

## Why you can't just fire an employee at the end of a probationary period

Bob was fed up with hiring the wrong staff. Twice he had his fingers burnt. The first time he ended up defending a personal grievance and the second time the employee in question made a number of very costly mistakes before eventually resigning. This time was going to be different: now Bob had an employment agreement which contained a 1 month probationary period.

### But this time wasn't different

After only 3 days it was obvious to Bob that he had made another hiring mistake. Karen came across very well in the interview and her CV showed lots of big company experience. However, when it came to managing a small business her lack of organizational skills became very apparent. Hiring Karen wasn't the problem: it was what he didn't do after that which cost him so much money defending a personal grievance. What Bob didn't do which cost him money. Knowing that Karen was on a 1 month probationary period Bob decided that he would simply let the 1 month period expire then give Karen notice. That was his biggest mistake. What Bob didn't realise was that even employees who are under a probationary period are entitled to be given a fair chance.

### Why you need to give probationary employees a fair chance?

Unfortunately, just because Karen was under a probationary period, it didn't mean that Bob could ignore fair procedure when terminating Karen's employment. The reason is all to do with s67(b) of the Employment Relations Act which says: Neither the fact that the probation or trial period is specified, nor what is specified in respect of it, affects the application of the law relating to unjustifiable dismissal to a situation where the employee is dismissed in reliance of that agreement during or at the end of the probation or trial period

### How Bob should have dismissed Karen

What Bob should have done was this. When he realised that Karen wasn't up to the job she should have sat her down and told her precisely where she was underperforming and exactly what she needed to do to improve. If any further training was required then that should have been identified at this stage. At the same time, he should have reminded Karen that she was on probation and that her employment was in jeopardy if she didn't improve. That way Karen would have been aware she needed to buck her ideas up rather than being blissfully unaware she was underperforming. Then, at the end of the period, dismissal would have been as easy as 1,2,3...

### What happens at the end of the probationary period?

At the end of the probationary period, Bob would have had options: Dismiss Karen - if she still wasn't up to standard; Extend the probationary period - if Bob still wasn't sure of her abilities or suitability for the job; Make Karen a permanent employee - if he was satisfied she was right for the job. Since Bob didn't sit down with Karen when things started to go wrong he denied himself the first of these three options.

### Bob had another option

Bob also had another option. He could have engaged Karen on a pre-employment trial period. A pre-employment trial period is different to a probationary period because during a trial period Karen is not classed as an employee and is therefore unable to raise a personal grievance. However, there are a few very important points to note about pre-employment trial periods: They must be for a short period - normally a day or two. A week would be the absolute maximum. There must be a written agreement for the trial period which states that the job applicant is not an employee and is just trialling for the job. Pre-employment trial periods work well for job applicants who aren't in current employment and where a large degree of supervision or training is given during the trial period. If Bob had given Karen a trial period he would have realised before the end of the period she wasn't up to the job. Either a pre-employment trial period or a properly executed probationary period would have saved the day.

### **Is there much point having a probationary period?**

Definitely yes. The reason is because events which would not justify dismissal on their own during permanent employment may justify dismissal during a probationary period. A probationary period allows an employer to assess the suitability of an employee in terms of his or her skills, diligence or personality. So if an employee is not a good team member, that would justify dismissal during a probationary period but would be a lot harder for a permanent employee.

### **Don't end up like Bob**

So if you don't want to end up with a personal grievance like Bob:

- Consider whether a trial period is appropriate for the job;
- Always have a probationary period;
- Always warn a probationary employee of any problems with their performance in plenty of time before the expiry of the probationary period;
- Assess whether any further training is required during the probationary period;
- Make it clear to the employee of the standard expected if they are to become a permanent employee