

Raising the Bar

▶ Leandra Lambie-Shaw



90-day trial period

You don't need a crystal ball to realise 2009 is going to be a tough year for many businesses in the district. It is, however, important to remember, amidst managing cash flow and budgets, one of the most important factors for a successful business is good staff!

You would have heard lately in the media talk about the new 90-day trial period for new employees. The media's bandied about terms such as "hired to fired in 90 days" and "fire at will" when, in fact, this is not actually the case. The new trial period, introduced in March, allows both employers and employees opportunities that otherwise may not exist in a tough economic climate and encourages employers to take on new staff where previously many would have been reluctant to shoulder the risk.

In a nutshell, the new trial period allows employers to hire new employees for a trial period not exceeding 90 days. If, at any time during that trial period, the employer decides the employee's performance is not up to standard, then the employer can terminate the employment without fear

of a personal grievance or other legal proceedings being brought against them.

There are, however, a few catches to protect employees:

- The termination must be based solely on performance issues
- The employee cannot be dismissed on the spot, and the notice period specified in the Employment Agreement must be observed
- There must be an Employment Agreement in place with a clause governing the trial period
- The trial period only applies to employers with less than 20 employees
- The old concept of a probationary period remains unchanged.

With redundancies and unemployment on the rise, it will be interesting to see if the new trial period has the desired effect and encourages employers to take on staff. For those employees out there, it is worth remembering the reward for work well done is the opportunity to do more...

Leandra Lambie-Shaw is AWS Legal's Resident Associate in Gore. Please remember this information is designed as a general guide and should not replace specific legal advice. Your comments are welcome - leandra.lambie-shaw@awslegal.com ph: 03 209 0333