



# **PONTEFRACT**

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## ACADEMIES TRUST

### **CAPABILITY PROCEDURE**

#### **ALL STAFF**

Trust Board Approval Date	16 July 2018
Implementation Date	1 September 2018
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Web Access	Intranet
Owner	Director of Finance Business and Operations

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# 1. Introduction, Purpose & Scope

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## 1.0 INTRODUCTION

- 1.01 The Pontefract Academies Trust (“The Trust”) is committed to giving all employees the support and encouragement they need to raise aspirations, unlock potential and work to achieve excellence through encouraging a “can do” culture, across all areas of the Trust.
- 1.02 The Trust expects all its employees to recognise their employment obligations to the Trust, pupils, staff and their communities. Employees must conduct themselves properly at all times in accordance with the Trust’s policies and procedures.

## 1.1 PURPOSE

- 1.1.1 Capability is an employee’s ability to perform their role at professionally expected standards. This procedure should be used where evidence leads to concerns that an employee is regularly failing to reach expected standards through a lack of ability, aptitude, skill or knowledge.
- 1.1.2 The Trust recognises that the vast majority of its employees meet or exceed the demands of their respective roles, however, it is acknowledged that concerns regarding an employee’s performance can, and do, arise. This procedure intends to:
- a) Provide a framework for dealing with capability issues in a fair, supportive and consistent manner.
  - b) Address concerns about performance through an appropriate programme of monitoring, support, guidance, training and feedback with a view to enabling the employee to reach and maintain an acceptable level of performance.
- 1.1.3 Every effort should be made to resolve concerns informally, through support and monitoring. All staff should be aware that entering the capability process could affect pay decisions or pay progression.
- 1.1.4 The Executive Director/Headteacher/Head of School has the authority to delegate responsibilities in managing, monitoring and supporting improvements in performance to other appropriate leaders and managers.

## 1.2 SCOPE

- 1.2.1 This procedure applies to all employees employed within The Trust who are employed for more than six months. It does not apply to employees who are within their probationary period, as they are subject to separate procedures.
- 1.2.2 This procedure does not apply to disciplinary matters such as misconduct, unacceptable behaviour, wilful or serious negligence or refusal to follow instructions. These matters will be dealt with in accordance with The Trust disciplinary procedures.

# 1. Introduction, Purpose & Scope

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- 1.2.3 Where competency issues arise due to medical or other health reasons, the sickness absence management policy should be referred to.
- 1.2.4 Where competency issues arise in respect of Executive Headteachers/Heads of School they shall be dealt with by the Chief Executive Officer in consultation with the Chair of the School Governance Committee. Where competency issues arise in respect of the Chief Executive Officer they shall be dealt with by the Chair of the Trust Board.
- 1.2.5 Employees have a right to be accompanied by a Trade Union representative or work colleague during the formal stages of the process. Where performance concerns are raised, managers will encourage the individual to seek advice from a professional association.
- 1.2.6 Where competency issues arise in respect of employees who are also trade union officials, no formal action will be taken until the circumstances of the case have been discussed with a full time official of the union concerned.

## 1.3 GRIEVANCES

- 1.3.1 If an employee raises a grievance during the Capability Procedure the Capability Procedure may be temporarily suspended, in order to deal with the grievance. Where the grievance and capability cases are related it may be appropriate to deal with both issues concurrently.

## 1.4 SICKNESS

- 1.4.1 If long-term sickness absence appears to have been triggered by the commencement of monitoring or formal capability procedures, the case will be dealt with in accordance with The Trust's Sickness Absence Management Policy. Usually this will involve a referral to the Occupational Health Service to assess the employees' health and fitness for continued employment and the appropriateness or otherwise of continuing with monitoring and formal procedure.
- 1.4.2 In some cases, it may be appropriate for the formal procedures to continue during a period of sickness absence. In such circumstances, the employee would usually be referred to the Occupational Health Service for a medical prognosis and associated report. Subsequent decisions will then be based on the most recent performance information.
- 1.4.3 In any return to work discussions with an employee, who has entered the capability procedures, the Manager should refer to the process and how this will be managed, or adjusted, to accommodate and support a return to work.

