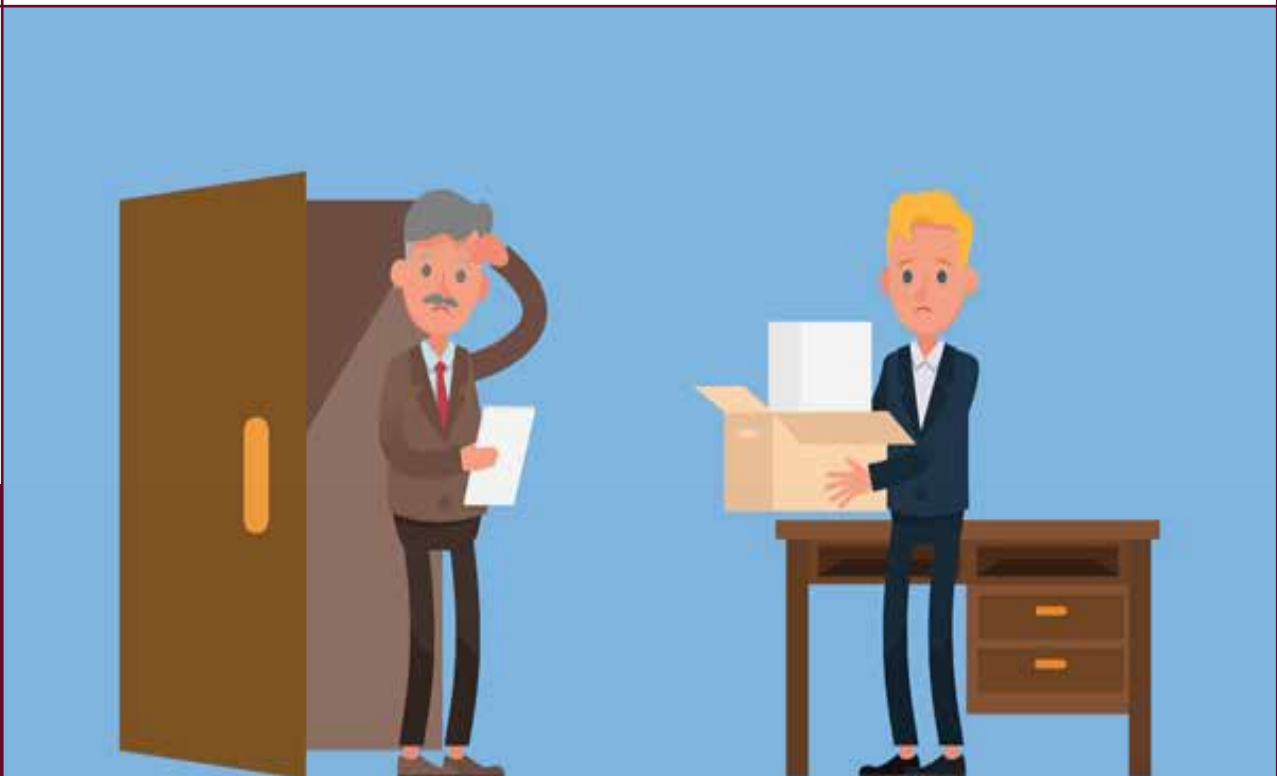




Terminating Employment for Poor Performance **Overview of the Law and Practice in Uganda**



1. Introduction

Though establishing an objective criterion for determining poor performance at the workplace can be challenging, it is crucial as it can provide the basis to justify the summary dismissal of an employee. In Uganda, employers often turn to the Employment Act and relevant court decisions for guidance on when terminating an employee for poor performance is warranted. By following the due process of the law, employers ensure fairness and avoid potential claims of unfair termination. This article explores the essential steps employers must take to comply with the law when considering employee dismissal due to poor performance.

2. What is poor performance?

Poor performance arises when an employee consistently fails to meet the required standards or expectations of their job. Poor performance is distinguishable from misconduct, which primarily deals with behavioural issues rather than an employee's ability to perform their job tasks effectively. Performance is evaluated based on job output, which includes the quality of work produced, adherence to employer operating procedures, the level of effort put forth by the employee, and their ability to perform the job at the expected level. By understanding the distinction between poor performance and misconduct, employers can better address and manage each situation appropriately.

