

## ESSENTIAL GUIDE TO MANAGING PROBATION

### What is probation?

Including a probation period in your contract of employment gives you some time to make sure that the selection you made for your vacancy was the right choice. It's an opportunity to evaluate the new employee's performance, commitment and general suitability for the role, and to take the necessary action if they are failing to meet your requirements.

There is nothing in law which requires you to use probationary periods, but they are commonly used and are really useful way to assess performance over a set timeframe and can help to avoid performance issues in the future.

Probation periods are also an opportunity for the employee to assess whether they have made the right choice

### How long should the probation period be?

This will depend on the length of contract, complexity of the job and training provided and even on the prior experience of the candidate. They are usually between one and six months. The key factor in setting the timeframe will be that you provide enough time for the employee to be able to learn the job, undergo any training required, review progress and have some time for the employee to respond to feedback when necessary. For many roles, by three months both parties will usually have a sense of their suitability for a role.

### Contractual rights during probationary period

While probationary periods do not affect employees' statutory rights, it is open to employers to provide for different contractual rights for employees during their probationary period. For example, you can withhold certain contractual benefits until the employee has successfully completed the probationary period.

It is also common to reduce the notice period during probation period so that if you find the employee is not suitable after having the opportunity to improve you can give, say, a week's notice, rather than a month.

### The probation process

The most common problem we come across relating to early performance issues is that the probation process is not clear or that the process just isn't followed, leaving performance issues not dealt with, time drifting and probation being 'passed' by default as the employee has been in place so long that it becomes difficult to address issues retrospectively.

To keep the management of probation simple, make sure that you include the following four steps:

1. Set Clear Expectations of the employee from the start
2. Review progress regularly
3. Provide opportunities for improvement
4. Confirm the outcome of probation

## Set clear expectations

To give your new recruit the best chance of passing their probation, there are a number of things you can do:

- Provide the employee with a clear job description
- Consider setting some short term objectives they can work on during their probation. Make sure they are clearly described, easily measurable and attainable
- Provide an overview of the general business practices and procedures they need to know, including standards of attendance
- Provide details about your core values and ethos and the behaviours you expect of them. For example, what standards of customer service do you wish to see?
- Schedule any necessary training or development that will help the employee reach your requirements
- Explain how you intend to evaluate their performance and when reviews will take place

## Review progress regularly

Whenever someone starts a new job it's difficult for them to know how they are getting on so try and offer guidance whenever possible. Where you can, specific, in the moment, feedback can be very helpful in assisting your new employee to learn the ropes and get up to speed. Always try to keep any criticism constructive and offer solutions to problems rather than just highlighting the fact they exist. Make it 2 way and encourage them to feedback their experience of being new in the business, it can often be insightful.

Set up regular (weekly or monthly) 1-2-1 meetings where you can give feedback and listen to any concerns they may have. If you don't work with them day to day, seek feedback from those they do work closely with. Run through progress on the various aspects of their role. Explain where they are doing well and be open and honest about where and how they need to improve.

If there are performance issues, start putting a plan in place to help the employee to improve. Be clear about your expectations and where the improvements are required.

Don't be afraid to adjust the various requirements as you get to know your employee better. If someone is struggling, try giving them something more attainable, and if someone is completing all the tasks with ease, offer something a bit more challenging to see how they cope.

Typical format for probation review:

- Reinforce the areas where the employee is doing well.

- Be open and honest with the employee about his/her short comings. Provide documentary evidence whenever possible
- Give the employee the opportunity to respond. There might be some other factor behind the problem
- Try to reach an agreement on the nature of the problem. If joint agreement can be reached the employee is more likely to react positively to any suggestion for improvement
- Offer guidance and support on how to overcome the difficulties. This might include extra training/coaching or closer supervision
- Ensure the employee understands the degree of progress required and that successful completion of the probationary period dependent on it
- Warn the employee that if this standard is not reached it may be necessary to terminate his/her employment.

Keep records of your performance reviews and the actions agreed to improve. It can be useful to summarise the meeting outcomes in an email so that the employee has a clear understanding of what they need to do.

## **Provide opportunities for improvement**

The purpose of a probation period is to provide employees a fair opportunity to reach the required standard of performance. If things aren't going the way you'd planned, you need to work out why during your reviews. Have you set the expected requirements too high? Have there been any external factors that have affected the development of the employee (such as a delay in training)? What can you do to help things get back on track? Remember that everyone learns at different speeds and sometimes just a little patience is in order.

Improvement activities may include:

- Further training
- Shadowing competent employees
- Resolving outstanding pieces of work to a satisfactory standard
- Meeting specific short term objectives set in the review meeting

## **Probation extension**

If you still have concerns about the employees performance as you reach the end of probation you can extend probation if the employee still needs to improve. This may be appropriate if there is just one area of improvement to be made and the employee has grasped a significant part of the job. You may feel that with some further training or support, the employee will reach the required standard. Keep the period fairly short, a month for example, to avoid the situation drifting.

This could also be appropriate in cases where you or the employee has been absent from the workplace for an extended period during probation due to circumstances beyond the employee's control.

Confirm the length of the probation extension in writing, include the reason for the extension (what is the area of improvement required) and the standard the employee needs to attain to reach a satisfactory improvement.

## Confirming outcome of probation

At the end of the probation period (including any extension previously agreed), you must write to the employee to confirm the outcome. The two possible outcomes are:

**Probation passed:** confirm that the employee has satisfactorily passed probation and confirm any additional benefits for which they may now be eligible and confirm new notice period.

**Probation failed:** after allowing the employee a fair opportunity to improve and where it is clear that they will not be able to meet your requirements you should write to them to confirm that they have not passed probation and confirm the next steps. You may want to review whether there are any other roles that the employee could be suitable for; but in many situations, the outcome will lead to dismissal.

## Misconduct cases

In the situation where the employee does not meet your expectations regarding behaviour or conduct then you can follow your disciplinary process and refer to it during your probation reviews. If their behaviour constitutes clear gross misconduct then your policy is likely to make provision for summary dismissal.

In the case of ordinary misconduct then warn the employee that any further misconduct will lead to immediate termination of his/her employment and reinforce this during probationary reviews. You must still follow a fair dismissal (explained below) if you get to dismissal stage.

## Dismissal

After following your probation process and where it is clear that an employee is not going to meet the requirements for the role then you can safely move towards dismissal. You can dismiss fairly for reasons related to an employee's conduct or their capability or qualifications for the job.

You must follow a fair dismissal procedure and provide evidence for the decision that you have reached. In essence, you need to do the following:

- Invite the employee in writing to a meeting (giving at least 48 hours' notice) to review their probation and state that a possible outcome may be that their employment may be terminated

- offer the opportunity for them to be represented by a trade union representative or work colleague
- Set out the clear reasons why the employee has not successfully completed the probationary period
- Give the employee the opportunity to present his/her case including any mitigating circumstances
- Provide an outcome letter confirming the dismissal and offering the opportunity to appeal.

Don't be tempted to avoid a fair dismissal process. Even though many employment rights, such as unfair dismissal do not apply until the employee has been employed for 2 years (since April 2012) there is no length of service requirement in relation to 'automatically unfair grounds'. If you have a probation, disciplinary or dismissal procedure that you do not follow, then the dismissal will be 'automatically unfair' in the eyes of the law.

## Want to know more?

If you have questions or want to know more about managing probation, then please call Angela Spooner on 01768 753001 or email [angela@peopledecisions.co.uk](mailto:angela@peopledecisions.co.uk)

