

For advice and  
guidance on your  
employee relations  
issues:

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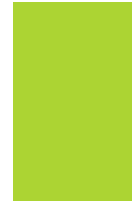
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**McKoneConsultancy**  
Specialist in Employee Relations





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# 90 Day Trials

HOW TO APPLY CORRECTLY IN YOUR WORKPLACE

# The 90-Day Trial

- ▶ Often referred to as the “Fire at Will” clause
- ▶ To give someone who doesn't have skills or experience a chance
- ▶ To test the suitability of someone who has **never worked with you** before.

# How a 90-Day trial goes wrong?

- ▶ Letting the employee commence work BEFORE they've signed the Agreement
- ▶ Not including all the requirements of s67A
  1. For a specified time not exceeding 90 days commencing at the beginning of the employee's employment, the employee is to serve a trial period
  2. During the trial period the employer may dismiss the employee
  3. If the employer does dismiss, the employee not entitled to take a PG or other legal proceedings in respect of the dismissal
- ▶ Extending the trial period
- ▶ Not complying with any stated requirements of the Trial Period

# 12 Steps to 90 Days

1. A trial period can only be offered to a “**new**” employee
2. The trial period **must** be in writing
3. The employment agreement **must be signed before** the employee starts work
4. If a commencement date is not provided, it is deemed to be the date the employment agreement is signed by the parties.

# 12 Steps to 90 Days

5. Include a start and end date of any trial period
6. Make the offer of employment contingent on the signing of any proposed employment agreement
7. The right to seek independent advice before signing
8. Give a reasonable opportunity to seek advice before signing

# 12 Steps to 90 Days

9. Consider any issues that the employee raises and respond to them during the offer stage
10. Comply with all obligations of good faith during the trial period
11. Observe other terms of the agreement during the period of employment
12. An employee who was subject to a trial period may still take a personal grievance for unjustified disadvantage or a claim of harassment or discrimination

# A model clause

- ▶ The first **xx** days of your employment, starting from [**commencement date**] and ending on [**date trial period ends**], will be subject to a trial period to assess and confirm the suitability of your employment.
- ▶ During the trial period, the employer may terminate the employment relationship by giving the employee **one** weeks' notice and the employee may not pursue a personal grievance on the grounds of unjustified dismissal. Any notice must be given, in writing, before the end of the trial period. The last day of the notice period may be before, at, or after the end of the trial period.
- ▶ The employer might decide to pay the employee not to work out the above notice period.
- ▶ The employee may still bring a personal grievance if they feel the employer has treated them unfairly for other reasons as specified in section 103(1)(b) to (j) of the Employment Relations Act 2000, e.g. discrimination, harassment or unjustified disadvantage.
- ▶ During the trial period, the employer and employee must treat each other in good faith.



Any Questions?



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