



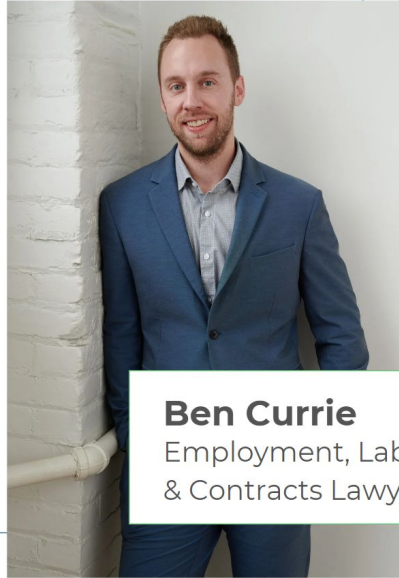
Free Webinar: **EP 47**

Performance Improvement Plans – Best Practices to Avoid the Pitfalls

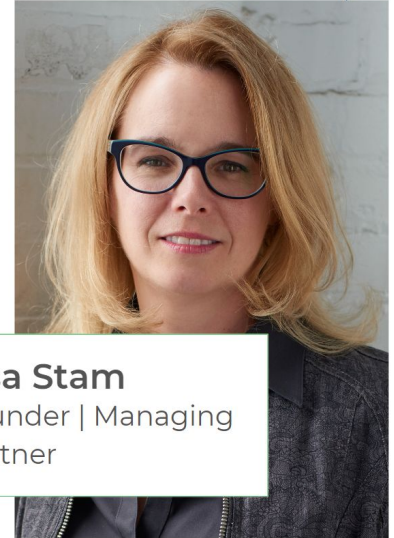
Wednesday, Nov 15, 2023
10:30 a.m. E.S.T.



Meet Your Presenters



Ben Currie
Employment, Labour
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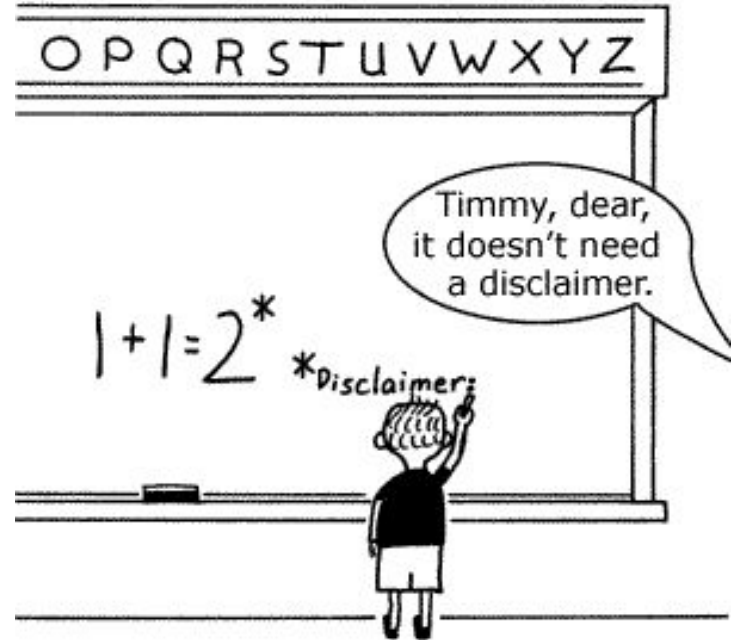
Lisa Stam
Founder | Managing
Partner

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doesn't need
a disclaimer
but we do...



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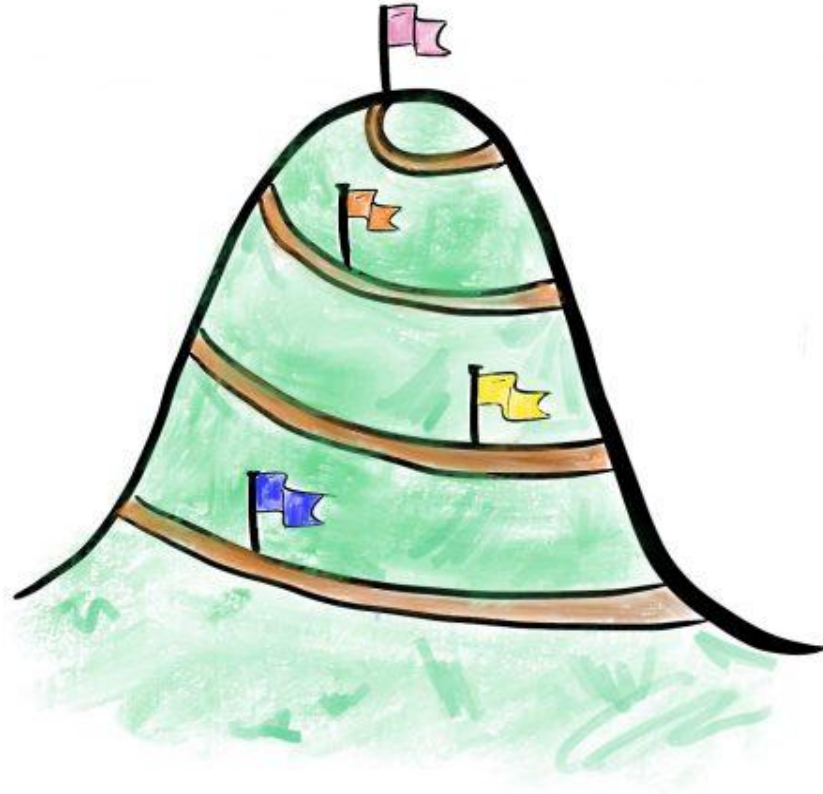
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Presentation Roadmap

