

**GOOD  
PRACTICE  
GUIDE:**

# **Probation:**

**Line manager briefing on  
effective management of  
probationary periods**

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## Overview

Line managers should ensure that they operate effective probationary periods for all new employees, and in some cases in respect of employees who have been transferred or promoted into new posts. This line manager briefing aims to help line managers to understand the processes involved in managing probationary periods and to explain the law and good practice in this area.

### 1. The purpose of probation

A probation period is a trial period for a new employee. It allows both the line manager and the employee to assess objectively whether or not the new recruit is suitable for the role, taking into account the individual's overall capability, skills, performance and general conduct in relation to the job in question.

There is a strong argument that the use of probationary periods increases the probability that new employees will succeed in their employment. Conversely, the absence of an effective probationary review process may lead to an employee who is not suited to the job being retained indefinitely.

After one year's continuous service, employees gain the right to claim unfair dismissal. It is therefore preferable for line managers to identify and address any unsatisfactory performance or behaviour on the part of new employees during a defined probationary period, rather than condoning or disregarding it.

It is much easier for line managers to tackle any problems shortly after they arise. If they allow them to continue, the problems may well escalate.

It is also better for employees to receive immediate feedback, rather than remaining ignorant of their manager's dissatisfaction. If they receive feedback they will have a fair opportunity to improve their performance or change their behaviour.

### 2. Length of probationary periods

There is no standard period of probation, as the length of time necessary to assess a new employee's performance objectively will depend on the complexity and seniority of the job.

Typically, a probationary period will be for a defined period of time. This is often three months in respect of unskilled, clerical or junior administrative or technical roles, or six months for management, supervisory, professional or senior technical roles.

A probationary period should be long enough to allow the employee to settle into the organisation and learn the key elements of the job. It should also be long enough for the manager to assess whether or not the employee is capable of fulfilling the requirements of the job. The probationary period should not, however, be any longer than is necessary to achieve these objectives.

The period of probation applicable to each individual, and the terms that apply during probation, should be clearly defined and recorded at the time the individual is recruited.

### 3. The legal status of probationary periods

#### Did you know that ...

... there is no legal requirement for employers to use probationary periods with regard to new members of staff?

Despite the absence of any legal requirement to use probationary periods, they are an extremely useful management tool, provided that they are well structured and properly implemented.

Qualification for many statutory rights is based on the employee having been employed continuously for a specific period. For example, the right to claim unfair dismissal is dependent on the employee having at least one year's continuous service.

However, probationary periods have no meaning in law, so the existence of a probationary period will not affect a new employee's length of service or statutory employment rights.

Those statutory rights that are dependent on a minimum period of service will be based on length of service from the employee's original start date, and not from the date that marks the end of the probationary period.

It is important that all new employees are clearly informed that their employment may be terminated if they do not reach the required standards of performance within the stated probationary period.

Assuming his or her probationary period is less than 12 months, a new employee dismissed by reason of unsatisfactory performance at the end of the probationary period will have no claim of unfair dismissal against the employer.

### 4. Structuring the probation programme

During a new employee's probationary period, the line manager should follow a formal structured procedure that is aimed at assessing and reviewing the employee's performance, capability and suitability for the role.

It will be the manager's responsibility to structure the programme in such a way that both parties are clear about what to expect.

The programme should include:

- regular monitoring of the new employee's performance through progress meetings;
- identification and discussion of any problem areas at the earliest possible time;
- the provision of regular constructive feedback;
- supervisory support and guidance; and
- the provision of any necessary training and coaching.

Although the HR department should be available to provide support and guidance where required throughout the programme, all these actions will be the responsibility of the new employee's line manager.

A probationary period must be properly planned if it is to be effective. The programme also needs to be agreed with the new employee, who must be clear on what is expected of him or her. This information will include:

- clear job outputs, ie what the new employee is expected to achieve during, or by the end of, the probationary period;
- the standards of performance that are required in respect of the job duties;
- the standards or measurements against which the employee's performance will be assessed;
- any agreed development activities; and
- a description of any relevant standards of behaviour, for example in relation to liaison with clients and colleagues.

