

Labour & Immigration  
Research Centre

*Te Pokapū a Mahi me Te Manene Rangahau*

A SERVICE OF THE DEPARTMENT OF LABOUR

# Employers' Perspectives – Part One: Trial Periods



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## **EXECUTIVE SUMMARY**

### **Purpose**

This report presents the findings from two studies of employers' perspectives of the trial period provisions introduced for Small-Medium Enterprises<sup>1</sup> (SMEs) in 2009 and larger<sup>2</sup> employers in 2011. The report is structured thematically and discusses the prevalence of use reported by employers, and the perceived benefits and issues with using trial periods.

### **Background**

Since 1 April 2011, an amendment to the Employment Relations Act 2000 has allowed all businesses to hire new employees on a trial period of up to 90 calendar days. Prior to this, employers with fewer than 20 employees were able to use the provision from 1 March 2009. Under the amendment, the employee cannot raise a personal grievance for reasons of unjustified dismissal if dismissed within the 90 calendar days, but still has the right to protections against discrimination, sexual and racial harassment, duress, or unjustified action by the employer that disadvantages the employee. Employees can still access mediation, and the principle of good faith still applies to the relationship.

This report details the findings of two significant datasets recently produced by the Department. The first is the 2011 National Survey of Employers, which involved 1,957 employers across New Zealand (excluding Christchurch). The second is a qualitative study looking at employers' perspectives on employment, particularly in relation to the Minimum Wage System. However, trial periods were examined in the context of their influence on employers' hiring decisions.

### **Methods**

#### ***National Survey of Employers***

The National Survey of Employers (NSE) surveyed New Zealand employers between mid-September and early December 2011. The purpose of this annual survey is to monitor labour market, immigration and employment issues from the employer perspective; to improve our research and evaluation evidence base; to develop and evaluate policy; and to answer contemporary policy questions.

The survey achieved a sample size of 1,957, with a response rate of 36 percent. The survey excluded employers in Christchurch city: the Department conducted a separate Canterbury Employers' Survey in October 2011. The survey is nationally representative based on the Statistics New Zealand Business Frame, by industry and firm size.

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<sup>1</sup> Small-Medium Enterprises (SMEs) refer to employers with fewer than 20 employees.

<sup>2</sup> Larger employers refers to employers with 20 or more employees.

## **Qualitative interviews**

The qualitative data is the result of interviews conducted with 53 employers in Hawke's Bay, Wellington, Auckland, and Dunedin/Invercargill. There were four industries of focus: Agriculture, Forestry and Fishing; Hospitality; Manufacturing; and Retail (see Table 2). These were all industries of focus on the NSE as well (see Table 1). The interviews were semi-structured and took from 20 to 90 minutes. The focus of the interviewing was the minimum wage system, so it targeted employers that were likely to have staff on or near the minimum wage.

To be eligible for interviewing, an employer needed to:

- be operating in one of the four industry types of interest (agriculture, forestry and fishing; hospitality; manufacturing; or retail)
- be based in one of four regions (Auckland, Hawke's Bay, Wellington, or Dunedin/Invercargill)
- have five or more staff
- have experience of paying some of its staff on or near the minimum wage in the 2 years prior to the research.

## **Key findings**

### ***Just over half of employers are using trial periods***

Overall, 60 percent of hiring employers in the NSE reported using a trial period since its introduction. There is not a significant difference between the level of use in Small-Medium Enterprises (SMEs) and larger employers. Currently, we do not know the number of workers whose employment involves use of the trial period provision, but are considering ways to establish this.

### ***Employers use trial periods to address risk when hiring***

Risk was a key issue discussed by employers. Risks of hiring varied between industry but included risk to the brand of the business, and damage to other inputs (such as damage to sheet metal caused by human error in manufacturing). Central to this was the potential cost associated with dismissing an employee being reduced, and thus giving employers the confidence to take a chance on an applicant who may not have fulfilled all the criteria wanted by the employer.

