

POOR PERFORMANCE OF A PROBATIONARY EMPLOYEE AS A REASON FOR TERMINATION

A company or an employer should know that the purpose of a probationary period is to afford a company the opportunity to evaluate the employee's work performance over a reasonable, mutually agreed upon period of time whereby the employer can determine the employee's suitability for the position that he/she was appointed based on the employee's work performance. The Employment and Labour Relations (Code of Good Practice) G.N. No 42 under Rule 10 (4) provides that the probation should not exceed a period of twelve (12) months.

The employee is therefore appointed on the basis of a conditional employment contract, meaning that the continuation of his/her employment contract is conditional on whether the employee has demonstrated that he/she is able to carry out the responsibilities defined under the job description.

However, during the probation period Rule 10(6)(a) (b) of the Employment and Labour Relations (Code of Good Practice) G.N. No 42 requires the employer to;

(a) monitor and evaluate the employee's performance and suitability from time to time.

(b) meet with the employee at regular intervals in order to discuss the employee's evaluation and to provide guidance if necessary. The guidance may entail instruction, training and counselling to the employee during probation.

This is so to say that, if the employee has been given reasonable time to improve performance or correct his/her behaviour and has failed to do so the employer must inform the employee if he determines that the employee's performance is below standard by informing the employee of the aspects in which the employer considers the employee to be failing to meet the required performance standards. If the employer believes the employee is incompetent, then the employer should advise the employee on the respects in which he believes the employee is not competent.

It should be noted that the probation period is imposed to specifically review the employee's ability to perform the tasks as expected, and the employer may therefore not use the probation as an excuse to fire an employee simply because he or she doesn't fit in or because the employer does not get along with the employee.

Subsequent to Sub-Rule 6 of the aforementioned statute, it also provides under Sub-Rule 7 that at any stage during the probation period, the employer is concerned that the employee is not performing to standard or may not be suitable for the position, the employer shall notify the employee of that concern and give the employee an opportunity to respond or an opportunity to improve.

The employment of a probationary employee shall be terminated if the employee has been informed of the employer's concern, if the employee has been given an opportunity to respond to those concerns and also if the employee has been given a reasonable time to improve performance or correct behavior and has failed to do so.

In so doing, if it happens that the employer finds the employee to be unable to perform the duties defined under the job description the employer shall make sure that he is in adherence to the provisions of Rule 10 (8) of the Employment and Labour Relations (Code of Good Practice) G.N. No 42 before he makes a decision to terminate the employee. In a nut-shell hereunder is a list of procedures to be adhered to;

Notification (to notify the employee in regard to issues concerning his or her performance standards and suitability for the position).

An opportunity to respond to those concerns.

An opportunity to improve performance (the said opportunity has to be within a reasonable time).

It should be borne in mind that a probationary employee shall be entitled to be represented by a fellow employee or union representative in a process referred to in Sub Rule 7 above.

CONCLUSION

It is advised that termination of an employee should not be a first option since under the probationary period the employer should not be looking for perfection in the probationary employee's performance, but rather on the steadily improved performance and whether the employee has been able to reach the required standard performance basing on the instruction, training and counseling during the probation period.

FURTHER INFORMATION:

This editorial is intended to give you a general overview of the Law. If you would like further information on any issue raised in this column, please contact.

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