
REFERENCE GUIDE

ADDRESSING POOR PERFORMANCE

Purpose

When it comes to performance based actions, agencies have the option of using the regulations under 5 U.S.C, Chapter 43 or 5 U.S.C., Chapter 75. Yet even with these options, supervisors and agencies struggle with addressing poor performance in the Federal sector. This guide looks at some of the concerns associated with performance management and offers some suggestions that will assist managers and supervisors no matter which regulation they choose.

Background

Over time agencies have used both Chapter 43 and Chapter 75 for performance based actions and the Merit Systems Protection Board (MSPB) does not consider one to be superior over the other. In fact, in the Executive Summary to their 2009 publication *Addressing Poor Performers and the Law*, the MSPB recommends that “agencies allow supervisors the flexibility to use either Chapter 43 or Chapter 75 to address poor performance.” Some agencies perceive that a PIP can be a laborious process and that it is “easier” to use Chapter 75 to address performance problems. For example, there is no statutory requirement under Chapter 75 to provide a performance improvement period and the performance deficiency does not have to be in a critical element. However, the lack of an improvement period may be a mitigating factor under *Douglas* and therefore in some cases it may be worth the extra time to use a PIP (for example individuals who have been long term employees but are not able to perform a critical job function). In their survey, the MSPB found that it was not really the PIP that supervisors found daunting but rather the nuts and bolts of **creating quality performance standards** along with **documenting the employee's performance** and **discussing the performance deficiencies** with the employee. The survey also found that supervisors also had difficulty with **confrontation** and the somewhat subjective nature of performance management. Let's take a look at these issues individually.

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Creating Quality Performance Standards

Many agencies have written guidance for supervisors and HR Specialists on how to create a PIP. Additional information, including a sample PIP, can also be found on OPM's website at <http://www.opm.gov/er/poor/son1.asp>. PIPs do not have to be complex documents. They are dependent upon the deficiencies being addressed and the complexity of the job to begin with. But before you can create a good PIP you must have good performance objectives. Performance objectives should be written as clearly defined responsibilities that are essential to the work of the organization and that can be measured over the course of the performance period. One method is to use the SMART acronym to set up standards that are Specific, Measurable, Aligned, Realistic/Relevant, and Time-based:

- Specific – The performance standard should be stated as simply and explicitly as possible.
- Measurable – Writing measurable performance standards allows for clearer, more objective evaluation
- Aligned – Employee's objectives should be aligned with their salary and grade and fit into the agency's strategic mission.
- Realistic/Relevant – Employees' job objectives should be achievable with the skills and resources that are available and the objectives should be significant to the employee and the agency.
- Time-based – When possible, performance objectives should outline specific time frames within the performance period. Performance standards should be written so that they can be completed within the timeframe of the performance period.

If performance elements and standards are well written from the start, then managing performance and addressing poor performance (including creating a PIP) become easier.

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Documenting the Employee's Performance

Monitoring and documenting employee performance should be an ongoing process throughout the year-long performance cycle. Supervisors are required to conduct and document a mid-year meeting with each of their employees to go over their year-to-date progress and make any necessary adjustments to the performance plan. Good performance management though, involves regular communication, coaching, and feedback that are done on a recurring basis - not just once or twice a year. Even with clear, concise job objectives employees still need frequent feedback about how they are doing. This can be accomplished through regularly scheduled weekly or biweekly meetings, team meetings, staff meetings, and informal dialogue with your employees. Besides hard copy, use the tools in Outlook as memory joggers to schedule meetings and keep notes; create to-do lists and checklists; and keep track of training and special projects and assignments.

Discussing Performance Deficiencies

Discussing poor performance with employees should be private, professional, and collaborative. This discussion is between the supervisor and the employee so it should be scheduled as an appointment with the employee. If you do not have a private office then you may want to try to borrow someone's office or schedule a conference room. You should make sure that you will not be interrupted by phone calls and silence your PDA. Before you meet with your employee find out what guidance he/she has been given on performance. Make sure that you understand what the performance standards are so that you can articulate to your employee exactly what acceptable performance is. Take a look at any operating manuals, guides or any tools that may be available to help your employee improve his/her performance. You should also have a copy the employee's Performance Plan along with specific examples of the employee's poor performance to answer the inevitable "what do you mean?"

Ideally, to assist an employee in improving his/her performance you will need some participation and input from that employee in identifying exactly what it will take to bring his/her performance up to an acceptable level. In order to do this you will need

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to use your active listening skills by asking open-ended questions, paraphrasing, and even using silence to draw your employee into the discussion. The purpose of a discussion on performance is to work together with your employee to create a plan to increase his/her performance that will involve both of you working together as a team. That plan may involve additional classroom or web-based training, regular follow-up meetings, and/or additional mentoring to assist your employee. In any case, the outcome will be more successful if your employee is involved in the process. For more counseling tips and other information on resolving poor performance see the Office of Personnel Management website at: <http://www.opm.gov/er/poor/jobaids.asp>.

Confronting Unacceptable Performance

No one likes confrontation but as supervisors and managers, part of your responsibility is to address poor performance. Left unchecked poor performance will only get worse, making your job and the jobs of the rest of your employees more difficult ultimately leading to low morale and a toxic work environment. Dealing with unacceptable performance early will pay off in the long run. As discussed earlier, it starts with clear performance objectives and standards of measurement. Once you have determined that you have an employee with unacceptable performance, consult with your local Employee Relations Specialist to determine the best course of action.

Whether you use Chapter 43 or Chapter 75 to take action, you will need all of the documentation discussed earlier: the employee's performance plan; the specific objective(s) that that is (are) not being met; and any counseling, training or other assistance that you have provided. Once you have established a plan of action, check in periodically with your ER Specialist to make sure that you are on track for dealing with the unacceptable performance. If you have done all of your preparation, then it should not come as a surprise to your employee once you do confront him/her with their unacceptable performance and move forward with either a PIP under Chapter 43 or another action under Chapter 75.

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Conclusion

Agencies, managers, and supervisors should consider the strategic alternatives when determining whether to use Chapter 43 or Chapter 75 to address unacceptable performance. HR staff should be proactive and educate supervisors on the options that are available and the requirements associated with each option. Supervisors and managers must also be proactive and seek assistance from their HR staff before things get out of control. No matter which option is chosen though, it all starts with understandable performance objectives and ongoing feedback and communication. Once a performance issue has been identified and the process to address it has begun, it is advisable for the supervisor and HR staff to periodically check in with each other to see if there is any improvement and to ensure that either the improvement stays in effect or that appropriate action is taken. When it comes to performance management and the performance appraisal process, there should be no surprises. No matter which regulation management chooses to address poor performance, clear expectations, ongoing feedback, and early intervention are the means to good performance management.

References:

- Addressing Poor Performers and the Law, A Report to the President and the Congress of the United States by the U. S. Merit Systems Protection Board, September, 2009.
- 5 U.S.C Chapter 43 – Performance Appraisal
- 5 U.S.C Chapter 75 – Adverse Actions