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Probation Management Checklist (2026)

Prepared by RK Corporate Consulting (RKCC)

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Introduction

Probation is intended to be a structured assessment period. In practice, it is often treated as an informal trial phase, with performance concerns assumed rather than actively managed. Delaying performance management until the end of Probation is one of the most common reasons probation disputes succeed at the CCMA.

At RKCC, we regularly see employers lose probation disputes not because performance was acceptable, but because expectations were unclear, feedback was inconsistent, and support was either inadequate or absent. Probation then becomes reactive and legally vulnerable.

This checklist is designed to help employers manage Probation lawfully, practically, and defensibly, from Appointment through to confirmation or Dismissal.

? Purpose of This Toolkit

This toolkit assists South African employers to:

- identify probation-related risk early;
- ensure compliance with the Labour Relations Act;
- structure probation reviews and feedback properly; and
- avoid avoidable CCMA disputes arising from poor performance management.

This toolkit does not replace legal advice. It helps you assess whether your probation process can withstand scrutiny and when professional support is required.



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Legal Framework: Probation and Performance Management

Probation is governed by **section 188 of the Labour Relations Act 66 of 1995**, read together with **Items 8 and 9 of Schedule 8 (Code of Good Practice: Dismissal)**, which forms part of the Act.

Section 188 of the Labour Relations Act

A dismissal is unfair unless the employer proves:

- a fair reason for Dismissal; and
- that a fair procedure was followed.

Section 188 of the LRA applies fully to probationary employees.

Schedule 8 of the Code of Good Practice Relates to Dismissal

Item 9 of the Schedule relates to Probation.

Recognises Probation as a period to assess suitability, but requires employers to:

- evaluate performance against reasonable standards;
- provide guidance, training, instruction, or counselling where performance is lacking; and
- allow a reasonable opportunity to improve.

Item 8 of the Code of Good Practice relates to Poor Work Performance (Capacity)

Requires employers to consider:

- whether performance standards were known;
- whether the employee was given a fair opportunity to meet them; and
- whether Dismissal was appropriate in the circumstances.

Probation allows for less formality — **not less fairness**.



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What the Law Requires During Probation

Probation is a period of assessment, not a shortcut to Dismissal.

The law requires employers to:

- clearly explain what is expected of the employee;
- actively assess performance during Probation;
- raise concerns early and clearly;
- provide guidance and support where performance falls short; and
- Consider alternatives before deciding on Dismissal.

While probation processes may be less formal than those applied to permanent employees, they must still be fair, rational, and supported by evidence.

What a Probation Review Is:

A probation review is a structured performance discussion between the employer and the employee. It is not a disciplinary hearing, and it is not a warning.

A lawful probation review should address:

- how the employee is performing against role requirements;
- where expectations are being met;
- where performance is falling short;
- What improvement is required?
- What support or guidance will be provided, and
- When will it be reviewed again?

The employee must be given an opportunity to respond and to raise any challenges affecting performance.

✓PART 1: At Appointment

Confirm the following at the start of employment:



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- ☐ A written probation clause is included in the contract
- ☐ The length of Probation is reasonable for the role
- ☐ Performance standards are defined and role-specific
- ☐ Review dates are scheduled in advance

Practical illustration:

An employee is appointed on Probation with no clear performance standards. At Dismissal, the employer cannot explain what the employee failed to meet.

Risk if overlooked:

Probation clauses without clear standards are difficult to defend and often collapse at the CCMA.

✓PART 2: During Probation

During the probation period, confirm that:

- ☐ Performance is actively monitored
- ☐ Feedback is provided regularly, not only at the end
- ☐ Guidance or support is offered where gaps are identified
- ☐ Discussions and feedback are documented

Case law:

Dial Tech CC v Hudson (2007) — probation dismissals require guidance and evaluation, not surprise decisions.

Practical illustration:



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An employee struggles with reporting standards but receives no feedback until Dismissal.

Risk if overlooked:

Silence during Probation followed by Dismissal is a routine basis for procedural unfairness findings.

What Should Be Discussed During Probation? (Critical)

Probation meetings are not disciplinary hearings. They are structured conversations aimed at assessing suitability and supporting improvement.

