

The trade and globalization of the world law employment essay

[Law](#)



Probationer is not defined in the employment act 1955 nor in the industrial relation act 1967. Literally, probationers are defined in the dictionary as a person who is on trial or in a state to give proof of certain qualification for a place or state. To understand more what probationer is, probation period is a period in which the employer monitors the employee's performance. Employee will be tested for compatibility and suitability to perform the job as well as in their conduct behaviour and attitude during the probation period. The probation period is normally spelt out in the contract of service or letter of appointment. If the employer deems necessary to extend the probation period, they have the right to do so. In such an event, the employee should be informed, in writing, before the end of the probationary period, that his probationary period is being extended. He should also be informed of the specific areas where improvement is expected. An employer may extend the initial probationary period to a further period of 1-3 months. During that period of time, an employer has the right to terminate the service for poor performance, misconduct, lack of the necessary skill required in the position or under other similar conditions. Termination under this condition may be without notice. If an employee on probation has reasons to believe that the termination of his service was mala fide, he may seek reinstatement under Section 20 of the Industrial Relations Act. Upon satisfactory completion of the probation period, the employee must be informed in writing by the employer stating revised wages and other terms and conditions where applicable. After receiving the confirmation letter from the employer then so-called probationer will no longer be a probationer employee but as a confirmed staff. An employee may also quit the job if he is dissatisfied with the job, even

without waiting for the end of the probationary period. There are no specific regulations governing probationary period in Malaysia. However, this provision is a common practice in employment contracts. The duration can be agreed by the parties. In practice, a three month period is common for non-executive employees whilst longer periods, say six months or possibly longer, are common for executive or management employees. The duration is in accordance to the discretion of the employer itself. By looking at this point, in my opinion maximum period of probation must be defined and added in the employment act 1955. This is to protect the probationer rights. Sometime the employer may extend the probation period up to 3 to 4 years and this is not good for the employee himself as they could not enjoy any right and benefit as the confirm staff had receive from the company. In Paari A/L Perumal v Abdul Majid Hj Nazardin & Ors[2]the plaintiff commenced employment with the defendant as a litigation clerk on 2 February 1994 at a salary of RM1, 100 per month. The probation period was three months. The plaintiff was entitled to annual leave provided his position was confirmed. He was given annual leave. The plaintiff left the defendant's employment at the end of January 1995. The plaintiff claimed against the defendant for damages for breach of contract due to the defendant's failure to pay the increment of RM100 after the end of the probation on 30 April 1994. The defendant contended that the said leave were given upon humanitarian grounds and therefore were not to be taken as annual leave. The magistrate dismissed the plaintiff's claim on the ground that the plaintiff was a probationer and therefore the respondent need not pay him the increment. The magistrate had presumed that the plaintiff's application for annual leave

was a labour tactic to defeat the defendant by trapping them. The plaintiff appealed and the appeal was allowed. Upon allowing the appeal, the learned judge stated that: " A probationer who is taken into the permanent service should be advised of it by written notice served within one week of the completion of the probationary period. But if the employee is neither confirmed nor terminated at the end of his probationary period, it should be deemed to be a confirmed employee. This will bring about certainty of status of employment to the employee. And automatically the employee concerned will then be entitled to all the benefits that come along with confirmation." Furthermore, it was held that the magistrate erred when she accepted the evidence that the plaintiff had not been confirmed in his position because the defendant was dissatisfied with the plaintiff's performance. It was clearly a defence of bare denial. The fact that the defendant was dissatisfied with the plaintiff's performance was nowhere to be found in the defence. It was adduced for the first time during trial. In those 12 months of employment, the plaintiff did not receive any letters warning him of any purported unsatisfactory performance. The absence of warning letters support the plaintiff's submission that these allegations regarding his poor and unsatisfactory performance were mere afterthoughts of the defendant. The different wage rates before and after the probation period entered in the register would certainly be evidence of confirmation. Besides, it is quite common to find a clause in the contract of service like "... during the probationary period, either party may at any time terminate the contract of service without notice...." and many employers simply make use of the clause to terminate the service of a probationers whom they find to be not to

