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Fair Work  
OMBUDSMAN

## Best Practice Guide Managing underperformance

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### Working at best practice

Employers who work at best practice benefit from motivated staff that are performing at their best. These employers also understand that when issues concerning underperformance are not addressed and managed both appropriately and sensitively, it can lead to unhealthy and unproductive outcomes that may affect the entire workplace.

This Best Practice Guide helps explain what is meant by underperformance and why this happens. It sets out an easy to follow five-step plan to help employers and employees address and manage issues about underperformance.

There is also a checklist to assist best practice employers.

This guide illustrates best practice when it comes to managing underperformance. For specific information regarding your minimum legal obligations, contact the organisations listed under the 'For more information' section at the end of this guide.

### Why work at best practice?

Establishing effective performance management systems can have significant benefits for your business, as it can lead to happier, more motivated and better performing employees. Reviewing, refining and implementing performance management systems are ways of helping achieve these significant benefits.

### What is underperformance?

Underperformance or poor performance can be exhibited in the following ways:

- unsatisfactory work performance, that is, a failure to perform the duties of the position or to perform them to the standard required
- non-compliance with workplace policies, rules or procedures
- unacceptable behaviour in the workplace
- disruptive or negative behaviour that impacts on co-workers.

Underperformance is not the same as misconduct. Misconduct is very serious behaviour such as theft or assault which may warrant instant dismissal. In cases of misconduct employers should seek specific advice about how to proceed before taking any action.

### What are the reasons for underperformance?

There are many reasons why an employee may perform poorly. Some of the common reasons include:

- an employee doesn't know what is expected because goals and/or standards or workplace policies and consequences are not clear (or have not been set)

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- interpersonal differences

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- there is a mismatch between an employee's capabilities and the job they are required to undertake, or the employee does not have the knowledge or skills to do the job expected of them

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- an employee does not know whether they are doing a good job because there is no counselling or feedback on their performance

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- lack of personal motivation, low morale in the workplace and/or poor work environment

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- personal issues such as family stress, physical and/or mental health problems or problems with drugs or alcohol

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- cultural misunderstandings

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- workplace bullying.

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Underperformance should be dealt with promptly and appropriately by an employer, as employees are often unaware they are not performing well and so are unlikely to change their performance. Best practice employers understand that issues that are not addressed promptly also have the potential to become more serious over time. This can have a negative effect on the business as a whole as it can affect the productivity and performance of the entire workplace.



### Helpful hints

Dealing with underperformance can be challenging and confronting for employees and employers alike, but it does need to be addressed. Managers need clear procedures, organisational support and the courage and willingness to tackle the issue.

Provide training to managers on how to tackle underperformance issues. It may be helpful to include role play workshops in the training material so that managers can learn how to approach matters in real-life scenarios. Well trained managers are better able to identify and address issues of underperformance.

If performance problems arise, it is crucial that they be resolved early. The longer that poor performance is allowed to continue, the more difficult a satisfactory resolution becomes, and the more the overall credibility of the system may suffer.

Not every underperformance issue needs a structured process. Explore other options for improving performance, such as the use of continuous feedback.

Remember that for performance management to be successful, the culture of the business should be one which encourages ongoing feedback and discussion about performance issues in open and supportive environments.

## How to manage underperformance

A clear system for managing underperformance is good for both a business and its employees.

Best practice employers are aware that ineffective performance management can dramatically reduce the level of performance in a workplace. Employees that perform well can lose motivation if they have to carry the burden of poor performing colleagues. Also, most employees who are not performing well would like to improve.

Negative attitudes to performance management, or a lack of credibility with the process, can be an indication of an inadequate performance management system. A consistent approach to performance management provides opportunities to address problems and generate effective solutions. A successful performance management process is one that supports the workplace culture and is accepted and valued by employees.

Here is an easy to follow step by step guide to managing underperformance.

### Step 1 — Identify the problem

It is important to understand the key drivers of performance or underperformance within the workforce.

It is also important to correctly and specifically identify the problem. Some common reasons for underperformance are identified later in this guide.

### Step 2 — Assess and analyse the problem

The employer should determine:

- how serious the problem is

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- how long the problem has existed, and

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- how wide the gap is between what is expected and what is being delivered.

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Once the problem has been identified and assessed, the employer should organise a meeting with the employee to discuss the problem.

The employer should let the employee know the purpose of the meeting in advance so they can adequately prepare for the meeting.

The employee should be allowed to bring a support person of their choice or a union representative to the meeting. Employers working at best practice will inform the employee that they can bring a support person as a matter of process.

### Step 3 — Meet with the employee to discuss the problem

It is important that the meeting takes place in private, in an environment that is comfortable, non-threatening and away from distractions and interruptions.

The employer should begin by holding a discussion with the employee to explain the problem in specific terms. From this conversation, the employee should be able to clearly understand:

- what the problem is

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- why it is a problem

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- how it impacts on the workplace, and

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- why there is a concern.

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The employer should discuss the outcomes they wish to achieve from the meeting.

