

# PROBATION



## GENERAL

Probation is for newly appointed employees only. The purpose of probation is to establish whether or not the appointee's performance is of an acceptable standard before permanently employing the employee.

Probation periods should be reasonable. This will depend on the nature of the job, which in turn will determine how long it will take to establish whether the employee is performing satisfactorily or not.

As a general guideline, the more complex the nature of the job, the longer the probation period e.g. only a month may be needed to evaluate the performance of a cleaner, but four months may be appropriate for an accountant.

Probation periods may be extended, within reason, where the employer is not convinced that the employee is performing to the required standard.

It is advisable that the probationary period be stated in writing (e.g. as part of the employment contract or letter of appointment) and that the company's expectations during the probationary period be communicated clearly and are understood by the employee. Should the probation be extended, it should once again be done in writing.

## PROBATION AND DISMISSAL ON GROUNDS OTHER THAN PERFORMANCE

Should it become necessary to dismiss an employee during the probation period for a reason other than poor performance, the normal procedural and substantive requirements are valid and need to be applied. Examples of such dismissals would include misconduct, incapacity due to ill health / injury or retrenchment. Therefore, should an employee on probation be accused of theft, a disciplinary hearing should be held. Where retrenchment has become necessary, a consultation process should be followed prior to the retrenchment.

The reason why probation does not have an impact on poor performance dismissals is due to the fact that probation is aimed at

sorting out performance issues *before* a person is permanently employed.

## DISMISSAL FOR POOR PERFORMANCE DURING PROBATION

An employer should give an employee on probation, evaluation, instruction, training, guidance or counselling as required by him/her in order to render satisfactory work.

Schedule 8 of the Code of Good Practice: Dismissal, deals with probation. An employer has the right to require a newly hired employee to serve a period of probation before confirmation of the employee's appointment, which period should be determined in advance and should be of a reasonable duration.

During the probation, performance of the employee should be assessed. If the employee fails to meet the required standards or is incompatible, the employee should be advised of these shortcomings.

## PROCEDURE

The employer should give an employee evaluation, instruction, training, guidance or counselling as required for the employee to render satisfactory work.

This means that the employer should evaluate an employee during the probationary period and should provide regular feedback.

An employer may dismiss an employee or extend the probationary period after the employee is invited to make representations. Only after considering those representations may the employee be dismissed or the probation period be extended.

There must be procedural fairness in dealing with this dismissal

There must also be substantive fairness – in that there must be fair reasons as to why the employee is dismissed or the period extended.

It is not necessary to hold a formal enquiry

The rules of natural justice will apply (e.g. when making representations the employee may be assisted by a fellow employee)

It should be noted though that the employer does not require to have as compelling reasons for the dismissal as would be the case with an employee who is not on probation (i.e. with employees who are permanently employed)

The Code of Good Practice for Poor Performance: Incapacity, does not apply to probationary employees.

A probationary employee cannot be dismissed for reasons that are automatically unfair e.g. participation in a lawful strike. A probationary clause cannot be relied upon for dismissing a probationary employee on operational requirements.

## RELEVANT LEGISLATION

Labour Relations Act, Schedule 8: Code of Good Practice: Dismissal  
Section 188  
(need to confirm once amendments passed)