

Avoid Costly Legal Mistakes:

Why Using a PIP as a Cover-Up Won't Meet the Bar for Just Cause

HR LAW CANADA, APRIL 9, 2026

Agenda

- A. Overview: What is a PIP?
- B. Is it a PIP Necessary?
- C. Risk of PIP Implementation:
 - Bad Faith
 - Discrimination
- D. Duty to Accommodate
- E. Implementation Tips
- F. Q & A



A. Overview: What is a PIP?



- A tool for professional growth and performance correction.
- Not a tool to fire an employee.
- Courts scrutinize PIPs to determine whether they are a “cover-up” for inevitable terminations.
 - A poorly executed PIP is rarely enough to clear the bar for “just cause”.
 - Implementing a PIP in bad faith can turn a standard termination into a liability for moral or aggravated damages.
 - Implementing a PIP in bad faith may also expose employers to human rights claim

B. Is a PIP Necessary?

Not Every Problem is a Performance Problem

- **When to Use a PIP:** "Non-Culpable" issues (skill gaps, slow pace, lack of organization).
- **When to Skip the PIP:**
 - When termination is pre-determined.
 - For "Culpable" issues: such as sexual harassment, theft, wilful misconduct.



C. Risk of Bad Faith

Piresferreira v. Ayotte, 2010 ONCA 384

- **Facts:** A 10-year employee at Bell was physically shoved by her aggressive supervisor. After the employee complained, the supervisor immediately retaliated by placing her on an onerous PIP.
- **The Court's Finding:** The PIP was not a performance tool, but a retaliatory cover-up to "paper the file."
- **The Result:** Bell was liable for bad-faith damages of \$45,000 for mental suffering due to the PIP implementation and the manner of dismissal, in addition to the 12 months of pay in lieu of notice.

C. Risk of Discrimination

Yan v. 30 Forensic Engineering Inc., 2022 HRTO 649

- **Facts:** An engineer was terminated after receiving a PIP. The employee immediately filed an internal human rights complaint, claiming the PIP was discriminatory and that her subsequent without-cause termination was a reprisal.
- **The HRTO Finding:** The employer had documented the details of interpersonal conflicts and failure to meet role expectations. There is no link between the PIP and the protected grounds. The HRTO found the PIP was a legitimate, non-discriminatory.
- **The Result:** The employee's claims were dismissed entirely.

C. Implementation Risk: Key Takeaways

- Employer's basic requirement of "good faith".
- A PIP must be authentic and present a genuine opportunity for the employee to retain their position.
- If a PIP is primarily designed to force an employee out or pressure them into a more restrictive contract, employers risk claims for bad faith damages.
- If a PIP is primarily designed to avoid accommodating an employee, employers risk claims for human rights violations and general damages.
- A properly drafted PIP, rooted in objective, pre-existing performance concerns, is an effective defence against allegations of bad faith, human rights violations or reprisal.



D. Duty to Accommodate

Before PIP:

- **Reasons for Performance Drop:**
 - Is it because of the protected ground?

After Implementation:

- **Leaves of Absence:**
 - Very common.
 - Medical certificate.
 - Pause and resume when the employee is medically cleared to return.



D. Duty to Accommodate: Work-related Mental Disorder?

[A2201477 \(Re\)](#), 2024 CanLII 10426 (BC WCAT)

- A flight attendant claimed compensation for a work-related mental disorder caused by a PIP alongside other workplace issues.
- While the tribunal denied the claim (ruling it did not exceed normal workplace pressures), the case illustrates:
 - Employees may experience severe anxiety when placed on a PIP.
 - Collaboration.
 - Confidentiality.

E. Implementation Tips: Good Faith

- **No Surprises:**
 - Preferably following prior verbal or written feedback.
- **Two-Way Communication:**
 - Dialogue.
 - Employee's opportunity to provide responses or dissent.
 - Incorporating their feedback.



E. Implementation Tips: Clear Goals & Support

- **Objective Criteria:**
 - Include specific and measurable areas for improvement
 - Use objective metrics.
 - Avoid vague references.
- **Provision of Support:**
 - Additional training.
 - Mentorship.
 - Adjusted workloads.



E. Implementation Tips: Timelines & Tracking

- **Reasonable Timelines:**
 - Enough time for meaningful change to occur
- **Clear Paper Trail:**
 - Document every feedback session and check-in.
 - Follow-up written summaries





Questions?

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