

# Trial Periods

## 1. Overview

- 1.1. An employer may employ a new employee on a trial period for the first 90 calendar days of their employment.
- 1.2. To legally implement a trial period for a new employee, the following rules must be met:
  - The employee must agree to the trial period.
  - The trial period must be in writing, and signed by the employee, before they commence employment.
  - The trial period must not be inconsistent with the terms and conditions of any applicable collective agreement.
  - A trial period cannot be offered to an employee who has worked for the employer in the past.
- 1.3. An employee who has a trial period in their employment agreement cannot take a personal grievance for unjustified dismissal if notice of dismissal is given during the trial period, whether the notice takes effect during the trial period or after the trial period ends. This does not however prevent the employee for taking a personal grievance for discrimination, harassment, disadvantage, or a claim for unpaid wages or holiday pay. Mediation is also still available to an employee on a trial period.
- 1.4. The trial period must be included in the individual employment agreement (IEA), or in the letter of offer where a collective agreement applies. When providing an IEA to a prospective employee, the employer must be prepared to consider and respond to changes requested. The employer cannot proceed with the inclusion of the trial period if the employee does not agree with it. However, an employer does not have to proceed with the offer of the position if that offer was made conditional upon agreeing terms of employment and the employer and employee haven't managed to reach agreement.
- 1.5. The employee is entitled to seek independent advice before agreeing to a trial period and signing the IEA and should be allowed reasonable time to do this. An employer should not ask an employee to sign the agreement immediately.
- 1.6. Where a trial period has been offered, it is a requirement that the employee agrees to the trial period before they start work. This means that an employee who brings their employment agreement to work on their first day and then signs it is not covered by a valid trial period. For this reason, offers of employment containing a

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trial period should always contain a date by which the agreement must be accepted which is before the commencement date of employment. It should be made clear that if the offer is not accepted by the deadline, the offer of employment will be withdrawn. If this occurs and the employer still wants to proceed with offering employment, a new offer, with a new deadline for acceptance, and a new commencement of employment date which is after the new deadline, should be offered.

- 1.7. The trial period must be correctly drafted, and a notice period must be included, with that notice period given, for the trial period to apply. If there is no notice period, or the notice period is not given, the trial period provision will not be upheld.
- 1.8. Case law has established that whilst the employer is not required to follow the usual disciplinary processes, the employer must act in good faith towards the employee. At a minimum, this means telling them why they have been dismissed. The employer must also provide the notice specified in the employment agreement.

## **2. Sample Trial Period Clause**

- 2.1. The employee and the employer agree that the employee's employment is subject to a trial period pursuant to section 67A of the Employment Relations Act 2000 (and its amendments) as per the following:
  - a) The trial period shall be for 90 days and will start at the beginning of the employee's employment;
  - b) Clauses [list any clauses which are inconsistent with the trial period] of this agreement and [list any applicable employer policies inconsistent with the trial period] will not apply during this trial period;
  - c) The notice period to terminate the employment during the trial period shall be [specify – e.g. one week];
  - d) During the trial period the employer may dismiss the employee or give the employee notice of dismissal; and
  - e) If the employer does dismiss the employee, the employee is not entitled to bring a personal grievance or other legal proceedings in respect of the dismissal.
- 2.2. The employee has been advised of their right to seek independent advice about the implications of this provision prior to agreeing to this trial provision.

## **3. Primary Health Care Multi Employer Collective Agreement**

- 3.1. The Primary Health Care Multi Employer Collective Agreement (PHC MECA), allows employers to use trial periods when employing new staff that fall under the coverage of the MECA. The PHC MECA states:

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*A new employee may be employed on a trial period in accordance with section 67(a) of the Employment Relations Act 2000. Any trial period requires agreement between the new employee and the employer. Where a trial period is proposed, it shall be specified in the employee's letter of offer, which letter shall also advise the employee of the right to seek independent advice about the implications of this provision prior to agreeing to this trial period.*

- 3.2. A sample 'Letter of Offer' is attached as Appendix A. As stated earlier, the employee must agree to the inclusion of the trial period prior to commencing employment.

