

90 Day Trial Periods – Getting it Right

Since March 2009, employers of fewer than 20 employees have been able to use periods of up to 90 days to trial new employees. On 1 April 2011, the law was extended to allow all employers to use these trial periods.

However, the cases that have been reported so far show that employers are still making mistakes in using trial periods. Since 1 April 2011, both cases which have been brought to Court, and all four cases which has been brought to the Employment Relations Authority dealing with the use of trial periods have resulted in the employer being liable for unfair dismissal.

The main problem is that employers are not giving prospective employees copies of the employment agreement containing the trial period clause a reasonable time before employment starts.

Ever since the Employment Relations Act 2000 came into force on 1 October 2000, employers of prospective individual employees (i.e. not employees under a collective agreement) have been required to give a prospective employee a copy of the proposed individual employment agreement before employment starts, and to allow the prospective employee an opportunity to seek independent advice about the agreement. An employer who does not do this can be penalised.

In the case of an employment contract that contains a trial period, the trial period will be of no legal effect if an employer does not give the prospective employee a copy of the draft employment contract before work starts, and does not give the employee a reasonable opportunity to seek legal advice on that draft agreement. Employment starts when the employee has accepted employment.

What you need to do:

- a. Give a prospective employee a copy of the draft individual employment agreement (whether by handing it to him or her, or by sending it by email or by post) a reasonable time before employment is to start;
- b. Make it clear to the prospective employee that the offer of employment is only accepted when the individual employment agreement is actually signed.

If you do not do this, you may face a fine as well as an order to pay lost wages and compensation for distress.

This information is designed as a general guide and should not replace specific legal advice on a particular issue