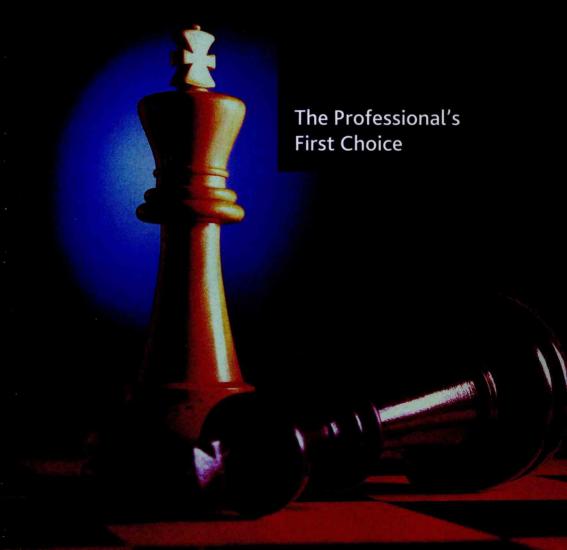
Managing Performance, Malaysia featuring poor performance







Managing Performance, Malaysia featuring poor performance

© 2009 CCH Asia Pte Limited

All rights reserved. No part of this work covered by copyright may be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying, recording, recording taping, or information retrieval systems) without the written permission of the publisher.

Disclaimer

This publication is sold with the understanding that (1) the authors and editors are not responsible for the results of any actions taken on the basis of information in this work, nor for any errors or omissions; and (2) the publisher is not engaged in rendering legal, accounting or other professional services. The publisher, and the authors and editors, expressly disclaim all and any liability to any person, whether a purchaser of this publication or not, in respect of anything and of the consequences of anything done or omitted to be done by any such person in reliance, whether whole or partial, upon the whole or any part of the contents of this publication. If legal advice or other expert assistance is required, the service of a competent professional person should be sought.

Published by CCH Asia Pte Limited Printed by Karisma Production Sdn. Bhd. ISBN-13 978-981-4228-75-6

ABOUT CCH ASIA PTE LIMITED

CCH Asia Pte Limited is a member of the Wolters Kluwer group, the world's leading publisher for professionals. CCH Asia Pte Limited provides its subscribers with the high standard of reporting for which the CCH group of companies has an established worldwide reputation.

CCH publications keep business managers, accountants, lawyers and other business professionals up-to-date with developments in a wide range of topics including taxation, company law, securities law, business law and employment law. The essence of CCH publications is accuracy, authority, practicability and ease of reference achieved by the presentation of information in a highly readable form and by the use of comprehensive indexes and other locators.

CCH Asia Pte Limited publishes a range of books and reporting services on taxation, company, business and employment law in Malaysia, Singapore, Hong Kong, and China. We will continue to expand our range of publications to serve the needs of our subscribers in the Asian region.

For enquiries contact your local CCH office:

CCH Asia Pte Limited (Registration number: 199703606K)

8 Chang Charn Road #03-00, Link (THM) Building Singapore 159637

Telephone: (65) 6225 2555 Customer Support Hotline: 800 6162 161 Fax: 800 6162 176

E-mail address: support@cch.com.sg Website: http://www.cch.com.sg

Commerce Clearing House (Malaysia) Sdn Bhd (216303-M)

Suite 9.3, 9th Floor Menara Weld, 76 Jalan Raja Chulan, 50200 Kuala Lumpur, Malaysia Telephone: (603) 2052 4688 Customer Support Hotline: 1 800 181 151 Fax: 1800 181 173 E-mail address: support@cch.com.my Website: http://www.cch.com.my

CCH Hong Kong Limited

Room 1608, 16/F, Harcourt House, 39 Gloucester Road, Wanchai, Hong Kong Telephone: (852) 2526 7606 Customer Support Hotline: 800 968 667 Facsimile: 800 933 814 E-mail address: support@cch.com.hk Website: http://www.cch.com.hk

