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INTERNATIONAL LABOUR LAW NETWORK **NEWSLETTER**

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APR **2026**

Topic of the month

Performance evaluations and PIPs in selected ILLN member states.

Fellow Reader,

We are pleased to present the latest edition of our newsletter. In this issue, we focus on performance evaluations and performance improvement plans (PIPs) from a labour law perspective across the ILLN member states, including most European Union countries, the United Kingdom, and Switzerland.

Such instruments play a central role within the employment relationship, shaping employees' career trajectories, informing decisions on remuneration and promotion, and - in more challenging circumstances - forming the documentary basis for disciplinary proceedings or termination.
Although the legal framework, terminology, and employer obligations vary between jurisdictions, performance evaluations and PIPs generally serve to provide a structured and objective assessment of an employee's output, conduct, and development, while balancing the interests of both employer and employee.

In many European countries, the use of such instruments is governed by statutory provisions, collective agreements, works council consultation requirements, or established practice, often giving rise to specific obligations as to transparency, procedural fairness, and the employee's right to be heard or to contest the assessment.

This newsletter provides a comparative overview of how performance evaluations and performance improvement plans are regulated and used in selected ILLN jurisdictions.

It examines, among other issues, whether employers are required to conduct formal evaluations, the scope of criteria and metrics to be assessed, employees' rights to participate in or challenge the process, procedural safeguards applicable to performance improvement plans, and potential liability arising from their misuse or improper implementation.

This cross-jurisdictional perspective highlights both shared principles and key differences in approaches to performance management within the employment relationship across Europe.
We hope you will enjoy reading this edition.

ANNUAL EVALUATION PLANS & PERFORMANCE IMPROVEMENT PLANS UNDER BELGIAN LAW

KINGDOM OF BELGIUM

Introduction

In today's evolving workplace, employers are increasingly expected not only to assess performance, but also to actively support employee development. While Belgian labour law does not impose a formal obligation to implement annual evaluation plans or performance improvement plans (PIPs), their use is strongly recommended. These tools serve multiple strategic, managerial, and legal purposes that can significantly benefit employers.

No legal obligation, yet strong practical value

Under Belgian law, there is no general statutory requirement for employers to conduct periodic performance evaluations or to implement structured improvement plans. Employers remain, in principle, free to organize performance management as they see fit, subject to general principles such as good faith, non-discrimination, and respect for employee dignity.

However, the absence of a legal obligation should not be mistaken for a lack of importance. On the contrary, in practice, evaluation systems and PIPs have become essential instruments of sound HR management and risk mitigation.

Identifying and structuring performance issues

One of the primary advantages of annual evaluation plans is their ability to identify issues at an early stage.

Regular, structured feedback allows employers to detect underperformance, behavioral concerns, or mismatches in expectations before they escalate into more serious problems.

Without a formal evaluation framework, performance concerns may remain undocumented or be addressed inconsistently. This can lead to misunderstandings, frustration, and ultimately conflict. By contrast, a structured evaluation process ensures that feedback is regular, objective, documented, and clearly communicated to the employee. This clarity benefits both parties and creates a shared understanding of expectations.

Supporting improvement and development

Performance improvement plans are particularly valuable once an issue has been identified. A well-designed PIP does not merely highlight deficiencies. It provides a roadmap for improvement.

BELGIUM

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Typically, a PIP will include a clear description of the identified issues, concrete and measurable objectives, a defined timeframe for improvement, support measures such as training or coaching, and follow-up moments to assess progress. Such a structured approach demonstrates that the employer is acting constructively and in good faith, giving the employee a genuine opportunity to improve. This is not only good management practice, but also aligns with broader expectations of fairness in the employment relationship.

Enhancing motivation and engagement

Beyond addressing underperformance, evaluation systems can play a positive role in motivating employees. Regular feedback, recognition of achievements, and clear goal-setting contribute to employee engagement and satisfaction.

Employees who understand how their performance is assessed, and who receive constructive feedback, are generally more likely to feel valued and supported, align their efforts with organizational goals, and take ownership of their development. In this sense, evaluation plans are not merely corrective tools, but also drivers of performance and retention.

The importance of proportionality and reasonableness

Another key aspect to consider is the principle of proportionality in the employer's response to performance issues.

Belgian courts do not only assess whether there were legitimate grounds for dismissal, but also whether the employer acted reasonably in light of the circumstances. In this respect, the existence of an evaluation track record and a genuine performance improvement plan can demonstrate that dismissal was not a first or impulsive reaction, but rather a measure of last resort. In practice, this means that even in situations of clear underperformance, an immediate dismissal without prior warning or opportunity to improve may be viewed critically by courts. By contrast, a gradual approach–starting with informal feedback, followed by formal evaluations, and ultimately a structured PIP–illustrates a balanced and responsible attitude on the part of the employer. This staged approach can significantly reduce the risk of a dismissal being qualified as manifestly unreasonable.

A key tool in managing dissmisals

From a legal perspective, one of the most significant benefits of evaluation plans and PIPs lies in their role in preparing and justifying dismissals.

Under Belgian law, although employers retain broad discretion to terminate employment contracts of indefinite duration, dismissals can be challenged as manifestly unreasonable (licenciement manifestement déraisonnable / kennelijk onredelijk ontslag).

