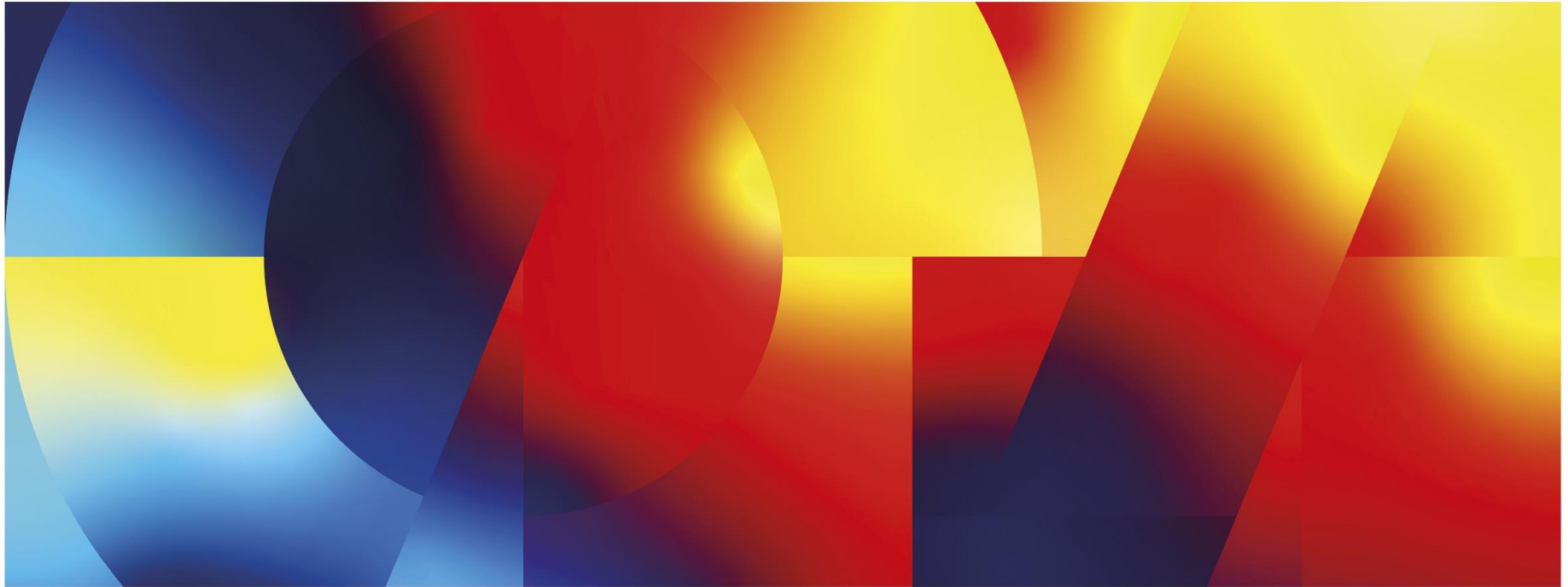


25 November 2021

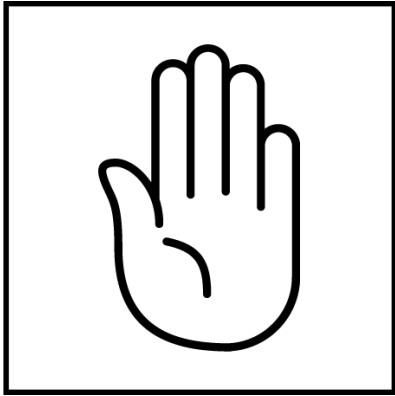
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ward
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CPD Seminars, 2: Capability: Managing Performance and Ill health



Housekeeping





Capability

- One of 5 potentially fair reasons for dismissal:
 - Conduct
 - Capability
 - Redundancy
 - Contravention of a statutory restriction (illegality)
 - SOSR
- A capability dismissal is one which is related to the employee's "skill, aptitude, health or any other physical or mental quality" (section 98(3)(a), Employment Rights Act 1996). The capability must relate to the work that the employee was employed to do (section 98(2)(a), Employment Rights Act 1996).
- Performance
- Ill health

Managing performance: aims and objectives



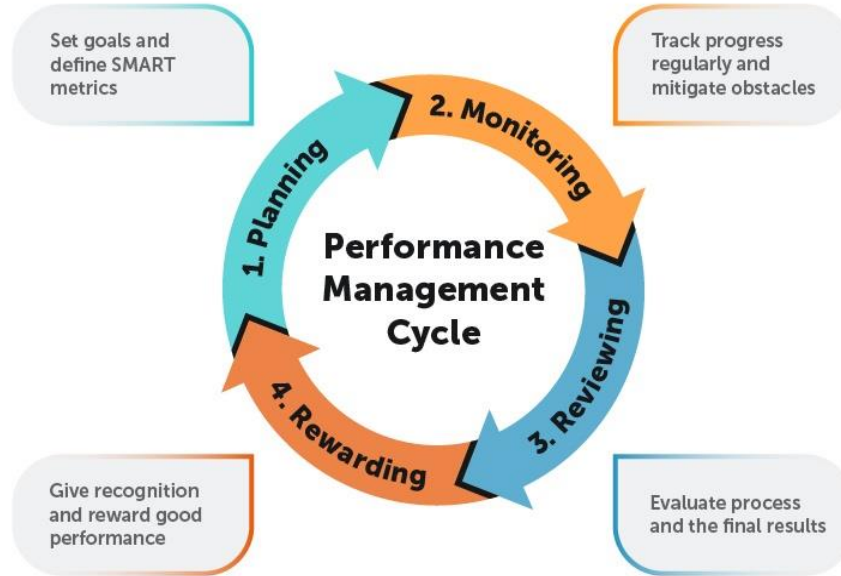
Why is managing performance important?