Beijing Wolters Kluwer Asia Pacific Information Technology Co Ltd

Suite 1203 CITIC Building, 19 Jianguomenwai Dajie, Beijing 100004 China Telephone: (8610) 5863 7888 Customer Support Hotline: (8610) 5863 7887

Fax: (8610) 65863 7999 Email: support@cchchina.com.cn

Wolters Kluwer India Pvt Ltd

No 22, Second Floor, Unit No 4 (Plot 7 & 8), Vardhman Trade Centre, DDA Building, Nehru Place New Delhi 110019

Telephone: (9111) 4653 0325 Facsimile: (9111) 4653 0399

E-mail address: support@cchindia.co.in

CCH Japan Limited

Towa Misaki-cho Bldg 5F, 3-6-2 Misaki-cho, Chiyoda-ku, Tokyo 101-0061, Japan

Telephone: 81-3-3265-1161 Facsimile: 81-3-3265-1166

E-mail address: support@cch.co.jp Website: http://www.cch-japan.jp

TABLE OF CONTENTS

Chapter

1	Managing Performance	1	
2	Performance Appraisals	21	
3	Industrial Discipline and Warnings	55	
4	Poor Performance	79	
5	Poor Performance: Legal Concepts and Case Law	131	
6	Managing Difficult Employees	163	
7	Promotion, Demotion and Transfer	191	
8	Grievance Procedure	211	
Case Table23			
Se	Section Finding List23		
Ind	ndex		

EXPANDED TABLE OF CONTENTS

Cha	ipter 1: Managing Pertormance	1			
1.1	Managing Employee Performance	3			
1.2	What is Performance Management?				
1.3	Purpose of Performance Management				
1.4	Preparing a Performance Management Policy				
1.5	Employee Performance Plans				
1.6	Need for Performance Standards				
1.7	Developing Performance Standards	8			
1.8	Need to Monitor Performance				
1.9	Poor Performance: an Organisational Perspective	12			
1.10	Dismissal for Poor Performance	16			
Appe	endix 1.1 Model performance management policy	18			
Chaj	pter 2: Performance Appraisals	21			
2.1	Performance Appraisal: a Key Component of				
	Performance Management				
2.2	What is Performance Appraisal?				
2.3	The Performance Appraisal Process				
2.4	Performance Criteria	25			
2.5	Formal versus Informal Systems	29			
2.6	The Problem of Conflicting Objectives				
2.7	Performance and Pay	32			
2.8	The Ethics of Assessing People	34			
2.9	Legal Aspects of Appraisals	35			
2.10	Termination of Employment	40			
2.11	Approaches to Appraisal				
Chap	pter 3: Industrial Discipline and Warnings	55			
3.1	The Disciplinary Interview	57			
3.2	Warnings: General Information	59			

3.3	Warning Procedures	61
3.4	First Warning	66
3.5	Final Warning	
3.6	Dismissal	67
Арре	endix 3.1: Model policy statement – Discipline and warnings	70
	endix 3.2: Model clause for employment agreement –	
	Disciplinary action	
	endix 3.3: Model letter – Follow-up to oral warning	
Appe	endix 3.4: Model letter – Written warning	74
Appe	endix 3.5: Model confirmation of first warning letter	75
Appe	endix 3.6: Model of final warning letter	76
Appe	endix 3.7: Model letter – Dismissal, given following a series	
	of warnings	77
Cha	pter 4: Poor Performance	79
4.1	Defining Poor Performance	81
4.2	What the Employer Must Do	85
4.3	Process for Handling Performance Problems	89
4.4	Performance Discussion	93
4.5	Dismissal	102
4.6	Performance Counselling	104
4.7	Guidelines to Managing Poor Performance	109
4.8	Poor Performance at Management Level	112
4.9	Probationers	114
Appe	endix 4.1: Model letter – Invitation to first performance discussion	118
Appe	endix 4.2: Worksheet – First performance discussion	119
	endix 4.3: Model letter – Follow-up to first performance discussion.	
Appe	endix 4.4: Model letter – Invitation to second performance discussion	122
Арре	endix 4.5: Model worksheet – Second performance discussion	
	endix 4.6: Model letter – Follow-up to second performance discuss (and written warning)	sion
Appe	endix 4.7: Model letter – Invitation to final performance discussion	

