

Frequently Asked Questions.

Salesperson new to the industry.

Q. Do I have to put a salesperson on probation for 12 months if they have already been in the industry?

A. The determinant of whether a sales person can be on a “commission only” is “roughly”;

- (i) at least 12 months selling experience anytime over the last 5 years.
- (ii) in a 12 month period of prior industry experience they would have earned if they were “commission only” in excess of about \$ 32,000 in that period.

(The exact qualifications are include in the “commission only” AWA documentation). So if they qualify in terms of “commission only” then you can put them straight on the “commission only” AWA. If they don't, because say they have only worked previously for six months at another real estate agency then you would need to put them on the probationary sales AWA for at least 6 months (to make up the total of 12 months experience) before switching them to the “commission only” AWA.

Q. Why does the Probationary sales person AWA designate them as a casual?

A. Although you can have them as permanents the overwhelming request from realtors was for the simplest possible arrangements. The current legislation only really differentiates between casuals and permanents in terms of whether they get holiday and sick pay or whether they just get an all up rate. The old definition of casually being employed by the day for the day no longer applies. Today casual can be as permanent as a permanent, but has the particular advantage of being easier to administer i.e. no holiday or sick pay records needed.

Q. Can I have a new probationary sales person as a permanent?

A. Yes, of course you can. With a couple of amendments to the flexible permanent Property Management/Admin AWA which we can give you over the phone, you can use that particular AWA . There is however two disadvantages (a) it's administratively messy (b) you cannot automatically switch the worker to “commission only” after 12 months experience without their permission.

Q. I have a trainee salesperson on a Government subsidized traineeship. Which AWA do I use?

A. you cannot use the standard Probationary Salesperson AWA because that designates them as a casual. You must use the flexible permanent property management/admin, although you will be paying the trainee rate to them you must enter the sales person “award” rate on page 3 number 3 under pay rate. Then make a note below it in number 4 the addition conditions “Traineeship conditions apply and partial rates shall be \$ x.00”. Then in schedule 1 in the box at the bottom of page 8 (the AWA itself) enter the Award rate not the lower traineeship rate.

Q. What happens when the probationary period ends (usually after 12 months experience)?

A. Unless the employer specifically agrees to continue the probation the employment comes to an end or is terminated. The employer may then offer a completely new contract of employment (for commission only) with different conditions because it is a new employment, not a continuation of an existing employment. This is extremely important as it almost entirely reduces the probability of a vexatious claim for duress against the employer should the employee sales person not want to go onto a “commission only” arrangement. You do not have this protection if you use permanent AWA for your probationary salespeople.

Q. What hours must a probationary salesperson work?

A. Because they are not designated “permanent” (unless you decide to go that way and use the flexible permanent (property management/admin) AWA with the entered amendments) you are not necessarily locked into a 38 hour week. You can set up a debit/credit arrangement only for the weekly hours and other compulsory meeting and training sessions. Say 20 hours each week. A word of caution here. This principle has not been tested so we offer no guarantees. If the matter was tested it is possible that a court would determine that the salesperson should be paid for up to 38 hours each week as the off set minimum. You would then still be no worse off than had you done nothing, but it is important to know about this important qualification.

Q. Can a probationary sales person be paid a non debateable wage salary?

A. Of course. On page 3, number 3 you have two choices. You can either pay an offset against the weekly debit or you can pay a wage with of course lower commissions. A common arrangement is to have the commissions cut in after a qualifying target has been met, say each quarter. In the commission schedule insert (page 13) just make sure you spell out exactly when and what the arrangements are.

Q. In the actual AWA on page 9 it has a schedule 1 which asks for the work patterns. How do we fill this out?

A. You can leave the applicable Award, classification and role title and pay rate to us because they will vary from state to state and whether or not your company responded before or after 27th of March, 2006. That’s why we ask you that question to on page one. You can however fill in the hours the sales person is expected to work. Because there are no hours to be worked in public holidays you can enter “none” for both questions.

Q. If I have a new sales person when do I have to start paying the offset amount?

A. From the moment the employment commences and should then be paid either weekly, fortnightly or monthly there after. Probationary sales people are not, not on commission only, so you should acknowledge that in reality be paying them regularly.

Q. If the probationary sales person earns commission, do they have to be paid out to them?

A. No. On page 5 number 8 it's important to get the sales person to acknowledge that is the case. At the end of the probation, their employment as a probationary salesperson comes to an end so at that point you would clear the account and pay any monies owing to them.

Q. Do sales people have to be on agreements at all?

A. No. But when conditions then revert to the relevant award and you would have to pay holiday and sick pay and a minimum weekly payment after 38 hours.

Q. Why do sales people have to pay all or part of the lodgement fee?

A. It's simply a matter of agency policy. Some agencies get the salesperson to pay the lot some pay it all for them. Most split the cost, it's your choice.

Q. Is a weekly roster important?

A. If there is no roster then the automatic default for the level of weekly offset would be 38 hours. A fairly typical roster would be for 2 half days and one sales meeting leading to an offset of around \$200 per week. (Remember the note about this being untested).

Q. Should probationary sales people be on the same commissions rates as the commission only sales people?

A. You can, but it's inequivalent for the "commission only" sales people. The probationary sales people are being trained and a guaranteed weekly income. Because this guarantee is imposed as a matter of law, whether the probationary sales person wants it or not, it is not unreasonable to charge for their guarantee with a lower commission rate. The sales people then have further incentive to work hard so that they can get onto this higher commission earning after their qualifying period is over.

Q. What happens when I need to terminate a probationary sales person?

A. Unless you have agreed in the additional conditions to give each other 7 days or longer notice of termination, you only need to give a days notice (if you have used the flexible permanent AWA for your probationary sales person you will have to at least a weeks notice).

Q. What is the savings reserve declaration in the probationary sales personnel and personal assistants AWA (clause 9, page 5)?

A. this is more for the personal assistants who will generally just be on an hourly rate, but it can apply to probationary sales people as well. Because the AWA specifies a “casual” all up rate with out holidays pay many employers appreciate their employees setting aside “holiday money” for them. One thirteenth of their hourly and or commission and bonus rate is exactly equivalent to 4 week paid leave. Most payroll programs like MYOB will easily accommodate these arrangements.

Q. What kind of details do I include in additional condition in the AWA checklist?

A. Additional conditions may include things like...

- Mobile phone
- Car- mileage allowances
- Special duties and responsibilities
- Key performance indicators.

Because the space is limited on page 3 most employers just use that space in clause 4 to refer to a more involved schedule which is then inserted into the documentation in page 13.

Q. What break period are real estate staffs entitled to?

A. Those which apply in the relevant Award. Usually 10 minutes after a 4 hours shift but legally meaningless in the real estate industry where remuneration is geared towards performance.

Q. What are the rates of pay that apply to probationary sales people?

A.

Casual

- : Queensland- \$16.49
- : New South Wales- \$
- : Victoria- \$
- : South Australia- \$
- : Western Australia- \$
- : Tasmania- \$
- : Northern Territory- \$

Flexibility Permanent

- : Queensland- \$13.74
- : New South Wales- \$14.65
- : Victoria- \$
- : South Australia- \$
- : Western Australia- \$
- : Tasmania- \$
- : Northern Territory- \$

Q. How does the “fairness test” apply to a probationary sales person AWA?

A. It depends upon which state you are in. The casual AWA is certainly a little easier and in Queensland it is “virtually” automatic for the SBU documents. Each one still has to be done individually though.