

The following is an HR guide to Probation Periods

What is a probation period?

The probationary period is an agreed duration of time in which to assess someone's ability to meet certain performance levels to undertake their new role.

Typically, the probationary period is for the first 3 or 6 months.

Although the probationary period has no legal basis, it is important to manage it correctly. There is no legal requirement to have probation periods, but they are a very useful management tool.

Essentially, it is a safety net for employers after recruiting a new employee. If, following a review, there is a failure within that period to meet the standards required, this can lead to the dismissal of the employee.

Employment starts from the first day of employment – not from the date at the end of the probationary period. This means length of service and statutory employment rights start from day 1 regardless of any probation period. This includes the right not to be unfairly dismissed.

The contract of employment must state the length of the probation period and conditions.

During the Probation Period

During the Probation Period, follow a structured programme aimed at assessing and reviewing the employee's suitability.

The programme should include regular monitoring of the new employee's performance through progress meetings, early identification and discussion of any problem areas, constructive feedback, support and guidance and any necessary training and coaching.

You may also put a training plan in place which includes specific skills, attributes and practices.

Hold regular progress meetings and implement an action plan if necessary.

Towards the end of the probation period, a final review meeting should be carried out. This meeting will determine whether employment is 'confirmed', terminated or whether the probation period should be extended (see below).

The final review will allow both the manager and the employee to identify and discuss any areas in which the employee requires further training or development and check how the employee feels about his or her employment in general.

Can the probationary period be extended?

If necessary a probationary period can be extended, however, this must be communicated in writing before the end of the initial period.

You should ensure you have a contractual right to extend.

It may be necessary to extend, for example, to allow additional training such as a training course or to allow for a period of unexpected absence during the initial period such as sickness.

If you do not extend the probationary period in writing before the end of the initial period, the probationary period is completed by 'default'.

Probation Periods for existing employees transferring or promoted internally

You may wish to place an existing employee on probation where they have moved to another role or been promoted internally.

This may be appropriate where the new job involves duties and responsibilities that are completely different from those of the employee's old job.

In this situation, continuity of service would be unaffected – continuous service would still be counted from day 1 of employment.

If the existing employee does not succeed in the new role, a suitable alternative position may be sought, but if not available, the employee's employment would be terminated. The employee would have no automatic right to move back to their previous role (unless that was agreed beforehand).

Given an existing employee may have more than the required qualifying service, they would have the right to bring an unfair dismissal claim before an employment tribunal.

Dismissing an employee during or at the end of the probationary period

You can legally dismiss if you are unhappy with your employee's performance or conduct.

You should follow disciplinary procedures or your own procedures if you have a separate probationary policy which outlines ending employment during the probationary period. If you do not follow your own contractual procedure to dismiss you may be in breach of contract.

You should give the correct notice period to dismiss the employee. Check their contract.

You do not need to wait until the end of the probationary period to dismiss if there is clear evidence that the employee is wholly unsuitable for the job.

Some final points on managing the probation period

- Be open and transparent with your employees, ensuring they are clearly informed of their probation period and understand the implications of it – especially that their employment may be terminated if they don't reach the required standards in their role.
- Don't be ambiguous – ensure the employee knows where they are not performing adequately.
- Keep records – if you're challenged as to your dismissal or extension of probation, you'll need to refer back to these to show you've acted reasonably.
- Don't delay the inevitable – if they aren't working out, you're wasting time and money and they could even move out of probation. Therefore, the sooner the employee knows the score, the sooner you can all move forward

This is a brief guide only to probation periods. If you require any help or support on managing your probation periods or any other HR service, please contact us today.