Appe	endix 4.8: Worksheet – Final performance discussion	127
Арре	endix 4.9: Model letter – Follow up to final performance discussion (and final warning)	
Appe	endix 4.10: Model letter – Dismissal, following warnings	
	(performance)	130
Cha	pter 5: Poor Performance: Legal Concepts	
	and Case Law	131
5.1	Employer Entitled to Dismiss for Poor Performance	133
5.2	Checklist Prior to Employee Dismissal	133
5.3	Termination by Contractual Notice Unacceptable in Industrial Law	134
5.4	Justification for Dismissal	135
5.5	"Trade Disputes" under the Industrial Relations Act 1967	139
5.6	Representations on Dismissals Made by Employees	140
5.7	The Industrial Court	144
5.8	Appeal Against the Industrial Court's Decision	151
5.9	Must a Domestic Inquiry Be Held Before Dismissal for Poor Performance?	154
5.10	Remedies in Industrial Law	
5.11	Case Study: Eric Ho Shing Chiang v UMW Toyota Motor Sdn Bhd Award No 1767/2008	157
5.12	Common Law Remedies	
Chaj	pter 6: Managing Difficult Employees	163
6.1	Introduction	
6.2	Job Satisfaction and Promotions	165
6.3	Unpromotable Employees	166
6.4	"Plateaued" Employees	167
6.5	Unsuccessful Candidates	170
6.6	Employees Who "Quit" on the Job	171
6.7	Other Types of "Problem" Employees	172
6.8	Career Counselling	177

6.9	Managing Generational Diversity	178
6.10	Generation X and Generation Y	179
-	Managing Mature-age Employees	182
6.11	Managing Mature-age Employees	105
6.12	Age Discrimination and Mature-age Workers	105
6.13	Dealing with Difficult Employees	186
Chap	oter 7: Promotion, Demotion and Transfer	191
7.1	Introduction	193
7.2	Promotion	194
7.3	Demotion	200
7.4	Lateral Transfer	205
7.5	Secondments	208
Cha	pter 8: Grievance Procedure	211
8.1	What is a Grievance?	
8.2	Resolving Individual Grievance under the Code of Conduct for Industrial Harmony	213
8.3	Key Features of a Grievance Procedure	
8.4	Handling Employee Grievances	
8.5	Investigating a Grievance	218
Appe	endix 8.1: Model policy on resolving employees' complaints and grievances	221
Appe	endix 8.2: Guide-sheet – Handling employees' complaints	
	endix 8.3: Decision on employee complaint or grievance	

LIST OF TABLES AND FIGURES

		Page
LIST O	F TABLES	
Table		
2.1	Examples of performance criteria	26
2.2	Advantages and disadvantages of formal and informal appraisal systems	30
2.3	Potential benefits of the 360-degree feedback appraisal process	48
2.4	Advantages and drawbacks of the common appraisal approaches	52
4.1	Organisational inadequacies leading to poor performance	87
LIST O	F FIGURES	
Figure		
1.1	Performance management model	
5.1	Dismissal cases under s 20 of the Industrial Relations Act 1967	141

