

# Probation and casual workers

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LEGAL MATTERS



In a prior column I covered trial periods and pre-employment checks.

In this article I look at probation periods, casual contracts and fixed term agreements.

## PROBATION PERIODS

What can you do when you are thinking about placing an existing employee into a new role, but you are not sure if they are up to it?

How can you give those employees a chance to prove themselves, without getting stuck in an employment agreement that they cannot live up to?  
 ■ As a pre-existing employee, you cannot put them into a trial provision.

However, you can agree to a probation period.

- A probation period must be agreed to in writing by both the employer and the employee.
- The probation can only be for as long as is necessary to ascertain the employee's suitability.
- The employer may also have obligations in terms of providing support and training, and being open and communicative about

how the employee is performing.

■ An employee on a probation period can lodge a personal grievance for unjustified dismissal.

Employers must have a good reason to dismiss the employee - you must follow a fair process in coming to that decision.

## CASUAL EMPLOYEES

■ A casual employee is someone who has no expectation of continued work, and the employer has no expectation on the employee's availability to work.

■ This type of arrangement works well if you need occasional extra staff, but cannot always predict when or for how long.

■ If you are not sure whether you have enough work for an employee, you should enter into a casual agreement.

■ If later it becomes apparent that you need a more permanent employee you can agree to a permanent arrangement.

If this happens then you will already be familiar with the employee and their suitability.

■ A pitfall to avoid is when an initial casual arrangement gradually turns into a more regular arrangement.

■ Once the work became regular and the parties develop an expectation of continued work, the employment relationship is no longer casual, despite what is



Probation periods, casual contracts and fixed term agreements.

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recorded in any agreement.

## FIXED TERM AGREEMENTS

- Fixed term agreements have a clear start and finish date.
- If you have a big project, for

which you need extra employees, but you cannot keep them on permanently after the completion of the project, a fixed term agreement might be ideal.

■ This is also a good way to cover for employees on long term leave (like maternity or sabbatical leave).

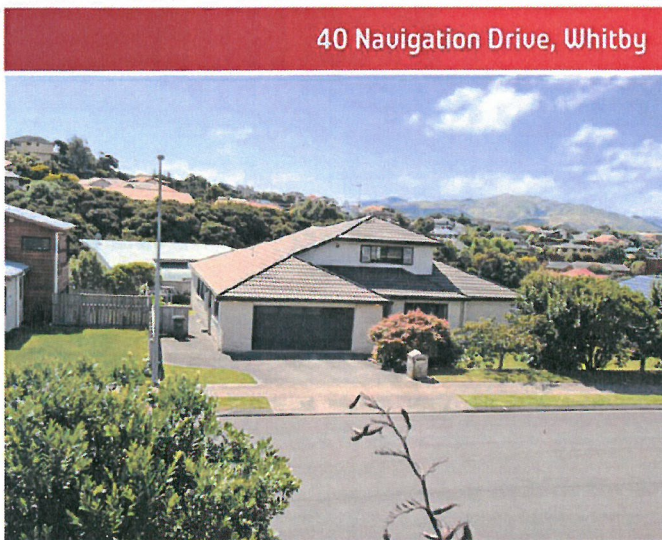
■ There must be a genuine business reason for the fixed term and it has to be set out in writing for the employee.

■ It cannot be used to assess suitability for a permanent position but if a genuine reason

exists for the fixed term there is nothing to prevent an employer offering a permanent role in due course.

■ An employer has no obligation to provide further employment after the agreement end date. You can find our free step by step guides to handling employment issues on our website in the Your Resources section.

■ Column courtesy of Rainey Collins Lawyers phone 0800 733 484 or email [aknowsley@raineycollins.co.nz](mailto:aknowsley@raineycollins.co.nz)



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