

Probation and probationary review periods.

An amendment to the Code of Good Practice : Unfair Dismissal contained in schedule 8 of the LRA regulates the respective rights of an employer and employee in a probationary context. The amendment provides that an employer may require a newly hired employee to serve a period of probation before the appointment of the employee is confirmed.

The amendment confirms that the purpose of probation is to give the employer an opportunity to evaluate an employee's performance before confirming an appointment. It is made clear that probation should not be used for other purposes, for example, to deprive employees of the status of permanent employment. Thus a stratagem of dismissing employees who complete their probation and replacing them with newly hired employees is not consistent with the purpose of probation and in terms of the amendment to the definition of unfair labour practice (see above) would be actionable. The Code of Practice provides that the period of probation should be determined in advance, and should be of reasonable duration. No specific period is prescribed, but the reasonableness of the length of any probationary period should be determined with reference to the nature of the job, and the time it takes to determine an employee's suitability for continued employment. During the probationary period, an employee is entitled to have his or her performance evaluated, and to be given whatever instruction, training, guidance or counselling is required to allow the employee to render satisfactory service. If the employer determines that the employee's performance does not meet the required standard, the employer is required to advise the employee of any aspects in which the employee fails to meet those standards, or any aspects in respect of which the employee is alleged to be incompetent.

If the employer decides to dismiss an employee or extend a probationary period, the employer is required to invite the employee to make representations with the assistance of a trade union representative or fellow employee if required. If the employer decides to dismiss the employee, the employee is entitled to be advised of the right to claim unfair dismissal.

Perhaps the most significant element of the amendment is the provision to the effect that any person making a decision about the fairness of a dismissal of an employee for poor work performance during or on the expiry of a probationary period ought to accept reasons for dismissal that may be "*less compelling*" than would be the case had the dismissal been effected after the completion of the probationary period. This establishes a lower hurdle of substantive fairness that the employer must jump to prove the fair dismissal of a probationer.

Source: "What you need to know about the LRA amendments" by Perrott Van Niekerk Woodhouse Inc.
www.elaw.co.za

Attached below is a suggested probationary review form to allow employers to schedule and evaluate employees during the probationary period.

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PROBATIONARY EMPLOYEE PERFORMANCE EVALUATION			
Projected Probationary End Date:			
Review Interval <input type="checkbox"/> 6 weeks / one month <input type="checkbox"/> 12 weeks / 2 months <input type="checkbox"/> Probationary Period End <input type="checkbox"/> Other:			
Employee Name (Last, First, Middle)		Employee ID Number	
Position Number	Role Title	Work Title	
Department		Sub-Division	
Employment Date	Supervisor's Name	Supervisor's Title	
	Evaluator's Name	Evaluator's Title	

Note:- Incapacity: Poor work performance - Probationary employees	
Please read the following provisions relating to probationary employees and sign in the space provided indicating that you have read and understood these provisions.	
(1) (a) An employer may require a newly-hired employee to serve a period of probation before the appointment of the employee is confirmed.	
(b) The purpose of probation is to give the employer an opportunity to evaluate the employee's performance before confirming the appointment.	
(c) Probation should not be used for purposes not contemplated by this Code to deprive employees of the status of permanent employment. For example, a practice of dismissing employees who complete their probation periods and replacing them with newly-hired employees, is not consistent with the purpose of probation and constitutes an unfair labour practice.	
(d) The period of probation should be determined in advance and be of reasonable duration. The length of the probationary period should be determined with reference to the nature of the job and the time it takes to determine the employee's suitability for continued employment.	
(e) During the probationary period, the employee's performance should be assessed. An employer should give an employee reasonable evaluation, instruction, training, guidance or counselling in order to allow the employee to render a satisfactory service.	
(f) If the employer determines that the employee's performance is below standard, the employer should advise the employee of any aspects in which the employer considers the employee to be failing to meet the required performance standards. If the employer believes that the employee is incompetent, the employer should advise the employee of the respects in which the employee is not competent. The employer may either extend the probationary period or dismiss the employee after complying with subitems (g) or (h), as the case may be.	
(g) The period of probation may only be extended for a reason that relates to the purpose of probation. The period of extension should not be disproportionate to the legitimate purpose that the employer seeks to achieve.	
(h) An employer may only decide to dismiss an employee or extend the probationary period after the employer has invited the employee to make representations and has considered any representations made. A trade union representative or fellow employee may make the representations on behalf of the employee.	
(i) If the employer decides to dismiss the employee or to extend the probationary period, the employer should advise the employee of his or her rights to refer the matter to a council having jurisdiction, or to the Commission.	
(j) Any person making a decision about the fairness of a dismissal of an employee for poor work performance during or on expiry of the probationary period ought to accept reasons for dismissal that may be less compelling than would be the case in dismissals effected after the completion of the probationary period.	
Employee Signature:	Date:
Supervisor Signature:	Date:

Section A : for the Evaluator to complete

Instructions to Evaluator: The Supervisor or direct line manager of the probationary employee is normally also the evaluator. Only in exceptional circumstances, for example, due to interpersonal conflict or non-availability of the line manager, should an evaluator (other than the supervisor) be appointed. Evaluators

should refer to the employee's job description when completing this form; the evaluation should focus on the employee's ability to perform the job duties listed in the job description. Employees should be evaluated at least three times -- at monthly or six-week intervals, and one other time before the end of the probationary period. Indicate the evaluation of the employee's job performance by writing a number between 1 and 3 on the blank line to the right of each attribute, in the appropriate column. Use the following scale:

1 = Unacceptable;

2 = Needs Improvement;

3 = Satisfactory

See the reverse side of this form for additional comments to the evaluator and the employee.

