

How to deal with substandard performance in the workplace

By Maryna Theron

As a business owner, Jan is tired of his employee not doing his work properly and charges his employee with misconduct. After having a disciplinary hearing the employee is dismissed. When the matter is referred to the Commission for Conciliation, Mediation and Arbitration (CCMA) – the employee will win! Why? Because Jan confused poor performance with misconduct.

What is the difference between poor performance and misconduct?

Poor work performance is an ever increasing challenge in the workplace and refers to an employee unable to reach and maintain the employer's work performance standards in terms of quality and quantity. Misconduct refers to behavioural problems, such as absenteeism, non-compliance with policies and procedures, insubordination, abusive behaviour, misuse of employer's property, etcetera.



Ask the following questions to establish that poor work performance is the problem:

- is the employee's output reasonable;
- is the quality of the employee's work acceptable;
- is the employee following the company's procedures;
- is the employee keeping costs within the company's budget;
- is the effort that the employee is making sufficient;
- might the employee perform better at a lower level;
- does the employee have the ability to do the job;
- is the employee paying attention to detail; and
- does the employee care that his performance is poor?

When it is established that poor work performance is the problem, the employer should hold an informal meeting with the employee to discuss the matter and to try and establish the reasons for the employee's poor work performance in order to identify the best remedy for the situation. The most common solutions include evaluation, counselling, assistance, training and guidance. Ideally the parties will jointly decide on the most appropriate solution in order to address the employee's poor work performance. The employer should be specific regarding the set standard of work performance and the areas for improvement. Take note to record everything discussed in writing. How the employer assists the employee will depend on the:

- number of weeks/years the employee has worked for the company and when work performance became poor;

Wie is die LWO?

Die LWO is gedurende 1990 as werkgewersorganisasie tot stand gebring, ten einde werkgewers binne die Suid-Afrikaanse besigheidsgemeenskap te bedien met regsdiens, asook verwante dienste op die gebied van arbeidsreg.

Die LWO is 'n lede-organisasie sonder winsbejag en word bestuur deur 'n Raad wat uit lede bestaan. Die LWO beskik oor die nodige infrastruktuur waardeur lede effektief op 'n nasionale basis bedien kan word.

Die doel van die LWO

Die LWO het ten doel om die werkgewersorganisasie van uitnemendheid te wees vir werkgewers gegrond op die professionele wyse waarop lede van die LWO met arbeidsregtelike dienste bedien word.

Who is the LWO?

The LWO was established during 1990 as an employers organisation in order for employers to be provided with legal services within the field of labour law.

The LWO is a non-profit members organisation and is managed by a board consisting of members. The LWO has the necessary infrastructure through which members can be served effectively on a national basis.

The purpose/goal of the LWO

The LWO aims to be the employers organisation of excellence for employers based on the professional manner in which members of the LWO is served with labour law services.

- type of job;
- employee's willingness to improve his/her performance; and
- effect the employee's performance has on the company.

The employer should take all possible steps to assist the employee and provide a reasonable time period for the employee to improve his/her work performance. It is important to monitor the employee's progress continuously.

If continuous poor work performance leads to a disciplinary hearing, the following will be considered:

- Did the employee fail to meet a performance standard; and if so –
- was the employee aware, or could reasonably be expected to have been aware, of the required performance standard;
 - was the employee given a fair opportunity to meet the required performance standard; and
 - was dismissal an appropriate sanction for not meeting the required performance standard.

When it comes to poor work performance it is vital to ensure that the employee was afforded a reasonable opportunity to meet the required standards. What is reasonable will depend on the circumstances.

It is vital to note that the employer can under no circumstances dismiss an employee without following the correct procedure. All dismissals must be procedurally and substantively fair. Please contact the LWO at 0861 101 828 or info@lwo.co.za for more information regarding the correct procedures to follow when dealing with poor work performance.