# 1. Introduction, Purpose & Scope

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## 1.5 PAY PROGRESSION

- 1.5.1 The Manager has the discretion to withhold a pay increment when the employee enters the formal stages of this process. Where this is the case, the employee must be made aware, in writing, that their increment may be withheld due to concerns regarding their performance.

## 1.6 EQUAL OPPORTUNITES

- 1.6.1 This Capability Procedure must always be applied fairly and in accordance with The Trust's Equality and Diversity Policy. Each case must be considered on its merits and handled in a constructive, supportive and equitable manner.

## 1.7 DISMISSAL

- 1.7.1 The Trust to agree formal actions (including sanctions) within the capability policy, up to and including dismissal is delegated to the CEO/Executive Director/Headteacher and Heads of School. The chair of any panel should be at least a senior level higher than the employee whose performance is being considered.

## 2. Roles and Responsibilities

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### **2.0 CEO/EXECUTIVE DIRECTOR/HEADTEACHER/ HEAD OF SCHOOL/NOMINATED MANAGER RESPONSIBILITIES**

- 2.01 The CEO has responsibility to ensure that this policy is applied fairly and consistently across the Trust. The CEO will be made aware of any employees whose performance is likely to impact their pay progression.
- 2.02 Throughout this procedure, the term “Manager” will refer to the CEO/Executive Director/Headteacher/Head of School or nominated Manager with the delegated authority to take action.
- 2.03 Managers are responsible for setting achievable and relevant objectives that will contribute to Trust and Academy objectives. They are also expected to make employees aware of the standards of performance expected of them. The performance management policy refers to this in more detail.
- 2.04 Managers are responsible for ensuring employees are competent to undertake the duties and tasks required of them. Any shortfall in performance should be highlighted and discussed with the employee to ascertain what support may be required and the format of any support or training plan.

### **2.1 EMPLOYEE RESPONSIBILITIES**

- 2.1.1 Employees should employ their skills, efforts and knowledge to undertake their role to the best of their ability. All staff are expected to access and accept any support or additional training that is offered to them to support their professional development.
- 2.1.2 Employees are required to attend any meeting arranged in accordance with this procedure. If the employee can provide a good reason as to why they would not be able to attend a meeting on the date given, then every effort will be made to re-arrange the meeting at the earliest opportunity.

### **2.2 HUMAN RESOURCES MANAGER/ADVISOR ROLE**

- 2.2.1 The Human Resources Manager/Advisor will provide advice and assistance to managers regarding this procedure.
- 2.2.2 The Human Resources Manager/Advisor reserves the right to attend any meetings held in relation to any of the procedures set out in this document. They will also attend any hearings which may lead to dismissal. This will ensure that advice is available on procedural issues and any employment legislation matters.

### **2.3 CONFIDENTIALITY**

- 2.3.1 Confidentiality must be maintained by all parties, and the contents of discussions undertaken as part of this procedure will be shared in order to provide support, training or monitoring.

## 2. Roles and Responsibilities

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### 2.4 RECORDS

- 2.4.1 A formal warning will remain effective during the period of time specified. This means that it will be taken into consideration, as part of the cumulative process, when determining the level of capability action warranted for any further performance concerns which may occur during the period.
- 2.4.2 At the end of the specified period the formal warning will expire. This does not mean that the warning will be removed from the employee's personnel record but that it will be disregarded when determining the level of further capability action. Previous warnings form part of the employee's work history and will remain on file for reference purposes.

### 2.5 REFERRAL TO RELEVANT PROFESSIONAL BODIES

- 2.5.1 Where an employee is dismissed due to capability, The Trust will fulfil its obligations by informing the relevant professional body.

### 2.6 REFERENCES PROVIDED TO POTENTIAL EMPLOYERS

- 2.6.1 The Trust will provide a factual reference where requested to potential employers and which may include any appropriate information regarding a formal capability process.

