

Guide: Trial and probation

Think about whether you wish to include provisions for a trial or probation period in the employment agreement for this position.

The Employment Relations Act 2000 contains provisions for both “trial” and “probationary” periods for new employees. It is important that the employer and employee are clear about what provision applies to them.

This guide outlines some key information about trial and probation periods. For more detail, see the [Employment NZ site](#).

Restrictions

From 6 May 2019:

Only employers with less than 20 employees are able to use trial periods

Employers with more than 20 employees are able to use probationary periods but employees dismissed under probationary periods are able to claim for unjustified dismissal

The following outlines some key information about trial and probation periods. For detail, see www.employment.govt.nz/starting-employment/trial-and-probationary-periods/

Trial period — key points

Employers may offer trial periods of up to 90 days to new employees. This can only be applied to new employees, so it is important that an employee does not start a job before signing an agreement providing for the trial. Trial period provisions must always be in writing.

The trial period prevents employees from bringing a personal grievance for unjustified dismissal within the trial period.

You and the employee must both bargain in a fair way about a proposed trial period. This includes considering and responding to any issues raised by the new employee.

Note that the 90-day period refers to calendar days and begins on the day the employee commences employment. See below for a sample clause.

Notice of termination must be given within the trial period, even if the actual dismissal doesn't become effective until after the trial period ends.

An employer and employee may agree to a trial period only once.

We recommend that you have regular reviews during a trial period as you would during a probation period.

Trial period — sample clause

The following is a sample of a clause you can include for a trial period if it is applicable to your business and the employee agrees:

The parties agree that this employment is subject to a trial period of [Number of Days] pursuant to Section 67A of the Employment Relations Act 2000. The trial period shall begin on the date the Employee enters into this agreement and end on [Enter Date]. The Employee acknowledges that during this trial period, the Employer may dismiss the Employee by giving, prior to the end of the trial period, one week's notice and that the Employee is not entitled to bring a personal grievance or other legal proceedings in respect of that dismissal.

Probation period — key points

If an employer and an employee wish to have a probation period, they must agree to this in writing at the start of the employment relationship. Ensure the probation period is covered in the employment agreement. A sample clause is provided below.

A probationary employee is a permanent employee who is yet to be confirmed in their position. The probation period provides time for this to occur. The key difference between a probation period and a trial period is that a probationary employee retains full rights to take a personal grievance in the event of being dismissed during the probation period. There is no time limit on a probation period.

A probation period provides time for the employee to show they are suitable for the position. Although the employee is on probation, this does not affect their statutory entitlements to annual holidays, sick leave etc. During the probation period, the employer should act fairly and reasonably in all matters.

The following apply during a probation period:

- The employee knows they will be under close and critical assessment
- The employer needs to clearly state expectations and the employee needs to show they are suitable for the position by meeting those expectations
- The employer and the employee have agreed to review the employment at the end of the probation period

Ensure that your expectations are clear to the employee and that the employee can meet these. During this period the employee is entitled to whatever training, supervision, support and resources you deem necessary.

Probation period — sample clause

The following is a sample of a clause you can include for a probation period if it is applicable to your business and the employee agrees:

Employment is subject to a probation period of [number] months during which time the Employee's performance will be reviewed in weeks [enter weeks for reviews]. The Employee will be entitled during this period to whatever training, supervision, support and resources may be deemed necessary by the Employer and will be advised at the performance review meetings of their work performance in relation to the standards required of them. The Employer will clarify the standards required.

The Employer may extend the probation period to enable the Employer to conduct additional performance reviews. Notice of the extension of the probation period and the length of the extended period will be given to the Employee in writing before the completion of the initial probation period.

One week's notice of termination of employment may be given after two performance reviews or at the final performance review if the Employer considers that the Employee has failed to meet the required standards.

Where the Employer terminates the agreement under this clause, the Employer may elect to pay one week's wages in lieu of notice.

On successful completion of the probation period, the Employer will give written confirmation to the Employee of the Employee's position with the Employer.

4-weekly reviews

If you and your employee agree to a trial or probation period, we recommend you include three 4-weekly checkpoints during a 12-week period. This ensures the employee is fully aware of your feedback on their performance and there are no surprises at the end of the period.

You should arrange for the new team member, their immediate supervisor and the Team Leader to meet at the 4, 8 and 12-week points to review the team member's progress and address any issues. Ensure that the appropriate review form is used for each meeting.

More information

For information on:

Trial periods — see the [website](#)

Probation periods — see the [website](#)

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s [67A](#) of the Employment Relations Act 2000

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