

COMPAN POLICY PROBATION

Purpose	This policy sets out the Company's probation management for evaluating the performance of new employees who are required to serve a probationary period. This policy also aims to ensure all probationers are given every opportunity to demonstrate expected standards of conduct, attendance, capability and competence for the position they are hire into within a supportive framework.
Scope	Applicable to all newly hired employees on permanent and fixed term contract.
Revision date	
Issued by	HR Department
Approved by	Managing Director

Contents

- 1.0. All new employees hired on a permanent and fixed term contract shall be required to undergo a probationary period. Contractors.
- 2.0. The probation period defined by the Company are as follow;
 - 2.1. Executive Employees : 3 months
 - 2.2. Non-Executive Employees : 1 month
- 3.0. The Company reserves the right to extend the probation period as per need.
- 4.0. The probationer shall be evaluated in areas pertaining to their work and conduct such as competencies, skills, attitude, attendance, tardiness, and other areas expected of an employee. The Company is not obliged to confirm a probationer who meets the targets set but fail to show the right conduct expected of an employee.
- 5.0. Probationers who are not confirmed in employment following the extension of the probationary period, their services will be terminated.
- 6.0. The Company shall issue a confirmation letter at the end of the probation period provided the probationer meets the expected performance level. There will be no salary adjustment upon confirmation.
- 7.0. Roles of Superior
 - 7.1. Provide and discuss the contents of job description to new probationers within the first week of the probationer's employment.
 - 7.2. Assign KPIs and targets for the probation period. Follow the SMART concept in setting the targets to be achieved by the probationer.
 - 7.3. Set periodic review meetings with the probationer. There shall be at least one (1) review every 30 days.
 - 7.4. Document the performance review in the performance review form and submit a copy to Human Resource Department for filing purposes. A copy is to be given to probationer.
 - 7.5. Provide necessary trainings, resources and tools to enable the probationer to facilitate the probationer to execute his tasks well.
 - 7.6. Assign a buddy where needed to speed up the probationer's learning curve.
 - 7.7. Ensure the probationer attends the familiarization programme.

- 7.8. Inform Human Resources Department as early as possible if there are signs the probationer is not showing proper progress or is having issues with his probation/tasks assign.
- 7.9. Ensure adequate warnings are given to the probationer if they do not meet the expected performance level during each review meetings.
- 8.0. Superiors who fail to properly manage the probation process for their newly hired subordinates as required by this policy may result in disciplinary action being taken which may include transferring them to other roles on individual contributor basis.
- 9.0. Roles of Probationer
 - 9.1. Read, understand and comply with the Company's code of conduct.
 - 9.2. Understanding the purpose of probation and the standards of performance, conduct and behaviour expected by the Company.
 - 9.3. Obtain good and clear understanding on the job description and targets assigned by immediate superior.
 - 9.4. Attend the familiarization process and trainings identified by immediate superior.
 - 9.5. Attend periodic review meetings as arranged by immediate superior
 - 9.6. Complete assigned tasks successfully.
 - 9.7. Seek timely advice and further clarifications on any aspects of the role or when faced with issues from immediate superior.
- 10.0. Roles of Human Resources Department
 - 10.1. Initiate employee familiarization process for all new employees.
 - 10.2. Provide support and guidance to immediate superior thought the probation period.
 - 10.3. Periodically review the probation systematics, forms, policies and procedures to ensure relevance to the company's operations.
 - 10.4. Issus confirmation letter to successful probationers.
 - 10.5. Issue termination notice to probationers who fail to meet the expected performance level.
- 11.0. Should a probationer commence her maternity leave during the probation period or extended probation period, the company may extend the probation period upon the probationer's return to work.
- 12.0. An employee who takes up other roles in the company via an internal transfer are excluded from the probation process.
- 13.0. The Company reserves the right to amend this policy from time to time and shall notify all employees when such amendment has been made and has been approved by the Management.
- 14.0. Should there be a translation of this policy into other languages, the English version of this policy shall be authoritative in the event of any dispute or confusion.

Tips/Advise to Companies

1. It is important to ensure the managers/superiors are well trained to manage a probationer and handle the probation period well.
2. Make it easy for the superiors to conduct the periodic review meetings by way of putting in place a simple review form which can be used at any time the manager wishes to do a review. To make things efficient, the form can act as a warning letter as well if it contains the necessary ingredients required.
3. Companies who are very clear and have an organised approach to managing probation and with well-trained managers/superiors, can also opt to put in place an automatic confirmation process.
4. A probationer who is wrongfully terminated can be awarded wages up to twelve (12) months of his/her last drawn salary.
5. A probationer cannot be terminated prior to the expiry of the probation period other than reasons such as misconduct. A probationer who feels he/she is wrongfully terminated can seek remedy under Section 20 of the Industrial Relations Act 1967.
6. The advantage of having a solid and robust probation management process would allow the company to hire employee and terminate them without having to fear of repercussions. At times, companies tend to be over cautious during the selection process and miss out potential good/star employee.

Some citations from past case laws:

- 1) ***A probationer's inefficiency, incompetence and inaptitude can be a basis to terminate the probationer at the end of the probation period.***
Shamsudin bin Mat Amin v Austral Enterprise Berhad (1974)
- 2) ***"A probationer remains a probationer until confirmed or terminated from that position by the employer"***
K.C. Mathews v. Kumpulan Guthrie Sdn. Bhd. (1981)
- 3) ***"A probationer enjoys the same rights as a permanent or confirmed employee and that his services cannot be terminated except for good cause or excuse.***
Khaliyah bte Abbas v. Pesaka Capital Corp Sdn. Bhd. (1997)

- 4) Note : When a probationer commits an act of misconduct, it must be dealt promptly/immediately and not wait till the end of the probation period to take action/inform the employee. This can also be construed as condonation by the employer.

In the case of Hong Leong Assurance Sdn. Bhd. v. Wong Yuen Hock (1990) the employer had in place a fixed disciplinary procedure. He did not however abide by it before dismissing the employee. And the Industrial Court held that failure to do so made the dismissal ipso facto unjust.

In the case of Sabah Bank Berhad, Kota Kinabalu v. Anthony Koshy, Kota Kinabalu (1993) the employer had as part of the terms and condition of employment certain procedural requirements which he did not comply with when dismissing the employee. And for this reason the Industrial Court found the dismissal to be without just cause and excuse.

In the case of Pernas Construction Sdn. Bhd. v. Puranachandran @ Maniam a/l Nagapan (1994) it was cited that "an employer with an agreed disciplinary or dismissal procedure ought to stick strictly to that procedure. Failure to observe this procedural aspect and on this score alone a dismissal can be unjust."

This sample policy/letter/document is merely a sample or guidance. Companies are advised to practice caution when drafting its HR documentation and shall always be in compliance with the Employment Act and Industrial Relations Act as well as past case laws so as to ensure the policy does not violate or infringe the prevailing employment regulations. Companies are encouraged to adopt best practices to be attractive employers and promote a productive and competitive operating landscape. The author shall not be held liable for any damages or claims arising from the usage of the contents of this document.

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