

A Guide to Probation Reviews & Performance Management

Thank you to those who attended the webinar on Thursday 16th September 2021. For those of you who didn't attend please take some time to watch the recording that has been sent to you. Below are the questions that were asked throughout the webinar and as promised, we have answered them for you. If you have any further questions please email advice@avensure.com (put follow-up question from the Webinar' in the subject title).

Questions & Answers

1. We have been advised that if we have people on zero hour contract no probation is needed as we can just stop offering work if we are not happy, but are there any problems we could face if we do this?

Where zero hours contracts are concerned, the main problem is ensuring that we are dealing with a true zero hours worker. That means they work on an ad-hoc basis, are not obligated to accept work that they are offered and nor is there an expectation that you will offer work.

Over time zero hours workers can build up a regular working pattern, this can result in the nature of the contract changing and the individual becoming entitled to full employment rights. That means, that you could face breach of contract or possibly unfair dismissal claims if you suddenly stopped offering them work.

If you are considering not offering work to someone on a zero hours contract and they have done regular work for you, please seek advice.

2. If the evidence is verbal, because a colleague is not willing to put negative report in writing, does that still count as evidence?

It's better to get evidence in writing. In the context of a probation review if the person is the employee's manager, then I would hope they would co-operate by evidencing any poor performance or poor conduct.

3. Do you have a standard form for appraisal and performance reviews?

Yes, we have documentation to assist with appraisals and reviews. Please contact your Lead Consultant, the advice line or email advice@avensure.com please quote your client reference number.

4. How often should appraisals be carried out?

There aren't any set rules on this but usually they are carried out once or twice a year.



5. Can we change the probation period in our contracts (for new starters) from 3 months to 6 as a standard?

Yes. If you require any changes to your contracts, please contact the HR Documentation team on **0330 100 8704** (opt. 4) or email hrdocumentation@avensure.com

6. With a change in role for an existing employee, what process should we follow to introduce a probation period in the new role? Would it involve a change in contract?

If an employee is being promoted or is just moving to a different role, then you can make clear, usually with an offer letter (which we can assist you with) that the role will be subject to a probation period.

Please note, if they have over 2 years' service and fail their probation, you would be looking at either moving them back to their previous role or commencing formal capability proceedings, rather than dismissing them.

7. I note that invitations to probation reviews should (best practice be in writing), but would it also be best practice to set out the details of the areas of concern in the invite letter... how detailed should that be?

Yes, this is good practice. The matters of concern should describe the concerns you have, for example, if its missed targets, setting out when the targets were missed, by how much and so on. If it's lateness, list the occasions and time of arrival.

8. Can you put on the job description that they need to be medically fit to carry out the role?

Someone should always be medically fit to do the role but putting this turn of phrase on a job description may be problematic, as it could discriminate against those with disabilities.

What you are better off doing is making sure the job description lists all of the duties. So, for example, if heavy lifting or long periods of standing are required, state this on the job description. That way the candidate is aware of the role requirements and can make their own assessment as to whether they can do the role or not.

9. Do you have a template for constructing an employee handbook? While each business is very different, a template would help us to identify any gaps in the handbook we are putting together for our own business.

We don't tend to issue templates because our service is to provide bespoke documentation for each client but if you wish to discuss your handbook or contracts, please contact the HR Documentation team on **0330 100 8704** (opt. 4) or email hrdocumentation@avensure.com

10. We currently have a person off on long-term sick who has been invited in for a probationary hearing, they will have been off by then for over 3 months, what steps do we need to take?

You should extend the probation period until such time as they are able to return to work and have their suitability properly assessed.

You can do this without having a review. Contact the advice line and we will assist you fully with this.

11. Satisfactory references are a requirement of employment with us, but this isn't currently in our contract or offer letter. It is noted in our recruitment policy. Should we add this to the contract for clarity?

If satisfactory references are a condition of employment, then this should be stated in the offer letter and the employment would only commence once the references have been received. So, you could just issue an offer letter initially and then issue the contract when the references have been received and a start date agreed. Contracts can be issued on the first day of employment but no later than this.

12. Can you briefly explain what the Employee Assistance Programme is please?

An Employee Assistance Programme (EAP) is an employee benefit program that assists employees with personal problems and/or work-related problems that may impact their job performance, health, mental and emotional well-being. They provide employees access to counselling services and advice for a range of matters such as financial/debt advice, personal relationship advice, bereavement and so on.

Avensure have an EAP service- please contact us for more information.

13. Are we allowed to ask new employees if they are vaccinated? If there is travel required within a job role and is on the job description can someone now refuse?

You can ask if someone is vaccinated but it is confidential medical information, so you should only be asking if it is essential that the information is provided (such as care homes in England where employees must be vaccinated). Employees can refuse to provide their vaccine status but if they do provide it, you must make sure that your reasons for obtaining the information is clear and any medical information is appropriately recorded and stored in line with general data protection regulations.

In terms of travel, as long as the company is not asking someone to travel outside any current travel restrictions, then employees should not unreasonably refuse.

If they are refusing, then we need to find out what their concerns are and aim to address those concerns/reduce risk and so on.

You will need to contact us for advice, as it will depend on the circumstances, the job role contract etc., as to what can be done.

14. It is okay to performance manage someone on their capabilities even though they are being monitored throughout the probation period?

Yes, you should be monitoring their performance during the probation period.

It will depend on the circumstances and how long they have worked for you but if they are in their probation period and are a new starter, then their suitability can be managed through probation reviews rather than the formal capability procedure.

15. What is a suitable period of probation period, 3 months or 6 months?

The probation period should be in line with the role.

If it takes someone 3 months to be trained, learn the ropes and so on, then 3 months is fine. 6 months tends to be the usual probation period length.

16. My staff all but one are zero hours. I am new to the service as a manager. Does this now mean then as you have just said that my staff should now be considered as permanent staff?

See answer to question 1.

17. On the no statutory right to be accompanied, the slide mentioned best practice, giving the employee the right to be accompanied by a fellow colleague. I presume we can say fellow colleague only and not permit a union rep.

It's good practice, so if you wish you can state that they can bring a colleague in for 'support' rather than to be 'accompanied'. However, if someone does want to bring a union rep to a probation review, I would advise you to seek advice before turning this down.

18. How about fit to drive as a class 1 driver whereby they cannot fulfil any role?

If a driver is no longer able to drive, whether this is due to a medical reason or they lose their licence, you will need to seek our advice on this as it will depend on the individual circumstances as to how this matter is handled.

