Recent Rulings Show When PIPs Lead To Employer Liability

By **Noah Bunzl** (November 13, 2025)

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On its face, a performance improvement plan, commonly known as a PIP, is a way to document deficiencies and provide a path toward improved performance. In popular culture, it is often associated with the last stop before termination.

In reality, employers often use a PIP in advance of a likely termination — with the idea that the PIP will protect them from liability by creating a written record.

However, several recent decisions underscore circumstances in which PIPs may aggravate, rather than reduce, employer liability if they are not handled carefully and with forethought, applying reasonable expectations.

Recent Decisions Underscore PIP-Related Risks

In June, the U.S. Court of Appeals for the Seventh Circuit overturned an award of summary judgment for the employer in Murphy v. Caterpillar Inc., where the plaintiff was placed on what the court called a "quite unusual" PIP.

When the plaintiff was provided with the performance action plan, the stated deadline for compliance had already passed and the plan had been signed in a box labeled "Did Not Meet Action Plan." The employer also refused to alter the plan after the plaintiff pointed out the error.

The court determined that the decision to place the employee on an action plan that was "written so that he had already failed" could constitute constructive discharge.

While most employers are unlikely to draft a PIP with deadlines that have already expired, Murphy raises an important theme: PIPs must contain goals that are actually achievable and should not be used to paper a premade exit decision.

Take, for example, the July 2024 decision in Melber v. Thermo Fisher Scientific, in which the U.S. District Court for the Western District of New York denied summary judgment to an employer where a PIP provided "deadlines for five major projects within a two-week period," which the plaintiff testified would be "impossible."

The court in Melber ruled that a jury could determine that the PIP was a record-building exercise intended "to put plaintiff in a position where he could not succeed."

In a similar example, Clark v. Restaurant Growth Services LLC, the U.S. District Court for the Middle District of Tennessee found in May that the record contained contradictory evidence regarding employee performance, and raised material issues of fact as to whether a PIP was justified and whether the employer's reliance on the PIP was pretextual.[1]

The takeaway is that a PIP must be designed so that the goals can actually be achieved. Otherwise, the conclusion can appear to be preordained, and a court may determine that the employer had some other non-performance-based motive, including a potentially discriminatory motive.

For example, in each of the below cases, a court determined that a PIP formed part of a pattern of discriminatory or retaliatory behavior, because it was constructed such that the employee could not accomplish the stated goals, or that the decision to implement the PIP was motivated by improper animus or retaliatory intent.

In July, in DeAngelis v. Jolt Software Inc., the U.S. District Court for the Western District of Pennsylvania denied a motion to dismiss where a new supervisor disapproved of an employee's existing accommodations, placed the employee on a PIP in manner that "made it more difficult for her to meet her PIP goal," and then terminated her for failing to meet the goal.

Likewise, in September, in Powers v. Town of Durham, New Hampshire, the U.S. District Court for the District of New Hampshire denied a motion for summary judgment where a fire chief surprised a firefighter by publicly announcing a PIP that retracted his ability to attend therapy sessions during work hours.

Similarly, in Jarvis v. Corteva Agriscience LLC in May, the U.S. District Court for the District of Hawaii denied summary judgment where, shortly following an employee complaint regarding discriminatory conduct in the workplace, the employee was given a bad review, placed on a PIP and then terminated.

Finally, employers should be mindful that a PIP itself can constitute an adverse employment action, giving rise to an employee claim.[2]

This is especially true after the U.S. Supreme Court's 2024 decision in Muldrow v. St. Louis, which held that employees need only show some harm — and not material or significant harm — to establish an adverse action.

Guidance for Employers

Before implementing a PIP, the employer should ensure that the stated objectives are reasonable and achievable, and the employer should have a good faith basis to believe that the employee can meet the objectives.

If possible, the decision to implement the PIP should be based on an existing record of performance deficiencies.

If the employer does not actually believe that the objectives can be met, a court may determine that the PIP is an attempt to paper the record based on a preexisting termination decision.

Under these circumstances, it may be better to move directly to termination rather than implement a PIP that drains resources, delays the inevitable and potentially compounds liability.

Employers should also take caution in the aftermath of any protected complaint. Any PIP that is implemented during this time frame can form part of a pattern of retaliation, and it may be better to take no action.

Similarly, a PIP itself should not be used as a mechanism to discriminate or retaliate against employees based on any improper animus.

Employers should also be mindful that a PIP that is overly onerous can constitute an adverse employment action that can give rise to an employee claim, even while the individual remains employed. In some circumstances, this can be a worse outcome than a post-termination claim.

Finally, employers should take care to treat employees equally, implement consistent metrics across the workforce for similar positions and enforce PIPs in a uniform manner.

In Summary

If a PIP is narrowly tailored, based on uniform metrics and created with goals that can be achieved within a reasonable time frame, it may be worth considering. But, absent these factors, and especially when the employer is likely to move forward with termination anyway, a PIP may compound liability.

PIPs may have earned their reputation as the last stop before an inevitable termination, and courts are catching on. Under these circumstances, the judicious manager should think carefully before implementing a PIP.

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[1] For an example of a recent case where the court found that a PIP was appropriate (and where the court distinguished Murphy), see Wilde v. EPS US, LLC (N.D. Ill. August 2025), which granted the employer's motion for summary judgment as, according to the court, the "PIP contained action items that he could complete within the allotted time period and there is no evidence that it was presented to him in bad faith."

[2] See, e.g., Regis v. Noem (D.D.C. June 2025), which held that the decision to place the plaintiff on a PIP that allegedly treated the plaintiff differently from other nonminority employees could constitute an adverse action at the motion to dismiss stage.