**MANAGING UNDERPERFORMANCE POLICY**

**PURPOSE**

The aim of this managing underperformance policy is to ensure that underperformance is addressed consistently and fairly, with the primary goal of helping employees improve their performance to meet required standards.

This policy does not cover cases involving misconduct. For those cases, refer to [EMPLOYER'S NAME Misconduct Policy].

This policy is accessible to all employees and is available on [EMPLOYER'S NAME] intranet. New employees will receive a copy during their induction.

Underperformance includes, but is not limited to:

* An inability or unwillingness to meet required or reasonably expected performance levels, considering factors such as:
  + The role’s nature and purpose.
  + The position’s classification and seniority.
  + Required skills, experience, or knowledge.
  + Any claims made by the employee during the hiring process, including qualifications.
* Negligence, inefficiency, or incompetence in performing duties.
* Failing to meet expected standards of care, diligence, or performance-related behavior.
* Non-compliance with workplace policies, rules, or procedures related to performance, including failure to follow reasonable and lawful directions.
* Unacceptable workplace behavior (refer to [code of conduct OR Workplace Behaviors Policy OR staff handbook]).
* Disruptive or negative behavior that affects coworkers, customers, suppliers, or the business as a whole.

An employee's ability to perform at the required standard will be assessed based on their skills, qualifications, experience, aptitude, health, or any other physical or mental condition.

This policy complies with applicable North Dakota state laws and regulations.

**POLICY APPLICATION**

This policy applies to all employees of [EMPLOYER’S NAME] who have successfully completed their probation period. It does not cover agency workers, self-employed contractors, or other staff members.

This policy is intended to guide employees on the process [EMPLOYER’S NAME] will ideally follow in cases of underperformance. However, it is not prescriptive, and [EMPLOYER’S NAME] may choose to deviate from it if deemed reasonable or necessary under the circumstances.

This policy applies to the management of underperformance from the effective date, including cases identified before that date which were not part of a performance management process (PMP) at the time. If a PMP was already in progress before the effective date under a prior policy or procedure, the underperformance will continue to be managed according to that policy or procedure.

**NON-CONTRACTUAL STATUS**

This policy is not part of any award, enterprise agreement, or other industrial instrument entered into by [EMPLOYER’S NAME], nor is it a part of any employee's contract of employment. [EMPLOYER’S NAME] retains sole discretion to amend this policy at any time.

**RESPONSIBILITIES**

[EMPLOYER’S NAME] is responsible for setting clear, realistic, and measurable performance standards, ensuring employees understand these expectations, and providing reasonable support to help employees meet them.

Employees are responsible for:

* Understanding and staying informed about this policy.
* Performing their duties to the expected standard and following lawful, reasonable instructions from [EMPLOYER’S NAME].
* Actively and in good faith, participating in any processes related to managing their underperformance.

**QUESTIONS AND CONCERNS**

Employees with questions or concerns about this policy should first reach out to their direct supervisor. If further clarification is needed, they should contact their designated HR representative.

For any uncertainty regarding the application of this policy, employees are encouraged to consult either their direct supervisor or HR contact for guidance.

**COMPLAINTS UNDER THIS POLICY**

Concerns about how a performance management process (PMP) under this policy has been conducted should be raised through [EMPLOYER’S NAME]'s [grievance policy or procedure].

Decisions to initiate a PMP, the content and steps of the PMP, and its final outcome are not subject to internal review or appeal.

**RECOGNIZING AND ASSESSING PERFORMANCE CONCERNS**

[EMPLOYER’S NAME] will take reasonable measures to identify, or respond to, signs of underperformance among employees.

If concerns arise about an employee's performance, [EMPLOYER’S NAME] may conduct a preliminary assessment to determine whether there are grounds to initiate a PMP. This assessment evaluates:

* Whether a gap exists between expected and actual performance standards.
* The nature, impact, and seriousness of the performance issues.
* The duration of the performance concerns.
* Possible reasons for the underperformance.

