

# Employee Probation



**An employee on probation is a newly hired employee on a conditional employment contract.**

This is to evaluate the employee's work performance during the probationary period to ascertain if he/she is able to perform the work at the required standard, before confirming the appointment.

Probation is dealt with in terms of the Code of Good Practice – Dismissal, Schedule 8 to the Labour Relations Act.

## **Important to note:**

- Probation as regulated in terms of the LRA only **applies to newly hired employees** – not employees who are promoted on a trial basis.
- Probation is not compulsory – the employer can decide if it is necessary when appointing an employee.
- Statutory probation and the applicable requirements, period, etc. must be agreed upon up front in the contract of employment.
- There is no prescribed probation period – the only requirement is that it must be “reasonable” and it depends on the nature of the job.
- The probationary status of an employee is only applicable to issues of work performance (competence) – it has no relevance to misconduct perpetrated by the employee during probation, nor can it be an easy way out for the employer on the basis of an arbitrary issue concerning the employee. All issues other than work performance (competence) must be dealt with in the same way as with any permanent employee. A probationary employee is still entitled to protection by labour law.

Probation also does however also not mean that the employer can fire the probationer “at will” if it is not satisfied with his/her performance. There is a process to follow and legal requirements to be met. The dismissal must be substantively and procedurally fair.

*The South African Labour Guide*