



Sports in the news – what do the employment lawyers think this May?

The Premier League Sack Race

The 2022-23 Premier League season has been record breaking. Yes, a genetic anomaly called Erling Haaland has scored lots of goals. However, as employment lawyers, we have been more interested in some other names: Parker. Tuchel. Lage. Gerrard. Hasenhüttl. Lampard. Marsch. Jones. Vieira. Conte. Rodgers. Potter. Gracia.

More Premier League managers have been sacked in-season than any other in the competition's history. The tally reached 13 at the start of the month, when Javi Gracia was removed from Leeds after just 70 days on the job following a 4-1 defeat at Bournemouth, and with the team fighting to avoid relegation. Enter Sam Allardyce, to manage his ninth Premier League club (another record).

As we reach the business end of the season, the pressure is on to win trophies, secure European qualification and avoid relegation. Every performance matters, and so this number may yet still increase.

Low-performing managers

We often see football clubs act quickly to terminate their managers' contracts as soon as the team starts to underperform. Football managers are generally hired on fixed term contracts, and so terminations prior to the expiry of the fixed-term are usually handled by mutual agreement, involving a large pay-off by reference to their generous contractual compensation package.

This is quite different to how employers in other sectors tend to operate, given the majority of employees in the UK are hired on a permanent basis. Also, while some employers may choose to negotiate an exit package and terminate via mutual agreement rather than follow a performance process that is expensive (especially when it becomes the default), and will therefore not always be an appropriate (or viable) option for the majority of employers.



Performance management

Note: Employees with less than two years' service do not benefit from unfair dismissal protection, so dismissing due to poor performance is much simpler in those cases. This article considers the principles employers should bear in mind for employees who do have unfair dismissal protection.

Employers in the UK (both inside and outside football) need to navigate unfair dismissal laws when dismissing employees due to poor performance. Although poor performance is one of the five potentially fair reasons for dismissal, employers still have to show that they followed a fair process in relying on that reason for dismissal.

The process employers should follow prior to terminating due to poor performance typically looks quite different to the process for a redundancy or misconduct dismissal, primarily because of how important it is to give the employee sufficient time to improve their performance.

Below, we set out some key considerations for managing employee performance. Employers should aim to:

1. **Raise issues early** and, ideally, **informally** before embarking on a formal performance management process. This can sometimes short-circuit the issue before it becomes a more serious problem.
2. **Gather evidence** of an employee's performance and **document** meetings with the employee where performance issues are discussed to ensure there is a record of the issue, how (and if) their performance has improved, when and how it has been raised with the employee and any representations made by the employee.
3. Follow any **company policies** regarding performance management and consider the ACAS Code of Practice, available [here](#). There may be sensible reasons to depart from standard procedures in certain situations, but this should be the starting point.
4. Give the employee **notice of the issue and reasonable time to improve**. Setting specific, measurable, achievable objectives within clear time parameters in a performance improvement plan will mean the employee understands the concerns and how they can improve. This will also assist in evaluating the employee's improvement (or otherwise).
5. Provide **support** to the employee and consider whether **other issues** might be at play that are impacting performance, such as ill health or disability, problems with childcare or caring responsibilities, poor management within the team, harassment or bullying, or excessive workload.

In short, performance management takes time, and we usually expect a process to last between 3 to 6 months. This can result in the resolution of the issue and retention of the employee. However, where performance issues persist, the above actions provide a strong legal footing in subsequent decisions to dismiss.

When looking at how football clubs sack their managers at the first sign of underperformance, it can be tempting to think that it is easy for employers in all other industries to take the same approach with their own employees. Don't be fooled: unless you are willing to negotiate a (potentially expensive) settlement package, conducting a fair performance process requires time, patience and an open mind.