Dunedin Manufacturing:

*Because it just takes away that problem of 'My God, why the hell did we employ that person' and you've got nothing, you then enter into a very hard road of getting, if you do wish to exit them then you're in for a long process of, of doing that, but we haven't needed to do that anyway.*

Specific reasons were given by employers in the NSE for using trial periods relating to risk, including:<sup>3</sup>

- To check an employee's ability to do the job before making a commitment to employ permanently (66 percent)
- To employ someone with the skills required, but where the employer is unsure about their 'fit' with the workplace (35 percent)
- To avoid incurring costs if the employee is unsuitable for the job (13 percent)

Employers also reported using trial periods to test the viability of a position (rather than person) within the business. This practice was more likely with SMEs, with 30 percent saying they would not have filled the most recently filled position without a trial period, compared with 17 percent in larger employers.

### ***Trial periods reported to improve employment opportunities***

The NSE found that 41 percent of employers would not have hired the most recent employee without a trial period. Employers in the qualitative interviews also discussed the key role that trial periods played in improving employment opportunities within their business.

Auckland Agricultural, Forestry and Fishing:

*Well, I definitely think it is a good idea ... it definitely is going to allow you to take someone on that you're maybe a little bit unsure ... you know, you're going to give them a chance whereas you wouldn't have given them a chance in the past.*

### ***Indications that youth and long-term unemployed are benefiting***

The qualitative interviews asked employers about employment of youth and long-term unemployed. Trial periods were reported as one of the key government initiatives that had improved employers' willingness to hire applicants from these two groups, as again they were seen to reduce the risk to a business when hiring employees.

Dunedin Hospitality:

*We employ a lot of people, young people, some—many of whom haven't had a job before. So it allows you to maybe take a bit of a punt.*

### ***One in five employers reported dismissing an employee on a trial period***

Nineteen percent of employers in the NSE reported dismissing an employee who was on a trial period. This is similar to the level found in the 2010 evaluation of trial periods in SMEs (22 percent).

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<sup>3</sup> Multiple responses allowed.

## **Policy implications**

The findings of this research are broadly consistent with the earlier evaluation of trial periods for smaller businesses. It shows that from an employer perspective, use of trial periods is significant. Employers report their main reason for using a trial period is to reduce risk and this has enabled them to take on staff, where they say they previously would not have.

One employer suggested extending the trial period duration to 4 months. This was an isolated view and all other employers interviewed did not discuss a need for any further changes to the trial period provisions.

The objectives of trial periods may be summarised as follows:

- to encourage enterprises to take on employees
- to reduce employment relationship problems
- to provide opportunities for those who might suffer disadvantage in the labour market, including:
  - women
  - youth
  - first-time workers
  - Māori and Pasifika
  - people returning to work after a period of unemployment or child-rearing
  - people with disabilities or mental illness
  - migrants, or
  - people with overseas qualifications.

(Johri & Fawthorpe 2010)

From this study, it is clear that from an employer's perspective trial periods have been successful in improving the likelihood of hiring staff, which means the first objective is being met.

This research did not uncover whether the trial periods have reduced the number of employment relationship problems in firms.

There is evidence to suggest that trial periods have influenced employers' decisions in relation to employing two groups considered disadvantaged in the labour market: youth and long-term unemployed. Thus the research shows the trial periods are meeting another of their objectives.

## **Next steps**

This report does not cover employees' perspectives on trial periods. These will be examined in a forthcoming evaluation of the trial periods, due for release in late 2012/early 2013.

