

Employment Law: Probation

Quick Facts

1 What is 'probation'?

Starting a new job will usually involve a period of **probation**. Probation is a specified amount of time at the beginning of a new job during which an employer has an opportunity to observe a new employee and determine whether they are suitable and qualified for the role. An employee must still be paid while on probation.

2 What rights does an employee have when they are on probation?

An employee on probation still enjoys the basic work rights afforded under the National Employment Standards. Among other standards, these include entitlement to annual leave, sick leave and maximum weekly working hours. Importantly, workers on probation must still be given written notice of termination and have their leave and other accrued entitlements paid out fully if they are dismissed.



3 Can an employer sack a person on probation for any reason at all?

Most employees on probation **cannot make a claim for unfair dismissal** (where the dismissal is harsh, unfair or unreasonable). This is because an employee usually must be employed for at least six months in order to lodge an unfair dismissal claim.

However, this does not mean employees on probation can be fired for any reason at all. Employees on probation are **still protected from unlawful dismissal** (a general protections claim). For example, if an employee on probation believes that they were terminated for discriminatory reasons (such as race, gender, age, pregnancy, religion, political opinion) or for exercising a workplace right (such as making a workplace complaint or taking sick leave), they may be able to take action against their employer.

4 Can I resign while I am on probation?

You can resign while you are probation but you should still give your employer notice of your intention to resign. You will need to check the relevant notice period in your employment agreement or award.

5 Where can I get more information and help?

FairWork Ombudsman
FairWork Commission
Employment Rights Legal Service
Legal Aid NSW - Employment Problems
LawAccess NSW: T. 1300 888 529
Find your local Community Legal Centre



Western Sydney University Justice Clinic

For further details on the WSU Justice Clinic, please visit the [website](#).

If you are a WSU student, you may like to contact the [WSU Student Legal Service](#) at studentlegalservices@westernsydney.edu.au for more guidance.