



## Memo

**To:** Chief Executive Officer  
Each Regional Executive Officer  
Each National Director  
Each Assistant National Director HR  
Each Assistant Chief Finance Officer  
Each Regional Director of People  
Each Regional Director of Finance  
Each CEO Section 38 Agencies  
Each HR Manager Section 38 Agencies  
Each Employee Relations Manager  
Each Group Director of Nursing & Midwifery  
Each Group Director of Midwifery  
Each Clinical Director  
Head of HR, PCRS  
Director National Ambulance Service

**From:** Anne Marie Hoey, Chief People Officer

**Date:** 29<sup>th</sup> November 2024

**Subject:** HR Memo 056/2024 – Updated HR Memo on Management of the Probationary Process

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Dear Colleagues,

The purpose of this memo is to set out the key principles and elements of managing the probationary process and to highlight recent statutory provisions relating to maximum duration probationary periods and probations for fixed-term employees. It supersedes the previous HR memo on the management of probations process dated 9<sup>th</sup> August 2022.

It is crucial that managers actively monitor new employees' performance, conduct and attendance in the job to establish their suitability for continued or permanent employment. A new employee's contract of employment (whether permanent or fixed term/specified purpose) should contain a probationary clause (if applicable to the individual) which refers to:

- the duration;
- the notice period;
- the circumstances where a probation may be extended and
- reviews of the employee's performance during the period of probation.

The **European Union (Transparent and Predictable Working Conditions) Regulations 2022** (HR Memo 008-2023 re European Union (Transparent and Predictable Working Conditions) Regulations 2022 attached) came into operation on 16 December 2022 and provided for the following important changes relating to probationary periods:

- Maximum duration of probationary periods
- Probationary periods for fixed-term employees.

#### **A. Maximum Duration of Probationary Period**

The Regulations provide that the probationary period of a public servant<sup>1</sup> shall not exceed 12 months<sup>2</sup>. This applies to HSE and Section 38 employees whose contract of employment provides for a probationary period<sup>3</sup>.

Where an employee is absent from work during their probationary period due to any of the following types of statutory leave, an employer can extend the probationary period for the duration of the employee's absence:

- Maternity leave/additional maternity leave/health and safety leave/leave to which a father is entitled under the Maternity Protection Act 1994
- Adoptive leave/additional adoptive leave
- Parental leave
- Carer's Leave
- Paternity Leave
- Parent's Leave
- Sick Leave Act 2022\*
- Any other statutory provision providing that probation shall –
  - i. Stand suspended during an employee's absence from work, and
  - ii. Be completed by the employee on his or her return from work after such absence

***\*The list of statutory leaves in the Regulations includes the Sick Leave Act 2022 (which provides for statutory sick pay). However, the Sick Leave Act 2022 does not apply to public health service employees as they are covered by the Public Service Sick Leave Scheme which is a more beneficial scheme. This means that if public health service employees are absent due to sick leave, their probationary period cannot be extended for the duration of their sickness absence.***

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<sup>1</sup>Public servant has the same meaning as it has in Part 2 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012 [here](#)

<sup>2</sup> The Unfair Dismissals Act 1977-2021 do not apply to employees on probation or undergoing training during a period at the beginning of employment, provided that (i) the contract of employment is in writing, and (ii) the duration of probation or training is one year or less and is specified in the contract.

<sup>3</sup> The probationary period of all other employees (i.e. those who are not public servants) may not exceed 6 months and may, on an exceptional basis, be longer where it does not exceed 12 months and would be in the interest of the employee.

The new legislation does not affect the standard probationary period of 12 months which generally applies in the public health service. **However, an employer can no longer exercise discretion to extend the employee's probationary period beyond 12 months for any reason other than to take account of their absence on statutory leave (if applicable) as per the above list.**

Similarly if there are issues with the employee's performance or conduct and a performance improvement plan is put in place it is important to note the employee's probation cannot be extended beyond the maximum period of 12 months unless they have availed of one of the statutory leaves listed above during their probation.