### 3. Transition from Performance Management to Capability

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- 3.0 The Trust believes that good management, clear expectations and appropriate support can assist in improving performance, and, that early identification of problems through performance reviews, improvement plans, and support in accordance with the Performance Management Policy will support all staff to meet the requirements of their role. As part of their role line managers are expected to set appropriate standards of performance and provide access to a reasonable degree of training and support to assist staff to meet their professional expectations.
- 3.01 Throughout their employment, all staff are expected to work to the highest standards of performance and professionalism, and where in place, performance standards (e.g. Teachers' Standards).
- 3.02 Managers are expected to monitor, feedback and communicate any concerns with an individual's performance on a regular basis. This may take the form of pupil progress discussions, data analysis or other quality assurance methods. The feedback given (positive or not) should be fair and reasonable and enable individuals to improve their performance and develop their professional practice.
- 3.03 Managers are expected to challenge individuals and provide constructive feedback throughout the performance management cycle, allowing for two-way discussions about performance. It is recognised that an individual's performance levels may vary, for this reason, this procedure should only be used where there is evidence that the individual is regularly, or consistently underperforming.
- 3.04 Where there are serious concerns about an individual's performance the formal capability procedure will be followed.
- 3.05 Prior to entering the formal stages of this policy, the Manager must make the employee aware of the concerns regarding their performance. This could be done by an agreed support and monitoring plan, agreed in discussion with the employee. The Manager must have sufficient evidence of the areas of underperformance and, where possible, objective data or information should be used in this evidence. Examples could be joint lesson observations, externally verified data etc.
- 3.06 If informal support during the usual performance management cycle fails to bring about the necessary improvements, a meeting will be arranged with the employee for the Manager to determine if it is appropriate for the Capability Procedure to be invoked. A copy of the Capability Procedure will be provided to the employee and following the meeting a summary record of the discussion agreed. This meeting will be an opportunity for the Manager and employee to discuss the evidence that has been gathered that is considered to be sufficient to begin the formal stages of the capability procedure.



## 4. Formal Procedure – Stage 1

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- 4.0 Where a Manager seeks to manage an individual's performance through formal capability procedures, they should arrange a formal meeting with the employee. The purpose of this meeting should be to outline the performance standards required, to review the support given to the employee to date, and to determine what further provisions are required to resolve the situation. At this stage it is recommended that the Manager seeks advice from the Trust HR Manager.
- 4.01 The employee will be given at least 5 working days' notice of the meeting in writing. This should include the details of:
- Date, time and venue
  - Copies of all relevant policies
  - The nature of the underperformance and any supporting documents enclosed for discussion
  - The right of the employee to be accompanied by a recognised trade union representative or work colleague.
- 4.02 The meeting will be to establish the facts and allow the employee to respond to the concerns raised about their performance. At the meeting, the Manager will outline the performance issues identified and the employee may make representations and provide new information or evidence to support their case. The following matters should be considered:
- Areas where there is failure in performance
  - Actions already taken by management to address these failings
  - Whether the employee acknowledges that there is a problem and shows a willingness to improve
  - The impact of the employee's poor performance on pupils and education outcomes.
  - Any impact on colleagues or the wider community
  - Any other mitigating factors

The employee should be given the opportunity to respond to the issues raised and any matter which may have a bearing on their performance.

The discussion at the meeting should be conducted by the Manager in a profession and constructive manner.