The scope of a preliminary assessment will depend on the specific situation and may include reviewing personnel records, examining appraisal documentation, analyzing work performance, collecting relevant materials, and, if needed, confidentially discussing the employee’s performance with relevant parties.

**ACCOMMODATING DISABILITIES**

[EMPLOYER’S NAME] will consider whether an employee's underperformance may be connected to a disability. In such cases, reasonable adjustments to working arrangements will be explored, including potential changes to duties, provision of additional equipment, or further training. Adjustments to this policy may also be considered where appropriate.

Employees who wish to discuss how a disability or medical condition may impact their performance should contact their line manager or [designated HR representative OR specific position].

**ADDRESSING PERFORMANCE ISSUES**

In most cases, performance concerns will initially be handled through routine discussions between an employee and their line manager. If these issues persist, the underperformance will be formally addressed through a PMP.

**ADDRESSING UNDERPERFORMANCE INFORMALLY**

In most cases, [EMPLOYER’S NAME] will begin addressing performance concerns through an informal discussion led by the employee's line manager. This discussion will cover:

* The performance standards expected.
* Specific areas where the employee's performance does not meet the required standard.
* Possible reasons for the underperformance.
* Reasonable support, training, or resources [EMPLOYER’S NAME] may provide to help the employee improve.
* Actions the employee must take to meet expectations and the timeframe for review.

If the employee successfully resolves the performance concerns within the agreed timeframe, no further action will be necessary, although regular performance reviews will continue as part of their employment.

**FORMALPMP**

[EMPLOYER'S NAME] initiates a formal PMP in cases of serious underperformance or when informal PMP efforts have not resulted in satisfactory improvement.

If a formal PMP is initiated:

* Notice of meeting: [EMPLOYER'S NAME] will provide at least 48 hours’ written notice (or a shorter period if agreed) of the meeting date, time, and location. The employee will also be informed of their right to bring a support person.
* Meeting purpose: The meeting aims to identify performance concerns, hear the employee's response, explore causes, agree on remedial actions, and develop a timeline for improvement using a Performance Improvement Plan (PIP).
* Documentation: A written summary will follow the meeting, outlining:
  + Performance concerns.
  + Actions and responsibilities agreed upon.
  + Any necessary next steps, including further meetings or plans.

**REPRESENTATIVE OR SUPPORT PERSON**

Employees are entitled to bring a representative or support person to formal PMP meetings, as outlined in [EMPLOYER'S NAME]’s [Support Person Policy or other applicable document].

* Informal discussions: Managers or supervisors may conduct informal performance discussions or operational conversations without the employee being accompanied by a support person.
* Formal PMP meetings: The presence of a support person or representative is allowed during formal PMP meetings, provided it aligns with the requirements specified in the relevant policy or procedure.

Employees are required to inform [EMPLOYER'S NAME] of their chosen support person or representative by providing their name and contact details with reasonable advance notice before attending any formal PMP meetings.

If the designated support person is unavailable at the scheduled time and their unavailability would result in an unreasonable delay considering the seriousness of the performance concerns and operational needs, [EMPLOYER'S NAME] may ask the employee to select an alternative support person.

The role and responsibilities of a support person are detailed in this policy. Ideally, the support person should not be a work colleague from the employee's immediate work area. Additionally, the support person must not be associated with the issues being addressed in the PMP meeting or hold a more senior role than the manager conducting the meeting.

While the support person may provide assistance and support to the employee during the formal PMP process, they are not permitted to present or advocate on behalf of the employee.

**PERFORMANCE IMPROVEMENT PLAN (PIP)**

A PIP is a written document created by [EMPLOYER'S NAME] after a formal PMP meeting. It outlines the specific performance improvements required from an employee within a set timeframe. A PIP will include:

* The areas where the employee has not met performance standards.
* Clear targets for improvement.
* Agreed-upon measures, such as additional training or supervision, aimed at helping the employee improve.
* Methods for monitoring and assessing performance against the targets.
* A review period and, if applicable, dates for interim performance assessments.
* The consequences of failing to improve within the review period or of further unsatisfactory performance.

