



# Basic Employee Relations Course

## New Employee Probationary Period

The term **probationary period** generally applies to employees in the competitive service. During this period, probationary employees can be terminated for any perceived deficiency in performance or conduct, with minimal procedural requirements and without the need to meet the stringent "efficiency of the service" standard that governs the removal of tenured employees. Our best opportunity to remove new employees who receive a career or career-conditional appointment is during the one-year probationary period. The one-year probationary period is an extension or continuation of the merit system competitive examining process for initial entry into federal civilian service. Let's closely examine this process.

During the employee's probationary period, the supervisor is evaluating the employee's job performance, work behavior, as well as character, conduct and attitude that directly affect job performance. **NOTE:** During this period, the supervisor is evaluating the whole person, not just performance and not just conduct. Action can be taken for either or both as appropriate. Neither Chapter 43 nor Chapter 75 procedures apply.

In some agencies, a supervisor may receive a hard-copy suspense notification and certify in writing if the employee was recommended to be retained in the position. For supervisory/managerial probationary period certifications, the hard-copy certified notification would be forwarded to the servicing personnel office to be scanned into the employee's electronic Official Personnel Folder. Under an automated process, supervisors may receive a system-generated e-mail notification directing them to how to use an electronic process to certify that the employee is recommended for retention in the position. Employees performing at an acceptable level will automatically have the required documentation filed in their eOPF.

The supervisor has the following options if the employee fails the probationary period: separate, change to a lower grade, or reassign the employee under limited circumstances.

Subject to 5 CFR § 315.803(b), when an agency decides to terminate an employee serving a probationary or trial period because his work performance or conduct during this period fails to demonstrate his fitness or his qualifications for continued employment, it shall terminate his services by notifying him in writing as to why he is being terminated and the effective date of the action. The information in the notice as to why the employee is being terminated shall, as a minimum, consist of the agency's conclusions as to the inadequacies of his performance or conduct.

Probation ends when the employee completes his or her scheduled tour of duty on the day before the anniversary date of the employee's appointment. For example, when the last workday is a Friday and the anniversary date is the following Monday, the probationer must be separated before the end of the tour of duty on Friday since Friday would be the last day the employee actually has to demonstrate fitness for further employment. (5 CFR 315.804)



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A probationer who has only limited procedural appeal rights may appeal to the Merit Systems Protection Board (MSPB) only based on:

- Alleged partisan political reasons or marital status (5 CFR 315.806(b))
- Improper procedure (5 CFR 315.806(c))
- Discrimination (5 CFR 315.806(d))

Another facet of the probationary period is when a probationer has leave without pay (LWOP). 5 CFR 315.802(c) states: ... "Non-pay time in excess of 22 workdays extends the probationary period by an equal amount." The following scenario is an example of issues an ER Specialist must be prepared to analyze. A manager contacts you after receiving notification that Tim's probationary period is about to expire; and says Tim has not been working out well, but he'd like to give Tim a chance after he returns from 7 weeks of LWOP. There are two areas to address: the status of the probationary period; and whether any procedural and appeal rights would apply. To answer the first issue, the ending date of the probationary period would need to be recalculated based on the LWOP. The second concern would be to determine if the recalculated ending date of the probationary period affects whether the individual receives procedural and appeal rights. The supervisor may not think to tell you about LWOP so the ER Specialist will need to be sure to ask whether there is any LWOP (or look it up in any automated system used by your agency).