This is the case when a dismissal is based on reasons unrelated to the employee's conduct or capacity, or when it would never have been decided by a normal and reasonable employer.

In this context, courts increasingly examine the employer's behaviour prior to dismissal. In particular, they tend to assess whether the employer has clearly identified the performance issues, communicated these issues to the employee, and given the employee a real opportunity to improve.

The absence of documented evaluations or improvement efforts can weaken the employer's position. Conversely, a well-documented evaluation history and a properly implemented PIP can provide strong evidence that the dismissal was based on legitimate performance concerns, that the employee was informed and supported, and that the decision to terminate was reasonable and proportionate.

In practice, judges are taking into account more and more whether the employer has made genuine efforts to allow improvement before proceeding to dismissal.

Best practices for employers

To maximize the benefits of evaluation plans and PIPs, employers should consider several best practices. It is important to ensure consistency across the organization, so that similar situations are treated in a comparable manner. Documentation should be thorough and retained properly, as it may prove crucial in case of disputes. Expectations and objectives must be clearly defined and communicated, leaving little room for ambiguity.

In addition, employers should foster genuine dialogue, allowing employees to express their views and respond to feedback. Regular follow-up is equally essential, ensuring that evaluation and improvement plans remain dynamic processes rather than one-off exercises.

Conclusion

Although not mandatory under Belgian law, annual evaluation plans and performance improvement plans have become indispensable tools for modern employers. They contribute to better performance management, enhance employee engagement, and play a crucial role in mitigating legal risks, particularly in the context of dismissals.

In a legal environment where the concept of manifestly unreasonable dismissal continues to gain importance, employers would be well advised to adopt a proactive and structured approach to performance management. Doing so not only strengthens their legal position, but also fosters a more transparent, fair, and productive workplace.

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ANNUAL EVALUATIONS & PERFORMANCE IMPROVEMENT PLANS UNDER FRENCH LAW

FRENCH REPUBLIC

Is the annual performance review mandatory?

No statutory provision makes the performance evaluations mandatory. The French Labour Code neither defines this tool nor imposes it on employers.

In practice, however, the annual performance review is very usually used by companies. Indeed, this instrument:

• Provides an opportunity to assess the preceding period and set objectives for the period ahead;

• Constitutes a key piece of evidence in litigation, particularly to substantiate a claim of professional underperformance. In the context of a dismissal for professional insufficiency, the evaluation is central to supporting such a decision;

• Serves as the basis for the "professional qualities" criterion required under the statutory order of redundancies in collective dismissal proceedings.

What is the role of the Works Council (CSE) in implementing & amending a performance evaluation system?

Prior to introducing a new individual employee evaluation system, or making any significant amendment to existing rules, the CSE of companies with at least 50 employees must be informed and consulted. This obligation is based on several provisions of the French Labour Code concerning means of monitoring employee activity, working conditions and health, and the implementation of techniques enabling activity surveillance.

Amendments leading to consultation include, in particular: the frequency of reviews, the topics to be addressed, the implications attached to evaluations (for instance, their use in determining the order of redundancies), and the introduction of any new assessment method.

Failure to comply with this obligation exposes the employer to the risk of criminal liability for obstruction (délit d'entrave). Should the process give rise to an unjustified infringement of employees' individual freedoms or a psychosocial risk, the CSE may seek a court order suspending the process.

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Must employees be informed in advance of the evaluation?

Employees must be informed, prior to any implementation, of the methods and techniques that will be used to evaluate them. Such notice must be given individually and within a reasonable timeframe allowing the employee to prepare.

The content of this notice must be comprehensive and cover, in particular: the existence and mandatory nature of the review, its practical arrangements, its conduct and the documents to be used, its purpose and implications, the rights afforded to the employee under the GDPR, and the distribution circuit for the written record.

Failure to comply with this obligation entitles the affected employee to claim damages, provided they can demonstrate actual harm. Furthermore, evaluation records produced in breach of this formality constitute unlawful evidence which the employer will, as a matter of principle, be precluded from relying upon in legal proceedings.

Are protected employees entitled to specific arrangements?

An employer cannot exclude employee representatives from the performance evaluation process on the grounds that they devote a significant portion of their working time to the exercise of their mandate. Such exclusion would be discriminatory.

Moreover, any reference to trade union activity during a performance review may be construed as evidence of discriminatory conduct. The appropriate balance must therefore be struck between, on the one hand, the prohibition on raising the employee's representative mandate during the professional appraisal and, on the other, the employer's need to adjust the employee's objectives to account for time spent fulfilling union obligations – so as to avoid any risk of a discrimination claim.

Specific arrangements may be provided for by way of a collective agreement. The law expressly allows for the negotiation of an agreement aimed at ensuring neutrality or at recognising the value of mandate-related activities within the evaluation framework.

On what basis is an employee's performance assessed, and are there any limits?

Performance evaluations must be conducted on the basis of criteria that are directly and necessarily linked to the employee's professional capabilities and the requirements of the position held. The criteria selected must be precise, objective, relevant and verifiable. Quantitative criteria – such as revenue generated, number of files processed, or compliance with deadlines – readily satisfy these requirements.

For certain roles, particularly managerial positions, behavioural criteria may be permitted: responsiveness, ability to lead a team, management of emergency situations. However, such criteria are only lawful where they are sufficiently precise to be connected to a concrete professional activity and assessed in an objective manner. Concepts as vague as "optimism", "honesty" or "common sense" have been held to be too imprecise and morally charged to constitute valid evaluation criteria.

