

# EMPLOYMENT LAW – ASK THE ATTORNEY

## Are “90 Day Probationary Periods” for New-Hires Required By law?

*By: Michael Kelsheimer*

Many of my clients put new-hires on a 90 day probationary period. They do this either for their own convenience or because they mistakenly believe the law requires it. The idea that it is “required” by a law is a myth.

Now that we have that out of the way, is there a reason to still have one? It is debatable.

The main reason that employers want to have a probationary period is to make themselves feel less guilty if the new-hire doesn't fit or can't do the job. Texas is an at-will state. From a purely logical standpoint, employers don't need to feel guilty when they let any employee go regardless of their tenure.

The only legal reason to even consider a probationary period is that it might set better with a jury if you let someone go during the probationary period. It might be easier for the jury to believe an employer's explanation that the employee was not a good fit for the culture of the business or that the employee simply could not meet the requirements of the job. At the same time, a jury should be able to appreciate that for a new employee within 90 days of employment, even without the use of a probationary period.

Is there a downside to having a probationary period? In my opinion, yes. If an employee is told that they are on probation

for 90 days, how will they feel after the 90 days is up? I think they will feel like they have some sort of tenure – as if they can only be let go “for cause.” To make matters worse, the employee is likely to act on their best behavior for the first 90 days and then show you how they really act!

At that point, a jury would be less likely to believe that the employee was not a good fit and that the employer may have acted with some type of bad motive if there were litigation.

If you decide to have a probationary period. Be very clear about what it means. I would recommend putting the information in your employee handbook with a clear explanation that the 90 day period is probationary but that they can be let go for the same reasons or any other reason after the probationary period is over. This may somewhat defeat the purpose of the probationary period, but it protects your business.

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## Scholarships for Graduating High School Seniors ACA of Texas Educational Foundation To Award Two \$1,000 Scholarships

The American Collectors Association of Texas Educational Foundation is again sponsoring a scholarship contest that is open to 2013 graduating high school seniors who are children, legal dependents or grandchildren of employees of agency members of ACA of Texas. Applications are available at [www.texascollectors.com](http://www.texascollectors.com), by calling 512-458-8666 or emailing [info@texascollectors.com](mailto:info@texascollectors.com). Completed applications and the required essay must be received by April 8, 2013.