3. Assessing employee performance

Through periodic performance appraisals, employee performance is assessed and documented. These appraisals enable employers to track employee performance objectively, providing a clear understanding of whether they meet the expected standards. It's important to note that appraisal systems must embody fairness and natural justice, as highlighted by the Industrial Court of Uganda in the case of *Donna Kamuli V DFCU Bank Labor Dispute Claim No. 002 of 2015*.

During the appraisal process, adherence to the employer's Human Resource Manual or Performance Management Policy is vital. Upholding principles of fairness and equity ensures that employees are evaluated in a just and consistent manner.

4. Managing poor performance

Stemming poor performance is essential for workplace productivity and efficiency. Therefore, when an employee consistently falls short of meeting the required standards or expectations of their job, employers must take appropriate steps to address the issue.

a) Performance Improvement Plan

Employers can implement Performance Improvement Plans (PIPs) or Performance Development Plans (PDPs) as the first step to address poor performance. PIPs identify issues, set clear goals, involve employees in finding solutions, and establish improvement timelines. PDPs help achieve personal and work-related goals through goal setting and action plans and foster open discussions on performance measurement to ensure employees meet expectations.

b) Disciplinary Penalties

Under section 62 (2) of the Employment Act, employers may opt for disciplinary penalties other than dismissal, such as a written warning, reprimand, or suspension from work to deal with work place poor performance. However, the suspension should not exceed fifteen days in any six-month period. These penalties can be imposed by the employer when it is reasonable to do so in cases of poor performance.

5. Termination for poor performance

Employers, as a means of last resort, can dismiss employees on grounds of poor performance under the provisions of section 66 of the Employment Act. However, before taking this step, they must explain the reasons for dismissal in a language the employee understands and allowing them to have a representative during the process. Adequate time should also be allowed to the employee to prepare representations.

In the evaluation of poor performance, employers must consider the reasonableness and compliance of their policies with labor laws. Moreover, they should assess whether the employee actually violated specific work standards in disregard of work place policies. Consistent application of rules/policies across the workplace is also essential to ensure fairness.

A recent Kenyan case, Vincent Namai V National Bank of Kenya Limited, illustrates the position that while assessing employee performance, the employer should not be blind to environment within which the employee is operating. The Court noted that the petitioner was essentially raising well-grounded grievances or complaints and, instead of the Respondent amicably addressing them, the scores of unsatisfactory performances were taken like they existed in a vacuum. The Respondent acted unreasonably by failing to take into account the petitioner's valid grievances about his work environment and going ahead to take a decision to terminate his employment. The poor performance was not attributable to the Petitioner's capacity, compatibility, and contact but to the Respondent's

defective operational requirements.

6. Conclusion

Employers must therefore exercise caution and ensure compliance with the law when dealing with terminations due to poor performance to steer clear of potential legal conflicts. When poor performance is determined fairly and objectively through the appraisal system, it can indeed be a legitimate ground for dismissal. By following due process and conducting evaluations diligently, employers can make informed decisions that uphold fairness and accountability in the workplace, fostering a conducive environment for both employees and the organization.

Cristal Advocates accepts no responsibility for any loss occasioned to any person acting or refraining from acting as a result of material contained in this publication. Further advice should be taken before relying on the contents of this publication.



Contacts for this Publication.



Denis Yekoyasi Kakembo
dkakembo@crystaladvocates.com



Rehema Nassaka
rnassaka@crystaladvocates.com

-
- **Energy & Infrastructure**
 - **Business support**
 - **Employment**
 - **Banking & Finance**
 - **School of Professional Excellence**
 - **Tax**
 - **Company Secretarial & Trustee Services**
 - **Public Law & Policy Advocacy**
 - **Dispute Resolution**
 - **Corporate and Commercial**
-

Contact us

Cristal Advocates
📍 32 Lumumba Avenue
4th Floor, Padre Pio House
Lumumba Avenue

✉ P.O. Box 1769 Kampala, Uganda
☎ +256 (414) 971274
admin@crystaladvocates.com
🖱 www.cristaladvocates.com