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| **90 Day Clause validity requirements*** Can only be used if you had 19 or fewer employees at the time you appointed the employee.
* Can only be used for new employees (i.e. someone not previously employed by the employing entity).
* Trial period must be included in the Individual Employment Agreement (IEA) and not just in the letter of offer.
* The IEA must have been agreed and signed before employment started. Best practice is to have the signed agreement returned before the employee’s first day of work.
* Must outline terms and impact of trial period (as per legislation):
	+ for a specified period (not exceeding 90 days), starting at the beginning of the employee’s employment, the employee is to serve a trial period; and
	+ during that period the employer may dismiss the employee; and
	+ if the employer does so, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.
* The IEA must specify the date on which the 90 Day trial starts.

Employer’s obligations during trial period:* Must comply with the duty of good faith, which means being active and constructive in establishing and maintaining a productive employment relationship in which the parties are among other things responsive and communicative. At a minimum, the employee needs to know what is expected of them and be told along the way if they are falling short of expectations.

Requirements if terminating under trial period:* Best practice is to call the employee to a meeting to discuss and deliver message face to face.
* Best practice is to communicate the reason for termination, so as to guard against any suggestion that the termination was for a discriminatory reason and to meet good faith obligations.
* Notice of termination must be given before the end of 90 day trial period.
* Notice can be paid in lieu of the employee working out the notice period if:
	+ Notice is given and accords with the employment agreement.
	+ The notice is clear and unambiguous and explains how and when employment will be terminated.
* Payment in lieu of notice is not sufficient notice in and of itself.

Note: Trial period doesn’t prevent other claims such as breach of good faith, unjustified disadvantage, discrimination, sexual and racial harassment, duress, compliance with Part 6A, ss 67C, 67D, 67G, 67H of the Employment Relations Act 2000. |