

# DCIF Project – Managing Performance

## Tool 6: Unpacking Performance

### Discrimination and Poor Performance

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#### Tags

#### Who is this for?

##### High Priority:

- Direct Line Managers

##### Practical Information:

- **DEI** and HR Professionals

#### What guidance does it provide?

- Understanding the possible impact of a disability on the behaviour of an employee
- How to differentiate between poor performance and performance impacted by a disability
- How to provide constructive feedback to support the performance of workers with disabilities

#### Take home points

- Stigma, negative attitudes, and stereotypes can lead to unrelated, unfair, and inaccurate assessments of people's personal characteristics, skills, abilities, and career potential. They may also lead institutions to develop policies, procedures, and decision-making practices that exclude or marginalize people with disabilities.
- **Disability confident** employers provide meaningful feedback to workers with a disability. They take into account mental health concerns, plan for disability specific considerations, and ensure that the structure of the performance review and communication of information are delivered in ways that suit the worker
- When determining the difference between poor performance and disability-related performance, do not act on the basis of assumptions. Instead ask workers to help you understand what is impacting their performance and discuss the development of an individual accommodation plan if needed

## Performance Discrimination Based on Disability

Employers must be wary of how their personal opinions and attitudes may influence the performance management process. Lack of self-awareness and underlying biases towards people with disabilities may cause an employer to make incorrect assumptions about a worker's skills and capabilities. Without disability awareness, managers may fail to provide feedback, guidance, or support, as well as opportunities to improve, to the same extent as they do for workers without disabilities.

### Identifying Negative Attitudes Towards Disability

When a person has conscious or **unconscious biases** against people with disabilities, they are often grounded in **ableism**. **Ableism** is a belief system that views disability as an "anomaly to normalcy," rather than an inherent and expected variation in the human condition. **Ableism** underpins negative attitudes, stereotyping, and overall stigma towards disability. It devalues and limits the enormous potential of people with disabilities.<sup>1</sup>

Stigma, negative attitudes, and stereotypes can lead to unrelated, unfair, and inaccurate assessments of people's personal characteristics, skills, abilities, and career potential. They may also lead institutions to develop policies, procedures, and decision-making practices that exclude or marginalize people with disabilities. Organizations must take steps to make sure that negative attitudes, stereotypes, and stigma do not result in discriminatory behaviour or treatment of people with disabilities. For more information, please visit [Culture Tool 4 - Addressing Barriers to Culture Change](#)

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*"Workers with disabilities are more likely to face involuntary job loss or to be laid off"*  
– Mitra & Kruse, 2016<sup>2</sup>

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### Should You be Evaluating Contextual Behaviours?<sup>3</sup>

Many organizations evaluate workers not just on their skills, knowledge, and abilities, but also on their behaviour or 'contextual performance.' While skills, knowledge, and abilities are directly related to the person's job, contextual behaviours create the environment within which the tasks are performed and are often the same for everyone who works in the organization.

They can include:

- Working as a team
- Acting with integrity
- Perseverance and dedication
- Demonstrating enthusiasm
- Promoting organizational goals and policies

While managers understandably want to employ people who get on well with colleagues and are enthusiastic team members, some workers with disabilities may not be able to display these behaviours. If a worker's behaviour doesn't meet the organization's standards, talk to the worker about their behaviour, but remember that the person may not be aware they are not meeting this standard. If someone cannot display the behaviour your organization requires because of a disability, depending on the nature of the person's job, it may be a reasonable accommodation to forego evaluation of that requirement. For example:

- Someone with Autism Spectrum Disorder (ASD) who has difficulty with interpersonal communication and relationships may not be a good team worker. They may nevertheless

be good at the tasks required in their job which may essentially be solitary and technical in nature. However, this does not imply to all individuals with ASD, as this will be entirely dependent on the individual in question and the team dynamics at play.

- Someone managing depression might find it difficult to be enthusiastic and cheerful, but still be able to perform the essential tasks of their job.
- Someone managing chronic pain might find it difficult to be a good team player if the teamwork requires volunteering for additional duties or working longer hours.

