

## Legal regulation of the trial period application

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### Abstract

In order to verify employee skills, the individual contract of employment, Article No. 60 of Labor Code. 154 of 28.03.2003 - gives employers the opportunity to establish a trial period of three months for the posts of executive and six months for a management position. During that period, the employer is entitled to set practical tests, such as solving concrete cases of tests. The trial period is an opportunity for the employee to prove his fitness to perform official duties that he will recover from his appointment to the position that he claims. Results can be evaluated by experienced professionals who will appreciate the quality of performance objectives, how is the work performed, duration etc.

**Keywords:** labor law, the legal relationship of employment, salary, employer, employee, rights, obligations and work responsibilities, notice, dismissal, resignation.

### Rezumat

Pentru verificarea aptitudinilor salariatului, la încheierea contractului individual de muncă, prevederile art. 60 al Codului Muncii RM Nr. 154 din 28.03.2003 - conferă angajatorilor posibilitatea de a stabili o perioadă de probă de cel mult trei luni pentru funcțiile de execuție și de cel mult șase luni pentru funcțiile de conducere. În cadrul perioadei respective, angajatorul este în drept să stabilească probe practice, cum ar fi rezolvarea unor situații concrete, a unor teste. Proba de lucru reprezintă șansa persoanei de a demonstra aptitudinea sa în ceea ce privește executarea obligațiilor de serviciu care-i vor reveni din momentul numirii sale în funcția la care pretinde. Rezultatele pot fi evaluate de specialiști experimentați care vor aprecia calitatea îndeplinirii obiectivelor, maniera în care a executat lucrul, durata etc.

**Cuvinte cheie:** legislația muncii, raport juridic de muncă, salariu, angajator, angajat, drepturi, obligațiuni și responsabilități de muncă, preaviz, concediere, demisie.

### Introduction

During the trial period, the employee shall enjoy all rights and all obligations under the labor law, the applicable collective contract of employment, also under the internal regulations and the individual contract of employment, the trial period being considered in the calculation of the length of service. So the trial period begins to run when the contract of employment it is signed; the person subject to trial period with employee status and enjoying all the rights and obligations arising from this capacity, though currently it is not practical to sign a contract of employment is concluded from the start of work, but after a period of several weeks (or months), during these period the future employee would be in the "trial period". In the execution of an individual employment contract can be determined only one trial period. As an exception to this rule, the employee may be subject to a new trial period when he begins with the same employer in a new position or occupation or he must work in hard, harmful or dangerous conditions.

## **Materials and methods**

Labor legislation governs the demarcation of the trial period, in terms of its duration, depending on the individual employment contract type (fixed-term or indefinite). Thus, the signing individual employment contract of indefinite duration, it can be a trial period to verify employee skills. During this period, the new employee is evaluated by the employer in terms of fitness for the post, the communication with the colleagues and general conduct. Being employed in a company, the first step is to be familiar with the work environment: organization and corporate culture, colleagues, customers. The trial period will be established within 3 months for an executive post, 6 months for management positions and for the unskilled categories of workers, the employer is free for contract under trial period for more than 15 days. The trial period gives the employee the same rights and obligations as a normal employment contract. In other words, the employee receives the salary during the all trial period, to perform certain tasks for positions established by the employer. Legal provisions also indicate that the employer may set a trial period for a single position. The situation may be repeated only if, within the same organization, the employee applies for another position. During the trial period, both employer and employee are free to terminate the legal relationship of employment without notice or justification; however, this stop must occur exactly during the trial. Omitting the term indicated is inadmissible in accordance with labor laws.

In accordance with art. 60 LC RofM, the trial period shall not include the employee on sick leave and other periods in which he was absent from work on grounds, confirmed by documents. Probation clause must be stipulated in the employment contract. In the absence of such a clause, it is considered that the employee was hired without a trial period. During the trial period, employee receives all the rights and obligations under labor law, internal regulations of the unity, of the collective and individual employment contract. During the individual employment contract, only one trial period can be established. As for the legal status of the trial period in the individual fixed-term employment contract, employees hired, may be subject to a trial period which duration is provided in Art.61 of LC of Republic of Moldova may not exceed:

- a) 15 days for an individual employment contract for a duration between 3 and 6 months;
- b) 30 days for an individual employment contract for duration no exceeding 6 months. As I mentioned, the trial period is a period of assessment of professional skills of the employee, at the end of which the employer decides on the continuation or discontinuation of their employment relationship. If during the trial period the employment contract is not terminated on the grounds stipulated by the Labor Code, the action continues, and termination of the contract will take place on general basis (art. 81 CM RM). If the trial period has an unsatisfactory outcome, this is found in order (the decision, decision) on the employee's dismissal, which is issued by the employer until the expiry of the trial period, without payment of compensation for the issue of service. The employee has the right to appeal the dismissal in court.