Sosiale media in die werksplek

Deur Marelize Roets

Sosiale media het deel geword van ons daaglikse bestaan. Werkgewers staar gereeld verskeie struikelblokke in die gesig as gevolg van werknemers wat gebruik maak van sosiale media in die werksplek. Die nadele van die gebruik van sosiale media sluit in:

- Verlies van produktiwiteit in die werksplek weens die tyd wat bestee word aan die gebruik van sosiale media;
- Finansiële verlies as gevolg van die oormatige gebruik van die internet; en
- Menings wat deur werknemers gepubliseer word op sosiale media ten opsigte van die werkgever of 'n mede-werknemer.

Die gebruik van sosiale media in die werksplek kan ook voordelig wees vir 'n werkgever. Die voordele sluit in:

- Werkgewers kan sosiale media benut om meer inligting te verkry oor kandidate vir vakante poste in die werksplek;
- Werkgewers kan 'n werknemer se profiel op sosiale media benut om ondersoek in te stel ten opsigte van enige siekverlof aansoek.

In die saak van *Sedick v Krisray (Pty) Ltd* is werknemers afgedank weens kommentaar wat deur die werknemers gepubliseer is op die Operasionele Bestuurder se facebook-blad. Die kommentaar het die eienaar van die besigheid sowel as die eienaar se familie wat in diens was van die werkgever in 'n swak lig gestel. Die werknemers se verweer was dat individue nie geïdentifiseer was in die kommentaar nie en dat hulle privaatheid geskend was omdat 'n ander werknemer toegang verkry het tot hulle facebook-bladsye.

Die kommissaris by die Kommissie vir Versoening, Bemiddeling en Arbitrasie (KVBA) wat die aangeleentheid aangehoor het, was van mening dat daar 'n groot

kans was dat mense wat die kommentaar gelees het, sou kon aflei na wie die kommentaar verwys. Die kommissaris het verder aangedui dat die werknemers se kommentaar 'n aanduiding was dat hulle nie respek betoon het aan die bestuur van die besigheid nie.

Die gebruik van sosiale media in die werksplek is 'n toenemende probleem wat werkgewers in die gesig staar. **Werkgewers kan die probleem oorbrug deur 'n sosiale media beleid op te stel. Kontak gerus die LWO Werkgewersorganisasie by 0861 101 828 vir meer inligting in die verband.**

Don't delay discipline!

By Elmarie Lemmer



Discipline should be implemented as promptly as possible by avoiding unnecessary delays, both psychologically and legally.

Psychologically, a closer time proximity creates a direct and clear connection between the misconduct and the discipline, aiding the learning process.

Legally, unnecessarily delayed discipline can be found to be faulty in terms of the seriousness of the offence as well as adherence to procedural time frames.

The actual charge can also be misconstrued as a pretext for a hidden agenda.

We strongly advise employers to ensure disciplinary action, whether in the form of warnings issued according to the employer's disciplinary code, or arranging a disciplinary hearing, is taken as soon as possible after the misconduct took place.

Contact the LWO at 0861 101 828 for more information and/or assistance.

Is dit 'n drankprobleem?

Deur Anneline Scriven

Indien die werknemer op 'n gereelde basis afwesig is, is dit noodsaaklik om vas te stel of daar 'n probleem is, veral as die werkgever vermoed dat die werknemer 'n drankprobleem het. Om hierdie probleem aan te spreek moet daar 'n konsultasie met die werknemer gereël word, waarvan hy/sy 48 uur kennis moet ontvang.



werknemer medikasie moet neem kan die werkgever byvoorbeeld die werknemer se medikasie by die kantoor hou om seker te maak dat die werknemer die medikasie elke dag neem. Die werknemer moet vir 'n redelike tydperk gemonitor word en die tydperk moet aan die werknemer bekend gemaak word. 'n Opvolg konsultasie moet dan gehou word om vas te stel of daar enige verbetering is. Indien daar geen verbetering is nie moet dit onder die werknemer se aandag gebring word dat sy/haar optrede tot ontslag kan lei.

Wat gebeur as die werknemer weer daarna dieselfde oortreding begaan?

Indien daar wel verbetering is maar die werknemer weer na 'n tydperk hom-/haarself aan dieselfde oortreding skuldig maak, kan dit lei tot ontslag. Wanneer daar wel vordering deur die werknemer getoon word maar nie genoeg is nie, sal ontslag ook regverdig kan word.

