

## How to manage an employee who is on probation

### What is probation?

The word probation means to undergo a test or trial period.

The start of an employment relationship creates certain obligations which both parties must meet. In order to achieve the main objective of putting an employee's productive capacity at the hands of the employer in return for remuneration, employers and employees generally need an opportunity to test one another to determine whether they can continue working with one another for an extended period of time in a productive employment relationship.

It is generally accepted that an employer may subject an employee to a period of probation at the start of employment.

Probation, and the rights and obligations of employees and employers during probation is dealt with in Schedule 8 to the Labour Relations Act 66 of 1995, the Code of Good Practice: Dismissal (the Code). Item 8 of the Code states that: *"An employer may require a newly-hired employee to serve a period of probation before the appointment of the employee is confirmed"*.

Employers need to know what their rights and obligations are during the employee's period of probation. This will ensure that the objective of assessing the employee's suitability for continued employment is achieved in a fair manner.

### What is the purpose of placing a new employee on probation?

According to the Code, the purpose of probation is to give an employer a chance to assess a new employee's performance, suitability and compatibility before deciding whether or not to confirm the employee's appointment. During this period the employer must decide whether or not the employee is suitable for the job, whether or not s/he can perform the tasks the job requires, and whether or not this performance is satisfactory. During this period of probation, the employer also has to see whether or not the employee gets on with the other employees, and is able to adapt and fit in at the new business.

During the probationary period, the employer should guide the employee so that the employee can perform his/her job properly in order to have the job confirmed.

### How long should the period of probation last?

The Code does not say how long a period of probation should last. The Code requires that the employer must decide the length of the probation before taking the employee on and that this must be communicated to the employee.

The length of the probation must be reasonable and should relate to the type of job. It must also link to the time it will take to decide whether or not the employee is suitable for the job. Therefore, if a job is difficult and more complex, or if the employee has little experience in the particular work, it may take an employer a longer time to decide whether the employee is suitable or not. It will not take an employer a long time to decide on the suitability of an employee that is hired to clean the offices, for example.

Most organisations have accepted the probation period as between 3 and 6 months.

### **Probation and the contract of employment / written particulars of employment**

Probation does not automatically form part of the employment contract or written particulars of employment. Probation must be added to the contract of employment or written particulars of employment. The contract of employment or written particulars of employment must specifically state that the employee will be on probation, the length of the probation, and the starting and ending date of the probation period. If the employee is not informed upfront that s/he will serve a period of probation, s/he may assume that his/her position in the organisation is confirmed and this may lead to a dispute if this was not the intention of the employer.

### **Guidelines for employer's during probation**

The employer has the following obligations towards an employee who is on probation:

- The employer must decide on how long the period of probation will be before taking the employee on. The employer must tell the employee how long the probation will be. This should be done in writing and included in the employment contract.
- The employer should have a discussion with the employee before employing him/her. The employer should make sure that the employee knows exactly what type of job s/he will be doing and what duties and responsibilities s/he will have. The employee should be upfront and advise the employer if s/he does not have some, or all the skills that are necessary for the job. The employer should allow the employee to be upfront and advise him/her (employer) if s/he (employee) does not have some or all the skills that are necessary for the job. If the employer is aware that the employee lacks certain skills the employer should draw up a plan to assist the employee to obtain these skills. The plan must have time periods and deadlines.
- An employer should apply similar probation conditions to all new employees in the same or similar position unless there is justification to treat employees differently. It would be unfair to place one employee on probation and not another one if they both come with the same qualifications, experience and skills.
- The employer should inform the employee how his/her performance is going to be measured. The employee should be told how often this will happen, who will do the assessment and what methods will be used to assess the employee.
- During the probation the employer should 'check in' with the employee. This will allow the employer to assess the employee and tell the employee whether or not s/he is performing reasonably, and if not, what his/her weaknesses are and how s/he needs to improve.
- The employer is expected to guide the employee, by giving him/her guidance, counselling, instruction, training, and evaluation, as may reasonably be required, on a continuous basis, during the probation period. The employer must therefore point out to the employee in which areas he / she is not competent.

This is to assist the employee to perform in a satisfactory manner. The extent to which training is required will depend on the employee's qualifications and past experience, but normally training will at least be required in the employer's specific in-house systems.

- The employer should not wait until the end of the probation to tell the employee for the first time that s/he is not suitable for the job. This will defeat the purpose of probation, which is to assist and guide the employee during his/her probation, and to tell the employee what his/her weaknesses are during probation, so that the employee can improve to a satisfactory level.
- An employer may extend the probation period if the employee is not performing in a satisfactory manner but may be able to improve if s/he is given more time.

[See How to Guide: How to terminate based on probation](#)

[See CCMA Information Sheet: Probation](#)