[Need more help?](#)

Contact HTRHN:

**Phone**

| 021-595-937

**Email**

| Robyn Fell: [robyn.fell@htrhn.org.nz](mailto:robyn.fell@htrhn.org.nz)

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## APPENDIX A – Sample Letter of Offer

(Date)

(Prospective employee's name)

(Address)

(Address)

(Address)

Dear

We are pleased to offer you the position of *[title]*, at *[practice name and address]*, commencing on *[date]* subject to your agreement to the following terms and conditions of employment.

.....

### Option A - For practices who are not party to a CEA (Collective Employment Agreement) or for positions that are not in the coverage clause of a CEA

You will be employed under an Individual Employment Agreement (IEA), a copy of which is attached. This offer is conditional upon us reaching agreement on the proposed terms of employment as outlined in the IEA.

.....

### Option B - For Practices who are Party to a CEA (most likely the Primary Health Care Multi Employer Collective Agreement (PHC MECA) and Where the Position is Covered by the PHC MECA))

This practice is a party to the Primary Health Care Multi Employer Collective Agreement (PHC MECA) negotiated with the New Zealand Nurses Organisation (NZNO). A copy of that agreement is enclosed. For the first 30 days of your employment, you will be employed under the terms and conditions of the PHC MECA in accordance with the provisions of the Employment Relations Act.

You may join the NZNO. If you do so, you will be bound by the PHC MECA.

For information on joining NZNO, please go to [nzno.org.nz](http://nzno.org.nz) or **[insert contact details of local organiser]**.

Within the first 10 days of you commencing your employment with us, we'll give you an 'Active Choice Form' where we'll ask you to indicate whether you intend to join NZNO. You have the

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option of joining NZNO, which means you will be bound by the Collective Agreement. If you indicate that you intend joining NZNO, we will provide your details to NZNO.

.....

**Trial Period – optional**

Our offer is conditional upon your agreement that your employment is subject to a trial period pursuant to section 67A of the Employment Relations Act 2000 (and its amendments) as per the following:

- (a) The trial period shall be for 90 days and will start at the beginning of your employment;
- (b) The notice period to terminate the employment during the trial period shall be [specify – e.g. four weeks];
- (c) During the trial period we may dismiss you or give you notice of dismissal; and
- (d) If we do dismiss you, you are not entitled to bring a personal grievance or other legal proceedings in respect of your dismissal.

You are entitled to seek independent advice about the implications of the trial period provision prior to agreeing to this trial provision. You can discuss this with your family, a union, a lawyer, or someone else you can trust. If you would like information on your employment rights you can contact the Employment Relations Service’s free Infoline on phone 0800 800 863 or visit their website at [www.ers.dol.govt.nz](http://www.ers.dol.govt.nz).

**Hours and Remuneration (Only include this information if the employee is being employed on a CEA. It is not required if they are being employed on an IEA).**

Your hours of work will be .....

Your pay rate will be .....

*(Outline any other terms and conditions that are not covered in the PHC MECA)*

Please note that you are entitled to seek independent advice about this offer.

**Acceptance of Offer**

If you are happy with the proposed terms and conditions and wish to accept this offer of employment, please sign a copy of this letter of offer and return it by [date to be inserted – but make sure this is some days prior to the commencement date inserted above]. In the event we have not heard from you by that date, this offer will be automatically withdrawn on that date. If you wish to clarify anything in the offer or discuss the terms offered, please contact me as soon as possible.

We look forward to working with you.

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Yours sincerely

XXXXXXXXXXXXXXXXX  
(Your Name)  
(Title)

I accept the terms and conditions of employment outlined in this letter of offer:

Signed: .....  
(Insert Employee's name)

Dated: .....

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