

**Bargaining Support Group**



**Negotiating  
probation  
policies**

  
*the public service union*

## **What is probation or a probationary period?**

The term 'probation' or the phrase 'probationary period', both commonly used in employment, are not legal terms within employment law. Instead they are used to denote the early stage of employment when a worker is first taken on in a role.

A probationary period can only apply if it is specifically mentioned in the individual's contract of employment. It cannot affect an individual's statutory employment rights.

However, employers may decide that some contractual terms will vary or not apply during this period. But again, these differences need to be made clear in the individual's contract of employment.

## **What should be the purpose of probation?**

The probationary period should be a clearly defined period at the start of employment for the new employee to settle in, receive a thorough induction, ongoing supervisory support, training and regular reviews, feedback and guidance. The aim is for the employee to get to know the key elements of their job and how their skills and experience can be used effectively to achieve the job's requirements.

Although it is in effect a trial period for both the employer and employee, the emphasis is mostly on the employer checking on whether they consider their new recruit is actually up to the job. But employers should only use it to objectively assess the new employee's potential capability, performance and conduct, not as a means of seeing if the worker is generally liked or 'fits in' with a team.

New employees should ideally be given the impression during the probationary period that the organisation is one that celebrates diversity and differences in people, not an organisation that finds such differences a problem. It is important for the trade union rep to be watchful that the employer takes account of the individual needs of new employees, for example those who are disabled and need reasonable adjustments, or those who are new to the world of work or have been out of the workplace for some time.

## **How long does a probationary period last?**

There is no set period but commonly probationary periods are for 3 or 6 months.

Sometimes employers include a clause in the employment contract or probation policy that allows them to extend the period should they have reservations about the capability or conduct of the new worker. This would be when they feel unable to confirm the employee as a permanent member of staff without a further trial period.

However, the probation should never be extended without good reason. It should be a relatively brief period within the employment service period.

## **What happens during the probationary period?**

Whilst the new worker is on trial, the employer may choose not to give them the same benefits and conditions as permanent staff.

For example, the employer may have a much simpler dismissal process and a shorter notice period during the probationary period. They may specify that probationary employees will not receive contractual sick pay (only statutory sick pay), until they have successfully completed their probation.

These sort of variations are common. However, the employer must still fulfil statutory requirements (see below).

It should be made clear to the new staff member the purpose of the probationary period, how they will be supported during this time, the standards required and how they will be updated with progress throughout the probationary period. A key aspect of a fair dismissal during the probationary period is that it should not come 'out of the blue', but appropriate warnings and additional support should have been in place before a decision on dismissal is made.

## **What are the basic rights of a new employee?**

All workers (not just employees) have a right to a 'written statement of employment particulars' summarising the main terms of their employment, from the first day on the job. The written statement will need to include:

- the employer's name
- the employee or worker's name
- the employment start date
- the date that 'continuous employment' (working for the same employer without a significant break) started for an employee
- job title, or a brief description of the job
- the employer's address
- the places or addresses where the employee or worker will work
- pay, including how often and when
- working hours, including which days the employee or worker must work and if and how their hours or days can change
- holiday and holiday pay, including an explanation of how it is calculated if the employee or worker leaves

- the amount of sick leave and pay (if this information is not included in the document, the employer must state where to find it)
- any other paid leave (if this information is not included in the document, the employer must state where to find it)
- any other benefits, including non-contractual benefits such as childcare vouchers or company car schemes
- the notice period either side must give when employment ends
- how long the job is expected to last (if it is temporary or fixed term)
- any probation period, including its conditions and how long it is
- if the employee will work abroad, and any terms that apply
- training that must be completed by the employee or worker, including training the employer does not pay for.

If further details are held in a policy (such as in a separate probation policy), then the statement must clearly state this, and where the policy can be found.

In addition, the employer must provide the employee with itemised pay statements. There are other details that the employer can provide later but within two months of the employee starting the job.

