

> Industrial Relations Fair Work Information Sheet Probation

This fact sheet is relevant to all employers in Queensland.

Probation Period

The probation period may also be referred to as a qualifying period. The Act refers to a qualifying period. The qualifying period excludes employees from being eligible for unfair dismissal for six months (or 12 months for small businesses). Some awards and workplace agreements include a separate and specific probation period, so employers should check the relevant award or agreement and ensure that all new employees are aware of the correct period, preferably by including it in their contract or letter of offer or providing a copy of a relevant policy.

Using the Probation Period to Best Advantage

The probation period is designed to allow the employer to assess a new employee's skills, abilities, and suitability for the role and organisation, as well as allowing the employee to assess how suitable the role and organisation is for them. Many employers forget that a probation period works two ways and therefore fail to make the most of this time.

A probation period should start by giving new employees a proper and thorough induction. An induction is a base for performance, so a better induction results in better performing employees. If an employee understands the organisation and what is required of them, they are better able to meet expectations. Also, a properly conducted induction engages the employee and gives them a more favourable first impression of the organisation.

Employers should also conduct regular reviews of the employee's performance, generally every four weeks. The employer should set aside time to discuss the employee's progress in the role and address any concerns the employee may have. During these discussions, the employer can identify areas for development in the following weeks and evaluate improvement in areas previously identified. The employee might identify gaps in the training provided or suggest workplace improvements for the employer to follow up. This should be in addition to any immediate feedback provided while performing duties, rather than saving all feedback for the review. This helps keep the employee on track with expectations.

At the end of the probation period, a final probation review should be conducted to ensure the employee is competent to perform the role going forward, or alternatively to show the employee why they have not passed and are being terminated or having their probation extended.

Extending the Probation Period

Probation periods can only be extended in exceptional circumstances. For example, if the employee has taken a large amount of leave (2+ weeks) the period can be extended by this time to allow proper assessment, or if the employee has not quite reached the required performance standard the employer may wish to give the employee more time to achieve competency rather than terminate the employee. Extending probation does not extend the period for unfair dismissal claims. Extension is by agreement and must be in writing.

Leave Entitlement

Employees on probation still accrue and are entitled to take leave, subject to approval for annual leave, or evidence of illness if sick.

Terminating Probationary Employees

Notifying of Termination

All employees must be notified of termination in writing prior to the date of termination. All employees within a probationary or qualifying period are entitled to one week's notice. An employer may choose to make payment in lieu of notice, of the amount the employee would have earned had they worked out the notice period.

An employee is able to terminate employment during the probationary period by giving the same amount of notice as the employer. The employer may choose to pay out this notice period rather than having the employee return to work. If the employee does not give this amount of notice, where an award/agreement provides, the employer is entitled to withhold one week's wages from the employee's termination payment.

Termination Payment Entitlements

An employee terminated under probation has the same entitlements as an employee terminated at any other time. This means that they should be paid out for any annual leave accrual or unused time in lieu/RDO accrual. If the employee has taken any leave in advance of accruing, the amount of leave owing can be deducted from the termination payment, as can any other monies owing pertaining to the employment relationship only.

Possible Termination Issues

Under the Act, employees who have been employed less than 6 months (or less than 12 months for small business employers) are unable to make a claim for unfair dismissal. However, these employees are still able to make a claim for unlawful dismissal if they believe they have been terminated for a discriminatory reason or for exercising a workplace right. For that reason, it is still important to handle the termination with care. If you are unsure if the reason for termination may be construed as unlawful, contact CCIQ's EAL for assistance prior to terminating the employee.

CCIQ has dedicated consultants and legal practitioners who can help you with drafting agreements, contracts/letters of offer, review forms or termination advice letters on a fee-for-service basis. We can also assist you to investigate and defend a claim for unlawful or unfair dismissal. If you need help, contact us for a competitive quote.

For further information contact the Chamber of Commerce and Industry Queensland's Employer Assistance Line on 1300 135 822 or lodge a query at our Online Portal found on the CCIQ website under Employer Assistance Line.

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