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In probation, there is a lower threshold for dismissing an employee than otherwise. And there is a shorter notice period than for regular dismissal. Trial period with a short notice period can also be an advantage for the employee, so that they can quickly resign after their own notice if they are not happy in the position or at the workplace. Agreement on probation In the private sector, probation must be agreed in writing when entering into the employment contract (Working Environment Act § 15-6). Should the employer wish to include a clause on probation after the contract has been signed, the employee's consent is required. In the public sector, there is a statutory six-month probation period in any employment relationship, unless it is determined that the probation period does not apply (State Employee Act § 15). There is no access to pre-agree longer probation than six months. The probation period of six months begins to run from the date of accession. Can the probation period be extended? If the probation period is to be extended due to absence, it must be agreed in the employment contract that the employer has such a right. Furthermore, a claim for extension must be made in writing to the employee before the end of the probation period. The extension must not exceed the length of the absence, and the absence must not be caused by the employer. Employer's obligations in the probation period The employee must receive necessary guidance, follow-up and assessment of the work in the probation period. The requirements for guidance and follow-up vary, depending on the type of position, the employee's education and experience. Stricter requirements can be imposed on managers than other employees. If an employer has neglected his duty of guidance or failed to provide necessary assessment and follow-up of the work, insufficient adaptation due to this negligence is not a valid reason for dismissal. Dismissal in probation In the private and municipal sector, there is normally a mutual notice period of 14 days in the probation period unless otherwise agreed in the employment contract or in the collective agreement. A dismissal in the probation period has effect from the day it is given, so that the notice period runs from date to date. In the public sector, the notice period is one month if the employment period is less than one year, see the State Employee Act § 22, 1 a) and 2 a). Dismissal in the probation period must be made in writing and have reached the recipient before the end of the probation period for the probation period's short notice period to apply. If the employee resigns from the position, there is no requirement for writing, but for the sake of the evidence situation, written notice is recommended. Requirements for dismissal reason in probation The starting point for positions with probation is that one is permanently employed from the first day. The employment relationship runs as usual after the end of the probation period unless the employer delivers written notice before the end of the probation period. The idea that the parties in the employment relationship's probation period should be able to terminate the relationship faster than normal, however, is reflected in the threshold for dismissal in probation. Threshold for dismissal is lower in probation In the private and municipal sector, a dismissal from the employer must be justified in the employee's adaptation to the work, professional competence or reliability (Working Environment Act § 15-6). Both coming late to work, taking too many and long breaks and poor treatment of customers are circumstances that fall under the provision. In the judgment Rt-2003-1071 and later judgments, the Supreme Court states in connection with probation that both the purpose of the provision on access to dismissal in the probation period and the fact that a separate statutory provision regulates the relationship, indicate that "the threshold for dismissal in such cases is somewhat - not insignificant - lower than what applies otherwise." In the public sector, the employee can be dismissed "due to lack of adaptation to the work or if he does not meet reasonable requirements for competence or reliability" (State Employee Act § 15 (4)). Employees who are obliged to undergo a specific training, are employed on probation until the training is completed, or test or exam is passed. If the training is not completed satisfactorily, a notice period of one month applies (State Employee Act § 15 (6)). If the dismissal is due to other reasons for dismissal than those stated by the Working Environment Act and the State Employee Act, the usual rules on dismissal apply. The factual basis for dismissal in the probation period must be linked to the law's thresholds for probation. The employer must, in a court proceeding, substantiate what the dismissal is based on, so that the courts can "review the employer's assessments". Prior process before a dismissal A dismissal should not come as a surprise to the employee in the probation period. In order for there to be a valid reason for dismissal - beyond the most serious breaches of trust from the employee - it is normally required that the employee is assessed, instructed and repeatedly illustrated that they are not performing at an acceptable level. The Supreme Court has stated that this purpose presupposes that the employee is given a real opportunity to try, (the judgment Rt-2003-1071). The employee must therefore be given special instruction, training and perform his / her work tasks in the probation period. This also follows from the State Employee Act § 15 (3) where it is stipulated that the state employee must be given necessary guidance, follow-up and assessment of his / her work in the probation period. The employee must also be given the opportunity to adjust and perform the work in accordance with the employer's wishes. The assessment of validity will also depend on the job advertisement, the nature of the work, type of position, the employee's education, experience and the job description. When assessing the validity of the dismissal, it will also be given weight that there has been no consultation meeting before a dismissal. Failure to hold such a discussion does not invalidate, but is a factor in the assessment of whether a dismissal is justified, see the preparatory works of the Working Environment Act (Ot.prp.nr.50) and statements from the Supreme Court in the judgment Rt-2003-1071. The mentioned conditions imply that the parties are encouraged to actively assess the situation in the probation period. As for the courts' testing intensity, the courts show restraint in reviewing the employer's discretionary assessment of how the employee functions in the position, as long as the fact the dismissal is based on is considered proven and relevant. The same applies to the discretionary assessment of an employee's suitability for the position and what the requirement for suitability consists of in more detail. New probation period with the same employer If you change positions within the same company, there may be some access to agree on a new probation period. The requirement is that the functions you will have in the new position differ so markedly from those in the old job, that the employer has no basis for assessing whether you will function satisfactorily in the new one. It has also been expressed in case law that an employee who has achieved normal dismissal protection in the position, can be employed on probation in a significantly different position, if he retains the right to return to his previous position by the probation agreement. It will normally not be required with such a long time as six months to clarify whether it works well enough in the new job based on the fact that one already has experience with the current employee from before. Downsizing in the probation period The employer can also go to dismissal for probationary employees if the conditions in the law's general provision on dismissals are met, for example in the event of bankruptcy and other closure. Such will normally come as an unfortunate surprise to new employees. If you are dismissed in the probation period as a result of downsizing in the company, it may be a problem whether you are entitled to the normal notice period that applies outside the probation period or whether the probation period's shorter notice period should apply. If this becomes relevant, we recommend that you contact Tekna for legal assistance. Keywords: prøvetid, test, tilpasing, brengeset tidsperiode In probation, there is a lower threshold for dismissing an employee than otherwise. And there is a shorter notice period than for regular dismissal. Trial period with a short notice period can also be an advantage for the employee, so that they can quickly resign after their own notice if they are not happy in the position or at the workplace. Agreement on probation In the private sector, probation must be agreed in writing when entering into the employment contract (Working Environment Act § 15-6). 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