

New Employee Probationary Periods Why You Don't Need or Want Them

Inevitably, in every Employee Handbook that we review from clients, they include a section for an **“introductory period”** or **“probationary period.”** Typically, these periods are for the first 90 days' post hire and are intended to give both the employer and employee an opportunity to evaluate the new working relationship and determine whether the new employee/employer relationship should continue.

However, “at-will” employment and the new eligibility requirements for providing medical benefits render introductory periods unnecessary, and we always recommend to our clients to eliminate that language from their Handbooks.

Many managers believe that they have a free pass to terminate an employee during their introductory period. This is not true!

New hires have the same protections as other employees and can be terminated at any time during the employment relationship for **any legal reason**. Having a special introductory period does not change that.

Here are some reasons you may also want to consider eliminating your introductory or probationary period policy:

- **Introductory periods can lead to confusion** regarding whether the employment relationship is “at-will”. “At-will” means that either the employee or the employer may terminate the employment relationship at any time, for any lawful reason. When employers use introductory periods, employees sometimes think that once they successfully complete an introductory period, they are no longer at risk for termination based upon their performance. This misunderstanding can lead to increased risk of wrongful termination lawsuits if the employer terminates the employee.
- **The term “probationary period”** may have a negative connotation for new employees. New hires may misinterpret “probationary” to mean that they are immediately placed on a disciplinary action plan at the start of their employment. This could negatively impact the employee’s perception of the company.
- **Under the new California Paid Sick Leave Law**, sick leave must begin accruing on the date of hire, employers cannot wait until the successful completion of an “introductory period” before accruing sick leave for their employees. Employers can, however, limit the use of sick leave until after 90 days of employments, but benefits must still accrue.
- California law **requires that insurance coverage** be made available to eligible employees as of the 60th day of employment. All calendar days must be counted, not just business days. Further, the coverage must apply by the specified day, not on the first day of the month following that day as typically offered by insurers. Indeed, if the insurer only allows enrollment as of the first of the month, employers will have to offer coverage as

of the first of the month prior to the expiration of the limit. Delays caused by an individual employee's failure to enroll are not counted.

- The fact that an individual was terminated during an introductory period would not disqualify the employee from unemployment benefits.

A much better strategy than using introductory periods is to develop an effective employment hiring process to find the best candidates for the position to avoid bad employment hires. During the interview process, employers should ask job-related and behavioral-based questions, and, where appropriate, should conduct employee post-offer job-related background and employee reference checks to help determine whether candidates have the potential to succeed in the open position.

Once hired, all employers should provide new employees with a comprehensive orientation process to familiarize them with the company (and vice versa). Supervisors should work closely with new hires, giving them the information, tools, and support they need to succeed. Supervisors should also establish clear goals, provide feedback and coaching regularly, and evaluate performance proactively and consistently.

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