

Starting a new job? – what are your employment rights and why you should keep your head down.

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In this market, it can be very challenging to find a new job, but when you do, it is likely you would initially be asked to complete a probationary period of 2-3 months and sometimes longer. During the probationary period, your employer usually reserves the right to terminate your contract at a shorter notice – often 1 week. After the probationary period, the notice is likely to be higher.

I have come across many instances where employers do not always notify the employee that he has passed the probation and later relies on the shorter notice to terminate his employment. Where this is the case, an employee would be entitled to insist that the longer notice period applies as the obligation is on the employer to terminate the employment during or at the end of the probationary period if that was their intention.

So, let us assume you have passed your probationary period. Is your employment position then safe? Actually it isn't. Your employer has until the end of the first year of your employment (technically 11 months and 3 weeks) during which time they can still terminate your employment without fear of the employee making a claim for unfair dismissal. This is because employment legislation provides that you need to be employed for this period of time before you are eligible to lodge a claim. I have seen many employers, mindful of this beneficial time limit, fast tracking an employee out of employment, with no recourse to that employee. Some employers get it wrong and wait until only a few days before the year end as opposed to the 11 months and 3 weeks.

The employee would retain his full rights to make a claim in these circumstances. There are a few exceptions when the 1 year rule does not apply, such as where there has been discrimination. Such employees can make an appropriate claim for unfair dismissal at any time - even if they are turned down at interview stage.

Many employees are unfortunately not aware of the aforesaid one year rule when they start a new job. I have encountered many headstrong people who have rubbed their line managers up the wrong way or somehow have made little effort to gel with their team. In short, they are perceived as "trouble" by their employers and in a market where there are no shortages of labour, such a person is unlikely to survive long in his job. Your personality (and of course those you work with) are a significant factor in whether you will successfully progress with the company you work for and so it is not surprising that the extent to which you can progress is not just based on results alone.

What else should you look out for when you start a new position? You are entitled to a written statement of particulars of your employment at the very least. This will set out your job title, rate of pay, hours of work, holiday entitlement and other basic terms. This is not a contract of employment as such, but is evidence of the basis upon which you are working. Most employers these days will provide you with a contract of employment, however, and it is important to make sure that it reflects what you have agreed.

If a bonus is part of your remuneration, then make sure the bonus clause in your contract reflects this and that it does not give your employer too much discretion to avoid payment.

The wider the discretion is, the more flexibility your employer has when it comes to the bonus payment date. Also make sure that the place of work is properly specified. The contract may reserve the right to move you to another location which could be many miles away from where you live. If you have agreed to this by signing the contract, you would lose your right to challenge the same later on.

Also, make sure your contract properly provides for the roles and responsibilities you have agreed to take on. Again, if the contract is too widely drawn and thus giving your employer the right to shift your responsibilities, you would find it difficult to argue against this if it happened at a later date.

Many employees do not appear to consider the ramifications of the contract that they sign and I suspect do not even read the contract in detail in the first place. As always, it is better to obtain professional advice on the contract (preferably before it is signed) if you are in any doubt as to the terms.

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