



The Details of Probation: Breaking Down the Nitty Gritty

Meet

Antoinette

Our Chief Vibe Validator

Also known as our **Probation Manager**, Antoinette is here to guide us through the nitty gritty of probationary employment — the rules, the cases, and everything in between.



QUESTION

True or False?

I can always dismiss without a reason during the probationary period



CASE LAW

Caruana vs. GCS Accounting Malta Limited (2021)

"pregnant employee" means an employee who informs her employer in writing of her pregnancy and who subsequently, within fifteen days, formally informs her employer of her pregnancy and of the expected date of confinement by means of a certificate issued by a registered medical practitioner or midwife

 **Protection of Maternity (Employment) Regulations (SL 452.91)**

QUESTION

True or False?

The probationary period must either be 6 months, or 12 months for technical, administrative, executive and managerial roles

THE LAW — BEFORE DECEMBER 2022

What the legislation said

Saving the provisions of sub-article (16), the first six months of any employment under a contract of service shall be probationary employment unless otherwise agreed by both parties for a shorter probation period

What the legislation now says

Saving the provisions of sub-article (16), when an employment relationship is subject to a probationary period, that period shall be of **six (6) months**.

Key Change

The December 2022 amendment added the implication that a contract of employment may exclude a probationary period ("...when an employment relationship is subject to a probationary period..."). How true is this interpretation?

Shorter Periods by Agreement

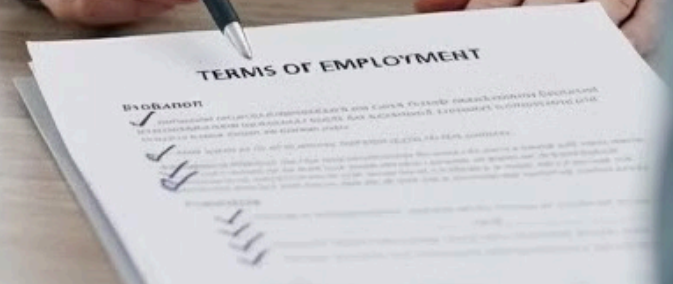
In any case, the probationary period may, by agreement between the parties, be shorter than the respective periods stipulated ...



Taylor vs. In My Mind Limited

CASE LAW

**PROBATIONARY
PERIOD
WAIVED.**



QUESTION

True or False?

Probationary periods must be proportionate to the length of a definite contract

Probation & Fixed-Term Contracts

*Provided further that for a fixed term contract of between **six (6) months and fifteen (15) months** duration, the probationary period shall be calculated on the basis of **two (2) months probationary period per six (6) months contract duration**; and if, in terms of the preceding proviso, the fixed term contract is **shorter than six (6) months**, the probationary period shall be **one-third of the duration** of the same fixed term contract:*

6–15 Month Contract

2 months probation per 6 months of contract duration

Under 6 Month Contract

Probationary period = one-third of the contract duration

QUESTION

True or False?

I can give a new probationary period when I renew a fixed-term contract of employment

Provided that:

- where the employee has been retained in employment in the same category after the date of termination of a contract of service for a specified time or
- has been re-employed in the same category by the employer for a fixed or indefinite term within one year from the date of termination of a contract of service for a specified time

the conditions of employment shall not be less favourable than those which would have been applicable had the contract of service been for an indefinite time and the **aggregate probationary period shall in no case be longer than that provided for under this Act:**

QUESTION

True or False?

Since we have probationary periods, I can easily withdraw a job offer if the employee would not have started employment with me



CASE LAW

J McCarthy vs. Atlas Language Institute Ltd

Jurisdiction

The Tribunal ruled that a statutory employment relationship only commences when the **performance of duties begins**, rather than upon the mere signing of a contract.

Probation

Even if a relationship existed, the withdrawal occurred **before the start date**, falling within the legal probationary period where termination without a stated reason is permitted.

QUESTION

True or False?

If I inform the employee in writing that I've terminated their employment on probation before the period expires, then I'm in the clear



QUESTION

True or False?

I can suspend an employee's probationary period when they are out on leave for any reason for more than 2 weeks

Suspension of the Probationary Period

The probationary period shall be **suspended** in the case of any **two (2) weeks or more of approved leave**, whereupon the probationary period shall be **extended to corresponding duration of the leave**



Thanks for listening!