their liking. Employers must be careful about doing this. When a new employee first came to the company, he or she must be given training in the job he or she is supposed to do. After due training the employee still could not do the job properly, he or she must be warned, at first verbally and then in writing or extension of the probationary period if things persist. If there is no improvement despite all that, then he or she is told to go when the probationary period expires. Even in a case of serious misconduct, an employer may not dismiss the employee summarily without first enquiring into the matter. Even if the probation period has been extended to another period of time, if an employee continues employment with the company after the probationary period, he is still a probationer. Probationers are employees same as the confirm staff in a company. Although a probationer is not a confirm staff in any such company, they should enjoys the same rights as a permanent or confirmed employee and he or she cannot be terminated without just cause or excuse. However, if a probationer who receives no confirmation after the probationary period but is given a salary increment, he or she definitely has a strong case that the employer is satisfied with his or her performance. Hence, from the above statement it is important to put a provision regarding a probation period in the employment act so that probationers know their own right as a probation employee in such company. Besides, the employer would not neglect their power as an employer to an employee by using the probation status of an employee. This is why the employment act should state and includes the maximum period of a probationer in any probation period together with their right as a probationer in any company must be define clearly. A female employee is

entitled to maternity leave under the Employment Act 1955 which is a period of not less than the eligible period of 60 consecutive days and be given maternity allowance in respect of the eligible period. Unfortunately there is no maternity leave for a father under the employment act in Malaysia. Husband to a woman who is giving birth of his child should be given a reasonable paternity leave because as a father to a new born baby, they also wanted to spend more time with their own child and help his sick wife around the house or to the hospital to visit his newborn child together with his wife. Usually male employee is given 3 days of leave or maybe less than that by the company for paternity leave. 3 days leave is not sufficient enough for a father to spend with the wife and the newborn baby. In Kesatuan kebangsaan Pekerja-Pekerja Syarikat- Syarikat Pembuat Keluaran Getah v KL-Kepong Rubber Production Sdn Bhd[3] also stated under Article 19 of the term and condition of employment between the two parties that the company shall upon application grant a confirmed male employee one day's paid paternity leave in the event of his wife giving birth. Is 1 day leave sufficient enough for a male employee? In my opinion, a father to a newborn child should be given more leaves as they also need time to bond with his baby and helping the sick wife to take care of the baby during her confinement period. What if the wife faces complication while delivering the baby? It is obviously that the father will taking care of the sick wife and the 3 days leaves given by the company is not sufficient enough. Even in the developing country such as Singapore and Indonesia offer more than 3day leaves to a male employee during the confinement of his wife. In 2004, California became the first states that offer paid family leave to a male

employee. Besides, most fathers take leaves or sick leaves when their children are born, and a growing number of new dads are taking unpaid family leave from their jobs to spend more time with their newborns. This matter was also become an issue which had been reported in the news recently where Malaysian Employers Federation executive director Shamsuddin Bardan began talks with the Human Resources and Women, Family and Community Development ministries to allow the sharing of maternity leave between wife and the husband. Some of them opined that male employee should be given 7 days of paternity leave. Moreover, Women's Aid Organisation did as well support MTUC's proposal to grant 14 days leave to the husband whose wife are in their confinement period[4]. For instance if a male worker who lost his wife while giving birth to his newborn child, the question arise here is that who will taking care of the newborn baby if the mother is not around? Of course the father will take care of the child. Will one days of paid leave sufficient enough? The father might take annual leave to handle this matter. What if there is no annual leave left for the father to apply from the company? Is this fair enough for the father as an employee? Therefore, a paternity leave should also to be put in and define in the employment act to protect a man right as a father to a new born child and as a husband to a sick wife.