



The Employee's Probation Period in the DR Congo Labour Law

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In terms of the DRC labour law, what is the probation and is it possible to extend an employee's probation period ? If so, what are the conditions?

Probation is provided for by Law No. 16/010 of July 15, 2016 amending and supplementing Law No. 015-2002 on the Congolese Labor Code, especially in its article 43.

Under the terms of this article, the parties (employer and employee) may indeed agree to carry out a probation and this probation clause must be recorded in writing because the probation period is not presumed.

Probation is a unique contract (different from the employment contract) subject to a suspensive or resolutive condition. This contract becomes final at the end of the expiration of the probation period, unless the parties intend otherwise.

This is a probationary period that allows the employer to ensure that the worker is suitable from the point of view of competence and aptitude for his job; and the worker to check whether the task entrusted to him is suitable for him.

It should be noted that at the end of the probation period, two situations arise:

- Either the probation proves satisfactory, the contract is now definitive,
- Or the trial proves unsatisfactory, each party resumes his freedom without any particular formality and without liability being incurred. However, the employer who declares that his worker's probation is not satisfactory must justify his decision with risk of incurring civil liability (payment of damages to the worker)

Regarding the duration of the probation period, the parties are free to set it. However, the Labour Code sets the maximum period beyond which the probation period cannot exceed. In other words, the probation period cannot exceed the time necessary to test the hired staff, taking into account the technique and customs of the profession.

The maximum duration of the probation cannot exceed one (1) month for the employees whose work does not require a specialty nor six (6) months for the other employees whose work requires a certain specialty or in-depth knowledge.

If the parties freely provide for a longer duration than the maximum, this is automatically reduced to one (1) or six (6) months, as the case may be, as set out above.

Furthermore, **if the extension of the probation services is beyond the maximum duration, this automatically leads to the confirmation of the employment contract**, i.e. the contract is therefore concluded on a definitive basis and this, in favour of the employee. Hence, the maximum probation period must be observed by the employer. On the other hand, it is understood that the parties may reduce the trial period below the maximum period required according to the agreed principle.

It should be noted that the illness occurring during the probation period leads to the extension of the probation period because it constitutes a legal cause for the suspension.

Finally, it should be noted that the probation engagement gives each party an absolute right to unilaterally terminate the employment contract at any time subject to three (3) working days' notice starting the day after the notification, unless stipulated expressly contrary to the contract. But in the event of gross negligence by one of the parties, termination may occur immediately and without notice during the first three (3) days of the trial.