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Trial Periods

By Paul May



The new Government has introduced an amendment to the Employment Relations Act to provide for trial periods.

These trial periods will be different from probationary periods that previously existed. These probationary periods will still exist if employers wish to use them instead of the new trial period option. The main feature of a probationary period is that if the employer does not follow the correct requirements for a dismissal during the probationary period, then the worker can still take a personal grievance against the employer.

For that reason, it is unlikely that many employers will continue to use the existing probationary period system.

The main purpose of the new trial period system is that (as long as all of the requirements are met) a dismissed employee cannot take legal proceedings for unjustified dismissal. The employee can still ask the employer to go to mediation, but cannot sue the employer in the Employment Relations Authority or the Em-

ployment Court.

There are some rules around the new trial period system:

1. It only applies to employers who employ fewer than 20 employees;
2. It can be for no longer than 90 days;
3. There can only be one trial period;
4. It cannot apply to someone who has previously worked for you.

The new law is intended to come into effect on 1 April 2009.

The new law does not prevent an employee taking action against an employer for matters outlined in, for example, the Human Rights Act, e.g. discrimination.

The stated purpose of the new law is to help small and medium sized businesses take the risk of tak-

ing on a new employee. Larger businesses often have a dedicated Human Resources Department and do not have the same high recruitment and dismissal costs of a small to medium sized business.

It is also stated that this will help the employment prospects of people who might otherwise struggle to find a job because an employer will be more prepared to take the risk.

A further justification is that most of our OECD trading partners have similar provisions in their employment law.

Obviously, the argument against the new law is that it makes it easier for employers to fire employees at will within that 90 day period.

A very important aspect of the new law is that the agreement to a trial period must be in writing at the start of the employment relationship.

For any further queries, contact Paul May or Nicola Goss.

The next issue will cover the Consumer Guarantees Act, by Davina Rowan