The meeting should be an open discussion and the employee should have an opportunity to have their point of view heard and duly considered. The employer should listen to the explanation of why the problem has occurred or to any other comments the employee makes.

When having this type of meeting, it may be useful in facilitating discussion to refer to recent positive things that the employee has done to show them that you also recognise and appreciate their strengths.

Key points for employers to remember when holding the meeting are to:

- talk about the issue and not the person
- explore the reasons why there is an issue
- clarify details
- stay relaxed and encouraging, and
- summarise to check your understanding of the situation.

And, when discussing shortfalls in any area, it is important to check that the employee:

- is aware that it is a task that is required of them
- has been shown what is required, and
- understands the gap between what is happening and what is required.

#### Step 4 — Jointly devise a solution

Where possible, it is important that a solution is jointly devised with the employee. An employee who has contributed to the solution will be more likely to accept and act on it.

When working out a solution, the employer should:

- explore ideas by asking open questions
- emphasise common ground
- keep the discussion on track
- focus on positive possibilities, and
- offer assistance, such as further training, mentoring, flexible work practices or redefining roles and expectations.

A clear plan of action should be developed with the employee to implement the solution. This can be in the form of a performance agreement or action plan. A performance agreement or action plan can:

- reflect an understanding of performance expectations and what is to be achieved over the specified time period (performance improvement milestones)
- clarify roles and responsibilities of the employee
- include strategies for training and career development
- include timeframes for improvement (these may vary depending on the issue and needs of the business, however it is important to give an employee adequate time to improve their performance)
- reinforce the value and worth of the role being performed.

A date should be set for another meeting with the employee to review progress and discuss the employee's performance against the agreed action plan.

The employer should keep a written record of all discussions relating to underperformance in case further action is required. Generally, it may also be used as evidence if legal action is taken about the matter.



#### Helpful hint

When devising a solution, make sure it is clear and easy to follow and does not rely on 'performance-management speak'. Use everyday language to avoid alienating both managers and employees. For example, if terms such as 'KPIs' (Key Performance Indicators) aren't part of everyday language, don't use them in performance agreements.

## Step 5 — Monitor performance

The employer should monitor the employee's performance and continue to provide feedback and encouragement.

A meeting to review and discuss the employee's performance should be held even if there is no longer an issue. This enables both parties to acknowledge that the issue has been resolved. The employer should provide both positive and negative feedback to the employee and should work with the employee to ensure that performance improvements are sustained.

More serious action may need to be taken if the employee's performance does not improve including further counselling, issuing formal warnings and ultimately if the issue cannot be resolved, termination of employment.

### Termination of employment

If an employee's performance does not improve to an acceptable standard, termination of their employment may be an option.

Employers cannot dismiss their employees in circumstances that are "harsh, unjust or unreasonable". What is harsh, unjust or unreasonable will depend on the circumstances of each case. However, it is important to be fair to employees particularly when it comes to termination of employment. They should be given reasons for dismissal and an opportunity to respond to those reasons.

Importantly, until 1 January 2011, employers with fewer than 15 full-time employees (or the equivalent) will be covered by special dismissal arrangements which are different to those that apply to larger businesses. Generally, the number of full-time equivalent employees can be calculated by dividing the number of hours worked by all employees over the four weeks preceding the dismissal by 152. See the 'For more information' section at the end of this guide for a link to the small business calculator.

The special arrangements that apply to employers with fewer than 15 full-time employees (or their equivalent) are:

- employees will need to have worked for the business for 12 months in order to be eligible to make a claim for unfair dismissal, and

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  - if a small business employer strictly follows the Small Business Fair Dismissal Code and the dismissal of their employee is not harsh, unjust or unreasonable, then the dismissal will be deemed to be fair. It is best practice to follow the code and fill out the Small Business Fair Dismissal Code Checklist at the time an employee is dismissed and you should keep the checklist with your records as it will assist you if an employee makes an unfair dismissal claim. A link to the code and checklist is available at the 'For more information' section at the end of this guide.
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After 1 January 2011 the special arrangements will only apply to employers with a headcount of less than 15 employees.

You should also ensure that you provide the employee with their entitlements such as notice and any annual leave that they have accrued. For more information on the entitlements you may owe after termination, contact the Fair Work Infoline on 13 13 94.

## Common performance issues

The following table (overleaf) provides a summary of common issues faced by employers and employees when managing performance and identifies key ways to improve performance management systems in the workplace.

