

## Legal Offices

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## Capability Issues

Lack of capability or poor performance may be addressed under an employer's standard disciplinary procedure or by using a specific procedure to address capability issues. Whichever approach is adopted, employers should be careful to deal with capability issues appropriately to minimise the risk of claims for unfair dismissal or constructive unfair dismissal. Failure to do so may result in a claim to an Employment Tribunal resulting in a financial penalty – the maximum compensatory award is now £74,200 - adverse publicity and unnecessary time wasted.

### Informal Capability Procedures

- Identify why performance is unacceptable and request an explanation: consider the explanation carefully and take legal advice if disability related reasons are suggested.
- Meet with the employee to identify areas that must be improved, setting specific standards and targets.
- Provide support if appropriate, including reasonable training and assistance.
- Set a timescale for review and deadlines for improvement.

### Formal Procedures

- If there is no improvement, proceed to a formal hearing (employees will be entitled to be accompanied).
- Repeat steps above and warn that failure to improve within the timescale may result in further formal action.
- Consider the imposition of a written warning if appropriate.

### If there is no improvement

- Proceed to further action under the disciplinary or capability procedure.
- Warn where appropriate that dismissal may result.
- Set clear measurable targets and review regularly.
- Provide appropriate support and discuss this with the employee.
- Always allow the employee to be accompanied at formal meetings.
- Allow the employee to appeal.
- Only dismiss as a last resort.
- Consider redeployment or demotion, if provided for in the contract.
- Be aware of disability issues and take legal advice if disability is raised.

For more information or to discuss your requirements, contact:

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Always take legal advice!

These comments are provided for guidance only. Each situation has to be examined on its own merits and you should not, therefore, rely upon the above without taking specific legal advice in relation to any particular matter.