# CONTENTS

<b>1</b>	<b>INTRODUCTION .....</b>	<b>1</b>
<b>2</b>	<b>BACKGROUND .....</b>	<b>2</b>
<b>3</b>	<b>METHOD .....</b>	<b>3</b>
3.1	National Survey of Employers .....	3
3.2	Qualitative interviews .....	4
<b>4</b>	<b>USE OF TRIAL PERIODS.....</b>	<b>6</b>
4.1	Prevalence .....	6
4.2	Terminating employment during the trial period.....	7
4.3	Intention to use trial periods in the future .....	8
<b>5</b>	<b>BENEFITS OF USING TRIAL PERIODS .....</b>	<b>9</b>
5.1	Reducing risk.....	10
5.2	Creating employment opportunities.....	11
5.3	Other benefits .....	14
<b>6</b>	<b>ISSUES WITH USING TRIAL PERIODS .....</b>	<b>15</b>
6.1	Supports bad practice/not needed as processes are robust.....	16
6.2	Unions.....	18
6.3	Undermines employment relationship .....	18
6.4	Case law .....	19
<b>7</b>	<b>DISCUSSION .....</b>	<b>20</b>
7.1	Use .....	20
7.2	Risk reduction.....	20
7.3	Improving employment opportunities .....	20
7.4	Dismissal during a trial period.....	21
7.5	Not needed if processes are robust.....	21
7.6	Impact on employment relationship.....	21
7.7	Union resistance .....	22
7.8	Case law .....	22
<b>8</b>	<b>CONCLUSION.....</b>	<b>23</b>
	<b>REFERENCES.....</b>	<b>24</b>

## FIGURES

Figure 1: Percentage of hiring SMEs who used a trial period with a new employee, by industry .....	7
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## TABLES

Table 1: Achieved sample of employers in NSE, by industry and size .....	4
Table 2: Employer participants in the research study, according to industry type and region.....	5
Table 3: Employment of new staff on a trial period by hiring employers, by employer size .....	6
Table 4: Percentage of employers using trial periods who have dismissed an employee during a trial period, by employer size.....	7
Table 5: Intention to use trial periods in future .....	8
Table 6: Positions that employers intend to use trial periods for in future .....	8
Table 7: Employers' reasons for intending to use trial periods in the future.....	9
Table 8: Percentage of trial period employers who would not have filled the last position without a trial period .....	11
Table 9: Percentage of trial period employers who would not have hired the most recent employee without a trial period, by firm size .....	12
Table 10: Reasons for not using a trial period in the future.....	16



# 1 INTRODUCTION

This report details the findings of two significant datasets recently produced by the Department. The first is the 2011 National Survey of Employers, which involved 1,957 employers across New Zealand (excluding Christchurch). The second is a qualitative study looking at employers' perspectives on employment, particularly in relation to the minimum wage system. Trial periods were also examined in the context of their influence on employers' hiring decisions.

This is the first of three research reports on employers' perspectives. The next reports look at employers' perspectives on the minimum wage system, and employment of youth and long-term unemployed.

The report builds on the previous evaluation to investigate how employers (including employers with 20 or more employees) currently view the trial periods and the role that trial periods are playing in decisions to hire new staff, including two groups considered disadvantaged in the labour market: youth and long-term unemployed. While this report provides a picture of employers' views on trial periods, it should not be considered an exhaustive evaluation. A further outcomes evaluation of the trial periods is expected in late 2012/early 2013 that will build a wider picture of the trial periods.

The report is structured thematically and incorporates the qualitative and quantitative data into each theme.

- The background section covers the objectives of trial periods and their definition.
- The next section discusses the methods in each dataset.
- The first results section discusses the use of trial periods, including looking at the prevalence, dismissals during the trial period, and intention to use trial periods in the future.
- The second results section examines reasons for using trial periods, based on both NSE data and the qualitative interviews.
- The last results section presents the reasons for not using trial periods, also based on the NSE data and qualitative interviews.
- A discussion section follows, before moving to the conclusion.

