

# Performance Management: a legal perspective

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# Performance Management: a legal perspective

- What is performance management about?
- Why is it important and what are the key features of good performance management?
- Key tips

# What is performance management about?

- Identifying and rewarding high performance
- Identifying areas for improvement
- Providing a process for enabling the improvement of performance
- Where employees persistently fail to meet the required standard - providing an equitable process for moving them on

# Key features of good performance management

- Clear and fair expectations are set
- Tools to support performance are readily available and used
- Timely and ongoing evaluation of performance
- The consequences for both good and poor performance are transparent and fair

# Why is it important?

Performance management done poorly leads to:

- Low staff morale
- High staff turnover
- Significant legal risks

# Performance Management: legal risks

- Workers' compensation claims
- Exemption: reasonable management action undertaken in a reasonable manner

# Performance Management: legal risks

- Discrimination claims
- Defence: objective reason for action taken unrelated to a protected attribute

# Performance Management: legal risks

- Bullying claims
- Defence: reasonable management action & fair process followed



# Performance Management: legal risks

- Unfair dismissal claims
- Defence: valid reason for termination related to capacity/conduct & fair process followed

# Performance Management: legal risks

- General protections claims: subjecting an employee who has exercised a *workplace right* to *adverse action*
- Defence: *workplace right* formed no part of the reason for the disciplinary action taking place

# Performance Management: key tips

- Ensure staff conducting PM understand what they are doing
- Have written, but flexible, policies in place regarding PM processes
- Set clear and fair expectations
- Provide reasonable support and assistance to enable employees to meet the standards required
- Do what you say you will do when you say you will do it

# Performance Management: key tips

- If performance does not meet the required standard after following a fair process, take action – do not leave poor performance in the “too hard basket”
- Particularly where termination of employment may result ensure requirements of natural justice are met, including that the employee is on notice of the issue/possible consequences, is given a proper opportunity to put their case and the option of a support person is provided
- DOCUMENT everything

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