The law also prohibits evaluation based on elements pertaining to the employee's personal life, including their state of health, age, origin, family situation or personal beliefs.

Conclusion

An employee may bring proceedings to challenge an evaluation system they consider unlawful, claim compensation for harm suffered, or seek the destruction of evaluations carried out under an irregular system.

Performance evaluations play a central role in establishing discrimination claims, both in terms of identifying potentially discriminatory criteria and in tracing the employee's career progression. Accordingly, where an employee has not benefited from performance reviews over several years – unlike colleagues in a comparable situation – they are entitled to argue that their chance for promotion or salary increases have been adversely affected.

Trade unions have standing to bring proceedings to have an evaluation system applicable within a company declared unlawful. The CSE, for its part, may exercise its right of alert in the event of an infringement of employees' individual rights.

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ANNUAL EVALUATIONS & PERFORMANCE IMPROVEMENT PLANS UNDER GERMAN LAW

FEDERAL REPUBLIC OF GERMANY

Introduction

Employees owe their employers the performance of work, not a specific result. The requirements regarding the quality and quantity of an employee's work are primarily determined by the contractual agreements. Where, as is typically the case, the contract does not contain specific provisions in this respect, these requirements are defined by the content of the work as determined by the employer's right to give directions and by the employee's individual capacity to perform. Thus, a subjective standard applies: the employees must perform the tasks assigned to them as well as their individual abilities permit. One way for employers to monitor employee performance is through annual performance evaluations.

Annual Performance Evaluations

Legal Framework for the annual performance evaluation is a regular assessment of an employee's work performance against defined criteria. It is usually conducted as part of a standardised process or in accordance with a works agreement.

In Germany, performance evaluation is recognized by law (cf. works council co-determination), but there is no direct regulation requiring its implementation, nor is it considered mandatory. It may be carried out voluntarily. Only matters in which the employer has a legitimate and justifiable interest may be assessed and documented.

Performance evaluations primarily serve internal purposes, such as preparing promotion decisions, determining performance-related pay, or deciding on the conversion of fixed-term contracts to permanent employment. At the same time, they promote dialogue between managers and employees by clarifying expectations and providing an opportunity to address performance shortfalls or differing assessments.

Employees are also entitled to request an interview regarding their performance assessment and career development possibilities in the establishment (Section 82 para. 2 sentence 1 of the Works Constitution Act (BetrVG).

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Content

In regard to content, a performance evaluation must be confined to an employee's work performance and conduct at work. Common criteria include work output, professional knowledge, teamwork, communication and initiative. Uniform standards are intended to ensure that results are comparable among employees. Since a performance evaluation inherently involves an act of evaluative judgment, the employer enjoys a margin of discretion. Judicial review does not extend to the result as such but is limited to the assessment process itself - namely, whether extraneous considerations were taken into account or generally accepted evaluation standards were disregarded. Works Council Co-Determination Performance evaluation systems are subject to the mandatory co-determination rights of the works council under Section 94 para. 2 BetrVG, which stipulates a right of approval of the works council for the establishment and the formulation of general assessment criteria. It does not, however, have the right to initiate the introduction of such a system.

Performance Improvement Plans - Legal Framework

A Performance Improvement Plan (PIP) is a tool by which the employer systematically identifies employee's performance deficiencies, sets concrete improvement targets, and establishes a timeframe for achieving them. Provided it is objectively justified and based on transparent, objective criteria, a PIP is legally permissible in Germany. The introduction of a PIP can and in most cases will be subject to the co-determination rights of the works council under Section 87 para. 1 BetrVG. Depending on how the system is set up, different co-determination rights will be applicable

Termination of Low Performers

Where an employee underperforms, either a dismissal for misconduct ("unwillingness to perform") or a dismissal for capability ("inability to perform", i.e., lack of aptitude) may be considered, depending on the cause of the deficiency. Since the legal requirements differ significantly depending on the type of termination, the employer must carefully assess in advance whether an employee is unwilling or unable to perform their duties, which then gives rise to either a performance-based dismissal or a dismissal for personal reasons. The hurdles and requirements established by case law in this regard are very high. Performance related redundancies are therefore rather rare in labour court practice. In an unfair dismissal court proceeding, the employer bears the burden of proof regarding the grounds for termination. The employer must demonstrate that the employee is not fulfilling their contractual duties and is not performing to the best of their ability. A requirement for this is thorough documentation of the underperformance. Employers must demonstrate this but still give the employee the opportunity to make full use of their individual capacity to perform. This is where the PIP takes on particular significance as an evidentiary basis. It does not, however, replace a formal warning. Courts will also examine whether the PIP was genuinely aimed at improvement. A PIP that appears fair but is actually intended to lead to dismissal may be deemed contrary to good faith, in which case the dismissal may be overturned. Overall, however, it is challenging in Germany to terminate an employment contract on the grounds of poor performance.

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PERFORMANCE EVALUATIONS & PERFORMANCE IMPROVEMENT PLANS UNDER ITALIAN LAW

THE ITALIAN REPUBLIC

Introduction

In the Italian employment law system, performance evaluations and performance improvement plans (PIPs) are not subject to a comprehensive statutory framework within the private sector.