## 2 BACKGROUND

Since 1 April 2011, an amendment to the Employment Relations Act 2000 has allowed all businesses to hire new employees on a trial period of up to 90 calendar days. Prior to this, employers with fewer than 20 employees were able to use the provision from 1 March 2009. Under the amendment, if dismissed, the employee cannot raise a personal grievance for reasons of unjustified dismissal, but still has the right to protections against discrimination, sexual and racial harassment, duress, or unjustified action by the employer that disadvantages the employee. Employees can still access mediation, and the principle of good faith still applies to the employment relationship. Both the employer and employee must agree to the trial period in writing before employment commences and it can only be entered into once, at the start of a new employment relationship.

The objectives of trial periods can be summarised as follows:

- to encourage enterprises to take on employees
- to reduce employment relationship problems
- to provide opportunities for those who might suffer disadvantage in the labour market, including:
  - women
  - youth
  - first-time workers
  - Māori and Pasifika
  - people returning to work after a period of unemployment or child-rearing
  - people with disabilities or mental illness
  - migrants
  - people with overseas qualifications.

(Johri & Fawthorpe 2010)

Trial periods are specific to New Zealand employment law; however, many other countries (and New Zealand) have probationary periods that have similar intentions. It is difficult to compare the two practices though: probationary periods often refer to a more casual employment relationship where most entitlements are not granted to new employees during the period, whereas a trial period only relates to the option for an employee to bring a personal grievance if dismissed during a trial period, and the conditions on this are also very specific. Thus, international comparisons are not included in the scope of this report.

The Department has already evaluated trial periods when they were available only to employers with fewer than 20 employees (see Johri & Fawthorpe 2010). The evaluation involved two employer surveys; interviews with employers, employees and union officials; and a literature scan. In the first year trial periods were available it found that employer awareness was high, although detailed knowledge was uneven. Irrespective of their level of knowledge, half of eligible employers used trial periods, and were generally very satisfied with the way it was working. Employers faced no costs in implementing the provision, and could potentially save costs because of simplified dismissal processes.

### **3 METHOD**

This report combines two datasets: the results from the 2011 National Survey of Employers, and the results of the Department's qualitative interviews with employers in late 2011/early 2012.

#### **3.1 National Survey of Employers**

The National Survey of Employers (NSE) surveyed New Zealand employers between September and December 2011. The focus of this survey (previously the annual Employers of Migrants Survey) was widened to explore employment relations and health and safety issues. An external research company conducted the survey.

The purpose of this annual survey is to monitor labour market, immigration and employment issues from the employer perspective; to improve our research and evaluation evidence base; to develop and evaluate policy; and to answer contemporary policy questions.

The specific objectives of the 2011 survey were to:

- better understand employer practices regarding aspects of workplace health and safety, flexible working arrangements, operating on public holidays, and use of the minimum wage
- monitor the extent of employment relations problems requiring action by management
- find out about employers' uptake of new employment legislation— requirement to retain signed employment agreements, cashing up holiday entitlements, use of trial periods
- assess the extent to which, and how, the 2010/11 earthquakes have affected firms outside Christchurch, and
- discover how recent migrants are integrating into their jobs and settling into New Zealand, and employers' attitudes towards migrants.

The survey contacted 7,079 employers and achieved a sample size of 1,957, creating a response rate of 36 percent (see Table 1). Three-quarters of the respondents participated in telephone interviews and the other quarter completed the survey online. The survey sample was obtained through an external organisation, and used a probability scheme with targets set for industry groups and by establishment size (number of employers). The survey excluded employers in Christchurch city: the Department conducted a separate Canterbury Employers' Survey in October 2011.