Chapter 1 MANAGING PERFORMANCE

1.1	Managing Employee Performance3		
1.2	What is Performance Management?3		
1.3	Purpos	e of Performance Management	5
	1.3.1	Balanced scorecard5	
	1.3.2	Six Sigma6	
1.4	Prepari	ng a Performance Management Policy	6
1.5	Employee Performance Plans7		
1.6	Need f	or Performance Standards	7
1.7	Develo	ping Performance Standards	8
	1.7.1	General measures8	
	1.7.2	Specific measures9	
	1.7.3	Writing standards10	
	1.7.4	Examples10	
1.8	Need t	o Monitor Performance	12
1.9	Poor P	erformance: an Organisational Perspective	12
	1.9.1	Addressing poor performance12	
	1.9.2	Pre-empting poor performance13	
	1.9.3	Process for managing poor performance14	
	1.9.4	Guidelines on managing poor performance15	
1.10	Dismissal for Poor Performance16		
	1.10.1	Warning of consequences17	
APP	ENDIX		
App	endix 1.1	Model performance management policy	18



1.1 Managing Employee Performance

The process of managing an employee's performance is an inherent part of the day-to-day role for any position which supervises or manages other employees. Communicating work expectations, monitoring and giving feedback to employees are all components of the appraisal process within the broader performance management function. When this process is operating effectively, employees know what is expected of them and have a better understanding of their role in the organisation.

The "informal" process of providing employees with regular coaching and feedback on their performance, in the normal course of their work, is often considered secondary to the formal review process, although it is arguably more timely and effective for keeping employee performance on track. The formal performance appraisal process, and dealing with poor or sub-standard performance, are areas that tend to receive the most attention from management. Placing more emphasis on the informal process, with regular feedback to and from employees, should assist the appraisal process and reduce the need to manage poor performers.

Managing employee performance is a continuous cycle of planning, analysis, evaluation, and feedback. This may be followed by changes to the way in which the work is performed, including where necessary the acquisition of skills and/or knowledge and/or behavioural modification by the employee, in order to achieve the desired level of performance. In a strategic context, managing individual performance will be linked, directly or indirectly, to improving organisational performance.

This chapter examines the overall performance management system and specifically performance standards, given that performance standards clarify the expectations of the company in regards to employees' responsibilities, duties and work quality.

The appraisal process, which is a key component of performance management, will be discussed separately in Chapter 2.

1.2 What is Performance Management?

Performance management is a strategic function which drives other human resource processes, aligning individual and organisational objectives to bring about the latter's effectiveness. It links a range of human resource processes: strategic and workforce planning, job design and definition, recruitment and selection, training and development, measurement and performance standards, and remuneration and employee diversity management.

A research study¹ in Australia defined the characteristics of an "excellent" as opposed to a "good" workplace, some of which relate to performance management are:

- Clear values the extent to which people could see and understand the overall purpose and individual behaviours expected in the place of work.
- Getting feedback always knowing what people think of each other, their contribution to the success of the place, and their individual performance over time.
- A sense of ownership and identity being seen to be different and special through pride in the place of work, knowing the business and controlling the technology.
- Learning being able to learn on the job, acquire skills and knowledge from everywhere, and develop a greater understanding of the whole workplace.
- Passion the energy and commitment to the organisation.

The study found that excellent workplaces make sure every individual receives continuous feedback on their performance and areas for improvement, both positive and negative. Employees in turn must be able to send their feedback to supervisors and management. They concluded that the benefits for the excellent workplace, when knowledge is readily available, are very considerable, particularly in terms of promoting a sense of ownership and identity.

The process for managing performance is integrated at all levels; whole of organisation, organisational unit (division, department, group) and individual employee. All levels apply the same process:

- Determine performance needs and develop plan.
- Implement plan (activities to achieve desired performance).
- Monitor and evaluate performance.
- Adjust, improve activities.

¹ Research by ACCIRT entitled "Simply the best: Workplaces in Australia" by Dr Daryll Hull and Vivienne Read in December 2003.

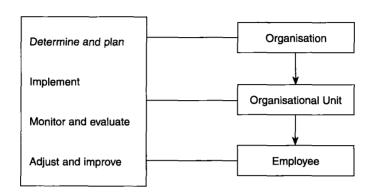


Figure 1.1 Performance management model.

1.3 Purpose of Performance Management

To be successful in today's globally competitive, knowledge-based economy, organisations must seek to gain a competitive edge by monitoring and improving their performance on an ongoing basis. There are various methodologies designed to facilitate this process on an organisational level, including the following.