Probation discussions should cover:

- **Role expectations**

What the employee is expected to do and how success is measured.

- **Performance feedback**

What is working, what is not, and why.

- **Support and guidance**

Training, tools, or clearer instructions are required.

- **Progress and timelines**

What improvement looks like and by when.

- **Employee input**

Challenges, constraints, or circumstances affecting performance.

These discussions should be documented, even if informal. Vague or absent feedback is a strong indicator of procedural unfairness.



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✓ **PART 3: Probation Extensions**

Before extending Probation, confirm that:

- ☐ The reason for the extension is clearly explained
- ☐ The extension period is defined and reasonable
- ☐ Specific improvement areas are identified
- ☐ Support measures are practical and measurable

Practical illustration:

Probation is extended twice without meetings or written reasons.

Risk if overlooked:

Repeated or unexplained probation extensions are a significant CCMA red flag.

✓ **PART 4: Before Dismissal**

Before dismissing for poor performance during or at the end of Probation:

- ☐ The employee was aware of the performance standard
- ☐ A fair opportunity to improve was provided
- ☐ Performance was assessed objectively
- ☐ Reasons for Dismissal are clearly recorded

Case law:



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Ndlovu v Transnet Ltd (2003): probationary employees are entitled to fair evaluation and engagement.

Risk if overlooked:

Dismissal without evidence of support and assessment is rarely defensible.

Mitigating and Aggravating Factors

Before deciding on Dismissal, employers must consider:

Mitigating factors, including:

- length of service;
- disciplinary record;
- personal circumstances; and
- willingness to improve.

Aggravating factors, including:

- Repeated failure to improve;
- seniority or position of trust; and
- operational impact.

Key principle:

Failure to consider mitigating factors exposes employers to compensation awards — even where performance is poor.

Relevant Case Law

Somyo v Ross Poultry Breeders (Pty) Ltd (Labour Appeal Court)

Employers must demonstrate that:

- appropriate performance standards existed;



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-
- The employee was aware of those standards, and
 - Performance was assessed fairly in context.

Avril Elizabeth Home for the Mentally Handicapped v CCMA (2006)

While processes may be less formal, they must still be fundamentally fair.

Together, these cases confirm that Probation does not excuse poor performance management.

Practical Case Study: A Predictable Outcome

An employee is appointed on Probation. No performance targets are set. Feedback is informal and undocumented. At the end of Probation, the employee is dismissed for “not meeting expectations”.

At the CCMA, the employer cannot explain:

- what the expectations were;
- when they were communicated; or
- What support was provided?

Outcome:

The Dismissal is found procedurally unfair, and compensation is awarded.

! Legal Consequences of Non-Compliance

Mismanaged Probation exposes employers to:

- CCMA compensation awards;
- reinstatement or re-employment orders;
- findings of procedural unfairness;
- Repeated recruitment and training costs; and
- reputational and operational damage.



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Probation failures often signal deeper compliance gaps.

Why This Matters in Practice

Probation disputes are decided on process, not intention.

If an employer cannot demonstrate:

- what was expected;
- when concerns were raised;
- If the guidance was provided and
- how the decision was reached,

the Dismissal is unlikely to withstand scrutiny.

This is why documentation, structured reviews, and consistent engagement are critical throughout the probation period.

How RKCC Supports You

RK Corporate Consulting assists employers with:

- drafting probation clauses aligned to role requirements;
- setting measurable performance standards;
- designing probation review frameworks;
- assessing dismissal risk before decisions are implemented; and
- managing CCMA disputes where Probation has already escalated.

Navigating Probation with Confidence

Are your probation processes structured, fair, and consistently applied, or informal and reactive?



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Could you explain, with evidence, how performance was assessed if a probation dismissal were challenged?

Probation is not about avoiding labour law obligations. It is about applying them early, fairly, and proportionately.

When Probation is properly managed:

- expectations are clear;
- performance issues are addressed early;
- decisions are informed rather than rushed; and
- Disputes are less likely to escalate.

At RKCC, we help employers implement probation systems that are practical, lawful, and defensible, giving you confidence that probation decisions will withstand scrutiny.

Book your free 30-minute consultation today

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