It is vitally important therefore for managers to ensure that a new employee's probationary period is actively managed from the outset and any shortcomings are addressed promptly. The manager's decision regarding the employee's suitability for continued employment should be made prior to the expiry of the probationary period and allow sufficient time for an employee to appeal the decision and, if unsuccessful, expiry of the notice period for termination of employment as per the *Minimum Notice and Terms of Employment Act 1973*.

## **B. Probation Periods for Fixed-Term Workers**

The Protection of Employees (Fixed-Term Work) Act 2003 was amended by the Regulations to provide that where a fixed-term employee has entered into a fixed-term or specific purpose contract with an employer which provides for a probationary period, the length of such probationary period shall be proportionate to the expected duration of the contract and the nature of the work.

Where an employer intends to renew a fixed-term contract for the same functions and tasks, the second fixed-term contract cannot be subject to a new probationary period.

Existing contract of employment templates should be reviewed and provide for a probationary clause for fixed-term/specified purpose employees. The contract of employment given to each individual should reflect their terms and conditions and the probationary period (if applicable to the individual) should reflect the expected duration of the temporary contract and nature of the work.

Managers should assess the performance of fixed-term employees at the outset, in the same manner as an employee who is undergoing a probationary period for permanent appointment, in order to establish the individual's suitability for continued employment up to the expiry date of the contract or the purpose for which they have been employed comes to an end.

## **Management of Probationary Period**

As set out above the objective of probation is to allow the manager the opportunity to monitor new employees' performance in the job and to establish whether they are suitable for continued employment. Performance feedback during the probationary period will generally be more intensive than at any other time throughout the employment relationship. Failure to manage this period properly can result in a mismatch between an employee and the duties of the post to which they were recruited.

Although a probationary employee must clearly establish their suitability for the job, there is a corresponding obligation on their manager to ensure that the employee is given the necessary feedback on their performance and the training and assistance to enable them to meet the required standards.

The following are key elements of managing the probationary process:

- » Ensure the employee's contract of employment contains a probationary period (if applicable) and the duration is appropriate;
- » Conduct progress reviews with the employee at regular intervals;
- » Keep a formal record of their assessment for the period under review;
- » Document any follow up action that was agreed during the discussion;
- » Where a new employee persistently fails to achieve the required standards, the line manager should advise the employee of their deficiencies. The objective at this stage should be to help the employee to improve whilst making it clear that a failure to do so will result in their employment being terminated;
- » Carry out a final overall assessment shortly before the end of the probationary period and meet with the employee to advise them of the outcome;
- » Where an employee has established their suitability and successfully completed the probation this should be documented;
- » Where the employee has not established their suitability, they should be given notice that their employment will be terminated before the expiry of the probationary period. The employee should be advised of their right to appeal the decision to terminate their employment and to avail of representation by a union representative or work colleague. The employee should be advised of the time limits and to whom the appeal should be submitted.

Managers should seek advice from their local HR/Employee Relations department if required. This is particularly important if a manager is contemplating the termination of the person's employment due to unsatisfactory performance in order to ensure that a fair process is followed. The HR department should be notified if the outcome of probationary process is a decision to terminate the employee's contract of employment.

The main principles that apply to probations in the HSE are set out in Appendix 1 of the [Disciplinary Procedure for Employees of the HSE](#) (2007). Section 38 organisations continue to be covered by the [Grievance and Disciplinary Procedure for the Health Service 2004](#) and may have their own probation procedures /guidelines. Further training supports for line managers on managing employee performance and the probationary

process are available as part of the People Management – the Legal Framework training programme.

Please ensure that contents of this memo are brought to the attention of all relevant managers in your area of responsibility.

### **Queries**

Queries from individual employees or managers regarding these arrangements should be referred to local HR Departments/Employee Relations Departments. Please note that the National HR Help Desk is also available to take queries on 1800 444 925 or email: [ask.hr@hse.ie](mailto:ask.hr@hse.ie)

Queries from HR Departments on the contents of this Circular may be referred to National Employee Relations, HR Directorate, 63-64 Adelaide Road, Dublin 2 Tel: 01 6626966, Email: [info.t@hse.ie](mailto:info.t@hse.ie)

Yours Sincerely



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**Anne Marie Hoey**  
**Chief People Officer**