
FACT SHEET
PROBATIONARY PERIOD – APPEAL RIGHTS

The probationary period should be used to determine an employee's fitness for continued employment in the federal government. Generally, the probationary period is the first year of service for an employee in the competitive service; however it's not quite that simple. It's the first year of service of an individual in the competitive service that is given a career or career-conditional appointment when the employee was either appointed from a competitive list of eligible's or was reinstated, unless the reinstated employee previously completed a probationary period or served with competitive status under an appointment that did not require a probationary period.

Probationary employees have limited rights when it comes to appealing a termination to the Merit Systems Protection Board (MSPB). The right to appeal a removal during a probationary period to *the Board* will depend on whether an employee meets the definition of an "employee" under the law and whether he/she meets the requirements of any OPM regulation that grants additional appeal rights. Whether someone is an "employee" with appeal rights will depend in part on whether he/she is in the competitive service or the excepted service. This information can be found on the employee's Standard Form 50. Generally, probationary employees are excluded from the definition of "employee" in the competitive service and excepted service. Case law helps guide how terminations during probationary periods are handled. See below for more details.

Prior service under a temporary limited appointment can count toward completion of a probationary period in the competitive service if it was: 1) rendered immediately prior to the career or career-conditional appointment or conversion; 2) in the same line of work; 3) in the same agency; and 4) with no more than one break in service of less than 30 days according to 5 CFR 315.802. Therefore, it's important to consult with human resources to ensure that an employee who you believe is a probationary employee really is.

- Competitive Service:
 - Individuals in the competitive service terminated during the first year of initial probationary period will have limited appeal rights. An employee may appeal to the Board if he/she believes the termination was based on (a) partisan political reasons, or (b) marital status. He/she may also appeal if he/she believes the termination was based on discrimination because of race, color, religion, sex, national origin, age, or physical or mental disability, but only if the allegation of such discrimination is raised in addition to (a) or (b) mentioned above.
 - Employees in competitive service who have completed one year of current continuous service under other than a temporary appointment limited to one year or less will have full appeal rights to the MSPB.

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- Excepted Service:
 - Except for an employee serving under a Veterans’ Recruitment Appointment (VRA), an employee serving under excepted service has no appeal rights to the MSPB. A VRA appointee terminated during probationary or trial period has the right to appeal to the MSPB. VRA appointees are the only excepted service appointees who have the same appeal rights as competitive service appointees.
- Prior federal civilian service counts toward completion of the probationary period when the prior service:
 - Is in the same agency;
 - Is in the same line of work (as determined by the employee’s actual duties and responsibilities); and
 - Contains a break in service not exceeding 30 calendar days.
- Supervisors shall utilize the probationary period as fully as possible to determine the fitness of the employee and shall terminate employee’s services during this period if he/she fails to demonstrate fully his/her qualifications for continued employment.
- If it is determined that a probationary employee is unsatisfactory in either performance or conduct, he/she may be terminated at any time during the probationary period. The effective date must be prior to the end of the probationary period.
- For supervisors, the probationary/trial period should always be considered a key period for addressing and resolving performance issues. The lapse of a probationary/trial period without a proper assessment of a new employee's performance may result in future performance problems; at which time the employee will have full MSPB appeal rights.

<u>RELATED TOPICS</u>	<u>REFERENCES</u>
Performance v. Conduct	5 U.S.C. 7511(a) 5 C.F.R. § 212.101 5 C.F.R. § 213.101 5 CFR 315 Subpart H