### **More information on the written statement of employment particulars and employment contracts from Acas**

[www.acas.org.uk/what-must-be-written-in-an-employment-contract](http://www.acas.org.uk/what-must-be-written-in-an-employment-contract)

Under the Employment Rights Act 1996, an employee with up to two years service has the right to at least one week's notice. For each subsequent completed year of service, the notice period increases by one week up to a maximum of 12 weeks.

Therefore within a probationary period, an employee must be given at least one week's notice for dismissal, unless they have less than one month's service. If the employee has less than one month's service, they can be dismissed immediately.

As well as being used for new employees, probationary periods are sometimes used when a staff member is transferred or promoted internally. In this situation the employee's continuous service will start from the first day they started working at the organisation, rather than the first day they started in this new role. Therefore the statutory notice period may be much longer.

Regardless of the length of notice that must be given, dismissal should always be fair and reasonable. Although not a legal requirement, one way of helping to ensure this is for the employer to follow the **Acas Code of Practice on Disciplinary and Grievance Procedures** ([www.acas.org.uk/acas-code-of-](http://www.acas.org.uk/acas-code-of-)

[practice-on-disciplinary-and-grievance-procedures](#)). In particular they should allow the new employee the opportunity to appeal against the decision if they feel they have been unfairly treated.

In addition, all workers from day one (including probationary workers) have a legal right to be accompanied to a statutory disciplinary or grievance hearing by a work colleague or trade union representative.

As the **Acas guide 'Starting Staff: Induction'**

([https://archive.acas.org.uk/media/4436/Starting-staff-induction-guide/pdf/Starting\\_staff\\_-\\_induction\\_Nov.pdf](https://archive.acas.org.uk/media/4436/Starting-staff-induction-guide/pdf/Starting_staff_-_induction_Nov.pdf)) explains, "if the employer wants to dismiss the employee, it must handle the dismissal correctly and include:

- giving the correct notice - which must be at least the statutory minimum or any more favourable period set out in their employment contract
- paying any outstanding wages
- paying holiday pay for accrued annual leave that hasn't been taken
- dismissing the employee fairly in line with the Acas code of practice on disciplinary and grievance procedures if they are a transferring employee that has at least two years' continuous employment with the employer
- dismissing the employee in line with any relevant contractual dismissal procedures."

Although an employee cannot make a claim of unfair dismissal at an employment tribunal until they have two years' employment service, all workers from day one of their employment, whether during the probationary period or not, have the right not to be discriminated against, victimised or subjected to any other detriment on grounds of sex, gender reassignment, pregnancy or maternity, being married or a civil partner, race, colour, nationality, national or ethnic origins, disability, age, sexual orientation, or religion or belief.

Similarly they are protected from an automatically unfair dismissal from day one of their employment. This is when the principal reason for dismissal is for a legally specified unfair reason such as pregnancy, whistleblowing, the assertion of a statutory right or trade union activities.

Additionally, although they may not be able to claim unfair dismissal unless it is for one of these automatically unfair reasons, there could be the potential for claiming a breach of contract (or wrongful dismissal) should procedures specified within the employment contract not be followed (such as the disciplinary process or notice period).

Of course, an employee who has already been working at the organisation, but who is now on probation in their new role or promotion, may have accrued sufficient continuous employment service to be able to claim unfair dismissal at an employment tribunal. So the employer should show particular care when following the probation policy and varying conditions in such cases.

## What happens when an employee experiences problems during probation?

It is important for both the employer and the new employee that any problems are identified early and promptly. Therefore, if a probationary period is going to be useful it should have a clear structure with regular one-to-ones with the line manager, documented progress meetings and constructive feedback given. But also the line manager should make clear the potential outcome of poor performance standards so that any consideration of extending the probationary period or even potential dismissal, does not come as a complete shock to the new starter.

However, the manager should not be using this potential outcome as some kind of 'threat' to put unnecessary pressure and anxiety on the worker during these early days. Such treatment towards the new starter might amount to bullying behaviour or harassment, which could be discriminatory.

It is obviously important that the employee is clear about what they are expected to achieve in the probationary period and the standards of performance expected for specific duties. But too often line manager's may neglect to communicate these fully or clearly, or assume that someone else is dealing with queries and clarifications.

