

IN DEFENSE OF THE PIP: 6 STEPS TO DEVELOP EFFECTIVE PERFORMANCE IMPROVEMENT PLANS

Insights
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The Wall Street Journal recently ran a column entitled "[The Most Hated Way of Firing Someone Is More Popular Than Ever. It's the Age of the PIP,](#)" arguing that using a performance improvement plan (PIP) is the worst way to fire an underperforming employee. But don't believe everything you read. The PIP remains a most useful tool for employers. Done properly, it advises the employee where work performance is not meeting expectations and gives them time to improve performance – while creating a valuable record for the employer. This Insight will review the benefits of the PIP and provide you six steps to take to ensure you are getting the most out of one.

PIPs Remain Better Than the Alternative – And Remain Valuable Tools

Despite the WSJ column stating that PIPs have little value, it is difficult to imagine that issuing a PIP is worse than simply firing an unperforming employee out of the blue without any prior warning. But then again, they must be carefully crafted in order to provide value to both the employee and the employer. A PIP must be fair, specific in identifying shortcomings, and provide a reasonable chance for the employee to improve.

While the WSJ authors' column includes statistics showing that most employees who receive PIPs ultimately are terminated, that does not mean that PIPs are unwarranted. Just the opposite. An employer has the right to hold its employees accountable to meeting performance standards, and PIPs are the fairest means of doing so.

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James J. McDonald, Jr.

Partner

949.798.2131

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The WSJ authors also suggest that PIPs are “used primarily to provide legal cover from employment lawsuits.” This is certainly true. Employment lawsuits are ubiquitous across the country. Many judges and jurors expect an employer not just to show that they did not violate the law, but also to show that they did the right thing by the employee.

Terminated employees often dispute verbal warnings and coaching sessions when they file a lawsuit, and courts – and juries – often agree with the old saying: “If it’s not in writing it didn’t happen.” A PIP is written evidence that an employee received a fair warning before dismissal.

Conversely, a PIP might result in improvement of the employee’s performance, avoiding the risk and disruption of terminating the employee – not to mention the cost of recruiting and training a replacement. Sometimes managers are not adept at communicating performance expectations to their employees and the PIP might be the first indication to an employee that their performance is unsatisfactory.

6 Steps to an Effective PIP

An effective PIP includes the following six elements.

- **Identification of specific incidents where the employee’s performance has fallen short.** General terms such as “poor attendance” or “poor sales performance” are not helpful. Rather, highlight specific examples, such as “no-call/no-show on 11/24, 11/30, 12/2 and 12/3,” or “You failed to meet your sales targets in September, October and November,” or “You were late in submitting your weekly sales reports in eight of the last 10 weeks.”
- **Specific instructions for how the employee’s performance must improve.** Examples include “You must call your supervisor at least two hours before the start of your shift if you must be absent,” or “You must convert at least X% of your sales leads to closed sales.” Even where desired performance might be less quantifiable, you can still provide specific requirements such as “Avoid any further use of profanity or insults when addressing your subordinates,” or “Come to board meetings fully prepared with all necessary documents.” The goals set for the employee must be reasonable and attainable, and they must track the examples of shortcomings provided in the PIP. Do not add other areas for improvement.

- **A reasonable period of time to improve performance.**
The employee should be given 30 or 60 days to show improvement. Less than 30 days' time is not enough. More than 90 days is usually too long. The duration of the PIP may be extended, however, in the event the employee shows some improvement but is not yet fully meeting expectations, or where the employee takes a leave of absence during the PIP period.
- **Notice of the consequences of failing to complete the PIP successfully.** If the consequence of an unsuccessful PIP will be termination of employment, it should be so stated. Regardless of the stated duration of the PIP, however, the document should state that management reserves the right to terminate the PIP sooner. The PIP also should state that it does not affect the at-will nature of the employment relationship, which may be terminated at any time by either party without cause or prior notice.
- **The employee's signature to confirm receipt of the PIP.** If the employee refuses to sign, write "employee refused to sign" on the document and have two members of management sign it. The PIP is no less binding should the employee refuse to sign it. Similarly, should the employee write a statement disputing the PIP, simply accept the statement and put it in employee's personnel file. The PIP will still apply regardless of the employee's protest.
- **Regular check-ins with the employee's manager or supervisor.** Feedback during the PIP period is essential. You should schedule these check-in meetings ahead of time, and you should follow them by providing a written account of the meeting to the employee. If a supervisor is not experienced in managing employee performance, a representative of human resources should attend the check-in meetings as well.

Final Thoughts

What if an employee on a PIP attempts to block their termination by filing a workers' compensation claim, requesting medical leave, or complaining about perceived labor law or safety violations? It happens. If the employee goes out on leave, suspend the running of the improvement period until they return. Do not let other claims or complaints interfere with the PIP process. You will have written evidence that the PIP preceded the claim, complaint, or

leave request, such that a claim of retaliation would be weak.

Conclusion

Employers should not hesitate to use PIPs when they are warranted. They provide fair notice to the employee of performance deficiencies and an opportunity to improve, and they can be extremely useful in defending a wrongful termination claim. If you have questions or need assistance with the performance management process, reach out to your FP attorney or the author of this Insight. Make sure you sign up to [the Fisher Phillips Insight System](#) to receive updates and notice of other important developments.