

## Article 14

### Article 14 - Probationary Period

Related Articles: 9.06, 11.04 (E) (3), 11.04 (J), 13, 18, 46, 49

#### Article 14 (A) - Regular Full-Time and Regular Part-Time Employees (Except community based employees)

1. **Regular full-time or part-time 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 25<sup>th</sup> is probationary through to September 24<sup>th</sup>.

2. **Seniority is back-dated to their first day of work** once the employee completes his/her probation.
3. **An employee can apply for a job posting during their probationary period;** however they cannot use their seniority until they complete their probation.

**Note:** An employee promoted or transferred does not serve an additional probationary period.

For information on probationary periods for casual employees, see Article 11.04 (H) and (J).

#### Article 14 (B) - Community Based Employees

1. **Regular full-time employees -** serve a 3 month probationary period (same as (A) above).
2. **Regular part-time employees -** serve a probationary period of **468 hours worked** (Melding Arbitration Decision: HEABC and BCNU, May 21, 1997 (Ready) - accepted Employer's proposal for a longer probationary period.

**Note:** An employee promoted or transferred does not serve an additional probationary period.

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

**Note:** Once an employee has completed their probationary period (even if it's one day later), in the situation where 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. This involves:

- providing an effective orientation;
- ensuring the employee understands the Standards of Conduct, policies and procedures and any other Terms and Conditions of Work relevant to their work in their position; and
- 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 he/she is provided with the opportunity to correct borderline or weaker aspects of performance.

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 (See Article 6.04 - Stewards).
- 2) The Employer is required to notify the Union Head Office in writing when a probationary employee is terminated (See Article 15 - Termination of Employment).
- 3) The probationary employee has access to the grievance and arbitration procedure to resolve any disputes including termination of employment (See Articles 9 and 10).

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

1. That the employee is *"unsuitable"*
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 [See Arbitration Award: *BC Telephone Company and Federation of Telephone Workers of BC* (1977) 15 (LAC) 2nd 310 (Weiler)].

Another 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 a found in the:

- Employer's performance evaluation form;
- Policies and procedures manual;
- Published workplace rules;
- Employee handbook;
- Mission statement;
- Orientation checklist.

[See Arbitration Award: *Vancouver Hospital and HEU Local 180*, July 23, 1983 (Greyall)].

To prove unsuitability the Employer must be able to demonstrate:

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

[See Arbitration Award: *Westfair Food Ltd. And UFCW Local 777*, (1990) 15 LAC (4th) 199 (Vickers)]

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

- there are legitimate standards of work performance;
- the standards have been conveyed to the employee and that proper and ample direction has been provided;
- the employee has been given the opportunity to meet the standards;

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- the employee has been properly evaluated; and
- there have been no unreasonable or discriminating acts.

### What information does the Steward need to get?

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

### Additional References

#### Arbitration Awards:

*BC Telephone Company and Federation of Telephone Workers of BC (1977) 15 (LAC) 2nd 310 (Weiler)* - the arbitrator sets out some of the other factors the Employer can use in assessing suitability.

*Vancouver Hospital and HEU Local 180, July 23, 1983 (Greyall)* - this another arbitration setting out factors used in assessing suitability.

*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.

*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.

**Melding Arbitration Decision: HEABC and BCNU, May 21, 1997 (Ready)** - accepted the Employer's argument that a longer probationary period was required due to the 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.

#### Legislation:

*Labour Relations Code*, Section 84