The induction process needs to be clear and thorough, and new staff members should be encouraged to ask for guidance and support from their manager. Difficulties may only require some training to update skills, or perhaps a mentor or work 'buddy' to help instil confidence, introduce them to the team and provide coaching or more hands-on guidance.

The probationary period is also a good time to ensure that the individual needs of the new employee are being met. For example, if the staff member is a disabled person, they may identify barriers at work and appropriate reasonable adjustments will need to be put in place. If the new employee has caring responsibilities they may need to request flexible working in order to balance care and work more successfully.

At the end of the probationary period, as described in the [Acas guide 'Starting Staff: Induction'](#): "it is decision time – are they going to stay or leave? If the employer is still unsure whether the employee is suitable for the job, it could extend the probationary period if the contract permits and/or the employee agrees..."

If the probationary period is to be extended, then the employer should be very clear about why this is taking place, what improvements are expected and what

standards are required for the role, as well as what support the worker will receive to help them achieve this.”

It may be reasonable for the probationary period to be extended if the new starter was absent for an extended time, perhaps due to an unexpected illness. But disabled employees, for example, who are absent on disability related leave should not be disadvantaged as it could potentially be discriminatory. Similarly those who have an unexpected absence due to issues related to pregnancy or caring responsibilities, for example, should not be disadvantaged as it may be discriminatory.

If the issue is performance, then the line manager must be clear on what is expected to be achieved to improve and any support available. Any extension has to be fully justified by the employer.

### **What should happen when the probationary period is completed successfully?**

Ideally, the employee’s manager should confirm the successful completion of the probationary period at a meeting and in writing. However, too often the date or process gets forgotten and the employee is made permanent by default as the period of employment continues.

The important thing for the employee to remember is that their contractual rights and benefits might change after the probationary period has ended.

Contact your **regional education teams and / or LAOS** to find out what training and resources are available to assist you with negotiating with your employer or promoting the issues in this guide with your members

<https://learning.unison.org.uk/>

If branches or rep have any comments on this guidance or any experiences that could be usefully incorporated in the guidance, please contact Bargaining Support at [bsg@unison.co.uk](mailto:bsg@unison.co.uk)

**Further bargaining guidance** [www.unison.org.uk/bargaining-guides](http://www.unison.org.uk/bargaining-guides)

## Checklist

- Is the probation policy mentioned in the contract of employment? Does it specify how long the probationary period will last? If there are any conditions to the probationary period such as reduced notice period, are these clearly specified in the contract of employment?
- If the probationary period can be extended is this specified in the contract of employment? Are potential reasons specified for any such extension and are they fair, reasonable and non-discriminatory? Is the extension limited to a further brief period?
- What contractual terms does the employer want to vary during the probationary period? An important negotiation area would be over these terms. For example, the employer should still ensure a fair dismissal process with the right to accompaniment, a right to appeal the decision and provide a reasonable notice period, as well as access to other benefits enjoyed by permanent staff members.
- Do line managers receive training on how they should support and guide new employees during the probationary period, provide regular one-to-ones and documented progress meetings, constructive feedback and thorough induction?
- Is there an agreed induction process for all new staff?
- Are new staff members made fully aware of the requirements of their job, expectations and standards? Are any problems identified early and promptly by their line manager?
- Have they received a written statement of particulars either before or on their first day of employment? These details may be contained within the full contract of employment.
- Do new members of staff receive additional support such as training opportunities, a mentor or workplace 'buddy'?
- Are new members of staff encouraged to raise queries with their line manager and ask for guidance and support?
- Are reasonable adjustments provided for disabled workers and flexible working allowed for workers with caring responsibilities?
- Do new staff members receive an itemised pay statement whenever they are paid?
- When the probationary period ends, are employees formally confirmed as permanent members of staff? Are they aware of any additional benefits that are now available to them?

