

# CONTRACT INTERPRETATION MANUAL

## Article 14 PROBATIONARY PERIOD

### Interpretation Guidelines

#### Article 14 (A) - RFT and RPT Employees

Regular employees serve a 3 month probationary period starting on the first day in the regular position. For example, a new regular employee who begins work on June 25th is probationary through to September 24th.

Seniority is back-dated to their first day of work once the employee completes their probation.

An employee can apply for a job posting during their probationary period; however, they cannot use their seniority until they complete their probation.

An employee promoted or transferred does not serve an additional probationary period. For information on probationary periods for casuals (see Article 11.04).

#### Article 14 (B) - Extension of Probationary Period

Stewards do not have authority to agree to extensions of a probationary period.

Probationary periods can only be extended by mutual agreement with the Union.

The Employer requesting an extension of a probationary period needs to write to the LRO concerned in advance and provide reasons why an extension is required.

#### Article 14 (C) - Failure to Complete a Probationary Period

Once an employee has completed their probationary period (even if it's one day later), and the Employer is seeking to dismiss the employee, the Employer is held to the stricter test of "just and reasonable cause" that applies to post-probationary employees.

The Employer is responsible for effectively managing the employee during their probationary period, which involves:

1. Providing an effective orientation;
2. Ensuring the employee understands the Standards of Conduct, policies and procedures and any other Terms and Conditions of Work relevant to their work in the position; and
3. Providing the context, clarity and feedback necessary for the employee to understand standards and expectations and to demonstrate their suitability for the position.

The Employer is responsible for ensuring that the employee is provided with a bona fide opportunity to demonstrate suitability for continued employment and to provide timely feedback on both strengths and weaknesses so that they are provided with the opportunity to correct borderline or weaker aspects of performance.

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If the Employer decides to terminate the probationary employee:

1. The employee is required to have Steward representation at any meeting of a disciplinary nature (Article 6.04);
2. The Employer is required to notify the Union Head Office in writing when a probationary employee is terminated (Article 15); and
3. The probationary employee has access to the grievance and arbitration procedure to resolve any disputes including termination of employment (Articles 9 and 10).

To make a successful case for termination the Employer has to meet a two-part test:

1. That the employee is “unsuitable”; and
2. That the factors involved in “suitability” could reasonably be expected to affect work performance.

The test of “unsuitability” is tied to identifiable performance measurement criteria.

In assessing “suitability” the Employer can use factors such as the Employer’s required standards for performance as well as general compatibility with other staff (BC Telephone Company and Federation of Telephone Workers of BC (1977) 15 (LAC) 2nd 310 (Weiler)).

In Vancouver Hospital and HEU Local 180, July 23, 1983 (Greyall), the arbitrator wrote that factors used to assess suitability are not limited to the job task identified in the employee’s job description. Other work performance measurement criteria are found in the:

1. Employer’s performance evaluation form;
2. Policies and procedures manual;
3. Published workplace rules;
4. Employee handbook;
5. Mission statement; and
6. Orientation checklist.

In Westfair Food Ltd. and UFCW Local 777, (1990) 15 LAC (4th) 199 (Vickers), the arbitrator wrote that to prove unsuitability the Employer must be able to demonstrate:

1. Standards of work performance were conveyed to employees clearly and repeatedly;
2. The employee was provided with proper direction;
3. The employee has been given a reasonable opportunity to meet these standards;
4. The employee was warned an unsatisfactory probation would cause their dismissal; and
5. An evaluation of the employee’s suitability was carried out properly in a manner that was in good faith, reasonable, and without discrimination.

A similar approach was taken in Government Employee Relations Bureau and the B.C.G.E.U. (1984), 15 L.A.C. (3d) 177 (Larson), where the arbitrator concluded that there were five conditions to be met before a probationary employee could be terminated. These conditions (p.188) are that:

1. There are legitimate standards of work performance;
2. The standards have been conveyed to the employee and that proper and ample direction has been provided;
3. The employee has been given the opportunity to meet the standards;

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The interpretations in this manual are provided on a *without prejudice, errors and omissions* basis to any position Unions in the Nurses’ Association of Bargaining Agents may take in any arbitral proceeding or any other forum.

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4. The employee has been properly evaluated; and
5. There have been no unreasonable or discriminating acts.

The Steward should obtain the following information:

1. The exact date the employee began their probationary period;
2. Copies of any performance evaluations, written feedback etc.; and
3. Any information on whether the Employer made any efforts to comply with the five tests set out above.

## Arbitration Awards

1. BC Telephone Company and Federation of Telephone Workers of BC (1977) 15 (LAC) 2<sup>nd</sup> 310 (Weiler). The arbitrator sets out some of the other factors the Employer can use in assessing suitability.
2. Vancouver Hospital and HEU Local 180, July 23, 1983 (Greyall). Another arbitration setting out factors used in assessing suitability.
3. Government Employee Relations Bureau and the B.C.G.E.U. (1984), 15 L.A.C. (3d) 177 (Larson). Another arbitration decision setting out five tests for an Employer to meet before terminating a probationary employee.
4. Westfair Food Ltd. And UFCW Local 777, (1990) 15 LAC (4th) 199 (Vickers). Sets out five tests an Employer has to meet before terminating a probationary employee.
5. Melding Arbitration Decision: HEABC and BCNU, May 21, 1997 (Ready). Accepted the Employer's argument that a longer probationary period was required due to more limited opportunities for supervisory assessment and the wider range of issues that community based employees must become accustomed to when working in the community.

## Additional Resources

Legislation

1. Labour Relations Code, Section 84

## Footnotes

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| Article          | 14                 |
| Sub-Article      | 14.0               |
| Last Update      | 31-03-21           |
| Related Articles | 11, 13, 18, 46, 49 |