1.3.1 Balanced scorecard²

The "balanced scorecard" is a measurement-based management system that translates organisational vision and strategy into action. It is based on the premise that a range of variables contributes to organisational performance in addition to financial performance, and should therefore be measured. Measures of customer satisfaction, growth and retention, internal operations (efficiency, speed, quality processes) and human resource systems and development are leading indicators of company performance, while finance is a measure of outcomes.

By developing, measuring, collecting and analysing data from both the internal business processes and external outcomes, the organisation can track and improve its strategic performance and results. The balanced scorecard methodology can be applied to most organisations on an organisational, business

² Developed in the early 1990s by Drs Robert Kaplan (Harvard Business School) and David Norton.

unit or department basis. An increasing number of organisations have adopted the balanced score card approach, are applying it to both their organisation and its functional units, and are integrating individual appraisals with scorecard goals and values.

1.3.2 Six Sigma

Six Sigma is a business improvement concept which aims to provide defect-free business processes with customer satisfaction and improvement being the driving forces. Established in the late 1980s, the objective of Six Sigma is to eliminate all mistakes, waste, and repeat work by using data and statistical analysis to measure and improve performance, to the point where the quality of the output is near perfect.

The methodology uses trained, cross-functional project teams to locate and make improvements to operational performance by identifying and eliminating "defects" in manufacturing and service-related processes. The most common tool used for Six Sigma improvement is the Define-Measure-Analyse-Improve-Control (D-M-A-I-C) cycle. Six Sigma entails a significant training investment in statistical, project management and problem solving skills.

1.4 Preparing a Performance Management Policy

A policy on performance management should articulate the whole system approach as well as communicate performance expectations and the appraisal process. It should relate to organisational effectiveness and be signed off by the chief executive.

The policy should address the following points:

• Set the scene with an introductory statement on managing performance in general, to establish or reinforce a culture of performance management. This communicates the fact that performance is taken seriously in the organisation and rather than being simply an annual review process, it is an approach which covers other processes like recruitment and selection, development, promotion, remuneration, that is "have we got the right people in the right jobs doing the right things?". Managing poor performance also needs to be included. If employees understand that their own performance objectives are not arbitrary but derive from or are linked to organisational objectives, they will have more clarity on their value and role in the bigger picture.

- Detail the benefits of regular feedback on a day-to-day basis, and effective job performance and behaviour for both parties, the values of the organisation, and how the appraisal system relates to them.
- The role of appraisals in providing for employee participation and communication in future work developments.
- How the information and results are to be used, eg individual development, training policies, salary reviews.
- Method used, who is to perform the appraisal, when it will be done and what means of follow-up will be employed.

An example of a policy statement is set out in Appendix 1.1 at the end of this chapter. Although for each individual organisation the specific wording of the policy statement should reflect its particular circumstances, the example given is indicative of the type of information which should be included.

A more detailed procedure than outlined in Appendix 1.1 may be necessary and appropriate in some cases – particularly those where unsatisfactory work performance is the justification offered by the employer.

1.5 Employee Performance Plans

Employees must know what they need to do to perform their jobs successfully. Expectations of employee performance are established through the elements and standards contained in employee performance plans. Performance elements tell employees what they have to do and performance standards tell them how well they have to do it. Developing elements and standards that are understandable, measurable, attainable, fair, and challenging is vital to the effectiveness of the performance appraisal process.

1.6 Need for Performance Standards

Poor performance can put the morale and productivity of the whole organisation at risk, and can be one of the most difficult workplace challenges faced by a supervisor or manager. Poor performers can also take up a disproportionate amount of management time, with little return on investment.

In order to ensure that employers are being fair to their employees, reasonable standards must be established by supervisors and managers. In addition, the standards of performance must be administered fairly, ie supervisors and managers must demonstrate integrity beyond reproach when dealing with all