



NEWSLETTER

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90 Day Trial Periods – Employers Beware!!

The Government's proposed changes to the Employment Relations Act 2000 ('ERA') include extending the 90 day trial period to all employers, rather than just those with fewer than 20 employees. The main benefit of a trial period is that it allows an employer to dismiss an employee within the 90 day trial period without fear of a claim from the employee of unjustified dismissal.

The Department of Labour has recently conducted an evaluation of trial periods and found that approximately 40% of employers stated that they would not have hired their last employee without the trial period and 74% of people hired on a trial period have retained their positions. It therefore appears to have been a win-win for both employees and employers.



The first decision on the interpretation of provisions, *Smith v Stokes Valley Pharmacy (2009) Limited*, demonstrates that an employer must comply strictly with the provisions of the legislation.

In this case Heather Smith was working in the Stokes Valley Pharmacy when it was sold. Heather was offered a job with the new employer and on 1 October 2009 commenced work for them. On 2 October 2009, she signed a new employment agreement that contained a 90 day trial period. The new employer quickly became dissatisfied with Heather's performance, and in reliance on the trial period provisions, terminated her employment in December 2009.

Heather commenced proceedings against her employer and, despite the existence of the trial period, the Employment Court found that Heather could make a claim for unjustified dismissal.

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