If the employee is unclear about any of these areas, he or she may lack commitment to the programme.

### **Training plan**

A probationary period will often include a training plan.

The idea of a training plan is to outline everything that the employee needs to learn in order to carry out the role effectively. A training plan might cover:

- specific job tasks;
- the organisation's procedures on, for example, health and safety or the use of computers;
- general workplace practices;
- product and/or technical knowledge; and
- computer skills.

The training should be structured in stages in order to enable the employee to work towards competent performance by the end of the probationary period.

## **5. Progress meetings**

The process of probation should include regular progress meetings between the line manager and the employee. It is advisable to conduct these at least once a month.

Monthly meetings throughout the probation period will allow the employee's performance and progress to be monitored on a "little and often" basis. Less frequent meetings may result in important issues being overlooked, or delays in the resolution of performance issues.

### **Planning progress meetings**

Progress meetings should be planned and scheduled at the outset of the employee's employment. It will be the line manager's responsibility to ensure that all probationary reviews are completed on time.

At each meeting, the manager should aim to:

- highlight areas where the employee is doing well;
- explain clearly and in precise terms any areas in which the employee is falling below the required levels;
- explore the possible reasons for any failure to meet the required standards;
- discuss and agree whether or not any specific training or coaching is required;

- discuss any other relevant matters such as timekeeping, attendance, general conduct or attitude;
- invite the employee to comment on issues such as the extent to which he or she has integrated into the department and how well he or she is getting on with colleagues; and
- give the employee an opportunity to ask questions or raise concerns about any aspect of his or her employment.

It is important that the manager does not restrict the progress meetings to discussions of problem areas, but also identifies and comments on the positive outcomes that the new employee has achieved.

Managers should be prepared to provide all possible support to their new employees in order to give them a fair opportunity to become fully integrated and productive employees in the longer term.

#### **Top tip**

Managers should make sure that they make diary notes of all an employee's probationary review dates at the start of the probationary period. Doing so will help ensure that the probation programme does not slip.

#### **Action plans**

At the end of each progress meeting, the manager should agree an action plan with the employee so that his or her progress can be monitored during the next few weeks.

The action plan should be documented in detail, stating what should be done, by whom, how and by when. In this way, the employee will be aware of what is expected of him or her by the time of the next review.

#### **Conducting progress meetings**

The monthly progress meetings should be a two-way process and provide both the manager and the employee with the opportunity to discuss progress on a one-to-one and confidential basis.

Where any concerns have arisen about the employee's performance, the line manager should discuss these fully and openly with the employee and an action plan to remedy the problem should be agreed. The line manager should always adopt a supportive attitude.

Where necessary, the line manager should clearly explain the consequences of underperforming to the employee. The individual should be helped to understand that a continued failure to achieve the required standards could ultimately lead to his or her employment being terminated.

#### **Dos and don'ts of progress meetings**

Do be clear and precise when discussing areas in which the employee is failing to meet the required standard, providing specific examples where possible.

**Do** give the employee prompt feedback if problems arise.

**Do** try to establish any underlying reason for performance problems.

**Do** focus on successes as well as failures.

**Do** be tolerant of mistakes - the new employee has to learn and cannot realistically be expected to do everything proficiently at first.

**Do** deliver any necessary criticism in a constructive way.

**Do** encourage the employee to raise any concerns or suggestions that he or she has about any aspect of the employment.

**Do** listen to what the employee has to say.

**Do** ensure that you set aside time to spend supporting the employee.

**Don't** automatically blame the employee for mistakes or lapses in performance.

**Don't** assume that unsatisfactory performance is being caused by something that it is within the new employee's control.

**Don't** postpone or cancel progress meetings unless this is absolutely unavoidable. Doing so will result in the employee assuming that he or she is unimportant to the organisation.