- 4.03 Once the facts are gathered and the seriousness of the matter established the Manager will conclude the meeting by one of following options:
- Decide that the employee is working at an appropriate/acceptable level of capability and continue with regular monitoring and feedback (insufficient grounds for formally pursuing the capability issue). Any remaining concerns will be addressed through providing support through the usual performance management framework or;
  - The Manager will adjourn the meeting. This would be to gather further information, or more time is required to consider the matter. In this case the meeting will be rearranged within five working days, or;

## 4. Formal Procedure – Stage 1

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- Continue with the meeting and agree a Performance Improvement and Support Action Plan. An example is shown in Appendix A, however the format this plan takes should be appropriate to the role and the improvements required.
  - The format of this plan should:
    - identify the professional shortcomings, *e.g. which of the standards expected of teachers are not being met.*
    - give clear guidance on the improved standard of performance needed to ensure that the individual can be removed from formal capability procedures (*this may include the setting of new objectives focused on the specific areas that need to be addressed, any success criteria that might be appropriate and the evidence that will be used to assess whether the necessary improvement(s) has been made*).
    - explain any support that will be available to help the individual improve their performance. This could include external courses, observing colleagues, visiting other schools/practitioners. This should be agreed with the employee.
    - Set out the timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but will be no less than four working weeks and no more than eight working weeks.
- 4.04 At this meeting the Manager should warn the individual formally that failure to improve within the set period could lead to dismissal. They should also advise the individual that entering the capability process may affect pay recommendations or decisions. The Manager can also issue a first written warning or, in more serious cases, a final written warning.
- 4.05 A record of any formal meetings will be made, and the individual will be informed in writing of the matters covered in the meeting, given information on the timeline set for improvement and when the formal capability review meeting will be held.
- 4.06 Where a formal warning is issued the individual will also be informed in writing of the length of time the formal warning will remain on their personnel file and the time limits for appealing against the warning, along with who the appeal should be addressed to. A First Written Warning will be issued within 5 working days followed by a monitoring and review period (of a minimum of 4 weeks'). The First Written Warning will remain on the employee's personnel file for 12 months. In cases of particularly serious concern, it may be appropriate to proceed directly to formal Stage 2 of this procedure and a Final Written Warning issued.
- 4.07 When a formal warning is issued the employee has a right to appeal against this decision. Any appeals must be in writing and be made within five working days of the formal meeting. See Right of Appeal Section 7.0.
- 4.08 When a first written warning has been issued, please refer to 4.1 for next steps. When a final written warning has been issued, please refer to 5.1 onwards.

## 4. Formal Procedure – Stage 1

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### 4.1 NEXT STEPS

- 4.1.1 Progress will be continuously reviewed throughout the duration of the monitoring and review period and modifications made if necessary. At the end of the review period and without delay, the Manager should meet the employee to review their progress.
- 4.1.2 The meeting will review:
- improvements made in the identified professional shortcomings.
  - improvements made in the standards of performance required.
  - how the support, monitoring and feedback has been accessed and utilised to support improvements.
- 4.1.3 The meeting will gather the facts and there will be a discussion in which the individual is able to present their case on how they have improved their performance in the areas identified. The Manager will conclude the meeting by one of following options:
- If sufficient progress has been achieved, then improvement is acknowledged, and the Manager provides written confirmation to the employee that he/she has reached the required level of performance and that no further action will be taken, provided the improvement is sustained for the duration of the First Written Warning period. The employee will return to the usual performance management processes.
  - If sufficient progress has not been achieved or improvement sustained for the duration of the First Written Warning period, then the matter will proceed to the formal Stage 2 of this procedure.
- 4.1.4 As in the capability meeting, the Manager will set out a timetable for improvement and explain how performance will be monitored and reviewed. The timetable will depend on the circumstances of the individual case but will be no less than four working weeks and no more than six working weeks.
- 4.1.5 A record of any formal meetings will be made, and the individual will be informed in writing of the matters covered in the meeting, given information on the timeline set for improvement and when the formal decision meeting will be held.

