

24 February 2017

3HR Legal Weekly

Employment

Probationary Periods

We've recently received several queries regarding probation periods. Here are some examples.

How long should we make probationary periods for our new starters?

There is no law determining the length of a probationary period. However, there is an expectation that the employer will be reasonable. Typically, a probationary period will be 3 months for a junior position or perhaps 6 months for a more senior position. Different lengths of time can be used depending on the nature of the job and how long it will take to assess the employee's performance. However, you should be aware that it would be unlawful to base the length of the period on protected characteristics (for example, requiring a younger employee to have a longer probationary period than an older employee doing the same job).

Why do we need probationary periods?

The purpose of a probationary period is to assess the new employee's performance and check that they are suitable for the role. Probationary periods are also useful because terms and conditions of employment can be different at this time. As long as you make it clear to the new employee that you will apply different terms and conditions during the probationary period, you may hold off company benefits (for example life assurance and health insurance) available to other employees at this time, saving you administrative time and Company resources.

If we decide an employee is unsuitable during their probationary period, do we just ask them not to come back the next day?

The answer to this is not quite as simple as "yes" or "no". Your options at the end of such an employee's probationary period are either to extend their probation or terminate their employment.

However, you will need to have reviewed the employee's performance during the probation period and have managed any concerns as they came up rather than leaving them until the end of the period. If, during the period, you notice some performance issues, you should consider the employee's training needs and give them a reasonable amount of time to improve.

In some circumstances, an early termination may be appropriate, according to the details of your disciplinary procedure. You should be aware that although an employee cannot claim unfair dismissal if they've been employed for under two years, they may be able to bring another claim relating to their dismissal for example under a protected characteristic such as a disability.

A probation review meeting should be held before the end of the period to identify whether the new starter will be successful or not. You may decide to extend the probation period if you feel it is necessary. There is no law regarding this, but as an employer you are expected to be reasonable about it. An extension of the probationary period should not come as a surprise to the employee.

In addition, be aware that all employees - including those on a probationary period - are entitled to statutory notice of one week if they've been in continuous employment for one month up to two years.

What paperwork should we keep in relation to probation?

Before offering employment (after deciding the period of probation and any specific terms and conditions that will apply during that time) you should write an offer letter that makes clear that the job offer is subject to the satisfactory completion of a probation period. The contract of employment should also confirm the length of the notice period and the relevant terms and conditions that will apply during this period.

If the employee is judged to have been unsuccessful in their probation, you should provide him or her with a letter explaining this. Along with keeping copies of all your outgoing paperwork to the new starter, we also recommend keeping a written record of all your meetings and conversations with the new starter about their probation.

Managing the period in a reasonable way and putting the entitlements of the employee in writing should minimise any problems. If you have any further queries, contact your usual 3HR consultant.

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