

How to end the employment relationship in a fair manner where the employee is unable to perform work to the required standard (poor performance)

In the how to guide on “how to manage the employment relationship in a fair manner where an employee is not performing to the required standard”, it is recommended that where an employee is not performing well, an employer should assess the employee’s performance and then after appropriate training, guidance and counselling, give the employee a fair opportunity to improve.

See how to guide: [How to manage poor work performance](#)

Should the employee not improve and the employer is satisfied that it has done what is reasonably possible to assist the employee; the employer may convene a final hearing to address the situation and to make a final decision as to the way forward.

Before convening a final hearing an employer should consider whether the poor performance is ongoing and serious and potentially damaging to the business. If it is, it will need to be dealt with finally.

See template: [Notice to attend a hearing: Poor work performance](#)

How to conduct a fair incapacity enquiry for poor work performance

- Serve the employee with a notice to attend a poor performance hearing.
- Arrange an appropriate venue for the hearing and inform the relevant persons of their need to attend the hearing (for example a manager or a supervisor).
- Advise the employee that he/she may bring a fellow employee as a representative to the hearing. Assistance by a trade union representative (shop steward) only applies if a registered trade union has been granted organisational rights to have elected shop stewards for this purpose. A trade union representative who does not satisfy this criterion may only assist you if s/he is a fellow employee.
- Ensure that the employee is aware of and understands the reason for holding the performance hearing.
- Check whether the employee requires the assistance of an interpreter. This could be a fellow employee who is conversant in the required languages.
- State the purpose of the hearing and how it will run.
- Go through the standards required, previous consultation(s), commitments made and steps taken to improve performance.
- Highlight continued poor performance and ongoing short-comings.
- Provide hard evidence to back up the allegations of poor performance– avoid general observations.
- Explain how the employee’s poor performance negatively affects the success of the business.
- If witnesses are called, allow the employee and his/her representative the opportunity to put questions to the witness.
- Give the employee and his/her representative the opportunity to comment and, if required, to call witnesses.
- Adjourn the hearing to consider an appropriate finding.

- If dismissal is contemplated, consider the checklist below that is based on the requirements for a fair dismissal:

CHECKLIST: DISMISSAL BASED ON POOR PERFORMANCE		
a)	Did the employee fail to meet a performance standard?	
b)	If yes, in what way did the employee fail to meet the standard. Was the standard reasonable and achievable?	
c)	Was the employee aware of the standard or could reasonably be expected to have been aware of the standard?	
d)	If yes, how was the employee made aware of the standard or could reasonably be expected to have been aware of it?	
e)	Was the employee given a fair opportunity to meet the standard? For example training, evaluation, counselling that was given to the employee or any structural causes that were identified as contributing to the poor performance and sorted out.	
f)	Did the employee receive adequate support and assistance to meet the standard?	
g)	Did the employee have enough time to meet the standard?	
h)	Would it be appropriate for the employer to consider dismissing the employee in the circumstances?	

- If the answer to each question above is 'yes', consider whether it is possible to take any action short of dismissal, including providing another opportunity for the performance to improve; demoting the employee or giving the employee a different role (by agreement and where reasonable); or issuing the employee with a warning.
- If there are no other reasonable alternatives available, dismissal may be the only option.
- Reconvene the hearing and advise the employee of the finding.
- If the decision is to dismiss, advise the employee in writing of the decision to dismiss and explain why the decision was reached (use the checklist above as a guide).
- Advise the employee of his/her right to refer the dispute to the CCMA or a bargaining council.

See template: Notice of termination - Poor performance