The key is the employee's ability to observe, listen and learn! His ability to ask questions correctly and on time to employer and colleagues will facilitate the achievement of its aim to assimilate information and to perform the charges received by applying their working methods proposed. Integration capacity and teamwork are essential. The benefits of the trial period for employee are:

- adaptation to the new job;
- if adaptation is not carried out and the employee is not satisfied with the new post, he can give up to the job immediately.

### ***Rights and obligations of the new employee during the trial period***

The trial period involves also employee benefits, not only for the employer. First, being in the trial period, means that the person is employed, so it must have a contract, which runs and it is recorded no later than two weeks from the time the person started to work and should receive the negotiated wage. Thus, the employee, during the trial period, benefits of all the rights and all the corresponding obligations.

Secondly, it is a good opportunity to test the new job. The person finds if she fits within that environment. Although organizational culture (i.e. values, beliefs, norms, customs, the working methods, how authority is exercised and distributed, the freedom granted to employees to express their views and to take risks,

given the importance of procedures, results individual or team), rewarding work, dress rules and expectations, are presented at time of interview and during the negotiations within the trial period there is testing out all these things. Thirdly, this period is the length of service. As mentioned, the trial period only occurs during of an individual contract of employment. However, for graduates of educational institutions, young professionals, their debut in the profession, the trial period cannot be applied. Most times it includes the training period. The question that arises most often at young people is at the beginning of his career, if they should be paid during training period. The answer is yes. Even if it's minimum wage, employee adaptation to job requirements, according to the labor code is the responsibility of the employer.

It is important to note that the trial period means the contract and the contract is length of service, and salary. Just practice and student and volunteer activities, which are unpaid, are all under contract, by which the employer gives a legal status in the company to young people. By this contract they obey the rules of the company and have the opportunity to add their theoretical knowledge and practical skills.

### **Prohibitions under the trial period**

There are categories of employees, which according to age; status law prohibits the application of the probationary period. Thus, it prohibits the application of the probationary period if the individual employment contract is concluded with:

- a) young professionals;
- b) persons under the age of 18 years;
- c) persons employed by competition;
- d) persons who have been transferred from one facility to another;
- e) pregnant women;
- f) disabled persons;
- g) the persons elected to elective office;
- h) persons employed under an individual employment contract for up to 3 months.

### **Results and discussions**

I consider incomplete the procedure of dismissing the employee because of unsatisfactory outcome of the probationary period covered by art. 63 CM RM, moreover, that method places the employee unable to defend all their rights and to correct some omissions in the operation admitted during working because of lack of experience. It would be appropriate that the issue of the order of dismissal due to unsatisfactory outcome during the trial period, to be preceded by a written warning notice handed over to the employee by signature, where the employee is notified about the improper performance or non-service duties and their consequences. For producing the needed effects, the termination of the employment contract, in this case, it is necessary that the party who initiates the termination of employment contract to meet some conditions (employer or employee).

A first condition is that the notification of termination of individual employment contract arises during the trial period, no later than the last day of this one (at the end of probationary period).

The second condition, this time, is that the notification must be written.

In practice, to have proof that the two conditions have been met, it would be advisable, if the initiative for termination of the individual employment contract comes from the employer, this one must transmit a notification to employee who, with signature of receipt and indicating the date when he received the notation or, in case of refusal of receipt, by registered letter with acknowledgment of receipt to the address notified for the official address or residence. If the initiative belongs to the employee, it is advisable to draw the notification in duplicate, one that will be submitted to the secretariat of the employer, and the second one remain at the employee, with the registration number and date of the employer's Secretariat record.

## **Conclusions**

In conclusion, we can say that Labor Code Nr. 154 of 28.03.2003 - about the trial period was primarily to give employers the opportunity to check the skills of new employees within a strictly limited time and can take the initiative of termination of individual employment contracts through a simple written notice, without having to give a notice. However, these provisions cannot be used arbitrarily, instituting it, all through the Labor Code and certain limitations or conditions to be met by employers. Thus, the probationary period begins after signing the individual employment contract, the employee, during the trial period, enjoying of all the rights granted by labor laws, of the internal regulations and of the applicable collective agreement. There are certain times you can have for trial periods, depending on the type of employment contract or the type of function that the employee is to occupy (management or executive). The employer may establish a single probationary period during the execution of an individual employment contract. The employee has the opportunity to get the termination of the employment contract, if he considers that he cannot adapt to the new job, he no longer wants to continue the contract or for other purposes.

## **References**

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\* \* \* Labor Code of the RM, no. 154 of 28.03.2003, Official Gazette no. 159-162 of 07.29.2003;