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**Performance Capability Toolkit**

**What does “performance capability” mean?**

Sometimes, employees struggle to meet the standards of work performance regarded as satisfactory. Where that happens, it is a performance capability matter. If the employee is not able to fulfil their contract because of ill health, this will be a medical capability matter. This toolkit looks at performance capability, for more information on medical capability, see our *Managing sickness absence*topic.

Under s.98 of the Employment Rights Act 1996, “capability” is listed as one of the potentially fair reasons for dismissal. For such a dismissal to be fair, a reasonable process must be followed to achieve that dismissal, considering the organisation’s size and resources and the circumstances of the case. This reasonable process involves performance management of the employees with a view to improving their performance. Where sufficient improvements are not made, this process can end with the dismissal of the employee on grounds of performance capability. For more information see our *Dismissal*in-depth topic.

There are several stages to a capability procedure. For more detailed information on capability processes, look at our guide on *How to Manage Poor Performance and Capability Dismissals*. If the reason for an employee’s performance is disability, see *How to Comply with the Duty to Make Reasonable Adjustments* for more information.

It’s recommended to outline the process you’ll follow in a capability policy. The procedure outlined within it can be initiated when you identify that an employee’s performance is not at the standard you require. Our *Checklist for managing capability* provides an outline of the process to follow.

**The steps to follow during a performance capability process**

**An informal approach**

You should discuss failures in performance with the employees concerned, listen to any reasons why they are failing and agree a programme of work, training and guidance to help them improve. Being specific about what you want them to achieve is important; so is a time scale. If this informal approach does not work, you may need to move to a more formal procedure. You can use a *Letter of concern, confirming informal warning following a discussion regarding minor misconduct*to set out in writing the issues and the improvements you expect to see and a *Form to record informal capability discussion*.

**A formal approach**

You should follow a similar process to the informal approach; however, this will involve a formal meeting at which the employee has the right to be accompanied. Our *Letter inviting employee to a formal meeting for unsatisfactory performance (performance capability, first formal meeting)* can be used for an initial formal meeting and *Letter inviting an employee to a formal review meeting for unsatisfactory performance* can be used for any after that.

The employee should be warned that a failure to improve within the specified time scale could result in formal action or dismissal. A formal *Performance improvement plan* can be used to set out the required improvements and the actions to be taken to help the employee to achieve them.

However, at least two formal warnings should be issued before progressing to dismissal. We have templates you can use for this, including:

* *Letter issuing a formal verbal warning for unsatisfactory performance*
* *Letter confirming the issuing of a formal or final written warning*

If, following the formal hearing, you decide the employee’s performance has improved sufficiently, you can use *Letter following a meeting to discuss unsatisfactory performance informing the employee that no penalty will be imposed*.

**A final formal meeting**

The employee should be warned that continued failure to improve can only result in dismissal. If there is no improvement in performance, this may result either in a final warning or even in dismissal. It is important to understand whether failure at this point means you revert to the disciplinary procedure, or whether a final warning under the capability procedure has the same implications.

**Action to end the problem**

This may be dismissal, demotion or transfer. *A Letter confirming dismissal for capability issues* can be used to confirm dismissal.

Employees can appeal any formal warnings they are issued. You should hold a formal hearing to hear the appeal, using *Letter inviting employee to a formal appeal meeting following warning for unsatisfactory performance* to arrange it. A *Letter confirming the outcome of informal capability discussion* can be used to communicate the outcome.

It is important at each stage of the process that employees are aware of the consequences of failing to improve their work performance or attendance, particularly if the outcome might be dismissal. They should not be able to claim later that they did not realise their job was at risk. It is also important that proper records are kept of each stage of your decisions and the reasons why they were made.

**Other content**

Flowcharts

* *Dealing with performance issues*
* *Managing a capability procedure*

Q&As

* *Assessing performance of older workers*
* *Dismissal due to capability*
* *Dismissing on grounds of capability*

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