If a worker with a disability is marked down in a performance review for failing to meet these behavioral requirements, and the behavioural standard is not a bona fide requirement of the job, the worker is being discriminated against on the basis of their disability. You must therefore make adjustments to behavioural requirements where it is reasonable to do so.

## Developing An Equitable Approach to Performance Management

People with disabilities have commonly been sheltered from constructive criticism to limit the possibility of any language or behaviour that would indicate the individual was receiving different treatment, or being subject to different expectations, due to their disability.<sup>4</sup>

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*Although the intent is protective, this practice limits workers with disabilities by denying them opportunities to correct their behaviour and learn on the job.*

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**Disability confident** employers provide meaningful feedback to workers with a disability. They take into account mental health concerns, plan for disability specific considerations (i.e., memory, attention, communication, anxiety, or stressful environments), and ensure that the structure of the performance review and communication of information are delivered in ways that suit the worker. To learn more about accessible communications, please visit [Communication Tool 2 - Understanding Disability Etiquette](#)

## Focusing on Performance Standards for Evaluating<sup>5</sup>

As mentioned in the overview of performance management tool [\[PM Tool 1 - Understanding Performance Management\]](#) it is an employer's responsibility to review **bona fide job requirements** with a worker and provide clear objectives and performance standards from the onset of employment. These expectations and standards are then collectively reviewed with workers at quarterly check-ins and formal performance reviews.

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*"More than half of small businesses have never hired a person with disability. Of the 44% of small businesses that have, 77% said these employees either met or exceeded their expectations" – BMO, 2012<sup>6</sup>*

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Most workers are required to perform both the **bona fide occupational requirements** and the "marginal" functions of a job. The **bona fide requirements** are those that must be performed to achieve the objectives of the job. Removal of these would fundamentally change the job. Marginal functions are

tasks or assignments that are tangential and less important. Performance standards used to evaluate workers must be mapped onto **bona fide requirements**, not marginal functions.

<b>Bona Fide Requirements</b>	<b>Marginal Functions</b>
<ul style="list-style-type: none"> <li>• Most important job duties</li> <li>• Critical duties that must be performed to achieve the objectives of the job</li> <li>• Removal of an essential function would fundamentally change the job</li> <li>• Degree, specialized expertise, or skill required to perform the function</li> </ul>	<ul style="list-style-type: none"> <li>• Character of the job would remain the same if the duties were not performed</li> <li>• Failure to perform the function may have minor consequences</li> <li>• Can be reassigned; another employee could perform the work with minimal to moderate disruption or inconvenience</li> </ul>

*Pop Up: Although a worker’s disability typically has no bearing on performance or conduct, sometimes an individual’s disability may contribute to performance or conduct problems. When this is the case, a reasonable accommodation initiated through the interactive process may be all that is needed to eliminate the problem.*

### Identifying Poor Performance vs. Disability-Specific Performance

If a worker is not performing to the caliber needed, it can sometimes be difficult to determine whether the challenges they are facing are related to their disability. **Disability confident** employers understand the importance of transparency. Here are some promising practices you can implement when determining if poor performance is disability-related:

1. **Do not act on the basis of assumptions:** Should any of your workers, including those with disabilities, be struggling, do not jump to conclusions and review their performance based on what you think you see. Remember, your workers are the expert in their disability and will know best what will support their ability to do the job.
2. **Ask workers to help you understand what is impacting their performance:** When intervening in a poor performance situation, an employer should first consider what effects a disability may have on a worker’s performance. If it is difficult to determine the impact of the disability, ask the worker to explain to you what may be influencing their performance.<sup>4</sup> It may be that a manager has developed a perception of poor performance, when in reality, the worker with a disability has identified a different approach to, or way of, completing their essential duties.
3. **Discuss the development of an individualized accommodation plan:** If a worker identifies that they would benefit from an accommodation, begin the accommodation process with them before engaging in a formal performance management review.<sup>4</sup> For more information, please visit [Accommodations Tool 6 - Developing Your Approaches to Workplace Accommodations](#).