- 1) When is a PIP Needed?
- 2) Essential Elements of a PIP
- 3) PIPs in a Unionized Workplace
- 4) PIPs and Human Rights
- 5) Next Steps: When a PIP is Not Working
- 6) Takeaways

1) When is a PIP needed?



When is a PIP needed?

- When an employee's performance is consistently below the accepted standard for the position
- Can be effective especially if the employee has the potential to perform, but is unclear on expectations or supports available

2) Essential Elements of a PIP



Essential Elements of a PIP

- Purpose of the document
- Where is employee's performance falling below the standard?
- What is the impact of the poor performance on the business?
- What is the expected standard?
- What is the source of that standard?
- List past discussions about performance

- List supports available to help employee achieve performance target (e.g. coaching, additional training, procedure manuals, explanation of processes)

Essential Elements of a PIP

- State PIP will be added to personnel file
- State timeline by which performance must improve
- State consequences if performance does not improve
 - The key *legal* part of the PIP
 - *Disciplinary action, up to and including termination of employment*
- Acknowledgement of Receipt and Review of PIP (vs agreeing with content of PIP)

3) PIPs in a Unionized Workplace



PIPs in a Unionized Workplace

- Not as common as in non-union workplaces
- Check applicable collective agreement to ensure implementing a PIP does not violate it
- Involve union in any discussions regarding performance or the use of a PIP
- Ensure using PIP does not run contrary to past practice

4) PIPs and Human Rights



Human Rights Considerations

- Ensure the PIP is not discriminatory
- If an employee requires an accommodation due to protected ground (e.g. disability), an employer cannot ignore the employee's limitations and impose the same performance standards if not reasonable in light of the accommodation

5) Next Steps: When a PIP is Not Working



What to do When a PIP is Not Working?

- Consider the timeline
- Further clarify expectations and potential barriers
- Extend the PIP
- Move toward termination of employment

Can an Employee Be Fired While on a PIP?

Generally speaking yes

- Important for PIP to have the essential elements discussed to form the basis of a termination
- Sustained failure to improve performance while on a PIP can be just cause, but will not be wilful misconduct (unless employee intentionally underperforming)

See our prior [webinar](#) “Termination Provisions 101” for more on the differences between standards of cause.

Additional Considerations

- PIPs are not a shortcut to firing your subpar employees
- Terminating employment and recruiting employees is costly and ideally the PIP will help the employee improve to avoid those costs
- May choose to terminate without cause to limit potential liability

6) Key Takeaways



Key Takeaways

- Seek counsel when developing a PIP – it must be carefully drafted to later rely on (it really is a legal document!)
- Performance standards must be consistent and objectively reasonable
- Must provide the employee with the tools to improve
- Adjudicators expect employers will provide reasonable opportunity to improve, especially if terminating employment for cause (consider costs)

Questions?

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springlaw.ca/team/

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LISA STAM



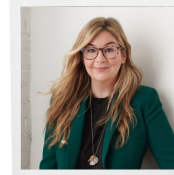
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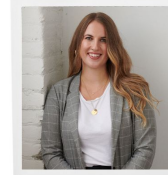
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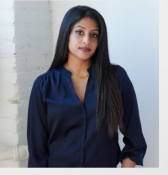
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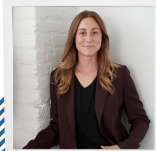
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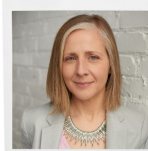
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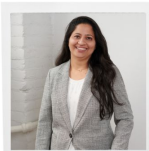
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