- Clear benefits to employer:
 - Better company performance
 - Better engagement
 - Consistency of standards
- Be clear on what is expected at each stage of employment lifecycle:
 - Recruitment
 - Induction
 - Probationary review
 - Ongoing review

Conduct or capability?



Performance management cycle



Continuous performance improvement

- Regular discussions
- Regular monitoring/supervision
- Set clear objectives
- Career planning
- Consider training
- Annual/bi-annual appraisals: no surprises!

Reasons for poor performance



Don't delay -
investigate and
record discussions

Informal or
formal?

Follow
performance
management
procedure

Think about what
you are trying to
achieve

Deal with the problem at an early stage

- Where possible deal with the situation early and informally:
 - More likely to get an improvement than to let it fester
 - Going through this step will make any later formal process more likely to be fair
- If managers let the issue drift:
 - Standards become ingrained
 - May have accepted the poor performance – standard takes longer to improve
 - Demotivating for other employees
 - Causes resentment of colleagues and lack of respect for management

Formal process

- Performance improvement warnings:
 - Be specific
 - Improvement required and realistic timescales – fact sensitive
 - Review date
 - Support or training to be provided
 - Staged warning process and potential termination of employment

- Cost to business:
 - Overall cost to UK economy pre pandemic stands @ approximately £19 billion a year
 - 2020: average level of absence 5.8 days per employee (reduction from 6.3 days in 2016), lowest since data collection began in 1995 (Office for National Statistics)
 - Vast majority of sickness absence caused by minor illnesses
 - Impact on staff morale
- Impact of covid on sickness absence data?
 - Virus increased sickness absence levels, but furloughing, social distancing, homeworking and shielding appear to have reduced other causes of absence
 - Since April 2020, coronavirus accounted for 14% of all occurrences of sickness absence.

Managing sickness absence

- Have a clear policy for managing sickness absence
 - Start with informal process
 - Conduct return to work interviews
 - Categorise leave time correctly- time off for dependants or other leave is not sickness absence
 - Consider use of trigger mechanisms to review attendance if this is an issue
 - Consider change to working patterns or environment, such as flexible working
- Keep in regular contact with staff who are absent
- Apply standards consistently

Short term absence

- Usually takes the form of:
 - Minor one-off absences (e.g. flu, toothache, sprains and strains)
 - Minor absences that occur more regularly (e.g. migraines)
- Employee should explain why they are absent and the nature of the problem
- Self-certificate if they return within seven days
- Statement of fitness for work if absent for seven days or more:
 - Employee is unfit for work
 - Employee may be fit for work
 - Phased return
 - Altered hours
 - Amended duties
 - Workplace adaptations

Repeat short term absence

- Discuss reasons at return to work interview
- Consider if indicates general ill health which requires investigation
- Conduct issue- manage by following disciplinary procedure
- Issue warnings (improvement notices)
 - What improvements in attendance is expected
 - Consequences of failing to improve

Long term sickness absence


- Keep in regular contact with the individual about their position
 - Be clear about their sick pay
 - Be clear about any workplace changes or promotion opportunities
- Consider whether it is appropriate to just keep in touch and give them the time they need to get better
- Assess if colleagues can manage without a replacement or whether you need to hire somebody on a temporary contract
- May need to follow formal process
 - Requirement for up to date medical information before termination of employment
 - Staged warning process not usually appropriate

- Those who continue to experience the impact/symptoms of Covid-19 after they have recovered from the infection itself (known as long COVID or Post-COVID-19 syndrome)
- According to the NHS most people will make a full recovery within 12 weeks
- Potential to be considered a disability for the purposes of the Equality Act 2010
 - Physical or mental impairment, **and**
 - The impairment has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities
- Acas guidance published in April 2021 regarding managing Long COVID
 - <https://www.acas.org.uk/long-covid>
- Employers need to ensure they follow a fair procedure. It is recommended to follow usual sickness management procedures.
- Current data suggests those most at risk of contracting long COVID are older people, women and ethnic minorities

- Equality Act 2020 imposes a duty on employers to make reasonable adjustments:
 - Duty arises where a disabled person is put at substantial disadvantage, an example of a reasonable adjustment in a sickness absence scenario may be agreeing to increase trigger points for individuals in relation to disability related absence:
 - consider how much absence would be reasonable for someone with the particular disability and increase the trigger point for formal action to reflect this
 - In general terms, if a reasonable adjustment can be made then a tribunal would expect an employer to make it: the onus is on the employer, taking into account the overall circumstances
 - Examples of potential adjustments (very wide ranging):
 - Allocating some duties to another employee
 - Considering suitable alternative posts
 - Altering hours of work
 - Assigning a different place of work or home working
 - Acquiring or modifying equipment (e.g. large screen or adapted keyboard)

Questions and answers

Thank you

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