

HR Guide

Capability/Performance Management

(Not ill health)

This document does not constitute a legal opinion or legal advice and is intended to be a guide only. To ensure you follow best practice (and, if applicable, do not compromise your insurance), you should contact the Alcumus HR Consultancy team before embarking on the process and at each subsequent stage.

Capability/Performance Management (not ill health)

Preparing for a meeting

Before you take formal action, you must have had discussions with the employee and ideally have documentary evidence that you have discussed underperformance previously and have given the employee the appropriate support and training (if required) as well as clarification as to what is required and have allowed them time already to achieve the required improvements. If the performance still falls short then you will then need to start formal 'capability', which can lead to disciplinary penalties being issued and could ultimately lead to dismissal. Therefore, you need to gather information to evidence why, in what way or how the person is underperforming.

You may want to look at past supervisions or appraisal information, notes of recent meetings/discussions, attendance/absence records, training records, evidence that objectives/expectations have been clear and communicated effectively, and that sufficient time has been afforded to the employee to reasonably enable them to achieve the required standard.

Incapacity due to ill health

If your employee has an unacceptable level of absence, or their ill health/absence is having a direct impact on their ability to complete or fulfil their incumbent role, then you will have to undertake reviews to discuss the level of absences, the reasons for them and what is expected going forward. Ultimately if the employee cannot fulfil their duties you may have to consider dismissal but you must go through a comprehensive process before you arrive at that decision and there is a risk of the employee claiming discrimination on the grounds of disability. For more details on this please ask for the HR Advice Guide on long-term sickness.

Capability action can lead to disciplinary action

Please be aware that when you start down the road of formal capability, this is a process which could lead to formal disciplinary action because failure to achieve the standards required could lead to the issuing of disciplinary penalties, usually through the normal levels of verbal warning, followed by written warning, followed by final written warning before dismissal. Other sanctions/penalties to consider may be a change in job role or even demotion as a way of avoiding dismissal. However, you must have a term within your Employee Handbook, Contract of Employment or other Company term which includes a provision allowing for you to impose a demotion as part of disciplinary action.

Conducting the process

The process should initially be conducted by the line manager as he/she is the best person to know what is required of the employee. Identify any relevant constraints that have impacted on their ability to perform to the required standard; look at absences from work or indeed any other factors/stumbling blocks that may have prevented or hindered the employee from achieving the required standards.

Performance management is a contentious and challenging area for both the line manager and the employee because it must include a degree of subjectivity. However, the more objective you can make the process/evidence the better. In any case contact one of the Alcumus HR Consultancy team for advice and for the factsheet on conducting a disciplinary hearing.

Planning the process

The line manager should:

- Ensure they understand what a fair procedure is and if there isn't a formal policy, agree this with their HR Consultant
- Ensure you have all the relevant information around what is expected, the job description, levels of achievement, areas of underperformance etc
- Consider what supporting information/evidence they will need
- Consider how they will get this information – think about the availability of records.
- When will they see the employee?
- How long will they give the employee to improve?
- Remember that at this stage it is not disciplinary action but ensure that the employee knows it could lead to formal disciplinary action and to the imposition of a sanction if they are unable to achieve the required standards within the required time frame.

The role of the line manager

The line manager should:

- Gather all the relevant evidence/information
- Speak to other 'stake holders' who can fairly and reasonably contribute, i.e. where perhaps another manager works with the employee and can give details of successes or weaknesses
- Analyse key information which could include emails, paper records and forms, customer feedback, perhaps even statements from others (seek guidance from the HR Consultancy team about what is reasonable evidence to use)

- Maintain confidentiality
- Ensure they can evidence the areas in which they wish to see an improvement and why
- Ensure all records are stored safely and securely
- Understand whether there are any health issues which may adversely impact on a person's ability to undertake their duties as they may have to consider 'reasonable adjustments' to avoid a claim for disability discrimination (speak with your HR Consultancy team if you suspect this may apply).

The meeting

The line manager should:

- Invite the employee in writing to a formal meeting, giving reasonable notice and explaining what the meeting is intended to cover (Alcumus can help with this)
- Give the employee the right to be accompanied by either a work colleague or a union official
- At the meeting try to quickly settle the employee
- Set the scene, i.e. the aim, what the meeting is for, what they hope to cover
- Make sure there are no interruptions and mobiles are switched off
- If there is a note taker, explain their role. Otherwise confirm what notes will be produced
- Identify and discuss areas of underperformance and identify where improvements are required.

Setting objectives

The line manager should:

- Agree with the employee what is expected to achieve the required standard(s).
- Set SMART targets:
 - S Specific
 - M Measurable
 - A Achievable
 - R Relevant
 - T Time Bound.
- Document what has been agreed.
- Ensure the employee accepts the SMART targets are reasonable and understands what is required.

- Ensure the employee understands the possible consequences of failing to achieve in the given time i.e. that it could lead to the issuing of a disciplinary penalty and ultimately dismissal
- Set and agree what they are going to do differently themselves to achieve the objectives
- Agree with the employee what is reasonable for the line manager/the Company to support the employee to achieve the objectives, i.e. extra training, support, training, tools, etc
- Establish how they/the employee intend to monitor or measure the appropriate outcomes
- Set and agree a review date and ask the employee to bring these to that meeting as evidence of their progress towards achievement, successes and stumbling blocks.
- Confirm it in writing.

Review

- Review each of the SMART targets in relative detail with the employee, allowing them to present their evidence and explanations
- Agree where the employee has achieved, or where they have failed to achieve, at the same time as understanding the reasons for underachievement
- Agree to extend the deadline/objectives if appropriate
- If the employee has achieved all the objectives set to the required standard, and no further monitoring is required, confirm in writing that they are no longer on 'capability' but you may want to continue some less formal monitoring/support as appropriate
- If the employee has not achieved all the objectives set to the required standard, and you feel that an extension of time is not appropriate, you will then take this to a formal disciplinary process and invite the employee to a disciplinary hearing.
- Please refer to the guidance on handling a disciplinary hearing. All of your evidence thus far will form the bundle of 'investigation material'.

Potential outcomes

- **If the employee achieves all or most of the objectives** set and you are satisfied that their performance has now met the required standard, you can confirm in writing that they are no longer to be monitored under the 'capability' procedure
- **If the employee achieves some of the objectives** but you are not totally satisfied that their performance has met the required standard, or that it will be sustained, you may decide to continue some informal monitoring and support but confirm this in writing

and don't 'micro manage' as this is counter-productive and could be considered to be bullying and oppressive behaviour

- **If the employee has only achieved a few or none of the objectives** without justification, you need to invite them to a formal disciplinary hearing. Please refer to the guidance on handling a disciplinary hearing. All of your evidence thus far will form the bundle of 'investigation material'
- **If the employee is absent from work due to sickness or other reasons** during the period you may need to agree an period of extension or you may need to defer the process and revert to absence management procedures or even consider termination due to ill health (discuss this with your HR Consultancy Team)