Workx Advocaten

THE PROBATIONARY PERIOD: **SOME DO'S AND DON'TS**

The law offers the possibility of agreeing a probationary period (proeftijd). But can you always agree a probationary period, and are the options for dismissal during the probationary period unlimited? Not quite...

01. MAXIMUM LENGTH OF THE PROBATIONARY PERIOD

SHORTER THAN SIX MONTHS

No probationary period

No probationary period can be agreed.

BETWEEN SIX MONTHS AND TWO YEARS

Max. one month

A collective labour agreement may deviate from this.

PERMANENT CONTRACT OR MORE THAN TWO YEARS

Two months

May be agreed.

The rules on its length are fairly strict: the probationary period is also called an 'iron' probationary period: it cannot be extended or suspended.

02. DO'S AND DON'TS

DO

Take the requirements into account

The probationary period must be the same for both parties and must be agreed in writing; the safest option is to include the clause in the employment contract. If the clause does not comply with the law, it is null and void: as if it had never been agreed.

Don't leave it too late!

A dismissal during the probationary period only takes effect if it has reached the other party before the probationary period ends. If notice arrives late, it is in principle ineffective. Only in exceptional circumstances, to which strict requirements apply, is an employee's reliance on strict application of the time limit unacceptable.

Align the reason for dismissal with the purpose

The probationary period gives the parties the opportunity to get to know each other's suitability. A reason may be that the employee does not seem suitable for the position, or that the employer has not seen enough to satisfy itself of that suitability.

DON'T

Probationary period in a second employment contract

In a new employment contract with the same employer, a probationary period cannot be agreed again, unless the new employment contract clearly requires different skills or responsibilities.

Suspending the probationary period

Not even if the employee falls ill during the probationary period: case law from the higher courts shows that this is not an option.

Letting someone work before the probationary period

If work is already done for pay before the start date (for example as time off in lieu), the probationary period starts earlier and also ends earlier.

Abuse

The reason must not be related to a 'because of' prohibition on termination and must not breach the prohibition of discrimination. Terminating 'during' illness in the probationary period is allowed, but the reason must then not lie in the illness ('because of' illness).

DISMISSAL **DURING THE PROBATIONARY PERIOD**

- Both parties may terminate with immediate effect during the probationary period.
- If the employer terminates, the employee may ask for the reason.
- No ground for dismissal is required.
- If the employee asks for the reason, the employer must provide it in writing.

Based on our article 'The probationary period: some do's and don'ts', 12 February 2025 — workxadvocaten.nl (in Dutch)
www.workxadvocaten.nl/en/artikel.html?a=de-proeftijd-enkele-dos-en-donts

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