Probationary periods

Can be used to find out if an employee can do a new job or for employees who are changing jobs with the same employer. Probationary periods must be in the employment agreement.

A probationary period:
- can provide a fair opportunity for the employer to assess an employee’s skills
- can let a person new to a job show that they have the skills to do the job
- can be used when an employee starts a new job (even if they already work there, but are changing jobs)
- must be recorded in writing in the employment agreement (the clause should clearly state that there is a probationary period and how long it will last). If the employee and employer agreed to it while talking, but didn’t put it in the employment agreement, then a probationary period can’t be used. Employers who want to put a probationary period into an employment agreement should seek expert advice.
- can be for any amount of time but the time it’s going to last for must be recorded in the employment agreement
- is paid; employers can’t use a probationary period to get work done for free
- doesn’t limit the rights and obligations of the employer or employee
- must be negotiated and used in good faith
- must be a reasonable length of time taking into account all the relevant circumstances of the employer, the employee and the job.

A probationary period cannot be applied after a trial period.

During the probationary period

During the probationary period the employer must follow a fair process. This includes:
- telling the employee if there are any issues with their work (and if there is a chance that their employment might not be continued after the probationary period ends)
- telling them what these issues are, and what good performance in this area looks like
- giving the employee support, and ongoing and appropriate training
- giving the employee the opportunity to improve. This means that the employer should be giving the employee feedback, support and training throughout the probationary period so that they know there are issues and they have a chance to improve before the end of the probationary period.

It is good practice for employers to tell an employee on a probationary period when they might expect to receive training and feedback at the start of their employment. The employer must follow through on any commitments they have made to the employee.

In some situations work is going so well that an employer may choose to remove the probationary period and confirm employment early. This can be done if the employee agrees; the agreement should be in writing because it is a change to the employment agreement.

At the end of the probation period

If the work is going well

As the employee, you and your employer don’t have to actively do anything to continue your employment. At the end of the probation period, your employer:
- won’t dismiss you
- your probation period ends
- your employment continues automatically on your existing terms and conditions of employment but with no probation period.

If the work hasn’t gone well

An employer can’t just tell an employee to leave their job at the end of the probation period. They must have assessed them fairly and, if their work wasn’t good enough, they must tell the employee why it was not good enough and that they intend to end their employment.

The employer must also give the employee an opportunity to respond to these points. If, after considering any response, the employer decides to end the employee’s employment they must give the employee the notice in their employment agreement.

If, as the employee, you’re dismissed at the end of a probation period, you can raise a personal grievance on the grounds of unjustified dismissal, for example:
- if you think your employer didn’t have a good reason to dismiss you
- if you weren’t given appropriate advice and training on how to do the job effectively, or
- you weren’t fairly assessed by your employer.

Example situation

Rachel wants to move from her assembly job into a supervisor job

Rachel’s supervisor at work is retiring and Rachel wants to move from her assembly job into the supervisor job. Her boss, Mene, isn’t sure she has the additional skills required and doesn’t want to take the risk of putting her in the job untested. Rachel really wants the job and asks if she could do it on a trial basis. Mene decides to offer Rachel the job but with a probationary clause in her new employment agreement. (Mene can’t use a trial period because Rachel is already employed by Mene).

Rachel agrees and they put a clause in Rachel’s employment agreement saying that she is in the new job but has a probationary period of 3 months. Rachel is a good employee, and Mene doesn’t want to lose her, so he also puts in Rachel’s new employment agreement a clause that if at the end of the probation period she hasn’t met the standard required, she can return to an assembly job rather than be dismissed from employment. Rachel and Mene both sign the new employment agreement.

Mene provides support and training to Rachel, gives her regular feedback and assesses her fairly at the end of the probation period. Mene decides that Rachel is doing quite well and that even though there are areas which she hasn’t mastered yet she should be able to come up to speed in a
reasonable period of time.

At the end of the probation period, Mene doesn’t have to do anything to confirm Rachel’s permanent supervisor position, but he decides to put a morning tea on for her shift to celebrate her success. (This cost less than it would have cost him to advertise the supervisor position).

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