



TJ SOLUTIONS HR TIPS

BEST PRACTICES REGARDING PROBATIONARY PERIODS

We often get questions about the probationary period and whether it should be three months or longer. We recommend a six-month probationary period as it gives both the employer and the employee enough time to determine if the hire has been successful.

Successfully orienting new employees to your organization often takes up to eight weeks due to the numerous policies and practices that must be reviewed. This leaves little time in a three-month probation period to assess the employee's performance. Since the cost of hiring and firing is so great both in terms of time and money, many employers have begun to give themselves more time to assess new employees by increasing the probation period to six-months.

This allows both the employer and the employee more time to determine if the position is really a good fit for both parties. Regardless of the length of the probationary period, employers should keep in mind that there are Employment Standards Act (ESA) and Accessibility for Ontarians with Disabilities Act (AODA) requirements attached to the probationary period.

Employment Standards Act

Under the employment standards act in Ontario, employers do not owe any notice or pay in lieu before 90 days.

If your organization has an extended probationary period of longer than three months (4-6 months) you will owe at minimum at least one notice or one week's pay in lieu for termination which should be highlighted in your employment contact.

Accessibility for Ontarians Disability Act Requirements

All businesses in Ontario are required to comply with the Accessibility for Ontarians Disability Act. During the probation period if the employee requests an accommodation, under the Act, you are required to provide an accommodation up to the point of undue hardship. You cannot use the disability as reason to release the employee during the probationary period. If you receive a request for accommodation you must accept the request in good faith and do an analysis of how the request can be accommodated even if it means modifying the requirements for the job that they were just hired to do. Failure to offer an accommodation may result in the employee making complaint against your organization under AODA or Human Rights Legislation.

Using an Employment Contract

We strongly recommend that all organizations use indefinite term employment contracts for all positions except when hiring to cover leave of absences and summer program positions.

Employment contracts should have clear language on the length of the probationary period including a termination clause that sets out the amount of notice or pay in lieu of notice that the employee is entitled to upon termination during the probation period.

Failing to include any language regarding the length of the probationary period and the terms of termination in employment contracts could result in an employee claiming constructive dismissal and sue for severance.

Managing Probationary Employees

There is an expectation under the ESA that employers will “act in good faith” and provide an employee every opportunity to succeed. Decisions to let an employee go during a probationary period can’t be arbitrary and should be based on measurable criteria. (punctuality, quality of work, conduct, professionalism, accuracy, following policies and procedures etc.)

No matter how long your probationary period is, you should have interim reviews of the employee’s performance before their probationary period ends. All discussions with the employee regarding their performance (both positive and negative) should be documented with a copy given to the employee and the other kept in the employee’s file.

Policies & Practices

Clearly written policies and practices are key for organizations to be able to demonstrate due diligence and good faith practices when it comes to managing new hires.

Organizations should have up-to-date employment contracts, hiring policy, orientation policy and probationary period policy.

If you need help with your employment contracts, hiring policies, orientation policy, etc. please feel free to contact us at askus@tjsolutions.ca or at 416 388-516-8888.

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