

Newsletter



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Avocats • Lawyers

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What are your obligations towards an employee on probation?

You just hired a new employee. In the employment contract, or under a verbal agreement, you specify that the employee will be on probation for a period of six months. What are the consequences of such a condition?

Salary

The question of compensation is easily answered: an employee on probation has a right to be paid. Under [s. 57](#), para. 4 of the *Labour Standards Act*, “[a]n employee is deemed to be at work [...] during any trial period or training required by the employer.”

The end of probation

As an employer, a reasonable application of your management rights allows you to supervise your new employee, to inform her of your objectives and to help her achieve those and, eventually, if the performance is not convincing, to terminate the employment.

The rules on termination do not differ whether the employee is on probation or not. If the termination occurs during the first three months of service, you do not have to give a notice, by application

of [s. 82.1](#) of the *Labour Standards Act*. But if the termination occurs after three months of uninterrupted service (and within the planned six-month probation), a one-week notice is required, except under exceptional circumstances (if the employee has committed a serious fault, for instance).

What about temporary leaves of absence?

Here, things can become delicate. Under your original agreement, you simply stated that the employee would be on probation for six months. What happens if, during this period, your employee takes a two-week sick leave?

Normally, a probation period is reserved for training and for performing the work; in other words, for job-related activities. The sick leave should therefore be excluded from the six months,



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and the probation period should be suspended.

For added certainty, probation periods should be measured in hours worked. A six-month probation for a job with 40-hour weeks could therefore be counted as 960 hours worked, including all time spent training and performing the work.

Lessons to be learned

The purpose of a probation period is to ascertain whether an employee is able to hold a given position. This could apply equally to a new hire or to an em-

ployee being promoted to a new position.

A probation can therefore be an effective way of making sure that you have found the ideal candidate for a position. Just keep in mind, however, that an employee on probation, just like a “regular” employee, is entitled to some legal protection.