This does not mean, however, that they are unknown in practice. On the contrary, they are often used by employers, especially in more structured and internationally oriented organisations.

In practice, performance evaluations and performance improvement plans are useful in monitoring performance and managing work progress over time. They may help employers structure feedback, clarify expectations and create a documented framework within which an employee may understand how his/her performance is being assessed.

Legal Employee Underperformance and Disciplinary Consequences

This may be particularly advisable during the probation period, when the employment relationship is still in an early stage and performance issues may more naturally be addressed through feedback and guidance. Periodic feedback and documented assessments help the employee: to understand whether his/her performance is regarded as satisfactory; to take any necessary actions to improve performance; and, when this assessment is utterly negative, to be ready for a termination, a before the probation period expires.

Employees unexpectedly dismissed, as a result of an unsuccessful trial, are more likely to seek legal advice about the lawfulness of their probation clauses, and/or the fairness of their termination; and, as a result, are more likely to argue against termination.

Beyond probation, performance evaluations and PIPs may be useful management tools, where the employer's aim is genuinely to support performance improvement, with clear expectations, realistic objectives, reasonable timelines and appropriate support measures. Contrariwise, when the employer is considering dismissing a poor performing employee, performance evaluations and, even more, PIPs may significantly slow down the process leading to this dismissal.

Timing is, in this respect, a critical factor.

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In our system, a dismissal for poor performance is essentially a disciplinary dismissal, of an employee liable for performing his/her duties negligently, failing to do his/her best efforts to achieve acceptable results; as such, this dismissal must be the result of a disciplinary procedure. More exactly, considering that several NCBAs require a series of minor disciplinary measures (reprimands, fines, suspensions) before dismissing a negligent employee, there should be several disciplinary procedures, before an employee may be lawfully dismissal.
Now, if the employer first implements an appraisal process; then, it places the employee on an improvement plan and allows several months for improvement; after then, it takes a series of disciplinary actions against the same; the overall path to a possible dismissal may become significantly long. In this sense, a PIP may serve a useful managerial purpose, but it may also significantly limit the employer's flexibility for an extended period of time.

Performance Appraisals & Redundancies

In our system, there are two main categories of dismissals: the ones related to the employee's conduct, and performance of the contract; and the ones based on economic, organizational, so-called "objective" reasons. The reason grounding a dismissal must be explained in the dismissal letter, and it must be truthful. Now, particular care is required where the employer may already be considering a redundancy affecting the employee in question. In such cases, introducing a performance improvement plan may create tension with the organisational rationale later relied on for the termination. The employee may argue, for example, that the dismissal was not genuinely based on redundancy but was instead punitive, retaliatory or otherwise linked to alleged performance issues.

Employers should therefore act cautiously when deciding whether to implement a PIP in respect of an employee whose position may also be at risk for organisational reasons. The overall strategy should remain coherent, since overlapping performance-management and redundancy rationales may increase the risk of challenge.

Conclusion

Overall, in the Italian employment law context, performance evaluations and performance improvement plans are best understood as tools for managing performance rather than as preliminary steps towards termination. Their usefulness lies in structuring expectations, feedback and improvement, but their use may also have significant implications in terms of timing, internal consistency and litigation risk. For this reason, employers should adopt them as part of a coherent management strategy, bearing in mind that, if poorly handled, they may complicate rather than simplify the management of underperformance.

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ANNUAL EVALUATIONS & PERFORMANCE IMPROVEMENT PLANS IN LUXEMBOURG

DUCHY OF LUXEMBOURG

Introduction

As Luxembourg employers place greater emphasis on performance management, understanding the legal landscape and adopting best practices has become essential.

While annual performance reviews and improvement plans are now common in the workplace, it is important to note that Luxembourg law does not provide specific regulations for these tools. Employers must therefore rely on general labour law principles to ensure compliance and mitigate legal risks.

Any formalized performance management processes must be fair, objective, and free from discrimination, with strict respect for gender equality.

Employers should further ensure compliance with information and consultation obligations towards employee representatives. Early involvement of the staff delegation may also enhance legitimacy and acceptance of performance management processes within the workforce.

Special procedures may apply if unilateral changes to working conditions are involved and excessive demands, pressure or unfair practices may increase legal risks and liability for employers.

By adopting a balanced, flexible approach, companies can protect their interests, foster a positive workplace environment, and position themselves as responsible employers in the eyes of both employees and the courts.

Luxembourg law does not impose a statutory process for performance-based disciplinary actions.

Performance evaluations and improvement plans can help identify areas for improvement and provide structure for monitoring employee development, but they are not always sufficient. For instance, annual performance evaluations may not fully reflect an employee's overall situation and often serve only as indicators, rather than providing a robust basis for making disciplinary decisions regarding under-performance.

Instead, employers must rely on case law, which requires that measures taken against incompetence or inadequate performance be reasonable, proportionate, and supported by concrete, specific facts observed over a relevant period. The length of this observation period is not fixed and depends on individual circumstances such as the employee's age, seniority, or personal situation. Crucially, documented facts must reveal the employee's inability to perform the duties for which they were hired.

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To justify disciplinary action, employers must carefully document and substantiate claims of incompetence or inability to fulfil assigned duties. This involves proving not only the precise nature of the employee's responsibilities, but also ensuring the employee is fully aware of expectations and confirming that tasks are feasible within normal working hours. Additionally, employers should demonstrate that the employee possesses the necessary qualifications and experience, and that adequate support and assistance - such as training, clear targets, or closer supervision - have been provided.

