

UNDER-PERFORMANCE OF EMPLOYEES

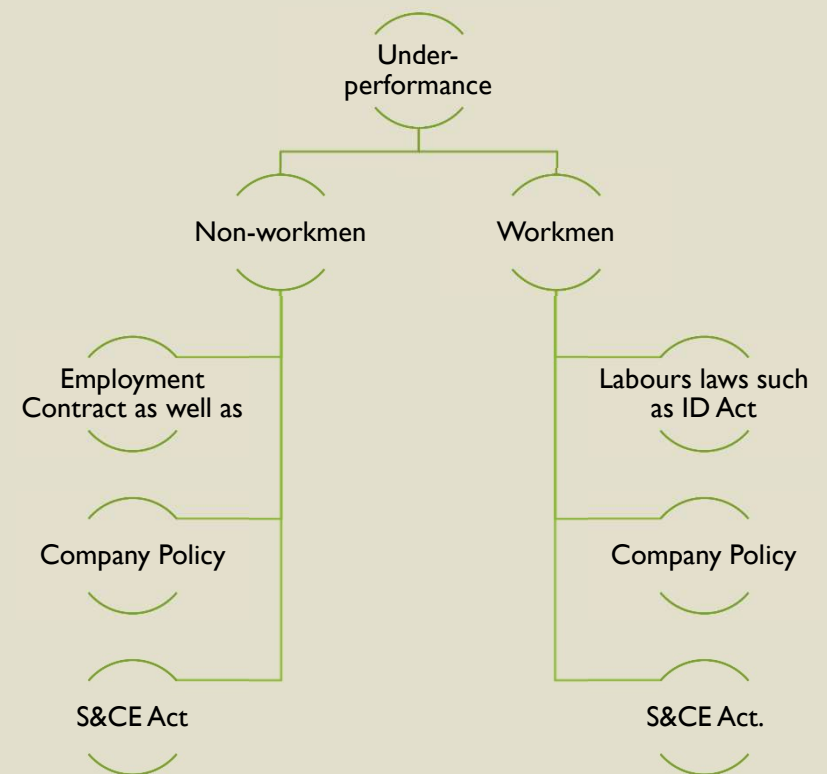
ARCHEUS LAW

UNDER-PERFORMANCE IN INDIAN LAW

Applicability on workmen and workers under the Labour Laws?

Procedure to be followed under the Indian Laws?

- Underperformance”/ “unsatisfactory service”/ “deficiency in service” by an employee is not specifically captured under the applicable Indian laws.



PROCESS TO FOLLOW FOR TERMINATION OF EMPLOYEE ON ACCOUNT OF UNDERPERFORMANCE

Applicability of employment contract in
case of such termination?

Applicability of company policy and
recourse in the absence of one?

1. The company must inform the employee **in writing** of his/her deficiency in services/underperformance.
2. Elaborate performance assessment report carried out by the Company as per the key-performance indicators.
3. Give the employee sufficient time and chance to improve upon the said deficiency in services.
4. Review the services of the employee after completion of the time-period stipulated under the company policy and/or the notice.

PERFORMANCE IMPROVEMENT PLAN

Is it mandatory?

Are there any guidelines?

1. There are no guidelines laid down as per the Indian Laws.
2. PIP should not be disguised a tool for termination of the employee.
3. PIP should be aimed at:
 - diagnosing the reasons why an employee is not able to deliver the performance expected from employee in the department or division,
 - function of the employee or tasks assigned to him,
 - and address his training needs so that he can be trained and developed to perform better up to the expectations of the company.
 - The means and ways to conduct an objective assessment at the end of the PIP must also be provided.

TERMINATION OF
WORKMEN FOR
UNDERPERFORMANCE –
IS IT RETRENCHMENT
UNDER THE LABOUR
LAWS?

- Termination on grounds of incompetence or for non-performance of duty would be a retrenchment under the IDA. (*Management of Karnataka State Road Transport Corporation v. M. Boraiah and another* (1984)1 SCC 244)
- The words 'for any reason whatsoever' needs to be interpreted and understood in a much wider and literal sense. (*Punjab Land Development and Reclamation Corporation v. The Presiding Officer, Labour Court, Chandigarh* (1990)3 SCC 682)

MISCONDUCT AND INQUIRY

1. The word misconduct though not capable of precise definition, its reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. *(State of Punjab and Ors. v. Ram Singh Ex. Constable 1992 AIR 2188)*
2. Termination on the basis of unsatisfactory service does not invite an inquiry (for misconduct). *(Rajasthan State Road Transport Corporation v. Jagdish Ram and Anr., (2001) IILLJ 839 Raj)*

LOSS OF CONFIDENCE VIS-À-VIS UNDERPERFORMANCE

What is loss of confidence?

Would termination on account of loss of confidence come under the ambit of retrenchment under the labour laws?

Does the ground of loss of confidence automatically covers underperformance of employees?

- The ground of loss of confidence applies to both, the workmen and the non-workment. *In Maruti Suzuki Ltd v Presiding Officer, [2010 (4) SLR 455]*
- As such, the ground of loss of confidence extends to both:
 - **Incompetence or unsatisfactory work** (Tata Oils Mills; Sunil Kumar Azmi v. M.P. Road Transport Corporation, 1980 MPLJ 471)
 - **Failure to discharge duty properly** (Francis Klein & Co. (P) Ltd. v. Their Workmen, AIR 1971 SC 2414)
- Termination of a worker on account of loss of confidence would **not** amount to 'retrenchment' (*Kamleshkumar and Torrent Power Ltd*)

THANK YOU