

Employment Law Dos & Don'ts

Performance Management

DO

- Do concentrate on measures to prevent, as well as to cure. Active support, encouragement and guidance for employees to help them succeed in their role is key in avoiding issues entirely at best, or catching them early at worst.
- Do read the ACAS Code of Practice on disciplinary and grievance procedures and their guide on how to manage performance.
- Do consider alternatives to dismissal, like demotion, particularly if you are a large employer with a lot of resources at your disposal and the employee has particularly lengthy service. A failure to do so could lead to a finding of unfair dismissal.
- Do look at your employee's job description before you start a procedure, to make sure what they're being asked to do is actually covered!
- Do make sure you have a performance management/capability policy in your handbook – and that you refer to it.
- Do think twice before awarding a pay increase, bonus, etc to an employee about whom there are performance concerns. Awarding an increase soon after starting a performance management process will look contradictory and undermine your process.

DON'T

- Don't forget that for a fair dismissal on performance grounds you must hold a reasonable belief that the employee is incompetent – whether they in fact are or not doesn't matter. As long as an employer can demonstrate to the Employment Tribunal that they held this reasonable belief, and carried out a fair process, the dismissal will be fair.
- Don't underestimate the importance of appraisals. Accurately reflecting performance in these will be invaluable in a performance management process.
- Don't leave performance molehills to turn into mountains later down the line – they will be that much harder to shift. Deal with performance issues when they arise, don't ignore them because you think it's too time consuming to manage.
- Don't jump straight into a formal procedure. An informal discussion might be all it needs for an employee to improve things. Also, you might discover that there's something else going on behind the scenes, perhaps health problems or workplace bullying, for example.
- Don't forget to provide support and carry out regular reviews of an employee's performance throughout the management process.