

**SECTION HR 41**

**AMAHLATHI**  
**MUNICIPALITY**

**PROBATION**

**POLICY**

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## **SECTION HR 41**

### **PROBATION POLICY**

#### **1. Introduction**

Beware of saying, "Get rid of him, he's useless!" Firing poor performers incorrectly can land you in hot water. Failure to correct the poor performance of your employees during probation can impact strongly on work quality later on. Here's how to deal with probation effectively but legally.

##### **1.1 The Purpose of a Probationary System in the context of South African Law**

The purpose of a Probationary System in the context of South African law is:

- a) to give you the chance to assess the employee's ability to meet your work performance standards.
- b) to encourage you to work closely with the employee so as to monitor and correct areas of poor performance by providing the necessary training, guidance and assistance.
- c) to set a target date by which the employee can become fully effective in the job.

Your Probationer will respond to this challenge in one of two ways:

- a) by proving himself to be suitable for the job; or
- b) by proving that, despite your efforts to help him reach the required standard, he cannot make the grade. In this case you will have the right to terminate the employment contract, after completing the required legal procedures.

**Caution:** A probationary employee is an employee in all respects save that permanent and continued employment is conditions on the satisfactory conclusion of the probationary period.

The period of probation should be determined in advance and should also be reasonable. The length of the probation period depends on the nature of the job and the time it takes to determine the employee's suitability for continued employment.

## 1.2 What happens if Performance slides after Probation Expires?

If your employee performs well during the probation period and then suddenly slacks off as soon as it expires, it is easy for you to prove:

- a) that the employee is capable of the required performance
- b) that a factor other than ability, e.g. laziness, lack of team support, is at play.

Your right to terminate the employment then flows from your thorough and expert implementation of this probation process.

## 2. Benefits and Limitations of Probation

Your **reason** for dismissing a probationary employee does not have to be as strong as it would have to be for a non-probationary employee. However, you still have to prove the employee guilty and have followed the statutory procedures for dismissal.

### 2.1 Limitations of Probation Clauses

In the old days your probationary employee had a specified period in which to prove himself. If he blew his opportunity you could give him 24 hours' notice and that was the end of the story.

**Caution:** Under current law, the existence of a probation clause in your employee's contract **does not give you the automatic right to fire the probationer**. You must still follow the corrective/disciplinary procedures set down in the LRA. No contractual clause, probationary or otherwise, can ever override the legal requirement for you to follow full and fair procedure before firing an employee. Your right to consider dismissal for less serious reasons only applies for poor performance, not for misconduct.

## 3. Making Dismissal Stick

The onus of proof is not on the employee, but on you. You can only consider dismissing your probationary employee if you can prove:

- a) he failed to meet a fair and reasonable performance standard
- b) he was aware of the performance standard
- c) you gave the employee a fair opportunity to meet the required standard
- d) you followed proper corrective procedures including a fair hearing

- e) dismissal was an appropriate sanction in relation to the severity of the poor performance

#### **4. Managing Probationers**

- a) Develop a thorough, written procedure for managing probationers and for correcting poor performance.
- b) Train line managers and supervisors accordingly.
- c) Set up proper induction and training / development programmes for new employees.
- d) Adhere to fair procedure.

#### **5. How you May and May Not Treat Probationers**

The recent labour law amendments have made it clear how you must treat probationary employees (LRA's Code of Good Practice: Dismissal). Should you ignore these laws, the CCMA can force you to reinstate unfairly dismissed employees.

Many CCMA arbitrators see probationers as learner employees who, by virtue of their inexperience in the organisation, need special attention from you to get them up to speed.

The extra effort to get your employee up to standard will not be wasted. Otherwise you could find yourself in a great deal more trouble with the CCMA.

#### **6. Proactive Management – Performance Appraisals**

In the final analysis, preventing serious poor performance is easier than trying to wade through the required legal procedures for dismissal. Performance management can be a powerful preventive measure.

The purpose of a performance appraisal is:

- a) to identify the areas where the employee is performing well as a guide to his future career path
- b) to identify the employee's areas of weakness in order to establish how to assist the employee in achieving the required performance standard
- c) to prevent poor performance from causing prejudice to your organisation
- d) to identify obstacles to required performance so that these can be dealt with

Whether an employee is a probationer or not, it is in your own interest to implement a proactive performance appraisal system. While performance

appraisals can take time, it is time well invested. Good performers save you time, hassle and money.

**7. Performance Appraisal**

- a) Outline the key performance areas (i.e. core objectives of the job) and discuss them with the employee when he starts the job.
- b) Agree on deadlines and quality standards with the employee.
- c) Monitor and measure the employee’s progress against the key performance areas, deadlines and standards.
- d) Meet with the employee periodically to discuss progress.
- e) Discuss his points of strength and weakness.
- f) Agree on action plans to build on the strengths and to overcome the weaknesses.
- g) Allow for a reasonable time period for the employee to improve this performance standard.

**8. Identify Reasons for Poor Performance**

When an employee is performing badly, you must investigate the reason for the poor performance. This is necessary to determine the most appropriate solution to the problem. The table shows examples of reasons for poor performance and solutions.

<b>Reason for Performance Problem</b>	<b>Solution</b>
Illness or disability	Medical Treatment
Lack of Skills	Training
Faulty Equipment	Repair / Replace equipment
Undue Work Pressure	Re-organisation of Work
Unjustified reluctance on the part of the employee to work according to standards	Discipline

Only once you have established the cause, can you take the appropriate action.

**9. Progressive Discipline or Corrective Measures**

Whether or not your employee is a probationer, his poor performance can be so serious as to merit dismissal on a first offence. Usually this occurs in a case of gross dereliction of duty or negligence.

## 10. Probation and Performance

You should thoroughly induct every new employee to ensure he/she:

- a) understands and internalises the company's standards of work performance, products / service quality and production / service deadlines
- b) understands and commits to the company's rules of conduct
- c) knows where the necessary facilities and equipment are and how to access them
- d) develops, without unnecessary delay, the ability to perform the work to the required standards
- e) is able to perform the work in the new environment under the new workplace conditions
- f) understands his place in the team and how he fits into the team output process

You must also:

- a) ensure your managers, supervisors and employees are trained in the requirements of the law and of your disciplinary rules and procedures
- b) use the proposed probationary laws constructively and responsibly to optimise productivity and to avoid unnecessary dismissals
- c) resist the temptation to assume that you have absolute rights to dismiss probationary employees