



PROBATIONARY EMPLOYMENT

A Practical Tool for Successful Hiring and Establishing a Stable Employment Relationship

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The most common reason employers opt to conclude an Employment Agreement with a probationary period is the lack of sufficient information regarding the professional qualifications and competencies of the candidate.

Probationary employment thus proves to be a useful mechanism that allows greater contractual flexibility if it becomes evident that the employee does not possess the required qualifications for the specific position, or if the employee finds the new work environment unsuitable.

Positions Subject to Probationary Employment

A probationary work period may be agreed upon for the performance of duties for which the employment relationship is established, i.e., duties defined by the Employment Agreement and the Rulebook on Organization and Job Classification, if adopted by the employer.

Purpose of the Probationary Period

The purpose of the probationary period is for the employee to demonstrate their professional and work-related competencies, and for the employer to assess whether these competencies meet the requirements of the position.

To properly evaluate the employee's performance, the employer must closely monitor the employee's work, professional qualities, and achievement of set standards and goals during the agreed probationary period.

Monitoring should be entrusted to a competent individual or committee—defined as persons possessing appropriate qualifications, knowledge, and experience necessary for evaluating the employee's performance.

Based on this monitoring, the employer provides a final assessment of the employee's professional and work-related competencies.

In practice, it is advisable that the results of such monitoring and evaluation be documented in a written report, which becomes particularly important if the employee fails to meet expectations and the employer decides to terminate the Employment Agreement.

Duration of the Probationary Period

The employer and employee are generally free to agree on the duration of the probationary period, with the legal limitation that it may not exceed six months.

Although the minimum duration is not defined by law, the nature of the job and the purpose of the probationary period require that it be long enough for the employer to assess, and the employee to demonstrate, the necessary competencies.

Termination of Employment During the Probationary Period

Both the employer and the employee have the right to terminate the Employment Agreement during the probationary period, with a notice period of at least five working days (unless a longer period is stipulated by general acts or the Employment Agreement).

The employer is obligated to provide a justification for termination during the probationary period.

Such termination may occur before the end of the agreed probationary period if the employee clearly fails to demonstrate the required competencies.

However, the employer must objectively determine that the employee does not meet the standards and criteria, and must provide a reasoned explanation.

The termination decision must include facts established through monitoring and the reasons why the employee's performance was deemed unsatisfactory.

Termination Upon Expiry of the Probationary Period

If the employer concludes that the employee has not demonstrated adequate competencies during the probationary period, the employment relationship ends on the date of expiry of the probationary period, based on the employer's decision.

Unlike termination during the probationary period, this scenario does not require a notice period.

Nevertheless, the decision must include a reasoned explanation of why the employee was found to lack the necessary competencies.

Practical Considerations

Issues related to probationary employment are accompanied by diverse judicial practices, often leading to contradictory conclusions.

Therefore, it is beneficial to regulate the process of monitoring and evaluating employee performance during the probationary period to avoid misunderstandings and potential disputes.

Practical Legal Recommendations for Lawful Conduct Include:

- **A clearly defined Employment Agreement** specifying the duration of the probationary period and the employer's expectations.
- **Establishing an effective onboarding system**, including designation of responsible persons for training and evaluation.
- **Implementing internal rules and procedures** (e.g., in the Labor Rulebook) that transparently regulate onboarding and performance evaluation.
- **Proper monitoring, documentation, and assessment** of employee performance and competencies during the probationary period.

With clear communication between employers and employees, probationary employment can be a beneficial mechanism for both parties - providing employers with flexibility in staffing decisions and offering employees a fair opportunity to demonstrate their abilities.

When properly implemented, probationary employment can serve as a foundation for successful and long-term collaboration.

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