**Don't** allow interruptions during progress meetings.

**Don't** allow any personal like or dislike of the new employee to influence your assessment of his or her performance.

**Don't** expect perfection.

### **Communication skills required for a progress meeting**

If a progress meeting is to have a positive outcome, open, honest and unambiguous communication will be necessary.

The manager should:

- stick to facts and avoid expressing personal opinions, unless these are constructive and can be backed up by facts;
- be specific when identifying any shortfalls in performance;
- avoid generalisations such as "you never meet your deadlines" or "you're doing OK";
- ask open questions;
- listen actively to what the employee has to say and take it on board;
- ensure that the tone used is friendly rather than accusatory;
- use positive words such as "improvement" and "achievement", rather than negative words such as "failure" or "weakness"; and
- check for understanding, for example by asking the employee to summarise his or her understanding of what has been discussed.

## Keeping records

The content of progress meetings should be fully and clearly documented on a probation review form.

The form should provide an accurate record of what was discussed at the meeting, including any areas of concern, as well as a note of the areas in which the employee is performing well.

The probation review form should be completed and returned to the HR department and a copy provided to the employee. If there are any areas of disagreement over what should be recorded on the form, the manager should try to resolve these with the employee prior to the document being signed by both parties.

## 6. Final review

At the end of the probationary period, the manager should conduct a "final progress review" of the employee's performance and suitability for the job.

It is extremely important that the final review meeting is held on or before the end of the agreed probationary period. If the meeting does not take place by this date, technically the employee's appointment will be confirmed by default. This will mean that any subsequent dismissal on account of unsatisfactory performance will be harder for the employer to justify.

The final review will allow both the manager and the employee to:

- identify and discuss any areas in which the employee requires further training or development;
- check how the employee feels about his or her employment in general; and
- explain how performance will be managed in the future, for example through the employer's formal appraisal system.

If the employee's performance is satisfactory, the manager - or HR department - should issue a letter of confirmation of appointment to the employee.

If the employee's performance has not been up to the standards required, the manager should discuss the matter with the HR department before any decision is made not to confirm the employee's appointment.

## 7. Extending probationary periods

If, at the end of the set probationary period, the employee's performance is unsatisfactory - or in cases where the employee or the manager has been absent from the workplace for an extended period during probation - an extension of the probationary period may be appropriate.

An extension should normally be sought only where there are special circumstances justifying it. The manager should consult with HR prior to any decision to extend an employee's probationary period.

As an employee will gain the right to claim unfair dismissal after completion of 12 months' continuous service, any extension of a probationary period should normally be for no more than three months.

Where it is agreed that an employee's period of probation will be extended, it will be important for the manager to set out the terms of the extension in writing. It will be important to state clearly:

- the length of the extension and the date on which the extended period of probation will end;
- the reason for the extension - for example that the employee's performance has fallen short of certain standards, but the manager reasonably believes that an extension of time will be effective in allowing him or her to achieve these standards;
- the performance standards or objectives that the employee is required to achieve by the end of the extended period of probation;
- any support - such as further training - that will be provided during the extension; and
- that if the employee does not meet fully the required standards by the end of the extended period of probation, his or her employment will be terminated.

It is not advisable to extend an employee's period of probation more than once. It is equally inadvisable to make extending probationary periods the norm. An extension should be agreed only if there are special factors that justify it.

Where an employee's probationary period is extended, written details of how and why performance has fallen short of the required standards should be attached to the terms of the extension.

## 8. Terms and conditions during probationary periods

Although a period of probation will have no impact on an employee's statutory employment rights, it is open to an employer to make entitlement to certain contractual rights available only after satisfactory completion of a defined probationary period.

Line managers will need to check with their HR department which, if any, contractual rights are held back until employees have reached the end of their probationary period.

### Distinction between statutory and contractual rights — example

#### Payment of sick pay

**Statutory sick pay:** Statutory sick pay must be made available to employees from the first day of their employment. This is the case irrespective of whether or not the employee is subject to a probationary period.

