

PROBATION

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Authority and Application

Clause 18.3 of the Victorian Public Service Enterprise Agreement 2020 (the Agreement), applies to Victorian Public Service Departments and Agencies (Employers) and their Employees (other than casual Employees) covered by the Agreement.

Overview

Clause 18.3 sets out the probationary period and the process for managing Victorian Public Service Employees (other than casual Employees) during their probationary period. An employee new to the VPS will commence employment on a probationary basis for a period of six months. This period cannot be extended.

Relevant provisions of the VPS Agreement

Clause 18.3 Probationary Period – New Employee

Supplementary Guidance Information

1. Monitoring and assessing performance during probationary period

- 1.1. Clause 24 (Management of Unsatisfactory Work Performance) of the Agreement does not apply to an Employee during the Probationary Period. However, an Employer is still required to implement a process to assess the Employee's performance during the probationary period.
- 1.2. During the Probationary Period, Employers should closely monitor the Employee's conduct and performance and provide regular opportunities for feedback during an Employee's probationary period. An Employer should meet regularly with a new Employee and provide them with specific feedback, and where required, highlight areas requiring improvement and provide support to address any performance concerns. It is recommended that probation meetings are organised and set up in the Managers and Employee's diaries within the first two weeks of commencement.
- 1.3. Where conduct or performance issues are identified during the Probationary Period the Employer will counsel the Employee and provide a written record of such counselling to the Employee in accordance with clause 18.3(d) of the Agreement.
- 1.4. Managers should discuss and seek assistance from their Human Resources area or equivalent once performance or conduct issues arise.

2. Failure to provide written notification at the conclusion of the Probationary Period

- 2.1. If the Employer fails to notify an Employee that their employment is to be confirmed in accordance with clause 18.3(e) of the Agreement, then by default, the Employee's employment is confirmed.

3. Cessation of employment

- 3.1. When terminating the employment of a probationary Employee, the termination date, the last date of employment and the whole of the period of the notice must fall within the Probationary Period. A decision to terminate must be limited to performance or misconduct reasons.
- 3.2. Where an Employer wishes to terminate a probationary Employee's employment for performance or conduct related reasons within the final two weeks of the Probationary Period, this can only be done by payment in lieu of notice so that employment does not extend beyond the Probationary Period.
- 3.3. An Employee's employment can be terminated for misconduct matters without notice at any time during the Probationary Period. Clause 25 (Management of Misconduct) of the Agreement does not apply during the Probationary Period, however a process is required that provides the Employee with the misconduct claim/s and an opportunity to respond.
- 3.4. Where issues of performance or conduct are identified it is important that departmental People and Culture or human resource employees are notified to ensure the cessation of employment follows the appropriate process.

4. Movement between departments or agencies covered by the Agreement

- 4.1. Consistent with clauses 18.3(a) and (b) of the Agreement, an Employee who has six months or more continuous service with the Victorian Public Service (VPS) is not required to

complete a Probationary Period when they move to another Department or Agency covered by the Agreement, provided there is no break in service.

- 4.2. An Employee who breaks continuity of service by ceasing employment within the VPS and who is subsequently employed at a future date by an Employer covered by the Agreement, will be required to complete a Probationary Period on being re-employed in the VPS. The Probationary Period is six months and cannot be extended.
- 4.3. Where an Employee moves to another Employer covered by the Agreement during their first six months continuous employment in the VPS, the Probationary Period with the new Department or Agency is reduced by the period of continuous employment in the first employing Department or Agency. In such circumstances, the assessment of whether an Employee should have their employment confirmed at the conclusion of their Probationary Period should take into account all of the roles performed during the probationary period to ensure the review is meaningful. This process may require input and involvement from multiple managers.

Making decisions under this policy

Under section 20(1) of the *Public Administration Act 2004*, the public service body head has all the rights, powers, authorities and duties of an Employer, which will usually be delegated to staff within their Department or Agency. Employers should ensure that any actions under this policy are only taken by an Employee with the delegation to do so. Each Department and Agency should give effect to this policy in accordance with its own delegations.

Dispute resolution

An Employee who is directly affected by a decision made or action taken by the Employer may apply for a review of actions under the Employer's review of actions policy or seek to resolve a dispute through the Resolution of Disputes procedure at clause 13 of the Agreement. However, this review right does not extend to termination of employment.

Further Information

Employees should refer to their Department or Agency's intranet for information on procedural requirements, systems and approval delegations.

For further information and advice please contact your local Human Resources or People and Culture Unit (or equivalent).

Related policies or documents

VPS Enterprise Agreement Common Policies

- Review of Actions *

All policies in the VPS Enterprise Agreement common policies collection can be found at <https://www.vic.gov.au/common-policies-victorian-public-service-enterprise-agreement>

***Note:** The right to Review of Action does not extend to termination of employment

Authorised by Industrial Relations Victoria:

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