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What you need to know about trial and probation periods

Including a trial period in your employment agreements can protect you from hiring an employee who might not have the right skills or attitude. However, it is important to use them correctly.

Discover what you need to know about trial and probation periods.

Trial periods

What you need to know

You have to:

- include the trial period in the employment agreement (it can be up to 90 days long) and have both parties sign it before they start work – otherwise it has no legal grounds if it's contested
- give the employee all the benefits of a permanent staff member, like holidays and sick leave, while they're on trial.

You can't:

- put an existing employee on a trial period – they're for new employees only
- extend the trial once it ends – the employee becomes permanent unless you dismiss them before the end of the trial period.

If you decide to dismiss the employee within the trial period:

- they can't raise a personal grievance against you on the grounds of unfair dismissal
- they can still raise a personal grievance if they think you've discriminated against them or harassed them
- their notice period still applies.

Case study

Testing times

Mark's plumbing business is a growing venture and is now so busy he needs to hire additional staff. He hires two qualified plumbers Jim and Thomas, including a 90-day trial period clause in their employment agreements.

Thomas proves early on that he is quite capable of handling the quality of workmanship required and he has had great feedback from customers. Mark is confident that Thomas will be a positive addition to the business and could be trusted to take on additional responsibilities in the future.

After a month, it's clear Jim is habitually late and that his work is sub-standard.

Mark asks Jim what's up – an important step in resolving the issue, as perhaps Jim doesn't have the right tools. Jim doesn't have an explanation, so Mark gives him an initial warning. He records the meeting in Jim's file and arranges a follow-up meeting.

A week later, Jim's conduct has worsened. Mark checks the employment agreement and sees he must give two weeks' notice of dismissal. He notifies Jim and offers to pay him out instead. Jim agrees and Mark goes through his employee exit checklist.

A trial period is only valid if included in a written employment agreement.

Quiz

Test yourself on employment basics

Find out what you know about hiring and managing people.



A trial period is only valid if included in a written employment agreement.

Use our new [Employment Agreement Builder\(external link\) \(https://eab.business.govt.nz/\)](https://eab.business.govt.nz/) to work through the necessary steps to create a proper agreement.

Probation periods

A probation period is different from a trial period.

A probation period is:

- for an agreed length of time
- at the start of employment
- so an employee new to the job can demonstrate their skills (they can be an existing employee who has applied for a new job with their employer), and
- so you can assess them.

What you need to know

You have to:

- include the probation period in the employee's employment agreement before they start work
- give the employee all the benefits of a permanent staff member, like holidays and sick leave, while they're on probation.

You can:

- use a probation period no matter how many employees you have.

You can't:

- use a probation period to get work done for free – you have to pay a full wage while the employee is on probation.

If you decide to dismiss the employee during the probation period:

- they can still raise a personal grievance for unfair dismissal
- you must follow a fair process
- you'll need to show there was a valid reason for dismissal.

If the reason is connected to the probation, it must be because the employee isn't performing to the expected standard in the agreed time. You must have given support and training for this to be a valid reason.

Don't use a fixed-term contract in place of a trial or probation.

This is prohibited. To hire an employee on a fixed-term contract, there must be a genuine reason for the job to only last a certain period of time — like seasonal work or cover for parental leave. Read more about [fixed-term contracts \(/hiring-and-managing/hiring-people/how-to-hire-fixed-term-casual-employees/\)](#).

If you run into problems — mediation

If there's a problem during a trial or probation period, you and your employee can get help from Employment Mediation Services. Their service is free, private and confidential. They can help you:

- solve problems
- identify issues
- improve communication.

Mediation can be:

- an email or phone call
- a meeting somewhere private where both parties feel comfortable.

[Employment New Zealand's contact page\(external link\) \(https://www.employment.govt.nz/about/contact-us/\)](https://www.employment.govt.nz/about/contact-us/)

[Trial and probationary periods\(external link\) \(https://www.employment.govt.nz/starting-employment/trial-and-probationary-periods/\)](https://www.employment.govt.nz/starting-employment/trial-and-probationary-periods/) — Employment New Zealand

[Employment Mediation Services\(external link\) \(https://employment.govt.nz/resolving-problems/steps-to-resolve/mediation/\)](https://employment.govt.nz/resolving-problems/steps-to-resolve/mediation/) — Employment New Zealand

[Resolving employment issues\(external link\) \(https://www.employment.govt.nz/resolving-problems/\)](https://www.employment.govt.nz/resolving-problems/) — Employment New Zealand

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