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90 DAY TRIAL PERIODS - ENDING EMPLOYMENT RELATIONSHIPS

There has been a lot of discussions in the media recently about 90 day trial periods and employment.

As from 1 March 2009, any Employer who employs 19 or fewer Employees is able to employ new Employees on a trial period of up to 90 calendar days. Currently the Government is debating whether or not to extend this trial period right to all Employers.

Any trial period must be agreed to by the Employer and Employee in good faith and in writing as part of the Employment Agreement. The Employer and Employee must both bargain in a fair way about a proposed trial period. This means that if the Employee raises any queries or concerns with regard to the trial period provision, this must be addressed by the Employer.

An Employer and Employee may agree to a trial period only if the Employee has not previously been employed by the Employer.

An Employee who is given notice of dismissal before the end of a trial period cannot raise a personal grievance on the grounds of unjustified dismissal. However, the Employee may still raise a personal grievance on other grounds such as discrimination or harassment by the Employer that disadvantaged the Employee.

Notice of dismissal must be given within the trial period, even if the actual dismissal doesn't become effective until after the trial period ends.

The written Employment Agreement should be signed by the Employer and Employee at the beginning of the employment relationship. The signed Employment Agreement may reduce the risks of legal challenge down the track.

Recently the first employment case brought to Court under 90 day trial laws was decided in favour of a dismissed Employee. This was due to the fact that the Employer did not comply with the contractual requirements of the Employment Relations Act relating to the trial period. In particular, the Employee's Employment Agreement required her Employer to give 4 weeks notice of dismissal if they were going to use the 90 day trial period rule. They did not give her the appropriate notice which means laws preventing the Employee taking a personal grievance case were nullified.

Employers need to make sure that when they use the 90 trial period that their contacts are accurate and correct to ensure the law will back them up.

- **Next Issue — Debt Collection—What Happens After You Get Judgment by Michael Moohan**