## 5. Formal Procedure – Stage 2

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- 5.0 If the formal Stage 1 process has not been successful in achieving the required improvement in performance, or particular serious concerns have been identified through the process then the Manager should arrange a Stage 2 Formal Meeting with the employee.
- 5.01 Within this formal process a Manager can decide that an employee, due to the serious nature of concerns, can enter the formal capability process at Stage 2.
- 5.02 The purpose of this meeting should be to outline the performance standards required, to review the support given to the employee to date, and to determine what further provisions are required to resolve the situation.
- 5.03 The Manager should give the employee at least 5 working days' notice in writing of the meeting. This should include the details of:
- Date, time and venue of the meeting
  - The nature of the underperformance and any supporting documents enclosed for discussion
  - The right of the employee to be accompanied by a recognised trade union representative or work colleague.
- 5.04 At the meeting, the Manager will outline the performance issues identified through the informal and/or formal Stage 1 procedure in clear and unambiguous terms. The following matters should be considered:
- Areas where there is continued failure in performance
  - Actions already taken by management to address these failings
  - Whether the employee acknowledges that there continues to be a problem and shows a willingness to improve
  - The impact of the employee's continued poor performance on colleagues and pupils
  - Any other mitigating factors (including external or contributory factors)
- 5.05 A further Performance Improvement and Support Action Plan should be completed by the Manager in consultation with the employee.
- 5.06 A Final Written Warning to be issued within 5 working days. The Final Written Warning will remain on the employee's personnel file for 18 months. This will invoke a continued monitoring and review period not exceeding four weeks.

### 5.1 NEXT STEPS

- 5.1.1 Progress will be continuously reviewed throughout the duration of the monitoring and review period and modifications made if necessary. At the end of the review period and without delay the Manager should meet the employee to review their progress.

## 5. Formal Procedure – Stage 2

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5.1.2 The meeting will review:

- improvements made in the identified professional shortcomings.
- improvements made in the standards of performance required.
- how the support, monitoring and feedback has been accessed and utilised to support improvements.

5.1.3 The meeting will gather the facts and there will be a discussion in which the individual is able to present their case on how they have improved their performance in the areas identified. The line manager will conclude the meeting by one of following options:

- If sufficient progress has been achieved, then improvement is acknowledged, and the Manager provides written confirmation to the employee that he/she has reached the required level of performance and that no further action will be taken, provided the improvement is sustained for the duration of the Final Written Warning period. The employee will return to the usual performance management processes.
- If sufficient progress has not been achieved or improvement sustained for the duration of the Final Written notice period, then the matter will proceed to the formal Stage 3 of this procedure. This is a capability hearing to consider dismissal.

5.1.4 The Manager must confirm their decision without delay to the employee in writing along with the process for appeal and who to address their appeal to (see Right of Appeal Section 7.0).

5.1.5 At this stage, given that performance is unsatisfactory, then consideration should be given to suspending the individual pending the outcome of the capability dismissal hearing.

## 6. Formal Procedure – Stage 3

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- 6.0 If the formal Stage 2 process has not been successful in achieving the required improvement in performance, then the Manager should arrange a Stage 3 formal meeting (potential Dismissal Meeting). This is a formal hearing to decide if an individual's employment is to terminate on the grounds of 'capability'.
- 6.01 At the Stage 2 meeting the individual will be made aware as to who will chair the capability hearing. Heads of School, Executive Headteachers and the CEO have delegated responsibility to chair a capability hearing and make the decision to dismiss an employee. The chair must not have been involved in the previous formal stages of the procedure.
- 6.02 Where appropriate, the decision may be made to refer the matter to a dismissal panel. In this case the hearing will be before a panel of at least two Governors/Senior Leaders. The Trust may use Governors or senior leaders from across the Trust to form an appeal panel. This is in the interests of impartiality.
- 6.03 The Manager should give the employee at least 5 working days' notice of the meeting in writing. This should include the details of:
- Date time and venue
  - Who will be in attendance
  - The nature of the underperformance and any supporting documents enclosed for discussion
  - The right of the employee to be accompanied by a recognised trade union representative or work colleague. Any written evidence will also be sent to the individual.
  - Confirmation that the employee's employment could be terminated as a potential outcome of the meeting.
- 6.04 The purpose of the meeting should be to outline the performance standards that are required, to review the support given to the employee to date and to determine whether the employee should be dismissed. The employee should be given the opportunity to respond to the issues raised and any matter which may have a bearing on his/her performance at work.
- 6.05 The outcome of the Stage 3 Formal Meeting (dismissal meeting) must be confirmed in writing within 5 working days to the employee along with the process for appeal and who to address their appeal to. The outcomes of the meeting may include one of the following outcomes:
- Notice of Dismissal - the employee will be given the full period of notice to which he/she is entitled but they will not be required to attend work during the notice period. During this period, the normal salary will be paid, and the termination date will be at the end of the notice period. Any outstanding holiday entitlement must be taken during the notice period if applicable according to the employees' terms and conditions of service. Where this is not possible the employee may be eligible to be paid for any accrued but untaken statutory leave entitlement.