Common performance issues		
Issue	Possible causes	Actions
<p>Employee does not undertake work as required, showing signs of apathy and laziness</p> <p>Employee does not appear to understand job requirements or directions</p>	<ul style="list-style-type: none"> <li>→ Job content &amp; design</li> <hr/> <li>→ Inappropriate job fit</li> <hr/> <li>→ Personal or external issues</li> </ul>	<ul style="list-style-type: none"> <li>✓ Begin with informal performance discussion</li> <hr/> <li>✓ Be clear about the performance requirements and expected contribution of the role to the work of the business</li> <hr/> <li>✓ Focus on interest in work tasks, and how they might be improved</li> <hr/> <li>✓ Explore options for opportunities in other areas of the business, if possible</li> <hr/> <li>✓ Refer to counselling service if personal circumstances are impacting performance</li> </ul>
<p>Employee will not follow directions or perform tasks as required</p>	<ul style="list-style-type: none"> <li>→ Failure to understand what is required</li> <hr/> <li>→ Inability to perform tasks</li> <hr/> <li>→ Personal issues</li> </ul>	<ul style="list-style-type: none"> <li>✓ Begin performance improvement process starting with informal discussions around what is required in the position. Look at possible options for training and development if a skill deficit is identified</li> <hr/> <li>✓ Commence formal performance management process if no improvement forthcoming</li> </ul>
<p>Employee fails to acknowledge they are underperforming</p>	<ul style="list-style-type: none"> <li>→ Performance issues have not been adequately explained</li> <hr/> <li>→ Process has not been adequately applied</li> <hr/> <li>→ Employee does not accept management assessments</li> </ul>	<ul style="list-style-type: none"> <li>✓ Re-establish expected outcomes, use evidence of how performance has failed to meet expected standards, explain the impact of this on the success of the business</li> <hr/> <li>✓ If necessary commence formal performance management process</li> </ul>
<p>Employee does not complete work tasks to the required standard</p>	<ul style="list-style-type: none"> <li>→ Lacks the required skills and capabilities</li> </ul>	<ul style="list-style-type: none"> <li>✓ Identify training and development opportunities as part of performance improvement plan</li> <hr/> <li>✓ If employee fails to develop required skills, progress through performance management process to possible options such as reassignment of duties, or transfer to another area to achieve a better job fit (if possible)</li> <hr/> <li>✓ Review recruitment practices to ensure appropriate selection decisions are being made</li> </ul>

Employee is cynical of work environment and tasks, bringing negative opinions to the work environment	<ul style="list-style-type: none"> <li>→ Has become disillusioned with work environment</li> <hr/> <li>→ Fails to understand value of work being undertaken</li> </ul>	<ul style="list-style-type: none"> <li>✓ Establish team culture based on respect and support</li> <hr/> <li>✓ Re-establish role of the position, and the value of outcomes delivered by the organisation</li> <hr/> <li>✓ If possible, explore opportunities for career transition and movement</li> </ul>
Employee is regularly absent without cause	<ul style="list-style-type: none"> <li>→ Job content &amp; design</li> <hr/> <li>→ Inappropriate job fit</li> <hr/> <li>→ Management style</li> <hr/> <li>→ Personal or now with youworkplace issues</li> </ul>	<ul style="list-style-type: none"> <li>✓ Identify cause behind absenteeism</li> <hr/> <li>✓ Explore possible strategies for job redesign, job fit, changes to working arrangements, management of health issues</li> <hr/> <li>✓ Re-establish expectations of attendance</li> </ul>

### Checklist for employers when managing underperformance

- ✓ Ensure employees clearly understand what is expected of them

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- ✓ Clearly identify and then assess the problem

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- ✓ Organise a meeting with the employee to discuss the problem

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- ✓ Give the employee time to prepare for the meeting

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- ✓ Allow the employee to bring a support person to the meeting

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- ✓ Conduct the meeting in a private, non-threatening, comfortable and quiet location

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- ✓ Define and explain your concerns to the employee in specific terms

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- ✓ Give the employee a genuine opportunity to respond before considering your actions

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- ✓ Where an employee's performance is suffering due to the employee's personal circumstances, refer the employee to professional help or counselling

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- ✓ Clearly outline the improvement required and the consequences of continued poor performance

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- ✓ Devise a solution with the employee to improve performance

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- ✓ Develop an action plan which includes performance improvement milestones and time frames for further review

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- ✓ Schedule another meeting to review the employee's performance against the agreed action plan

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- ✓ Document all discussions, including actions to be taken

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- ✓ Monitor the employee's performance and continue to provide feedback

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- ✓ Follow any steps set out in an applicable industrial instrument (such as a modern award or enterprise agreement), the employer's policies and procedures and the employee's employment contract concerning performance management

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- ✓ For small business, know and comply with the Small Business Fair Dismissal Code (available through the Fair Work website – see overleaf).

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For more information

**Fair Work Online**

[www.fairwork.gov.au](http://www.fairwork.gov.au)

**Fair Work Ombudsman**

13 13 94

[www.fwo.gov.au](http://www.fwo.gov.au)

**Fair Work Australia**

1300 799 675

[www.fwa.gov.au](http://www.fwa.gov.au)

**To download the Small Business  
Fair Dismissal Code & Checklist**

[www.fairwork.gov.au/Termination](http://www.fairwork.gov.au/Termination)

-of-employment/Pages/Small-Business

-Fair-Dismissal-code.aspx?role=employers

**To calculate whether your business  
is a Small Business**

[www.fwa.gov.au/index.cfm?pagename](http://www.fwa.gov.au/index.cfm?pagename)

=dismissalsabout

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