Objective evidence of non-performance is crucial. Comparisons with similarly situated employees who successfully performed the same duties can strengthen the employer's position. Employers should also show that employees have been properly warned about performance issues and given opportunities to improve. A practical tip is to always keep detailed records of performance discussions, agreed objectives, and any support provided to employees.

Employers should demonstrate flexibility and adapt their appraisals to the specific context and history of the employee, especially when dealing with long-standing staff who have never received a performance complaint or warning. A case-by-case analysis is essential, as disciplinary action based solely on employer-defined indicators may not be upheld by the courts. The overall context and fairness of the process will be scrutinized, so flexibility and careful consideration are vital to ensure any sanction is reasonable and proportionate. While performance improvement plans may be valuable, it is important to recognize that a single process may not fit all situations.

Given the legal complexities and potential for disputes, consulting with a labour law specialist is highly recommended before implementing performance management or disciplinary measures. Our team offers expert guidance to help you navigate Luxembourg's nuanced legal requirements, identify compliant processes, and implement best practices that align with both local and broader European HR strategies.

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ESSENTIALS OF PERFORMANCE REVIEWS AND IMPROVEMENT PLANS IN THE NETHERLANDS

THE KINGDOM OF THE NETHERLANDS

Introduction

This article addresses the importance of annual performance reviews and performance improvement processes, including the creation of an adequate personnel file, where an employee's performance is in question and the employer may consider this a ground for terminating the employment contract on account of underperformance.

Underperformance as a valid ground for termination

Under Dutch employment law, an employer may terminate an employment contract unilaterally only if there is a valid legal ground for termination. Underperformance may constitute such a valid reasonable ground for terminating the employment relationship.

As the Netherlands has a so-called preventive dismissal system, this ground for dismissal relied on by the employer must, unless the parties agree to terminate the employment contract by mutual consent, be reviewed in advance by the court before the employer can terminate the employment contract unilaterally.

Annual performance reviews

Under Dutch employment law, there is no general statutory obligation requiring every employer to conduct annual performance review meetings. In many cases, however, it is advisable, and sometimes practically necessary, to hold such review meetings on a regular basis.

Under Dutch employment law, there is no general statutory obligation requiring every employer to conduct annual performance review meetings. In many cases, however, it is advisable, and sometimes practically necessary, to hold such review meetings on a regular basis.

Their practical relevance becomes particularly apparent in cases of underperformance. If an employer wishes to dismiss an employee for inadequate performance, there must be a reasonable ground for dismissal (see above). An annual performance review cycle may, however, be mandatory if this follows from a collective labour agreement, the employment contract, or an applicable staff handbook or internal policy.

THE NETHERLANDS

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Key principles where underperformance may constitute a ground for dismissal

A court will grant an employer's request to terminate the employment contract on grounds of underperformance only if the employee was informed in a timely manner of the inadequate performance and was given a sufficient opportunity to improve. It is also important that the underperformance must not result from the employee's illness or disability. In addition, the employer is subject to training and redeployment obligations, which are also addressed below.

Fair chance for improvement

If an employer ultimately wishes to substantiate a dismissal on the ground of underperformance, the starting point is that the employee must first be given a fair and genuine opportunity to improve his or her performance. Merely pointing out what is going wrong is not sufficient. The employer must actively seek to improve the employee's performance, usually by means of a performance improvement process with concrete arrangements, clear objectives, supervision and, where necessary, training.

A performance improvement process must also be recognizable to the employee as such. It must not become apparent only in hindsight that meetings or supervision were intended to constitute a formal performance improvement process. Case law shows that the terminology used is not decisive: the factual course of events may also lead to the conclusion that an employee should have understood that a performance improvement process was underway. Nonetheless, it is advisable for the employer expressly to state that a performance improvement plan is being implemented in order to support the employee in meeting the applicable job requirements.

Requirements for a proper performance improvement process

The content of the performance improvement process is essential. The employer must clearly specify the areas in which the employee is falling short, what improvements are expected, within what timeframe those improvements must be achieved, and how support will be provided.

A written performance improvement plan is strongly recommended, containing objectively measurable standards, interim evaluation moments, and a clear start and end date. It is advisable for the employer to use an up-to-date job description to determine the aspects of the work in which improvement is required. It is also recommendable to be clear about the possible outcomes of the process, including the fact that unsuccessful completion of the performance improvement process may lead to termination of the employment contract.

That said, a formal written performance improvement plan is not absolutely required in every case. Case law shows that, even in the absence of a separate written document, an employee may still have been given a sufficient opportunity to improve, provided that the employer offered concrete assistance, guidance and feedback and can demonstrate clearly what was expected of the employee.

Tailor-made approach required

The employer must tailor the process to the circumstances of the case. Relevant factors include the nature and level of the role, the employee's education and experience, the nature and seriousness of the underperformance, the length of service, previous attempts to improve performance, the employee's willingness to accept criticism, and the size of the employer's organisation.

The employee also has obligations. He or she may be expected to cooperate seriously with the process, be open to feedback, and make genuine efforts to improve.