While mutual agreement on the terms of a PIP is preferred, [EMPLOYER'S NAME] reserves the right to finalize a PIP if consensus cannot be reached. Employees may submit a written response to the PIP, which will be attached to the final document.

The finalized PIP will be signed and dated by [EMPLOYER'S NAME] and, where possible, by the employee. Both parties will retain a copy.

Employees are required to adhere to the PIP as part of a lawful and reasonable direction from [EMPLOYER'S NAME]. Refusal to comply may constitute misconduct and result in disciplinary action, including potential termination.

During the review period, the employee's performance will be monitored. Within seven days after the review period concludes, [EMPLOYER'S NAME] will provide written notice of the outcome:

* If performance has met required standards, no further action will be taken.
* If performance remains unsatisfactory, the process may escalate to a disciplinary action.
* If there has been significant improvement but not to the required level, the review period may be extended.

**CONFIDENTIALITY**

[EMPLOYER'S NAME] is committed to handling performance matters with sensitivity and respect for the privacy of all individuals involved. Employees, representatives, and support persons are required to maintain strict confidentiality regarding all information shared in connection with matters under this policy.

Employees and any accompanying representatives or support persons must:

* Safeguard the confidentiality of all processes under this policy and ensure that any information disclosed by [EMPLOYER'S NAME], its representatives, or advisers is kept private.
* Share confidential information within [EMPLOYER'S NAME] only on a need-to-know basis and with prior written authorization from [MANAGER OR HR REPRESENTATIVE], unless required by law.
* Share confidential information outside [EMPLOYER'S NAME] only with prior written authorization, to seek personal or professional support, or if legally required.

When disclosing confidential information for personal or professional support, employees must ensure the recipient agrees to maintain confidentiality. Recipients must not share the information further without explicit consent.

If disclosure is legally required, employees must notify [EMPLOYER'S NAME] in writing before disclosing the information. This notification must include details of the information to be disclosed and the specific legal requirement. Disclosure should only be to the extent mandated by law.

Confidentiality obligations do not apply to information already in the public domain, unless it entered the public domain due to a breach of confidentiality by the employee, representative, or support person. Employees must consult with [EMPLOYER'S NAME] to confirm which information is considered public before making any disclosures.

**DISCIPLINARY PROCESS**

[EMPLOYER'S NAME] aims to provide employees the opportunity to participate in a PMP before disciplinary action is taken. However, in cases of gross negligence or for employees still within their contractual probationary period, disciplinary action, including termination of employment, may occur without a PMP.

Disciplinary action, up to and including termination of employment, may be taken if:

* Performance has not improved sufficiently within the timeframe specified in a Performance Improvement Plan (PIP).
* Performance remains unsatisfactory while a PIP is active.
* The employee’s conduct involves gross negligence warranting immediate dismissal without a PMP.

Unauthorized disclosure of confidential information related to a PMP by an employee or their support person (if also employed by [EMPLOYER'S NAME]) may lead to disciplinary action, including termination of employment.

Any disciplinary action will be carried out in accordance with [EMPLOYER'S NAME]’s [DISCIPLINARY POLICY OR INDUSTRIAL INSTRUMENT].

**ACKNOWLEDGEMENT OF RECEIPT AND REVIEW**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (employee name), acknowledge that on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (date), I received and reviewed a copy of [EMPLOYER'S NAME]’s [NAME OF POLICY]. I understand that it is my responsibility to familiarize myself with the policy and adhere to its terms.

I also acknowledge that this policy is not intended to create an employment contract or alter my at-will employment status, unless otherwise specified in a written agreement signed by an authorized representative of [EMPLOYER'S NAME]. Any delay or failure by [EMPLOYER'S NAME] to enforce the provisions of this policy does not constitute a waiver of its rights to enforce them in the future.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Printed Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date