

Letter of an unsuccessful probation period template

You can use this letter to confirm with an employee that his or her employment will not continue beyond the probationary period (if applicable). You are not required by law to provide a letter like this or to have employees on probation. However, you are required to provide written notice of termination if you are terminating an employee's employment during the probationary period.

Information you will need to fill in:

- the end date of the probationary period
- that the probation period ended unsuccessfully
- if the person is going to continue to be employed by the business, and
- if the employment will not continue, the period of notice of termination (or payment in lieu of that notice).

Are you a small business owner?

If you operate a small business it is important that you follow the [Small Business Fair Dismissal Code](#) when terminating an employee's employment. Using this template may help you to comply with the Code.

Please note, a probation period does not affect any entitlements employees receive under the National Employment Standards (NES) or a modern award such as annual leave, personal leave, and notice of termination. If an employee's employment ends because of an unsuccessful probation period, their accumulated leave entitlements must be paid out to them as per the NES and they may be entitled to notice of termination under the NES or their modern award. The probation period may be different to the minimum employment period for unfair dismissal applications.

Suggested steps for preparing a letter of an unsuccessful probation period

If at any time you need more information or assistance, call the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au.

Step 1: Highlight expected performance and behaviour standards

A probationary period is an opportunity for you to assess a new employee's performance in their job, and for them to decide whether the job suits them.

If an employee's performance or conduct is not satisfactory during their probationary period, you should attempt to address the issues. Performance and conduct issues often arise because employees do not understand what is expected of them. You should:

- make sure the employee clearly understands their role, the expected level of output or performance, and the expected conduct at work, and
- provide the employee with regular performance feedback during the probation period and inform them of any changes needed to their work or conduct.

Step 2: Create your letter of an unsuccessful probation period

It is best practice to confirm with your employee whether or not his or her employment will continue beyond the probation period. The letter should be given to the employee before the end of the probation period.

When drafting the letter you should:

- review the letter of engagement to check the length of the probation period, and
- check whether the relevant industrial instrument (e.g. an award or an enterprise agreement) contains any compulsory rules about probation.

Under the NES, you need to give an employee written notice to end his or her employment. The written notice should specify:

- the period of notice given (or payment in lieu of notice), and
- the date the employment will end.

Remember to also check if the letter of engagement or a relevant industrial instrument (e.g. an award or an enterprise agreement) contains a longer notice period. If they do, the longer notice period will apply.

For more on notice periods, visit www.fairwork.gov.au or contact the Fair Work Infoline on 13 13 94.

This template has been colour coded to assist you to complete it accurately. You simply need to replace the red < > writing with what applies to your employee and situation. Explanatory information is shown in blue italics to assist you and should be deleted once you have finished the letter.

Step 3: Meet with the employee to provide the letter of unsuccessful probation and notice of termination

While it is best practice to meet with an employee towards the end of their probation period, there is not a legislative requirement to do so. It is particularly important to meet with the employee if you are considering terminating his or her employment.

Meeting face to face is an opportunity for you to:

- provide feedback to the employee about their performance or conduct,
- explain why the probation period was unsuccessful, and
- give the employee an opportunity to respond to your comments.

If the employee has been employed with you for 6 months or more (even if they are on probation) there are additional steps you may need to take before you terminate their employment. See the [Small Business Fair Dismissal Code](#) for more information.

Step 4: Keep a copy of the letter of an unsuccessful probation period

Keep a copy of the letter given to the employee and document the meeting with the employee for your records.

The Fair Work Ombudsman is committed to providing you with advice that you can rely on.

The information contained in this template is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or a workplace relations professional.

<Print on your business letterhead>

<Date>

Private and confidential

<Insert employee's full name>

<Insert employee's residential address>

Dear <insert name>

Termination of employment

Your probation period with us at <insert business name> is due to end on <insert date>.

</We> confirm that </we> have decided not to continue your employment beyond your probationary period. As a result, your employment will end on <insert date>.

You must ensure that the date entered here is at least one week later than the date the letter is provided or that you are paying the person in lieu of receiving the notice. If the employee has more than 12 months service (which is unlikely for a probationary period) you should contact the Fair Work Infoline on 13 13 94 regarding notice of termination.

Employees and employers may seek information about minimum terms and conditions of employment from the Fair Work Ombudsman. If you wish to contact them you can call 13 13 94 or visit their website at www.fairwork.gov.au.

We wish you well in your future endeavours.

Yours sincerely,

<Insert name>

<Insert position>

PLEASE KEEP A COPY OF THIS LETTER FOR YOUR RECORDS