## 6. Formal Procedure – Stage 3

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- Extend the monitoring and review period for a period of no more than four-weeks. The matter should then be referred back to the Manager.
  - Demotion/redeployment. If during the capability procedure the employee requests to transfer to an alternative job, with the terms and conditions of employment relevant to that role, this may be considered as an alternative to a dismissal hearing. For this to happen there must be a vacant role available for the individual to transfer to. The Manager of the individual and the Manager for the post they wish to transfer to, must be in agreement that the individual has proven skills, experience, knowledge and aptitude to be successful in the new role. Should the Managers agree, then the individual will be considered to have resigned from their substantive post, and therefore no salary safeguarding will apply, should the salary be lower than their substantive post.
- 6.06 If there are no other suitable alternatives the capability procedure will continue as outlined above. There is no obligation to create a role.
- 6.07 Where the individual accepts an alternative role, any formal warnings will remain on their personnel file. The capability procedure will cease, and usual performance management, review and monitoring procedures will apply for the new role.
- 6.08 Where there is evidence of serious concerns about an individual's performance in the new role the formal capability procedure will be followed. The individual will enter the procedure at Stage 2 of the process, (where a final written warning will be issued), irrespective of where they were in the process in their previous role. The appeal processes described in Section 7.0 will apply.



## 7. Right of Appeal

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- 7.0 An employee has the right of appeal against any formal action taken under this procedure within 5 days of a decision.
- 7.01 For Stages 1 – 3 the person identified to hear appeals should have had no previous involvement in the case at the relevant stages of the procedure. Where the appeal is against dismissal, a panel of three (which can include trustees/ Governors/Senior Leaders from across the Trust and Human Resource Manager/Advisor support) should be formed who have had no previous involvement in the case.
- 7.02 The purpose of the appeal hearing is not usually to re-hear the case. It is to review the decision taken by the manager and to assess whether this was appropriate on the evidence presented. The appeal hearing will consider:
- Why the employee considers the decision unfair or unreasonable; and
  - The rationale and justification for the decision of the manager who has progressed the capability procedure with the employee.
- 7.03 New evidence which was not initially available may be presented but should be made available to the appeal manager in advance of the appeal hearing.



# APPENDIX A: Performance Improvement & Support Action Plan

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Name of Employee		Name of Manager									
Job Title		Job Title									
Meeting Stage		Attached:	<table border="0" style="width: 100%;"> <tr> <td style="width: 80%;">Current Job Descriptions</td> <td style="width: 20%; border: 1px solid black; text-align: center;">Yes / No</td> </tr> <tr> <td>Latest PM documents</td> <td style="border: 1px solid black;"></td> </tr> <tr> <td>Previous Meetings</td> <td style="border: 1px solid black;"></td> </tr> <tr> <td>Documentation:</td> <td style="border: 1px solid black;"></td> </tr> </table>	Current Job Descriptions	Yes / No	Latest PM documents		Previous Meetings		Documentation:	
Current Job Descriptions	Yes / No										
Latest PM documents											
Previous Meetings											
Documentation:											
Date of Meeting											

Details of Current Performance v Expected Performance	Actions taken to date to improve performance to expected performance	Further Actions Required by employee	Timescale to achieve expected performance	Training and Support to be provided

Detail the consequences of the employee not performing to acceptable levels within that timescale.	
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Manager Signature		Employee Signature	
Print Name		Print Name	