### Case Study

Mark is 32 and is employed as a computer programmer at a prominent bank in Canada. He was involved in a car accident at 21 years of age that resulted in a lower limb amputation. He uses a motorized scooter to get around locally and drives an adapted van. He also lives with Type 2 Diabetes. Recently, Mark has expressed to his manager that he feels very stressed out and anxious at work. His manager has noticed that Mark occasionally logs on later in the day and is less responsive in comparison to his colleague who holds the same role and title. Mark has also missed the last 2 out of 3 deadlines for project deliverables. Mark’s manager is unsure of how to support Mark and is finding it difficult to address Mark’s change in performance.

*What can an employer do in this case?*

Employers cannot measure a worker's success or performance according to how they measure up to others. Rather, performance should be measured according to predetermined standards:

- Performance standards should be individualized
- Performance standards should be mutually agreed upon at an early performance management meeting when new workers begin their role
- Performance standards should be directly mapped on to a worker's skillset and capabilities

As Mark lives with more than one disability, it can be difficult to determine where to start to best support Mark. Because Mark has disclosed his disabilities to his employer:

- Mark's manager can schedule a 1:1 meeting to discuss the specific barriers Mark is facing at work
- Together, they can determine whether reasonable accommodations can be implemented to address these barriers and enable Mark to perform the work he is assigned to do
- If a request for an accommodation is made, Mark's manager should wait to evaluate Mark's performance until after an accommodation is implemented

For more information on how to navigate difficult performance management conversations, please watch:

- English - <https://www.youtube.com/watch?v=bsjauyXUHsQ>
- French - <https://www.youtube.com/watch?v=aiJkHRliJrY>

## References

- <sup>1</sup> Ontario Human Rights Commission (2016). *Policy on ableism and discrimination based on disability*. [https://www3.ohrc.on.ca/sites/default/files/Policy%20on%20ableism%20and%20discrimination%20based%20on%20disability\\_accessible\\_2016.pdf](https://www3.ohrc.on.ca/sites/default/files/Policy%20on%20ableism%20and%20discrimination%20based%20on%20disability_accessible_2016.pdf)
- <sup>2</sup> Mitra and Kruse 2016
- <sup>3</sup> Business Disability Forum (2014). Performance management. *Line Manager Guide*. [https://rct.learningpool.com/pluginfile.php/711/mod\\_folder/content/0/Saesneg%20-%20English/BDF%20Performance%20Managment%20Line%20Managers%20Guide.pdf?forcedownload=1](https://rct.learningpool.com/pluginfile.php/711/mod_folder/content/0/Saesneg%20-%20English/BDF%20Performance%20Managment%20Line%20Managers%20Guide.pdf?forcedownload=1)
- <sup>4</sup> The Conference Board of Canada (2015). *Employers' Toolkit: Making Ontario Workplaces Accessible to People with Disabilities (2<sup>nd</sup> ed.)*. [https://www.conferenceboard.ca/docs/default-source/pdf\\_downloads/7159\\_accessibilitytoolkit-2015\\_rpt.pdf?sfvrsn=a98e7013\\_2&pdf=toolkit](https://www.conferenceboard.ca/docs/default-source/pdf_downloads/7159_accessibilitytoolkit-2015_rpt.pdf?sfvrsn=a98e7013_2&pdf=toolkit)
- <sup>5</sup> U.S. Equal Employment Opportunity Commission (2008). *Applying performance and conduct standards to employees with disabilities*. <https://www.eeoc.gov/laws/guidance/applying-performance-and-conduct-standards-employees-disabilities>
- <sup>6</sup> Bank of Montreal (2012). *BMO Survey: More than Half of Small Businesses Have Never Hired a Person with a Disability*. <https://newsroom.bmo.com/2012-10-02-BMO-Survey-More-than-Half-of-Small-Businesses-Have-Never-Hired-a-Person-with-a-Disability>