

Proper Perspective - First Steps with Your New Hire

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In many companies, the first 30 to 90 days of employment is called the “Probationary Period.” This early period of employment is supposed to be a special time where the employee has to prove they can handle the job, “fit in” with co-workers, and adjust to the company’s culture. What is the legal significance of this period? How does the new employee perceive a “probationary period?” How long should it be? And, from a management viewpoint, what is supposed to happen during this time?

It’s important to understand how this customary and well-accepted practice originated.

There is not enough space to recount the rise and fall of unionism in this country so, take my word for it – the idea of a “probationary period” is a union concept. Unions rose during the years between the World Wars, but after World War II began to decline. In those days, employers (legitimately so) complained that new hires immediately became eligible for the job protection that unions promise to provide. Ultimately, a short, initial period of employment became a “bargaining chip” and contracts began to include language sanctioning the practice. During this time, the new person was not a union member. Thus, a non-performer or otherwise troublesome employee could, technically, be dismissed without union interference. In some cases, the union steward might even request such a dismissal.

In a non-union firm, a probationary period has no legal significance since employees do not work under a contract. There is nothing in federal or state employment statutes that treats this period of employment any differently. If you dismiss an employee after two weeks, they can still file for and collect unemployment. They can file a complaint with a federal or state agency for any number of reasons. Simply saying that they were “on probation” is no defense.

Probationary employees often perceive that, once this time ends, they have achieved some type of job security that no one, in this day and age, can guarantee. This is one reason why I prefer other terms such as “Introductory Period.” The first Webster’s definition of the word “probation” is: (a time of) “critical examination and evaluation.” Webster’s defines the word “introductory” as: “a first step that sets something going or in proper perspective.” Whatever you call it, the terminology should have some relevance to your expectations for the new person. (But, please, stop with the “P” word – it sounds so criminal!)

If you choose to establish an Introductory Period, it makes sense to coordinate it with the waiting time for certain benefits. Health and life insurance, as well as cafeteria plan benefits, are usually not available for 30, 60 or 90 days. Once the new person becomes eligible for benefits, they may also be eligible for coverage under COBRA, which extends your liability for future benefits. An Introductory Period that exceeds the waiting period for benefits is redundant.

More than anything, the Introductory Period is a management tool. It should be a time when you, or the immediate supervisor, keep close watch on a new hire. This is not a passive activity. It means timely counseling for any type of unacceptable behavior and identifying areas where training is needed. Too often, I get calls about troublesome employees. My first question is, “How long have they been with you?” Sometimes the answer is, “Two (five, ten, fifteen) years – BUT they’ve always been a problem!”

Remember, a new hire is usually on his/her BEST behavior in the beginning. If you are conscientious about quickly providing counseling or additional training when problems arise, most things can be corrected during the Introductory Period. But, if a new person will not strive to meet expectations, or is obviously not suited for the position, it is better to end the employment relationship as soon as possible.

Occasionally, I am asked if it is acceptable to extend the Introductory Period in cases where there are problems but the situation seems salvageable. This can be a useful strategy when the problem is something that might be corrected by training. For behavioral issues, it rarely works. But be aware, extending the Introductory Period does NOT mean that you can postpone offering certain benefits if the person is otherwise eligible. If it is your practice to make a wage adjustment after the Introductory Period, that can be delayed until it is warranted.

The main benefit of using an Introductory Period is that it forces you to focus on evaluating performance closely so you can make a timely decision about retaining the new hire. Use the Introductory Period as a tool and it can serve you well. Just don’t expect it to be a defense against a claim for unemployment benefits or any special consideration in court when that new person is dismissed.

If you have questions or comments on this topic or any other HR matter, please feel free to call the HR Help Line at 800-683-3440 or e-mail Lesley@taxfavoredbenefits.com.