistical information if that is an appropriate method of assessing performance in the particular case.

Whichever method is used, the investigation must be carried out promptly.

Investigations that prove groundless should be noted in the employee's file, and the employee should be notified accordingly.

2. Interview

If, after an appropriate investigation has been carried out, the employer is satisfied that there is substance to the allegation of unsatisfactory performance and wishes to investigate it further, an interview should be arranged with the employee concerned as soon as practicable. Copies of the documentation relevant to the allegation will be provided to the employee at the time of notification of the interview.

The employee should be notified of the interview which should be confirmed in writing.

The notification should include :

- (i) the time and place of the interview;
- (ii) the general nature of the matters to be discussed;
- (iii) the employee's right to have a person of their choice (including a Union representative) present.

In arranging an interview, it is the employer's responsibility to cater for any of the employee's "special circumstances". This may include assessment of language skills (need for an interpreter), health and family issues.

At the interview :

- (i) the employer should have his/her own witness present;
- (ii) notes of the meeting should be taken;
- (iii) details of the deficient or unsatisfactory performance should be provided to the employee. This should be in sufficient detail to enable the employee to respond and address the issues raised adequately;
- (iv) the employee should be given the opportunity to respond to the allegations and to raise any other matters which the employee considers to be relevant. If the employee wants time to consider the matters raised, it should be allowed, but it should be limited to the shortest reasonable time.
- (v) the employer and employee should negotiate a time by which standards are to be achieved.

3. Outcome of Interview

If, having regard to all matters raised at the interview and to the employee's response, the employer considers that no action is required, the employee should be advised in writing accordingly. Should action be deemed necessary, the employee will be advised in person with written confirmation, including :

- (i) that the employer has considered all matters raised at the interview, including the employee's response;
- (ii) that the employer believes that the employee's performance is deficient;
- (iii) details of the deficiencies;
- (iv) the standards which need to be met and the agreed time within which that must be achieved;
- (v) a review date in respect of the employee's performance against those standards. (The employer may wish to confirm that the employee will be subject to ongoing review, if that is to be the case, but that further discussion will need to take place on the first review date);
- (vi) the potential consequences of failing to achieve the standards within the time frame, including the ultimate possibility of termination of employment.
- (vii) the name of a nominated contact within the organisation (e.g. the employee's supervisor or a negotiated mentor) with whom the employee can discuss any matters which are unclear or from whom any assistance may be gained;
- (viii) details of counselling and/or professional development (where applicable) available to the employee
- (ix) that the employee was given an opportunity to be represented at the meeting; and
- (x) that the employee was given an opportunity to respond to the matters raised at the meeting.

4. Review

The review should occur whether or not the employee's performance has improved.

If the employee's performance has improved, the employee should be informed of this in writing. However, the need to continue to improve to reach and maintain the agreed standards should be reinforced and confirmed in writing.

If the employee's performance has not sufficiently improved, the investigation, interview and review process should be repeated.

If the second review finds the employee's performance is still unacceptable the employer may choose to: continue with disciplinary action/counselling in accordance with the four stage process outlined above; or find an alternative arrangement in the organisation (e.g. change of duties or position location) if in all the circumstances, dismissal is the only other option; or dismiss the employee if in all the circumstances termination would not be harsh, unjust or unreasonable and where (a) and (b) are not justifiable alternatives. The employer should notify the employee in the following manner of their dismissal:

- The employee should be informed by the employer of the reason for their dismissal and the employee should be allowed to respond to the allegations.
- The employer should provide the employee with written notice in accordance with the relevant state and commonwealth statutory requirements. The minimum period of notice depends on the employee's length of service and their age. Payment may be made in lieu of notice.
- The employer should ensure the process of formal review of unsatisfactory performance has been followed and that each stage has been fully documented.