- If the probationary period is to be extended, are the employees clear about why this is considered necessary and for how long, as well as what is expected to be achieved to improve and any further support available?
- If an employee is to be dismissed during the probationary period, is a fair procedure followed? Is the correct notice period given? Have they been paid any outstanding wages or holiday pay due?
- Do staff members on probation in a new role who have been transferred internally or promoted, made aware of their statutory rights such as notice period based on their continuous service, not just on their service in the new role?

## Example contract or probation policy clauses

Please note that the text in square brackets [...] indicates where branches and workplace reps need to complete information specific to your workplace, or else are notes for you to consider in relation to your negotiations.

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The main purpose of the probationary period is to enable new members of staff to gain a full understanding of the requirements of their post and of the organisation, to assess the suitability of the role with the benefit of first-hand experience, and to achieve an acceptable level of performance within a certain period of time.

It provides a framework for managers to assess the performance of new members of staff, for feeding back on good performance and for improving performance if necessary.

Following their induction and appropriate supervisory support and guidance, if a new employee's performance does not meet the required standard by the end of the probationary period, then their employment with **[name of organisation]** will be ended.

***[It is useful to clarify the purpose of the probationary period for both the employee and managers, and to be clear from the start that successful completion of the probationary period is important for permanent employment with the organisation. Dismissal during probation for poor performance should not come as a unexpected shock 'out of the blue' to the employee.]***

The probationary period is three months ***[which is a common period – more senior roles may have six months]*** unless it is extended on reasons of poor performance or if it has not proved possible to adequately assess performance in that period.

***[There would need to be for a fair reason such as a period of sickness absence to not be able to adequately assess performance in the standard probationary period time-frame. However, caution should be shown if this absence is linked to a long-term health condition or disability, in case the treatment is considered as potentially discriminatory. Similarly if the unexpected absence is linked to pregnancy or caring responsibilities.]***

The length of the probationary period must not exceed ***[three, for example]*** months in total, or ***[five, for example]*** months if extended.

***[It is important that the probationary period is not dragged out unnecessarily and the employer properly commits to the new staff member.]***

During the probationary period employment may be terminated by one week's notice in writing by either party.

***[This is the common notice period during a probationary period but you may wish to try to negotiate a longer period of time to carry out a fair dismissal process – although again, it is in nobody's interest to drag out the process unnecessarily.]***

During the probationary period, line managers must set out clear objectives and standards which are required for the job role and ensure the employee understands them.

***[It is important that the employee is clear about what is expected of them. But also they know the level of support and induction they should be receiving during the probationary period.]***

Line managers have a responsibility to ensure that all progress meetings and induction and training take place in a timely manner, that new employees understand the probationary period and the consequences of failing it. Line managers will need to liaise with, support and provide constructive feedback to new employees to help ensure that they are reaching or are capable of reaching the required performance standard to undertake their job.

Probation progress meetings will take place.....

***[These should be specified – at least one review meeting half way through the probationary period as well as at the end of the period, or alternatively perhaps monthly.]***

In addition, other meetings between the new employee and their line manager may take place as and when necessary.

Staff within their probationary period will not be eligible for.....

***[If the employer is to vary benefits such as contractual sick pay available for probationers, they should be very clear about this.]***

Where the performance of the new employee is satisfactory, confirmation will be given to the employee in writing that a successful probationary period has been completed.

Where performance issues cannot be resolved within the probationary period, the employment will be terminated through a fair and transparent process.

***[It is important to be clear about the dismissal process, particularly if the organisation's full disciplinary procedure does not apply during the probationary period. The new employee should still have a hearing at***

***which they can be accompanied by a trade union representative or work colleague, as well as a right to appeal against the decision made. The process should not be rushed but clear and transparent.]***

The full disciplinary and grievance procedures do not apply to probationary employees. However in cases of dismissal or gross misconduct, the minimum requirements as outlined in the Acas Code of Practice on Disciplinary and Grievance Procedures will be followed.

Internal candidates who move to a new post within ***[name of employer]*** will not be subject to a probationary period.

***[This is preferable rather than to impose a further probationary period on a member of staff who has already been confirmed and is likely to have received considerable supervision and appraisal.]***