Wat behels die konsultasie?

Die werkgever moet aan die werknemer uitwys dat hy/sy gereeld afwesig is. Indien daar 'n definitiewe patroon is, veral afwesigheid op Maandae, moet dit ook aan die werknemer uitgewys word.

Die werknemer moet 'n geleentheid gebied word om te verduidelik indien daar 'n probleem is. Indien die werknemer op daardie stadium van die konsultasie erken dat hy/sy 'n drankprobleem het, is dit noodsaaklik vir die werkgever om bystand te bied.

Watter bystand kan die werknemer verwag?

Indien dit operasioneel moontlik is, kan die werkgever die werknemer tyd afgee om 'n dokter te besoek. Wanneer die

Sal die werkgever se saak by Die Kommissie vir Versoening, Bemiddeling en Arbitrasie (KVBA) suksesvol wees?

Die werkgever moet deurlopend die korrekte prosedures volg tydens die konsultasie proses. Daar moet ook deeglik rekord gehou word van alle konsultasies tesame met die bystand wat aan die werknemer gebied is. 'n Kommissaris by die KVBA sal oorweeg of daar enigsins meer verwag kan word van 'n werkgever ten opsigte van die bystand wat aan die werknemer gebied was.

Kontak die LWO by 0861 101 828 of info@lwo.co.za vir bystand indien u vermoed dat 'n werknemer 'n drankprobleem het.

Plaaswerkers

Deur Elmari Lemmer

Sektorale Vasstelling 13 reguleer arbeidsverhoudinge in die Landbousektor en plaas sekere wetlike verpligtinge op die boer as werkgewer. Hierdie Sektorale Vasstelling definieer 'n "plaaswerker" as enige persoon wie betrokke is by boerdery aktiwiteite, insluitende algemene werkers op 'n plaas, alle huiswerkers wie in en om die plaashuis werk, asook sekuriteitswagte wie die plaas en areas waar boerdery aktiwiteite plaasvind bewaak en nie in die Privaatsekuriteitsektor werkzaam is nie.

Die nuwe minimum loon vir plaaswerkers is vrygestel wat op 1 Maart 2016 in werking getree het en geldig is tot 28 Februarie 2017. Die loon is soos volg:

- **Uurliks: R14.25**
- **Daagliks (9 ure per dag): R128.26**
- **Weekliks (45 ure per week): R641.32**
- **Maandeliks (195 ure per maand): R2778.83**

Dit is uiters belangrik dat die werkgewer altyd regverdig en billik optree, asook die korrekte prosedures volg soos van toepassing. Opsies indien die werkgewer nie die minimum loon kan bekostig nie, sluit in:

- **Aansoek om kwytstelling:** die werkgewer doen aansoek om kwytstelling van die minimum loon by die Departement van Arbeid deur spesifieke dokumentasie in te dien, asook finansiële state bloot te lê. Verder moet uitsonderlike omstandighede aangevoer word om die kwytstelling te motiveer.
- **Korttyd:** die werkgewer moet deeglik met werknemers konsulteer voordat werksure aangepas kan word.
- **Personeelvermindering:** alle alternatiewe



moet eers oorweeg word voordat daar op personeelvermindering besluit word ten einde dit sover moontlik te vermy.

Wanneer die werkgewer beplan om voort te gaan met personeelvermindering, of werknemers se werkure te verander om korttyd te werk, is dit belangrik dat die werkgewer die korrekte konsultasie prosedures volg, waarna 'n skriftelike ooreenkoms tussen die partye opgestel moet word. Indien daar 'n vakbond in die werksplek teenwoordig is, is dit uiters belangrik dat die werkgewer die vakbond in kennis stel en betrek by die proses.

Kontak gerus die LWO by 0861 101 828 vir meer inligting en/of bystand. Ons is 24/7 beskikbaar.

Compensation Commissioner - are you registered?

