

Trial vs. probation periods - what you need to know

Trial periods and probationary periods can be a great way to test out a new role while also establishing yourself as a valuable employee. However some of your rights during trial and probationary periods are different. Here's what you need to know.

Trial periods

If you've started a new job, there's a good chance your employer will put you in a trial period to make sure you're the right fit for the role. "Trial periods are useful for employers to assess an employee's skills and suitability for a role," says Jaenine Badenhorst, an associate lawyer with Rainey Collins.

A trial period can only happen if you and your employer agree. "The agreement must be recorded in writing, otherwise the employer may not be able to rely on it," says Badenhorst.

- **How long can trial periods last?**

A trial period can be for any period of agreed time, as long as it is not longer than 90 days.

While trial periods can last for as long as you and your employer agree (provided it is not longer than 90 days), it is essential that the time period be recorded in advance in your employment agreement.

- **Are trial periods essential?**

Although they are not crucial, trial periods are a great way to test out a new employment situation with reduced risk. "Both you and your employer can use the trial period to evaluate whether your skills and expertise, the role and the team is a good fit," says Badenhorst.

- **Dismissal during a trial period**

It is easier for employers to terminate an unsuitable employee under a trial period than under a probationary period. "If you are dismissed under a trial period, you cannot raise a personal grievance for unjustified dismissal, but you may still raise a personal grievance on other grounds, for instance if you were harassed or suffered an unjustified disadvantage," says Badenhorst.

If you are not dismissed, your employment will continue automatically at the end of the trial period.

- **Employers who offer trial periods**

From May 2019, [trial periods](#) are only available to small-to-medium sized employers who have fewer than 20 employees. As a result, Badenhorst says that some larger employers may instead seek to rely on probationary periods instead. “This can be risky for employers and employees who do not fully understand the differences between a trial and a probation,” says Badenhorst.

Probationary periods

“Probationary periods are most useful to assess whether an existing employee is suitable for a new role and responsibilities,” says Badenhorst.

If you want a new challenge within the same organisation but without jeopardising your existing job security, you can ask to be employed on probation in a new role. “You can agree with your employer that if at the end of the probation period your employer decides not to promote you, you will return to your original role,” says Badenhorst. “An employer is more likely to take a chance on an employee if they have a trial or probation period in place.”

- **Dismissal after a probationary period**

After a probationary period ends, you can only be dismissed if there are grounds for the dismissal and a fair dismissal process has been followed. If not, you may be able to raise a personal grievance for unjustified dismissal or for the breach of good faith (due to a flawed process).

“This means that your employer must be active and constructive during the probation period,” says Badenhorst. “They should provide you with information about how you are performing so you can make adjustments as necessary.”

Before any adverse decisions are made, you should be given an opportunity to respond and your employer must genuinely consider this feedback.

- **Extending a probationary period**

“A probationary period can be extended if the employer considers the employee incompetent, and after instruction, reasonable evaluation, counselling and/or training, there is still no improvement, and the employer wants to give the employee another chance” says Badenhorst.

If your employer decides to extend your probation period, they must consult and negotiate the extension with you. “Any variation in the duration of a probationary period should be recorded in writing to avoid later disputes,” says Badenhorst.

- **When a probationary period ends**

At the end of the probationary period your employer may agree that you remain in the probationary role permanently. If not, the employer will need to follow a fair process before making any adverse decisions.

“It is important to remember that probationary periods provide employees with more rights and protections in the case of a dismissal than trial periods,” says Badenhorst.

It is important to be aware of your employment rights under probation and trial periods, and if you are unsure about these, it's recommended that you contact an employment lawyer.

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