

# TRADIE LAW FACT SHEET #8

## DEALING WITH EMPLOYEES

TRADIE LAW  
POWERED BY Ford Sumner  
LAWYERS

---

## Trial periods

### OVERVIEW

A trial period is a timeframe that employers can use to work out if a new employee is fit for that role.

Employers can dismiss an employee up to 90 days into their employment (or less if specified in the employment agreement) without being subject to a personal grievance on the basis of unjustified dismissal or other legal proceedings regarding their dismissal (as long as the employer has given the right amount of notice to the employee).

However, it is important to use trial periods correctly.

### Can I put a new employee on a trial period?

Trial periods can be utilised if you have fewer than 19 employees when the new employee signs their employment agreement.

You cannot use a trial period if the employee has worked for you before. In that case, you may consider implementing a probationary period.

### How can I implement a valid trial period?

A trial period is only valid if it is included in a written employment agreement that is signed before the employee commences work. This must be agreed in good faith, meaning the employee cannot be forced into being employed on a trial period.

The trial period clause in the employment agreement must state, or have wording to the effect, that:

- from the start of the employment, the employee will be on a trial period for a set period not exceeding 90 days (and the exact time period must be specified);
- during this trial, the employer can dismiss the employee; and
- the employee cannot bring a personal grievance or other legal proceedings about their dismissal.

### What legal rights does the employee retain on a trial period?

Employees still have all the minimum employment rights and responsibilities as other employees who are not on a trial period, except for bringing a personal grievance for unjustified dismissal. This includes things like minimum pay and leave entitlements (annual leave, public holidays, sick leave).

Employees can bring a personal grievance on a limited number of other grounds (i.e. not about dismissal) including discrimination, unjustified disadvantage, or sexual or racial harassment.

### **How do I give notice of dismissal during the trial period?**

If during the trial period you decide to dismiss the employee, you must give notice to the employee that they will be dismissed in accordance with the trial period provision in the employment agreement.

You should not ask your employee to leave effective immediately – you need to let the employee know in advance (the amount of time will be specified in the employment agreement).

You must give notice before the trial period is over, even if the actual dismissal takes effect after the trial period ends.

While you do not have to give reasons for the employee's dismissal or give the employee a chance to comment before the dismissal, it is good practice to do so. You should seek legal advice if you have concerns regarding your reasons for dismissal.

### **What if the employee is a member of a union?**

You can implement a trial period clause in their employment agreement, but it must be consistent with the terms of the collective employment agreement.

**If you are considering implementing a trial period for an employee or want to permanently include a trial period clause in your employment agreements, get in touch so we can help.**

#### **Contact:**

**E**     [helpdesk@tradielaw.nz](mailto:helpdesk@tradielaw.nz)  
**W**     [www.tradielaw.co.nz/tradie-law/contact/](http://www.tradielaw.co.nz/tradie-law/contact/)

**One of our team will be in touch to assist you within 24 hours.**