The duration of a performance improvement process must be reasonable. What is reasonable depends on the circumstances, among other the complexity of the role and the employment history of the employee. In case law, a period of approximately three to six months is often accepted as a general benchmark, although a shorter or longer period may be appropriate. More time will often need to be given in cases involving illness, a new role, or a learning trajectory.

Likewise, if the employee falls ill during the process, additional time will generally need to be allowed.

Please note that even where there is underperformance, the employer still has an obligation to consider whether the employee can be redeployed to another suitable position that is better aligned with the employee's capabilities.

Final remarks

Finally, an employer faces risks if a performance improvement process is handled carelessly or discontinued prematurely. Case law shows that failure to conduct such a process properly may, in certain cases, lead to the employer's application for dissolution being rejected, or to a finding of seriously culpable conduct on the part of the employer, resulting in a substantial additional severance payment. For HR, this means: document matters carefully, make expectations concrete, provide appropriate support, and evaluate progress on a structured basis. This is not only part of good employment practice, but also a legal necessity.

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ANNUAL PERFORMANCE EVALUATION & PERFORMANCE IMPROVEMENT PLANS

REPUBLIC OF POLAND

Introduction

The contemporary labor market, shaped by the dominance of an approach based on measurable results and performance indicators, has led to the emergence of an established practice of using specific management tools. Among the most significant are annual employee evaluation systems and the implementation of so-called improvement plans (Performance Improvement Plan – PIP). These instruments are now widely used by employers as part of human resource management standards, even though their terminology and structure are not explicitly regulated in the provisions of the Polish Labour Code of 26 June 1974.

A legal perspective

Their application must be assessed through the lens of the general principles of labour law arising from the Labour Code, in particular the obligation to respect the dignity and other personal rights of the employee, as well as the principle of equal treatment in employment.

The legal foundation for all evaluation systems is, above all, Article 94(9) of the Labour Code, which imposes on the employer an absolute obligation to apply objective and fair criteria in assessing employees and the results of their work. Moreover, within the framework of the employee's duty to comply with the employer's instructions, one may also infer an element of performance assessment and the employer's authority to issue instructions aimed at improving work results.

However, to prevent such a process from becoming arbitrary, the evaluation criteria must be known to the employee before the beginning of the assessment period.

An employee performance evaluation is, in essence, a summary of the employee's work results over a given period (e.g., semi-annually or annually). It is typically conducted by a supervisor, often jointly with the employee, through a performance review meeting and/or structured questionnaires. Many employees perceive performance evaluation primarily as a control mechanism. However, for HR departments and management, they serve as a tool to assess workforce productivity and identify internal organizational issues. At the same time, for employees, periodic evaluation may create opportunities for promotion, salary increases, discretionary bonuses, changes in position, or further development of competencies.

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A Performance Improvement Plan is a tool used by the employer within the scope of its managerial prerogatives. It is designed to improve the performance of an employee who does not meet expectations in terms of the quality or efficiency of their work.

The key objective of a PIP is not only to identify problems and inform the employee that their performance, attitude, or quality of work falls below expectations, but also to provide support in achieving improvement and meeting the required standards. During the implementation of the plan, the employer focuses on assisting the employee in achieving set goals, addressing challenges encountered, and providing support (such as regular one-on-one meetings, evaluations, feedback, training, etc.).

As a rule, employers do not treat PIPs as a tool for finding grounds to terminate employment, but rather as an opportunity for the employee to improve, re-engage, and return to the level expected by the employer. Such an approach forms part of a broader motivational and developmental system aimed at strengthening employee performance in the long term.

At the same time, within this process, the employer clearly informs the employee that failure to meet the objectives set out in the improvement plan may result in consequences, including, among others, termination of the employment contract. However, a key factor in the success of a Performance Improvement Plan is the employee's own engagement. The employee must demonstrate a willingness to improve and make an effort to align with the organization's expectations. Ultimately, the outcome of the improvement plan largely depends on the employee's commitment and actions.

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ANNUAL PERFORMANCE EVALUATION & PERFORMANCE IMPROVEMENT PLANS

KINGDOM OF SPAIN

Legal framework & practical use

Performance evaluation is defined as the process by which the results and behaviours under the control of the evaluated individual are identified, observed, measured, and valued, which are determinants for a specific organization. It is a tool for both people management and establishing variable compensation.

In Spain, it is increasingly common for companies to implement annual performance evaluations and, where appropriate, performance improvement plans (PIP). Although not expressly regulated as a legal obligation, these tools fall within the employer's directional and organizational powers as recognized in Article 20 of the Workers' Statute.

In practice, many companies use these mechanisms as part of their internal HR policies to assess employee performance, set objectives, and identify areas for improvement.

Relevance for disciplinary purposes

Annual performance evaluations and performance improvement plans are particularly relevant from a labour law perspective, as they can help support potential disciplinary measures. When properly drafted and documented, they may:

• Provide objective evidence of a decrease in performance or lack of compliance with expected standards

• Demonstrate that the employee has been informed of the deficiencies detected • Evidence that the company has given the employee an opportunity to improve before adopting disciplinary measures

Therefore, these tools can be useful in building a solid factual basis in the event of a disciplinary dismissal.

Legal risks and key considerations

Notwithstanding the above, special care must be taken when drafting performance evaluations and performance improvement plans, as certain content may generate legal risks and weaken a potential dismissal. In particular:

• References to absences due to sick leave (temporary incapacity) age or any use of legal rights as a sign of lack of commitment or poor performance has direct impact on the potential termination.