	6 WEEKS*	12 WEEKS*	FINAL
DATE			
QUANTITY OF WORK The extent to which the employee accomplishes assigned work of a specified quality within a specified time period			
QUALITY OF WORK The extent to which the employee's work is well executed, thorough, effective, accurate			
KNOWLEDGE OF JOB The extent to which the employee knows and demonstrates how and why to do all phases of assigned work, given the employee's length of time in his/her current position			
RELATIONS WITH SUPERVISOR The manner in which the employee responds to supervisory directions and comments. The extent to which the employee seeks counsel from supervisor on ways to improve performance and follows same			
COOPERATION WITH OTHERS The extent to which the employee gets along with other individuals. Consider the employee's tact, courtesy, and effectiveness in dealing with co-workers, subordinates supervisors, and customers			
ATTENDANCE AND RELIABILITY The extent to which employee arrives on time and demonstrates consistent attendance; the extent to which the employee contacts supervisor on a timely basis when employee will be late or absent			
INITIATIVE AND CREATIVITY The extent to which the employee is self-directed, resourceful and creative in meeting job objectives; consider how well the employee follows through on assignments and modifies or develops new ideas, methods, or procedures to effectively meet changing circumstances			
CAPACITY TO DEVELOP The extent to which the employee demonstrates the ability and willingness to accept new/more complex duties/responsibilities			

Section B: This section must be completed by the Supervisor only:-

Describe your new employee's performance / conduct.

Does this employee demonstrate the expertise and general skill level you expected based on the job application and interview? Yes No

If no, in what way does this employee's performance differ from your expectations?

Do you consider this employee to be making progress appropriate to their length of employment?

Yes No

If no, please describe the areas that need improvement?

Have you made arrangements for the employee to receive additional training?

Yes No

If yes, what training? Where conducted?

Have you spoken to the employee about areas of concern at any time other than during this probationary review?

Yes No

If yes, what was the employee's reaction to the discussion?

What goals have you and this employee set for the next few weeks/ months on the job?

Does it seem probable that this employee will satisfactorily complete the probationary period?

Yes No

If no, please explain.

Any additional comments or concerns?

Recommended Action

Type of Training	Examples for a call centre employee (please edit according to internal requirements)
On-the-job	e.g. re-do module 2 of customer service training course
Classroom	e.g. Attend company customer service training course
External	e.g. attend Call Centre software training course
"Buddy" training	e.g. place employee on same roster as Samantha (most experienced call centre employee)
Appoint mentor	e.g. appoint John Smith, Customer Support Manager, as mentor for duration of probationary period to familiarize employee on customer service requirements

Recommended measures

Action	
Reason	
Responsible Person	
By When	

Action	
Reason	
Responsible Person	
By When	

Section C: For the Employee to complete

Provide a brief overview of your current working environment?

Did you undergo a formal HR orientation? Yes No
 Was your formal HR orientation session helpful? Yes No
 If no, what could be to make the formal HR orientation more beneficial to you?

Are you starting to feel comfortable in your new job? Yes No
 If no, what can be done to help you feel more comfortable?

Did you receive a job description? Yes No

Is the job you are doing different from what was described to you, either verbally or on your job description? Yes No
 If yes, in what way does it differ?

Do you feel that you have the knowledge/skills to be proficient at your job?

Yes No

If no, what additional support or training do you feel you need to become proficient?

Has your supervisor spoken with you about your progress to date?

Yes No

If yes, what was the outcome?

Recommended measures

Action	
Reason	
Responsible Person	
By When	

Action	
Reason	
Responsible Person	
By When	

Section D :

Employee Comments (please include date; attach additional paper if necessary):

Evaluator Comments (please include date; attach additional paper if necessary):

Recommendations by Supervisor / Evaluator:-

Should the employee's probationary period be extended: Yes No

Period required: _____

Reason : (explain benefit to employee and company for extending the probationary period, for example, what skills would be acquired by the employee through the extension of the probationary period itself):-

TO BE COMPLETED ONLY AT LAST EVALUATION BEFORE END OF PROBATIONARY PERIOD:

- I recommend this probationary employee become permanent and continuous.
- I recommend that disciplinary action be taken against this probationary employee before the end of the probationary period and will submit the appropriate forms.
- I recommend this probationary employee's probationary period be extended by a further _____ weeks / months. Note:- An employer may only decide to dismiss an employee or extend the probationary period after the employer has invited the employee to make representations and has considered any representations made. A trade union representative or fellow employee may make the representations on behalf of the employee.
- Employee resigned before completion of probationary period. (It is important that the HR Department receive this form even if employee has resigned.)

Comments to Evaluator and Employee. Evaluators should discuss the evaluation results with the employee. At a minimum, employees must be given a copy of the evaluation for their own records. Both the evaluator and the employee should sign the evaluation form. The employee signature indicates only that the employee received a copy of the evaluation. It does not necessarily signify employee concurrence. Both employees and evaluators are strongly encouraged to include written comments.

Note:- If the employer decides to dismiss the employee or to extend the probationary period, the employer should advise the employee of his or her rights to refer the matter to a council¹ having jurisdiction, or to the Commission (CCMA).

6 WEEKS
EVALUATION _____ (Evaluator Signature and Date) _____ (Employee Signature and Date)

12 WEEKS
EVALUATION _____ (Evaluator Signature and Date) _____ (Employee Signature and Date)

FINAL
EVALUATION _____ (Evaluator Signature and Date) _____ (Employee Signature and Date)

Copies of this evaluation must be placed on the employee's personnel file.

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