

# PIPs: Write, Implement and Time Them Precisely

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**A** performance improvement plan (PIP) is typically a step in a progressive discipline policy—one that shouldn't be rushed into too quickly or used for all types of performance deficiencies.

If the performance failure is a one-time event, it may be too soon to implement a PIP, said Katherine Rigby, an attorney with Epstein Becker Green in Boston. "However, if an employee is experiencing repeated or multiple performance deficiencies, a properly structured PIP can effectively provide the necessary road map and support to meet performance objectives."

Immediate termination may be appropriate for egregious misconduct. If implementing a PIP, employers should clarify the plan doesn't change the at-will nature of employment.

"A PIP should be used primarily to facilitate improved performance by identifying deficiencies while providing an opportunity for improvement and success," said Timothy Ford, an attorney with Einhorn Barbarito in Denville, N.J. "At the same time, a properly drafted and implemented PIP can serve to justify legitimate business reasons for termination and provide evidence of performance-related issues and failure to improve."

## Progressive Discipline

A progressive discipline policy often has four or five steps, Ford said:

- Coaching and re-establishing expectations.
- Verbal reprimand.
- Written reprimand.
- Suspension, which is not always appropriate.
- Termination.

A PIP is part of the written reprimand phase.

## Drafting Tips

When drafting PIPs, the objectives should specify the employee's areas of needed improvement and what the employer expects the worker to accomplish in a specific time frame, said John Connell, an attorney with Burr & Forman in Greenville, S.C.

Include a specific and appropriate duration for the PIP, such as 30 to 90 days, Rigby said. "The appropriate duration should be aligned with business goals and will depend in part on the performance metrics that need to be improved and whether the duration is sufficient to allow the employee to accomplish the objectives," she said.

Identify the responsibility of the position, job expectations and what would be acceptable performance, Ford said. Then compare this to the employee's current level of production.

"Identify the support, training and mentorship that will be provided. Schedule regular meetings for follow up and to discuss performance," he said. "Identify the consequences if the employee does not meet the objectives, including termination."

Don't set unachievable expectations, he cautioned. Don't make the PIP and the objectives subject to interpretation; include measurable objectives. "Do not make it personal or identify anything other than professional responsibilities," Ford said.

Include confirmation that the employer has provided previous opportunities to improve with dates of prior coaching or corrective action, said Jennifer Long, an attorney with Duane Morris in Chicago.

Consider including a statement that the employee must demonstrate "immediate and sustained improvement," Rigby recommended.

The PIP could note that the company may determine at its own discretion to end the PIP early if the employee clearly cannot or is otherwise refusing to meet the goals of the PIP, she said.

HR needs to be involved to ensure the drafting of the PIP is consistent across the organization, Rigby added.

### **Proper Implementation**

Regularly and accurately document the employee's performance throughout the PIP with details on the date and examples of how performance has progressed—whether it has improved, stayed the same or deteriorated—Rigby said.

"Obtain feedback from the employee about their performance and obstacles, if any, they have identified in progressing," she said. "If the need for additional training and support is identified, provide that as soon as possible."

Be open to making changes to the PIP based on employee feedback, Rigby added.

"If the employee has sustained consistent improved performance, consider whether to end the PIP early," she said. "If, on the other hand, the employee has failed to make sustained improved performance, consider whether to end the PIP early and whether other action should be taken."

Repercussions if the PIP is not completed satisfactorily might not necessarily be termination, she noted. Further discipline, demotion and transfer are other options.

"Do not refuse to accept or otherwise belittle feedback from employees concerning obstacles they may be facing," she said. "Do not include irrelevant information in progress reports as that can be seen as intentionally sabotaging the PIP process."

Delivery of the PIP to the employee should be in a private meeting, preferably at the end of the day and at a time that does not interfere with a major work deadline, Long said. "The employee should not have to return to complete an urgent work assignment or to walk past an area full of co-workers at the end of the conversation when they may be emotional or upset," she said.

The manager should make sure they are available to answer follow-up questions from the employee, she added. The manager also should note the deadlines or time frames provided in the PIP to ensure the employee receives timely feedback on their progress.

"An employee should not be left to wonder whether their performance is improving," Long said.

### **Fast Termination Versus a PIP**

An employer might prefer a fast termination instead of a PIP when the employee's behavior, more than performance, is the problem, said Douglas Bracken, an attorney with Kane Russell Coleman Logan in Dallas.

For example, when an employee poses a safety threat or has engaged in serious insubordination or work refusal, most employers will take immediate corrective action, including removal of the employee from the workplace or termination, Long said.

PIPs are not appropriate for any unlawful conduct, including discrimination, Connell said.

Once on notice of unacceptable conduct, the company may be held liable if the employee engages in the same conduct again, Bracken said.

A PIP is not typically effective if the employer has already repeatedly counseled the employee on various performance deficiencies, and the employee clearly is unlikely to perform the required job duties, assuming there is no need for a reasonable accommodation, Rigby said.

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