

# Ask the Lawyer



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## How to make a PIP more tolerable — and productive

JUNE 7TH, 2010 | UNCATEGORIZED

Performance improvement plans (PIPs) are not fun for either the manager or the employee. But, both the manager and the employee can make the best of a PIP.

The PIP is a notice to the employee of an opportunity to improve performance, or be fired. From the employee's perspective, it is almost like being put back on probation, and should be regarded as such. From the manager's viewpoint, a PIP is a lot of work with a seemingly never-ending period of putting up with a nonperformer.

The employee who receives a PIP notice should take it seriously and respond with a positive attitude and much hard work. The employee should try to impress the manager and not appear to be fighting back against what the employee believes is an injustice. There is no right to grieve a PIP or to file an equal employment opportunity complaint or Merit Systems Protection Board (MSPB) appeal on a PIP alone. Appearing to be uncooperative or belligerent, no matter how wrong the manager is in his or her conclusion about the employee's performance, will only play into the manager's hands and make it easier for the agency to prevail on an MSPB appeal.

An employee who is 50 years of age with 20 years of service or any employee who has 25 years of service is eligible for discontinued service, or early, retirement if he is fired for poor performance after failing a PIP. An employee who has the requisite service and who receives a PIP letter should do some serious soul searching about his performance. He should consider the early retirement option if he concludes there is some merit to the supervisor's PIP, even if he disagrees on the severity of the action. As a general rule, it is difficult for an employee to win an appeal of a performance-based adverse action if the employee has a valid performance standard, goes through a meaningful PIP and has a manager who engages the employee before and during a PIP.

From the manager's perspective, the PIP can be made easier if the manager is in the habit of maintaining and keeping documentation. Helpful documentation would include e-mails to the employee, notes in the margin of a work product, memos to the employee about performance and memos to the file about conversations between the manager and the employee concerning performance expectations.

A frequent practice in preparation for a PIP is the writing of an extensive PIP notice. Sometimes these notices are the equivalent of a full-length nonfiction book about the employee's perceived poor performance. There is no requirement to do this. The only requirement is to identify where the employee's performance has fallen short and what the employee must do to reach an acceptable level. A manager should fully and clearly state these expectations, but does not have to write a PIP notice that covers every eventuality and attempt to rebut every perceived argument that the employee might have. It is just a notice and the manager does not have to spend excessive time on it. A trip to the human resources office will help the manager determine the right balance.

A manager who approaches a PIP with a sincere desire to rehabilitate the employee's performance will do better on all fronts. Such a manager will make a favorable impression of sincerity with an arbitrator or MSPB judge if the employee fails the PIP and files a complaint. And given human nature, a manager who really cares about

improving the employee's performance may be able to succeed in rehabilitating a poor performer, turning the employee into a productive asset.

The final point for a manager is to offer assistance during a PIP — for instance, having an open door policy, assigning a mentor, or offering training to the employee — and to follow through on that assistance. Failure to do this has, in some cases, resulted in a reversal of a performance-based adverse action.

Both managers who impose PIPs and employees who are subjected to them find the process unpleasant. With some careful attention and the right attitude by both the manager and the employee, the PIP experience will be more tolerable, and, hopefully, more productive.

