

> Unfair dismissal laws: probation periods versus qualifying periods

The following information confirms the distinction between “probation periods” and “qualifying periods” for the purpose of excluding an employee from federal unfair dismissal laws. This information applies to employers who are constitutional corporations and subject to the federal legislation. Other employers should consult their state industrial legislation.

The contract of employment under which Mr Nelson was engaged with Westpac contained a provision which indicated that Mr Nelson was employed on a three month “probation period”. Mr Nelson’s employment was terminated at around five months but less than six months (the qualifying period).

Federal unfair dismissal laws state that employees serving a “probation period” and employees serving a “qualifying period” are excluded from being able to bring an unfair dismissal claim. The maximum “probation period” is three months unless a period of greater than three months is reasonable in all the circumstances. The “qualifying period” is an automatic six months. The “qualifying period” can be reduced or increased in writing but any increase beyond the automatic six month time frame must be reasonable.

Westpac argued that Mr Nelson’s unfair dismissal claim could not proceed on the basis that Mr Nelson had not completed the necessary automatic six month “qualifying period”. In response Mr Nelson submitted that the “probation period” as set out in his contract of employment, also constituted the “qualifying period”.

The commission found in favour of Westpac finding that the “probation period” and “qualifying period” under federal unfair dismissal laws are distinct concepts and accordingly an agreement about a “probation period” cannot constitute an agreement about a “qualifying period”. A shorter “probation period” of three months will not automatically reduce the length of the

Create Date	March 09
Review Date	June 09
Author	SO’C
No. of pages	1
File path C:\Local Documents\sharedoer\My Documents\2010 Directory\OER Information Sheets\Unfair dismissal laws.docx	

“qualifying period” to three months.

Further References: Workplace Relations Act 1996