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EMPLOYMENT CONTRACTS - THREE MONTH TRIAL PERIOD

In 2009 the National Government amended the Employment Relations Act to introduce the ability of small Employers to take on an Employee for a trial period of up to 90 days.

On the face of it it seems like a great tool for an Employer to assess a new Employee as to whether they are suitable to be permanently appointed to the position.

Despite this however, a number of Employers are still getting into trouble with their practices around the trial period clauses in their contracts.

Whilst it may appear to be a play on words the Court of Appeal have considered this section and what they consider to be its plain and ordinary meaning.

The section of the Employment Relations Act that specifically allows the trial provision to be inserted into an Employment Agreement states that it can only apply to an Employee who "has not been previously employed by the Employer".

That seems simple enough.

However if the new Employee starts (for example) on a Monday morning at 9.00am and the Employer asks them to sign their Employment Agreement at their morning tea break at 10.00am the trial period will

not apply.

That is because by 10.00am that Employee has been "previously employed by that Employer" for 1 hour.

Too many Employers are being caught out by this wording of the trial period section.

You don't need to have three months. You can specify any period of time as long as it doesn't exceed 90 days.

However if you do have a shorter period it would be advisable to check the wording of the clause you have in your contract before using it.

On too many occasions Employers use Google to find clauses for their employment contracts. There is no one clause that fits all situations and this practice does get a lot of Employers into trouble. The trial period clause is a great tool for Employers wanting to take the risk of employing someone new but in order to avail yourself of its benefits you must use it correctly. If they haven't signed their contract, they shouldn't be allowed to start.

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