

## **PROBATION**

The Public Service Act 1994, as amended, at section 13 makes provision for appointment on probation in respect of public officials/employees. Regulation 68 of the Public Service Regulations, 2016 and clause 8 of Schedule 8 of the Labour Relations Act 66 of 1995 (as amended) also cover probationary appointments.

Section 13(1) of the Public Service Act provides for the appointment of an employee on probation for such period as may be prescribed for the relevant category of employees. Section 13(2) provides for the confirmation of the probationary appointment after the completion of the probationary period contemplated in subsection (1) provided the employee concerned has:

- a) Performed at least satisfactorily during the period; and
- b) Complied with all the conditions to which his or her appointment was subject.

Subsection (3) provides for the extension of the period of probation or dismissal of the employee, in accordance with the Labour Relations Act, if the probationary appointment is not confirmed in terms of subsection (2).

Regulation 68 (1) of the Public Service Regulations, 2016 provides that persons or employees who are appointed to the public service for a period exceeding one year shall serve a probationary period of 12 calendar months, excluding the number of days for which leave has been taken by him or her during the period of probation or any extension thereof. For instance, if an employee has taken leave during his or her probationary period, the period of probation shall be extended by the number of days of leave taken by the employee concerned to ensure that he or she has served the 12 months prescribed probationary period.

Recruitment processes, depending on the nature of the job, after short-listing may include case studies and interviews all of which cannot for certain guarantee how an employee will do in a job in practice. Hence, the probation period is crucial as a trial period of employment which is intended to ensure that the right person is appointed to the job.

The probationary period should in essence address issues of performance based on agreed performance standards, acceptable conduct, performance reviews, provision of feedback, appropriate roles and how matters will be handled during the probationary period.

Therefore, the existence of mutual trust between the supervisor and the employee during the probationary period is crucial. It will enable the employee to inform the supervisor of the areas on which the employee is experiencing challenges. Likewise, it will provide the supervisor with an opportunity to determine and implement the appropriate interventions for mutual benefit of the employee and the employer, and to give feedback to an employee. Employees are entitled to know

whether their performance is satisfactory or not and are also entitled to be informed about their unsuitability in an organisation (***Fraser / Caxton Publishers [2005] 3 BLLR 323 (CCMA)***).

Performance reviews are very important elements generally in employment settings and probationary periods in particular as they give both the employee and the employer opportunities to discuss any concerns and to address such, for example, additional training targeted training (Taylor, 2016). An employer is entitled to assess and evaluate an employee's ability to perform and whether an employee will fit within the organisation (***Fraser / Caxton Publishers [2005] 3 BLLR 323 (CCMA)***). These reviews afford management opportunities to raise concerns in the workplace through a process of corrective action (***Fraser / Caxton Publishers [2005] 3 BLLR 323 (CCMA)***).

The employer should retain all notes of such reviews and feedback; and always observing the principles of natural justice and fair procedure is crucial (Nugent, 2015). Such will ensure that informed and objective decisions are taken, as and when necessary. Whilst an employer is entitled to satisfactory performance, they are simultaneously to point out an employee's shortcomings (***Fraser / Caxton Publishers [2005] 3 BLLR 323 (CCMA)***).

The confirmation of appointment is subject to satisfactory completion of the trial period (probation) and satisfactory performance. Clause 8 of Schedule 8 of the Labour Relations Act 66 of 1995 (as amended) as it relates to probation, will be covered in the next article; **PROBATION PART 2**.

***(3rd quarter 2016/17 employee relations article, an opinion from the Employee Relations Desk)***