Numerous business risks must be managed by the employer on a daily basis to ensure the business's profitability and sustainability. To comply with legislation is not negotiable, creating a challenging environment employers must navigate to limit risk and promote profit. The best way to manage risk is to do it proactively, although many employers delay until a crisis occurs, in this case either an injury on duty or an inspection by the Department of Labour.

Who is the Compensation Commissioner and what is the Compensation Fund?

The Compensation Commissioner is the governmental department that enforces the Compensation for Occupational Injury and Disease Act ("COID Act"). It is a non-profit organisation that employers are obligated to contribute to annually and acts like an insurance fund for employees who get injured at work. These employees can claim compensation for their injury based on the degree of severity and consequences of the injury, etcetera.

The COID Act

The COID Act (implemented in 1993) replaced the Workers Compensation Act (introduced in 1914) and includes a much broader spectrum of injury and disease coverage.

Compliance - Letter of good standing

All employers must be registered with the Compensation Commissioner and pay annual assessment fees. In recent years the Department of Labour focuses on much

stricter enforcement of compliance with the COID Act by employers.

The letter of good standing was implemented as a requirement to tender and refers to a letter granted to employers compliant with the act. This letter of good standing is granted annually upon payment of the most recent assessment.

During an inspection by the Department of Labour, the inspector will always request the letter of good standing to confirm compliance with the COID Act.

Consequences of non-compliance

Any person that is found guilty of non-compliance with this act can at conviction be fined up to 10% of the total annual employees' pay that the annual assessment fee is based on, or imprisonment. The employer can also be held accountable for the employee's medical costs and salary.

Be proactive

An accident can happen at any time and an injury on duty can have far-reaching consequences for the employer. Through compliance employers minimise risk for the business as well as employees. We advise employers to be proactive:

- Ensure you are registered with the Compensation Commissioner
- Investigate the status of your accounts at the Compensation Fund to ensure you are up to date with your annual payments - the Compensation Fund's

financial year runs from the beginning of March to the end of February

- Update your account every year with the latest salaries and wages figures
- Declare your earnings and pay your annual assessments

March 2016 falls in the new assessment period and all employers are once again obligated to declare their earnings of the previous year (1 March 2015 to 29 February 2016) and pay their annual assessments.

We advise employers to finalise their returns and settle the assessments as soon as possible to ensure compliance and limit risk.



The LWO has an agreement in collaboration with CIRC (corporate industrial risk consultants) to assist LWO members with regards to the Compensation Fund and injuries on duty.

Contact CIRC for more information at 012 346 8100 | info@circ.co.za | www.circ.co.za

Kontak die LWO / Contact the LWO

Tel: 0861 101 828 | Faks/Fax: 012 664 2703 | E-pos/E-mail: info@lwo.co.za | Web: www.lwo.co.za
 Adres/Address: Privaatsak/Private bag x121, Centurion, 0046 | Eenheid/Unit 16, Central Office Park, Jeanlaan 257 / 257 Jean Avenue, Centurion

HOOFKANTOOR

Voorsitter	Pieter Muller	082 853 8711	pietman@amana.za.net
Hoof Uitvoerende Beampte	Pieter Breytenbach	082 944 6886	hb@lwo.co.za
Bestuurder: Bemarking	Ansofie van der Walt	076 091 4647	ansofie@lwo.co.za
Bestuurder: Finansies & Admin	Daniel van der Vyver	071 485 0647	daniel@lwo.co.za
Senior Regsadviseur	Mariëtte Redelinghuys	071 485 3501	mariette@lwo.co.za
Senior Regsadviseur	Marius Rieger	071 485 3551	marius@lwo.co.za
Regsadviseur	Elmari Lemmer	071 485 3531	elmari@lwo.co.za
Regsadviseur	Crystal McLauchlin	071 485 3565	crystal@lwo.co.za
Regsadviseur	Morné Venter	071 485 3530	morne@lwo.co.za
Regsadviseur	Maryna Theron	071 485 3435	maryna@lwo.co.za
Regsadviseur	Alexandra Small	071 485 3503	alexandra@lwo.co.za

LWO bedieningspunte / service points

Nota: dienste sal gelewer word vanaf die naaste bedieningspunt / Note: services will be rendered from the closest service point

