

Resource

October 9, 2023

This guidance is intended to assist employers who are dealing with employee performance issues and considering different strategies for addressing those issues.

What is a PIP?

A Performance Improvement Plan (PIP) is a formal, structured process utilized by employers to address an employee's underperformance or behavioral issues. It outlines specific areas that require improvement and sets measurable goals, expectations, and a timeline for achieving those improvements. The plan may include support such as additional training, coaching, or regular check-ins with management. A well-implemented PIP aims to guide the employee toward success, strengthening the employment relationship. If the employee fails to meet the goals set in the PIP, further disciplinary action, including termination, may be considered.

Note: A PIP should not be a substitute for disciplinary measures when the employer has decided to terminate the employment relationship. Disciplinary proceedings, a progressive discipline policy, or immediate termination should be used to address misconduct or policy violations such as theft, fighting, dishonesty, or violations of a code of conduct or ethics.

Components of an Effective PIP

There are no specific legal requirements for the language used in a PIP; however, it is essential to use language that is professional, respectful, and free from any discriminatory or offensive terms. The focus should be on constructive feedback and support to help the employee succeed.

While exact requirements will vary across organizations and specific circumstances, a PIP should generally include:

1. **Employee Information:** The PIP should start with the employee's name, job title, and the date the performance plan is issued.
2. **Performance Issues:** Clearly identify the performance or behavior deficiencies that need improvement. Be specific and provide examples to help the employee understand the areas requiring attention.
3. **Expectations:** Set clear expectations for improvement. Define measurable goals, performance standards, or behavioral changes that the employee should achieve during the PIP period.
4. **Action Plan:** Outline the steps and actions the employee should take to meet the goals outlined in the plan. This could include additional training, coaching, or other support.
5. **Timeline:** Set a reasonable timeline for achieving the goals outlined in the PIP. The timeline should be achievable and allow the employee sufficient time to make improvements.
6. **Monitoring and Evaluation:** Explain how progress will be monitored and evaluated during the PIP period. It should include regular check-ins or feedback sessions.
7. **Consequences:** Clearly state the consequences if the employee fails to meet the goals or does not show improvement during the PIP period. This could range from further disciplinary action to termination, depending on the severity of the performance issues.
8. **Signatures:** Have the employee and the manager or supervisor sign the PIP to acknowledge that they have read and understood the plan.

Employers should document all aspects of the PIP, including discussions, goals, progress, and evaluations. Employers should also encourage employee feedback during the PIP process to help ensure fairness and address any concerns the employee may have.

Benefits and Challenges of Using a PIP

There are numerous advantages to using a PIP, including:

1. **Clarity and Understanding:** PIPs define clear performance expectations and improvement benchmarks. They pinpoint areas that need rectification, thereby minimizing confusion.
2. **Constructive Outlook:** Instead of a punitive stance, PIPs promote a constructive focus. It allows employees to perceive feedback as a growth opportunity, rather than criticism.
3. **Protection and Compliance:** When correctly documented, PIPs help to safeguard employers in potential future lawsuits, showcasing the efforts taken for performance rectification. This can reduce or even eliminate potential legal risks associated with wrongful terminations or discriminatory claims.
4. **Accountability and Monitoring:** Implementing a PIP heightens employee accountability. It also sets the stage for continuous performance monitoring, ensuring that progress is tracked and necessary interventions are made.
5. **Employee Retention:** Performance lapses often stem from unawareness. PIPs not only highlight these lapses but provide a chance for remediation, potentially retaining valuable employees.
6. **Open Communication & Development:** PIPs encourage transparent discussions between employers and employees. Furthermore, with the correct training and guidance, PIPs can transform struggling employees into significant organizational assets.

However, some of the challenges employers should be aware of include:

1. **Legal Implications:** Proper alignment with employment laws is critical to prevent accusations of discrimination, wrongful termination, or other related claims.
2. **Retaliation Concerns:** Employees might perceive PIPs as retaliation for certain activities, such as whistleblowing. Such perceptions could lead to legal disputes.
3. **Consistency and Morale:** PIPs should be consistently applied, and their implementation should foster a supportive atmosphere. Inconsistent or negative application may adversely affect organizational morale. Inconsistent application may also lead to allegations of discrimination, or other similar legal claims.

4. **Objective Setting and Perception:** Goals set in a PIP must be realistic. Unrealistic goals or the employee's perception of the PIP as a termination precursor may hinder genuine improvement efforts, and could lead to alleged legal claims.

Conclusion

Performance Improvement Plans, when implemented with sincerity, transparency, and in alignment with legal standards, can act as strategic assets. They foster a culture of constant improvement and responsibility. Further collaboration with legal or human resources professionals can enhance the efficacy of PIPs, ensuring they are both effective and compliant with applicable laws.

Disclaimer: *This article is an informative guide, not a substitute for specific legal counsel. Always consult with a qualified legal professional for particular legal concerns.*

Legal Disclaimer: *Gunderson Dettmer Stough Villeneuve Franklin & Hachigian, LLP ("Gunderson") has provided these materials for general informational purposes only and not as legal advice. Our provision and your use of these materials do not create an attorney-client relationship between Gunderson and you. These materials may not reflect the most current legal developments and knowledge, and accordingly, you should seek legal counsel before using or relying on these materials or the information contained herein. Gunderson assumes no responsibility for any consequences of your use or reliance on these materials.*

Submit a SMART Request for assistance preparing a PIP

If you need assistance preparing a performance improvement plan for an underperforming employee, please complete this SMART Request.

Featured Insights

FIRM NEWS

Gunderson Dettmer Launches Catalyze: An Exclusive Community Platform Built to Support and Empower Companies Throughout the Startup Journey

INSIGHTS

Gunderson Dettmer Releases 2025 Mid-Year Venture Capital Report

CLIENT NEWS

Gunderson Dettmer represented Statsig in its \$1.1B acquisition by OpenAI

RESOURCE

Example Pre-Seed Due Diligence Checklist

RESOURCE

6 Startup Mistakes That Cost Founders Everything (And How to Avoid Them)

INSIGHTS

Ryan Purcell Guest-Authors “6 Startup Mistakes That Cost Founders Everything (And How to Avoid Them)” for Not Another CEO

INSIGHTS

Client Insight: Quarterly Employment Law Update – Summer 2025

INSIGHTS

Private Market Liquidity: A Review of Tender Offers

INSIGHTS

Client Insight: Eighth Circuit Vacates FTC’s “Click-to-Cancel” Rule

INSIGHTS

Client Insight: One, Big, Beautiful Bill Enactment: Impacts To Qualified Small Business Stock

INSIGHTS

Client Insight: “Click to Cancel” Amendments to the FTC Negative Option Rule and California’s Automatic Renewal Law

FIRM NEWS

Gunderson Dettmer Practice Areas and Partners Recognized by Chambers USA 2025 Guide

