

THE 90 DAY TRIAL PERIOD EMPLOYER RIGHTS AND OBLIGATIONS



By providing for an initial period in which to assess the suitability of the employment relationship, the 90 Day Trial Period enables employers to reduce the risk of taking on new staff.

The law around the 90 Day Trial Period is still developing. At the present time, there has been one decision of the Employment Court on the trial period legislation, which of course, had its own particular fact scenario.

HIRING

If hiring an employee on a trial period an employer should take the following steps:

1. Ensure that the employee has not been previously employed by the employer or has previously worked for the business/place of employment. NB: take particular care if you are purchasing a business and taking on existing employees.
2. If the above requirement is met, and the employer wishes to use a trial period, the trial period provision must be written in the employee's employment agreement.
3. The trial period provision contained in the employment agreement must state that:
 - for a specified period not exceeding 90 days, starting at the beginning of the employee's employment, the employee is to serve a trial period; and
 - during that period the employer may dismiss the employee, and if the employer does so, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.
4. Before the employee commences employment, an employer must make sure that the employee:
 - receives a copy of their employment agreement containing the written trial period provision;
 - is made aware of the trial period provision contained in their employment agreement;
 - has the opportunity to take advice on the employment agreement ; and
 - signs the employment agreement.
5. An employer must not treat an employee on a trial period differently from an employee whose employment agreement contains no trial period provision.
6. An employer must act and deal in good faith with the employee.

If you have any questions about trial periods, please do not hesitate to contact the Employment Law team at Hesketh Henry on 09 375 8700 or employmentteam@heskethenry.co.nz



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DISMISSAL

If you are considering dismissing an employee during their trial period the following steps should be taken:

Firstly, ensure the following 3 points are in place:

- Make sure that the employee has a trial period provision in their employment agreement.
- Make sure that before the employee commenced employment that the employee:
 - received a copy of their employment agreement containing the written trial period provision;
 - was made aware of the trial period provision contained in their employment agreement;
 - had the opportunity to take advice on the employment agreement ; and
 - signed the employment agreement.
- Ensure that the notice of termination is being given before the end of the trial period, whether the termination takes effect before, at, or after the end of the trial period.

Assuming the above has been implemented:

1. **If the employee requests it**, an employer must give the employee a reason as to why they are being dismissed during their trial period. The reason given must not be misleading or deceptive. **The reason does not have to be given in writing.**
2. Under the Act, an employer is not required to give an employee access to information regarding the decision to dismiss or the opportunity to comment on the information before a decision to dismiss is made.
3. An employer, if requested, is not required to provide a statement in writing of the reasons for the dismissal.
4. **Ensure that notice is given** – applicable notice is that contained in the trial period provision in the employee's employment agreement.
5. **If there is no notice period specified in the trial period provision, then the notice contained in the termination or notice clause of the employment agreement is to be applied.**

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