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How Should Municipalities Deal With Poor Employee Performance?

The municipal sector is experiencing a severe labour shortage. Last June, *Le Devoir* published a series of articles on municipalities' struggle to recruit municipal inspectors, which was forcing them to reduce their hiring criteria.¹

Given that, it is in municipalities' best interests to put measures in place to retain their human resources and properly manage under-qualified staff. There are two approaches that employers should consider to deal with unsatisfactory performance before opting for termination: the administrative approach and the mixed approach.

The administrative approach

Incompetence in the workplace essentially occurs when "an employee who does not possess the knowledge, skill, or experience needed to properly carry out their duties [...] cannot perform the work for which they were hired"² (translated from French).

Before permanently ending an employment relationship for this reason, employers should consider the framework developed by case law on the topic. The employer is expected to (i) inform the employee of their expectations, (ii) point out the employee's deficiencies, (iii) offer the employee the support needed to correct their performance, (iv) give the employee a reasonable amount of time to correct the situation, and (v) advise the employee of the risk of dismissal if they fail to improve.³

The majority of case law also recognizes that while these criteria must serve as a guide for assessing the employer's conduct, their decision still needs to be analyzed in its overall context.⁴

For example, an employer may put an underperforming employee on a performance improvement plan that involves identifying the employee's deficiencies and defining the organization's performance expectations. The person will then be given a reasonable amount of time to demonstrate significant improvement. Depending on the circumstances, the process may include support measures such as training sessions to help the employee achieve the desired results.

The administrative approach is especially useful given that, practically speaking, it is often difficult to fill a position after a dismissal.

The mixed approach

Employers sometimes struggle to identify the true cause of unsatisfactory performance, i.e., whether the employee is simply incompetent (involuntary) or negligent (voluntary). When such questions arise, it may be appropriate to consider a "mixed" approach that involves both administrative and disciplinary measures.⁵

When negligence is likely involved, the employer may impose a disciplinary measure to spur the employee to correct their conduct. In such cases, apart from certain exceptions, the employer must use progressive discipline, which involves imposing increasingly severe measures (e.g., written notice, suspensions of varying duration, then dismissal) if the problem is not resolved.

When the employer uses a mixed approach, "the essential rule remains that the employee must be clearly advised that their employment is at stake and that they risk dismissal if they do not correct or improve their deficiencies"⁶ (translated from French).

Conclusion

It is important for municipalities to take performance management seriously, as it can help them retain resources and lessen the impact of labour shortages on their operations.

¹ Goudreault, Zacharie. "Le métier d'inspecteur municipal en perte de popularité, en pleine crise du logement," *Le Devoir*, June 10, 2024; Goudreault, Zacharie. "Des villes réduisent leurs critères d'embauche d'inspecteurs municipaux... et s'expose à des poursuites," *Le Devoir*, June 10, 2024.

² Bernier, Linda, Guy Blanchet and Éric Séguin. *Les mesures disciplinaires et non disciplinaires dans les rapports collectifs de travail*, 2nd ed., Cowansville, Éditions Yvon Blais, loose-leaf, online: EYB2023MDN828.

³ *Costco Wholesale Canada Ltd. v Laplante*, 2005 QCCA 788. For cases in the municipal sector, see *Gagné and St-Bruno-de-Kamouraska (Municipalité de)*, 2016 QCTAT 1157, paras. 32 et seq.; *Riopel and Saint-Côme (Municipalité de)*, 2018 QCTAT 5506, paras. 86 to 125.

⁴ *Syndicat de l'enseignement de la région de la Mitis v Centre de services scolaires des Monts-et-Marées*, 2024 QCCA 1280, paras. 25 to 28.

⁵ Bernier, Linda, Guy Blanchet and Éric Séguin. *Loc. cit.* note 2, online: EYB2023MDN828; *Paquin v Caisse Desjardins du Cœur-de-l'Île*, 2022 QCTAT 62, paras. 70 to 75.

⁶ *Forget v Brasserie Labatt limitée*, 2009 QCCRT 126, para. 148.