• Such references could be interpreted as discriminatory or as a violation of fundamental rights.

• This may ultimately lead to the dismissal being declared null (article 55 of the Workers' Statute), which implies the immediate readmission of the worker under the same conditions, the payment of back salaries from the date of dismissal until effective reinstatement, the payment of Social Security contributions for that period and a compensation for damages.

Accordingly, companies must ensure that evaluations focus strictly on objective performance-related aspects and avoid including elements that could be linked to protected situations.

SPAIN

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Current trends

Annual performance evaluations and performance improvement plans are gaining significance in Spain, as justifying terminations is becoming increasingly necessary due to recent legal developments. While these tools are valuable for performance management and legal risk mitigation, their effectiveness largely depends on careful drafting and proper implementation.

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ANNUAL PERFORMANCE EVALUATIONS IN SWEDEN

KINGDOM OF SWEDEN

Introduction

There is no statutory requirement under Swedish law mandating that employers conduct annual performance evaluations. Nevertheless, annual development dialogues and structured performance assessments and improvement plans are of considerable legal significance in two principal contexts: (i) as a prerequisite for lawful termination due to poor performance, and (ii) as an obligation arising under collective bargaining agreements.

Relevance in the Context of Termination

Under the Swedish Employment Protection Act (Sw. lagen om anställningsskydd), dismissal due to personal grounds (such as poor performance) requires objective reasons (Sw. sakliga skäl). In order to establish objective reasons for termination in a poor performance situation, the performance must be materially below an acceptable level, the employer must also have clearly communicated the performance concerns with the employee, prepared and followed up on a performance improvement plan and made the employee aware that the employment is at risk unless the performance improves to an acceptable level.

The employer must also have considered relocation (Sw. omplacering) to another vacant position and followed a certain formal procedure including trade union involvement, before proceeding with termination of the employment. Failure to satisfy these requirements is likely to render the termination unlawful, potentially resulting in reinstatement and/or liability to pay substantial damages to the employee. Documented performance evaluations and performance improvement plans constitute the primary evidence that the employer has met the requirements under the employment protection act.

A performance improvement plan should include specific and measurable performance targets, a reasonable timeframe for improvement (normally three to six months), concrete support measures, and regular documented review meetings.

Relevance under Collective Bargaining Agreements

Approximately 90% of Swedish employees are covered by collective bargaining agreements (CBAs), which may impose specific obligations to conduct regular performance reviews and establish individual development plans. Annual development dialogues are deeply entrenched in Swedish workplace culture and consistent with the Swedish labour market model.

Performance assessments must comply with the Discrimination Act and may not disadvantage employees on any protected ground.

In summary, while no statutory obligation to conduct performance evaluations exists, such evaluations and structured performance improvement plans are essential for lawful termination on personal grounds relating to poor performance and are frequently required under applicable CBAs. A robust and well-documented performance management process is therefore strongly recommended.

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ANNUAL PERFORMANCE EVALUATIONS

& performance improvement plans in Switzerland

THE SWISS CONFEDERATION

Legal framework

Swiss employment law is characterised by a high degree of flexibility. There are no statutory rules governing performance management, annual performance evaluations or performance improvement plans (PIPs).

The relevant legal parameters derive primarily from the employer's duty of care (Art. 328 CO) and the employee's duty of loyalty (Art. 321a CO).

The duty of care requires employers to protect the employee's personality, health and dignity, which also informs how performance is assessed and addressed. The duty of loyalty obliges employees to perform their work diligently and to cooperate in good faith in performance-related processes (including evaluations or PIPs).

Annual performance evaluations

While not legally required, annual performance evaluations are widely used in Switzerland as a management and risk mitigation tool. From a legal perspective, they primarily serve a documentation function.

Consistent, objective and well-documented evaluations can be relevant in later disputes, in particular in the context of terminations or bonus claims. Employers should therefore ensure that evaluations are:

- Objective and consistent: Criteria should be role-related and applied uniformly across comparable employees.
- Balanced and accurate: Overly positive evaluations may undermine a later reliance on poor performance as a ground for termination.
- Documented: Written records should be retained in the personnel file.
- Discussed with the employee: Employees should have the opportunity to comment, even if no formal agreement is (and should not be) required.

From a legal standpoint, performance evaluations do not limit the employer's right to terminate but may shape the factual context against which a termination is assessed.

Best practice considerations in PIPs

There is no obligation to implement a PIP before taking employment law measures. However, PIPs may be appropriate in light of the duty of care, particularly where performance deficiencies are remediable.

Where a PIP is used, employers should:

- Reserve termination rights: Make clear that the employment relationship may be terminated at any time, subject to statutory limitations (e.g. protected periods under Art. 336c CO). A PIP should not be construed as a waiver of termination rights.
- Set clear expectations: Define objective, measurable targets and realistic timelines.
- Ensure proper communication: Discuss the PIP with the employee and allow for feedback.
- Document the process: Record meetings, progress and outcomes systematically.
- Act fairly and consistently: Avoid creating undue pressure to resign and ensure that the PIP constitutes a genuine opportunity for improvement. Inconsistent conduct (e.g. positive evaluations followed by termination for poor performance without prior indication) may increase the risk of an abusive dismissal claim under Art. 336 CO.

