

Can I be fired while on probation?

Can my employer fire me while I'm on probation? It's a simple question, but the answer can have a big impact on your career.

If you've started a new job on probation, it's worth understanding what your rights are.

We speak to Jaenine Badenhorst, an associate lawyer with [Rainey Collins](#), who shares her insight on how and when you can be dismissed during a probationary period.

Here's what you need to know.

What's a probationary period?

Probationary periods are generally used to find out if you're a good fit for a new job – whether it's with a new business or a new role at your current workplace. “You can also be on a probationary period if there have been issues with your performance,” Badenhorst says.

“A probationary period can be used to assess your progress to see if you are coming up to speed in terms of what is expected of you. This is often referred to as a ‘Performance Improvement Plan’ or ‘PIP’,” she explains.

Probationary periods must be recorded in writing in your employment agreement and the agreement needs to state how long probation will last.

If your probationary period goes well, you don't have to do anything – your employment should continue on the existing terms and conditions of your employment, but you won't be on probation anymore.

But if you get to the end of the probation period and your employer has fairly assessed that your work wasn't good enough, they may tell you they intend to end your employment.

How is probation different from 'standard' or 'regular' employment?

“Probationary periods are when you are being observed by the employer or manager to assess your performance and skills,” Badenhorst says. This means you may be subject to more regular reviews, meetings, training, support and assessments.

Badenhorst notes that you should receive regular feedback about how you're going so that you can make any changes required.

“You may also have additional terms as part of your employment,” Badenhorst adds. “For instance, if you do not come up to the required standard, your employment might end, or you may

go back to a previous role.”

Being dismissed after a probationary period

Once your probationary period ends, you can only be fired if there are grounds for the dismissal. This means that your employer has assessed you fairly and has actively provided you with constructive feedback during your probation.

Your employer must also give you an opportunity to respond to their feedback and make any adjustments needed. If your employer is still not satisfied with your performance, they can end your employment by giving you the notice that’s set out in your employment agreement.

If you believe a fair dismissal process hasn’t been followed, you may be able to raise a personal grievance for unjustified dismissal or for the breach of good faith (due to a flawed process).

What employers can do when it comes to dismissal

Employers are legally allowed to terminate your employment if they have followed a fair process and have a good reason to dismiss you.

This means they’ve kept you up to date and informed about how you’re going, including what you are doing well and how you can improve.

“If at the end of the probation period you do not meet the expected standard, it should not come as a surprise to you because your employer should be acting in good faith, by keeping you informed throughout,” Badenhorst says.

Badenhorst notes that employers must give employees an opportunity to comment on what’s called the preliminary final assessment (for instance, to dismiss) before any final decisions are made.

“If you are being dismissed, there should also be a notice period stipulated in the agreement, and this will need to be complied with,” she says.

What employers can’t do when it comes to firing an employee on probation

“An employer cannot dismiss you without good reason or without following a fair process,” Badenhorst says.

“Your employer should allow you a fair opportunity to prove yourself during the probation period, and you should have a clear idea about what will happen if you do not prove yourself – for instance employment will not continue, or you will return to your previous role.”

Your employer must also comply with all the minimum employment standards like keeping

records, allowing for leave, paying at least minimum wage rates, not discriminating or harassing you and providing a safe workplace.

“They also need to ensure that they’ve done everything they agreed to do at the outset of the probation period, such as providing you with support, feedback and training,” Badenhorst says.

Reasons you can be dismissed

- **Serious misconduct**

This is conduct that ‘[deeply impairs or is destructive of the relationship of trust and confidence](#)’. “In this case, an employer would be able to terminate your employment after a fair process has been followed,” Badenhorst says.

- **Failure to reach the expected standard**

If you have been given enough support during the probation period and there was no agreement for you to return to another role, you can be dismissed.

When you can’t be dismissed

- **You haven’t been kept informed**

“An employer cannot fire you if you have not been kept informed about your progress during the probation period,” Badenhorst says. “This is likely to result in a personal grievance.”

- **If there’s an agreement to return to your previous role**

You can’t be dismissed if it was agreed beforehand that you would return to your previous role if your probation period was unsuccessful.

You think you’ve been unfairly dismissed. Now what?

You can raise a personal grievance for unjustified dismissal. A personal grievance is a way of formally raising a complaint. There are a few ways you can resolve a grievance, including by communicating in writing with your employer, requesting mediation or making a claim with the Employment Relations Authority.

You can read more about these processes at [Employment New Zealand](#).

“It is recommended that you put your grievance in writing, and that you clearly state the nature of the grievance, and what you would like to be done about it,” Badenhorst says.

“An employee must raise their grievance within 90 days of the grievance happening/taking place (or becoming aware of the grievance), unless the employer agrees to extend the time, or the [Employment Relations Authority](#) orders it.”

A probationary period can allow you to try out a new role and demonstrate that you've got the skills for the job. But it's important that you know your employment rights under probation. If you're unsure about your rights, it's worth contacting an employment lawyer.

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