**Contractual sick pay:** By contrast, contractual sick pay (ie payment of normal wages or salary during defined periods of sickness absence), which is not required by law, may be made available to employees subject to their having satisfactorily completed a defined period of probation.

## Notice periods

It is possible to define shorter periods of notice than normally apply to the organisation's employees during probation.

Employers are required by law to give employees defined minimum periods of notice to terminate their employment. These statutory minimum periods of notice can be extended through the contract, but not shortened (except in the case of gross misconduct on the part of the employee, in which case the employee may be dismissed without any notice).

Statutory notice periods come into play once an employee has completed one month's service. At that point, the minimum period of notice that the employer must give the employee to terminate the employment is one week. After two years' service, this rises to two weeks. From then onwards it increases by one week per completed year of service, up to a maximum of 12 weeks.

After one month's service the statutory minimum period of notice that the employee must give to the employer if he or she wishes to resign is one week. This does not rise with increased length of service. Again, the period of notice may be extended by a clause in the employee's contract.

It is common practice for employers to make new employees' employment subject to the statutory minimum periods of notice, and to specify longer notice periods that will apply once they have satisfactorily completed the period of probation.

If a new employee turns out to be unsuitable, it is preferable for the employer to be able to terminate the employment with the shortest possible period of notice.

## 9. Instituting probationary periods for employees transferred or promoted internally

It is open to an employer to place an existing employee on probation where he or she has been promoted or transferred into a new role.

This may be appropriate where the new job involves duties and responsibilities that are completely different from those of the employee's old job, for example where a shopfloor worker is promoted to the position of junior manager.

The employee's continuity of service in these circumstances will be unaffected by the promotion or transfer or by the probationary period. Continuous service will be counted from the first day of employment, and not the first day of the new job.

If the employee does not succeed in reaching the required standards for the new position, and if there is no suitable alternative position into which he or she can be transferred, the line manager may have no option but to terminate the employee's employment.

Since an individual in these circumstances will, in most cases, have more than 12 months' continuous service, he or she will have the right to bring a claim of unfair dismissal before an employment tribunal.

An employee in these circumstances will have no automatic right to be moved back into his or her previous job role, unless this was expressly agreed as part of the terms of the transfer or promotion.

## 10. Dismissing an employee during or at the end of the probationary period

If a probationer's performance is unsatisfactory, and it is clear that further training or support is unlikely to alter the situation, termination of the employment will be the next step.

Unsatisfactory performance in the job for which an individual has been employed is capable of being a fair reason for dismissal in law.

In order to give an employee a full opportunity to come up to the required standards, the line manager will usually wait until the end of the probationary period before taking a decision to terminate. However, if there is clear evidence to suggest that the employee is wholly unsuitable for the role, the line manager should consult HR with a view to early termination.

If the employee on probation transferred internally, the line manager should review whether or not there is any available alternative employment that might be offered to the employee in order to avoid the need to terminate his or her employment.

Any proposal to transfer the employee again - whether back to his or her old job or to an alternative role - will need to be agreed with the employee concerned.

### **The (repealed) statutory dismissal and disciplinary procedures**

In October 2004, statutory dismissal and disciplinary procedures were introduced into employment law, requiring employers to take certain procedural steps when dismissing employees. Although the dispute resolution procedures have since been repealed (from 6 April 2009), they continue to apply in Northern Ireland.

Where the statutory dismissal and disciplinary procedure continues to apply, any failure by the manager to adhere to it will make the dismissal automatically unfair. An employee will, however, need one year's service to bring an unfair dismissal claim - and most employees on probation will not have been employed for this length of time.

However, no minimum length of service is required to bring many other tribunal claims, including discrimination claims. If the dismissed employee brings such a claim, the employment tribunal has the power to increase any compensation awarded by between 10% and 50% as a result of the employer's failure to follow the statutory procedure.