SWITZERLAND

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a. General principles

Under Swiss law, employment relationships can in principle be terminated freely, subject to notice periods and statutory restrictions. Poor performance does not need to meet a specific legal threshold.

However, a termination may be deemed abusive under Art. 336 CO in exceptional cases, in particular where it violates the duty of care or is based on contradictory or manifestly unfair conduct.

From a risk management perspective, it is advisable to:

• Clearly communicate performance deficiencies;

• Allow, where appropriate, a reasonable opportunity for improvement (e.g. via feedback, warning or PIP);

• Maintain adequate documentation.

These elements are not legal prerequisites for termination but help mitigate litigation risk.

b. Increased duty of care towards older and long-serving employees

Swiss case law imposes a heightened duty of care towards older or long-serving employees. Before terminating such employees for performance-related reasons, employers are expected to act with particular consideration and assess reasonable alternatives (e.g. reassignment, adjustments, support measures).

- Failure to do so may, in specific circumstances, contribute to a finding of abusive dismissal under Art. 336 CO. Accordingly, performance management in these cases should be handled with increased diligence and care.

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ANNUAL PERFORMANCE EVALUATIONS AND PERFORMANCE IMPROVEMENT PLANS IN IN THE UK

THE UNITED KINGDOM OF GREAT BRITAIN AND NOTHERN IRELAND

Introduction

Annual performance evaluations and Performance Improvement Plans (PIPs) are central tools for performance management in the UK. Although there is no statutory requirement to operate either system, they play an important role in setting expectations, recognising good performance and addressing underperformance a legally defensible way.

Purpose and practice

Annual performance evaluations (often referred to as appraisals) provide a structured opportunity to review performance, set objectives and identify development needs. In practice, they serve both a developmental and a risk management function. From a legal perspective, annual evaluations often become contemporaneous evidence if an employer later needs to justify formal action for poor performance. Tribunals frequently examine whether concerns were clearly identified, communicated and documented over time. Good practice includes setting clear role-specific objectives, recording evidence of performance and allowing employees to comment. A recurring risk arises where appraisals are overly positive or inconsistent with subsequent allegations of poor performance. Many employers use probationary reviews as an early form of performance evaluation, allowing them to assess suitability, provide feedback and address concerns at the outset of employment.

Managing and recognising good performance

While often associated with underperformance, appraisals also play an important role in recognising good performance, informing pay progression, bonuses and promotion decisions. Employers should ensure that performance outcomes are applied consistently and transparently, particularly where they have financial consequences. Inconsistencies between appraisal outcomes can give rise to discrimination risk, where decisions appear subjective rather than evidence based.

When performance concerns arise

Performance concerns should be addressed promptly. Where an issue with performance emerges, employers should identify whether the issue relates to capability rather than misconduct.

Capability refers to an employee's ability to perform the work they are employed to do and is assessed by reference to factors such as skill, aptitude, health and other relevant physical or mental qualities. Whereas, misconduct relates to an employee's behaviour or actions, for example a failure to follow rules, policies or reasonable instructions, and is typically addressed through a disciplinary process.

Before formal action is contemplated, employers should consider:

- whether the required standard was clearly communicated;
- whether expectations have changed over time;
- whether appropriate training, supervision or support has been provided; and
- whether health, disability or workload issues may be contributing factors.

Failing to explore these issues can significantly weaken an employer's position if the matter later escalates.

THE UK

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Performance Improvement Plans (PIP)

A PIP is commonly used where informal feedback has not resolved ongoing concerns. In the UK there is no statutory definition of a PIP, however, it is widely recognised as a structured mechanism for supporting improvement before disciplinary or capability action is taken.

An effective PIP will identify areas of underperformance, set measurable targets, provide appropriate support, set a reasonable review period and make clear the consequences of failing to improve.

Regular review meetings should be held during the PIP period and documented carefully. The purpose of a PIP is to provide a genuine opportunity to improve, not to pre determine the outcome.

PIP and fair procedure

Where a PIP does not lead to sufficient improvement, the employer may progress the formal capability process. Employers are expected to rely on objective evidence, conduct a reasonable investigation and give the employee a clear opportunity to respond.

A failure to give the employee an opportunity to engage meaningfully with the concerns can render a dismissal unfair, even where performance has been substandard.

Dismissal following a PIP

Poor performance can amount to a potentially fair reason for dismissal on grounds of capability. However, dismissal will only be fair if the employer acts reasonably in all the circumstances.

In assessing fairness, tribunals will consider whether:

- the employer had an honest and reasonable belief that the employee could not meet the required standard;
- that belief was supported by evidence such as appraisals and PIP outcomes;
- the employee was warned about the risk of dismissal and supported; and
- dismissal fell within the range of reasonable responses available to a reasonable employer.

Dismissal should ordinarily be the final stage of a structured process involving performance reviews, a PIP and a fair opportunity to improve.

Legislative developments

Proactive performance management is so important due to the new Employment Rights Act 2025, which reduced the qualifying period for ordinary unfair dismissal claims from two years to six months. As a result, employers may have less time to identify and address performance issues before employment protection arises.

Conclusion

Annual performance evaluations and PIPs remain central to effective and fair performance management in the UK. Employers use them to set clear expectations, support employee development and address underperformance. By documenting performance carefully, applying standards consistently and managing underperformance through a clear capability framework, employers reduce legal risk.

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