



Question of the Week

May 21, 2025

Question

Can we extend a new employee's probationary period?
They aren't meeting expectations yet.

ANSWER

If a new employee has reached the end of their introductory period and they aren't performing up to your expectations—but you still think they have potential—it is recommended you implement a Performance Improvement Plan (PIP). This kind of plan allows you to detail the company's expectations with respect to the employee's performance and will provide for follow-up meetings to discuss their progress. Upon the conclusion of the PIP, you make a decision as to the employee's continued employment.

You may consider using the word 'introductory' instead of 'probationary'. Probationary has a punitive ring to it and sounds a bit like the employee is already in trouble even though they've just started working for you. However, and more importantly, at least one court has ruled that the term 'probationary period' implies greater employment rights upon the completion of the period. Essentially, its use could interfere with the at-will relationship between the company and employees.

Be aware that having an introductory period for new employees has no legal impact on the employment relationship. Terminations during that time still come with risk (so problems should be discussed and documented) and terminated employees can still file for unemployment insurance. Extending the introductory period doesn't mitigate risk or affect your rights and responsibilities as an employer.

This Q&A does not constitute legal advice and does not address state or local law.