

# 90 Day Trial Period

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On the 12<sup>th</sup> of December 2008 the Employment Relations Amendment Bill was passed. This bill makes a change to the Employment Relations Act 2000 with the introduction of the 90 Day Trial Period. The aim of the 90 Day Trial Period is to provide a win/win by both providing confidence for employers engaging new staff and allowing struggling job-seekers to get their foot in the door.

From 1 March 2009, businesses that employ fewer than 20 employees (i.e. 19 or less) will be able to hire new staff for a trial period of up to 90 days.

The 90 Day Trial Period is aimed at giving small businesses the confidence to take on new staff allowing employment to be terminated up to and including 90 days from the start of employment if the employee or employer feels the working relationship is not working.

An employee can not pursue a personal grievance for unjustified dismissal if they're given notice during the trial period. But the employee can raise a personal grievance if issues, such as discrimination or serious breaches of good faith, arise.

The 90 Day Trial Period is voluntary and needs to be negotiated and agreed in good faith between the employer and new employee and documented in the employment contract. The written agreement must be signed by both parties at the beginning of the employment relationship. During this negotiation the employer must consider and respond to any issues raised by the potential new employee.

## **Ending the relationship within the 90 Day Trial Period**

To end the employment relationship, notice must be given by the employer within the agreed trial period even if the dismissal doesn't become effective until after the trial period ends.

If ending an employment relationship within the 90 Day Trial Period employers need to be realistic and use common sense in their decision making.

If a new employee has been a beneficiary prior to being employed and their employment is ended through no fault of their own (e.g. Serious misconduct on behalf of the employer) – they will not face a stand-down period before receiving the benefit again.

A trial period cannot be 'rolled over'. The trial period can only be used if the employee has not previously been employed by the employer.

## **Mediation Services**

When an employment relationship problem arises during the trial period, or if the employee is dismissed, the employee and the employer can access mediation services.

Information regarding the 90 Day Trial Period is available on the Department of Labour website.

At a recent seminar The Minister of Labour – Hon. Kate Wilkinson spoke about widening the net to include all sizes of business in the 90 Day Trial Period.

# Probationary Period – no change

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Probationary period can also be known as a trial period where the employer and employee discuss and agree to, before the employee is confirmed in that position. The probation period provides time for the employee to show the employer that they have the suitable skills, and ability for the position. Any employer and employee who wish to have a probation period, must agree to this in writing at the start of employment and have agree a date to review the employees employment at the end of this probationary period. 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 and the employer needs to clearly state expectations, therefore, enabling the employee to be aware of their employer's expectations of them within this role and that they are under assessment. It is good practice to mark the end of the probation period by advising the employee that the probation period has been successfully completed, for example by holding a meeting to discuss progress and/or writing to the employee confirming the successful completion of the probation period.

## For Employers

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When employing new employees employers need to ensure the best outcome for their business, their objectives and goals. A robust recruitment process should be followed to make sure you get the right person in the right role.

You need to win commitment and engagement from your employees to ensure a good working relationship. Open communication, flexibility and a commitment from you to your new and current employees should ensure you cement strong working relationships.

Our view is the existence of trial periods should not be seen by employers as a substitute for good recruitment or good management practices.

### Useful Websites

Department of Labour – [www.dol.govt.nz](http://www.dol.govt.nz)

Beehive – NZ Government – [www.beehive.govt.nz](http://www.beehive.govt.nz)

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