



## ADDENDUM TO CONTRACT OF EMPLOYMENT

### 1. Probation

These notes are provided to you for your benefit, so that you know your rights, and are treated fairly. For the detail on the labour law concerning Probation refer to the Labour Relations Act and see the section on the Code of Good Practice – Dismissal, Schedule 8.

If you require a copy of the Labour Relations Act, please ask, and an electronic copy will be made available to you.

- 1.1 A probationary employee is **newly employed** on a **conditional** employment contract – to evaluate the employee's **work performance** during the probationary period to ascertain if he/she is able to perform the work at the required standard, before confirming the appointment.
- 1.2 Probation as regulated in terms of the Labour Relations Act and only applies to newly hired employees – it does not apply to employees who are promoted to a new position on a trial basis.
- 1.3 Probation is not compulsory – the employer can decide if it is necessary when appointing an employee, however as a matter of consistency and fairness, Reliable Pressings always applies a probationary period to a newly hired employees' contract of employment - see section 3.2
- 1.4 Statutory probation and the applicable requirements, period, etc. must be agreed upon up front in the contract of employment.
- 1.5 There is no prescribed probation period – the only requirement is that it must be "reasonable" and it depends on the nature of the job. Generally Reliable Pressings sets the probationary period at two months.
- 1.6 The probationary status of an employee is only applicable to issues of work performance (competence) – it has no relevance to misconduct perpetrated by the employee during probation, nor can it be an easy way out for the employer on the basis of an arbitrary issue concerning the employee.
- 1.7 All issues other than work performance (competence) must be dealt with in the same way as with any permanent employee. A probationary employee is still entitled to protection by labour law.

### 2. Dismissal

Probation does not mean that we, Reliable Pressings your employer can fire you, the probationer "at will" if we are not satisfied with your performance. There is a process to follow and legal requirements to be met. The dismissal must be substantively and procedurally fair. The guidelines for dismissal for poor work performance (in general) are set out in the Code as follows:

- 2.1 *"Any person determining whether a dismissal for poor work performance is unfair should consider-*  
*(a) whether or not the employee failed to meet a performance standard; and*



*(b) if the employee did not meet a required performance standard whether or not-*

- (i) the employee was aware, or could reasonably be expected to have been aware, of the required performance standard;*
- (ii) the employee was given a fair opportunity to meet the required performance standard; and*
- (iii) dismissal was an appropriate sanction for not meeting the required performance standard."*

- 2.2 A decision at the end of the probationary period not to appoint an employee, amounts to a dismissal. The employer must therefore be able to prove that all of the requirements in the Schedule have been met in order to succeed against a challenge of unfair dismissal relating to probation. The decision to dismiss an employee for unsuccessful probation must be supported by records so that the employer is able to justify its decision.
- 2.3 The employer is also obliged to consider other ways, short of dismissal, to remedy the matter.
- 2.4 Line management must therefore actively manage the probationary period and address performance problems during probation by way of continuous evaluation, counselling, instruction, training and guidance – and pointing out to the employee in which areas he/she is not competent. The employee must also be given an opportunity to state what he/she thinks the cause of the non-performance is and how this could be addressed.

### 3. Responsibilities of Managers

- 3.1 In practice, this means that the employer must ensure that line managers and supervisors are aware of these legal requirements and that they should keep detailed written records and minutes (a paper trail) of -
  - meetings with the employee (where the employee may have the assistance of a co-worker), or even informal mentoring sessions or on-the-job training and coaching,
  - solutions decided upon between the parties to address mistakes / performance,
  - reasonable deadlines given for improvement, and
  - the result of the measures taken for the employee to attain performance at the required standard.
- 3.2 Note that the employer should not be looking for some improvement in the employee's performance, but whether indeed the employee has been able to reach the required standard of performance during, or by the end of, the probation period.
- 3.3 The more senior the probationary employee is; or if it is an employee employed as a professional where certain acquired skills and competencies can be expected, the onus on the employer to provide assistance / training / etc. is less onerous.
- 3.4 The probationary period could be extended to further assess the employee's performance, but this should only be done in exceptional circumstances, and only for reasons relating to probation, such as where the employee has potential but the employer is not yet sure if the employee has resolved all his/her performance issues. It should not be done because the line manager has failed to properly manage the probation in the first place.



- 3.5 The employee must be given the opportunity to make representations, with the assistance of a co-worker before extending the probation period or before dismissing the employee,
- 3.6 The employee must also be advised of their rights to refer the matter to the CCMA / Bargaining Council. This is the purpose of this addendum to your employment contract.

As a final note, Reliable Pressings has a long track record of excellent employee relations, and this is reflected in our average tenure period of over 10 years. We hope that you will have a long and fulfilling relationship here with us.

Annexure List

Annex A: Duty sheet

Annex B: Disciplinary Procedure and Code of conduct

Annex C: Notes on Probation