**Table 1: Achieved sample of employers in NSE, by industry and size**

<b>Industry</b>	<b>2-5</b>	<b>6-9</b>	<b>10-19</b>	<b>20-49</b>	<b>50-99</b>	<b>100+</b>	<b>Unknown</b>	<b>Total</b>
Agriculture, forestry and fishing	71	33	34	31	5	11	4	<b>189</b>
Manufacturing	39	38	60	75	54	42	0	<b>308</b>
Construction	48	43	58	58	30	24	0	<b>261</b>
Wholesale and retail trades	30	47	56	51	49	53	0	<b>286</b>
Accommodation and food services	43	59	59	44	23	21	0	<b>249</b>
Prof, science and technology; and health care and social assistance	40	34	50	57	45	47	0	<b>273</b>
Other industries	42	36	44	78	76	115	391	
<b>TOTAL</b>	<b>313</b>	<b>290</b>	<b>361</b>	<b>394</b>	<b>282</b>	<b>313</b>	<b>4</b>	<b>1,957</b>

The survey results were weighted back to the sample frame, and then to the Statistics New Zealand Business Frame, by size and industry. All data presented in this report is based on the weighted results and is presented by establishment size. Only differences between groups that are statistically significant are reported.

This report focuses on the results of questions on trial periods.

### **3.2 Qualitative interviews**

The qualitative data is the result of interviews conducted with 53 employers in Hawke's Bay, Wellington, Auckland, and Dunedin/Invercargill. The four regions were chosen to incorporate cities and provincial towns in the North and South Islands.

A total of 189 employers were approached and invited to participate. Forty-five employers were grouped as 'Not eligible'. Most of these had not employed any staff near the minimum wage in the past 2 years. In addition, some businesses were no longer trading or had moved region, or the employer had died. Sixty-one employers did not respond. Thirty employers refused to participate, usually indicating they were too busy, unavailable during the interview period, or their business was going through significant change.

There were four industries of focus: Agriculture, Forestry and Fishing; Hospitality; Manufacturing; and Retail (see Table 2). These were all industries of focus in the NSE as well (see Table 1). The interviews were semi-structured and took from 20 to 90 minutes.

The focus of the interviewing was the minimum wage system, so it targeted employers that were likely to have staff on or near the minimum wage.

To be eligible for interviewing, an employer needed to:

- be operating in one of the four industry types of interest (agriculture, forestry and fishing; hospitality; manufacturing; or retail)
- be based in one of four regions (Auckland, Hawke’s Bay, Wellington, or Dunedin/Invercargill)
- have five or more staff
- have experience of paying some of its staff on or near the minimum wage in the 2 years prior to the research.

**Table 2: Employer participants in the research study, according to industry type and region**

Industry type	Auckland	Hawke’s Bay	Wellington	Dunedin/ Invercargill	All regions
Agriculture, forestry and fishing	4	1	0	2	7
Hospitality	3	0	5	3	11
Manufacturing	3	9	3	9	24
Retail	3	0	7	1	11
All industry types	12	10	15	15	53

Mostly the ‘employer’ interviewed was the chief executive or owner/operator of the business. However, among some of the larger employers it was a member of the senior management team (usually the manager responsible for Human Resources). Forty-seven face-to-face interviews were conducted with employers and three with representatives of employer associations. Three interviews with employers were conducted by phone. Most interviews occurred before the national general election on 26 November 2011, although the last was in early March 2012.

Quotes are present in intelligent verbatim form, meaning repeated words and filler words<sup>4</sup> have been deleted, but otherwise quotes are reported as stated.

### ***Advantages and limitations of the research design***

The advantage of qualitative studies such as this one is that they yield in-depth information, and provide context and explanation for the results of quantitative data. With a total of 53 interviews, the data reached saturation with no new themes emerging. Whether saturation of information was reached with employers from any one industry group or region is less certain. The sample also targeted employers who employ staff on or near the minimum wage, which limits how generalisable the views are to employers as a whole. Nevertheless, the research findings are expected to provide useful insights into employers’ views on a number of employment areas, including trial periods.

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<sup>4</sup> Filler words are ‘um,’ ‘ah,’ etc.

## 4 USE OF TRIAL PERIODS

### 4.1 Prevalence

The NSE asked hiring employers if they had used a trial period for the new hires.<sup>5</sup> For employers with fewer than 20 employees, the date of introduction was 1 March 2009; for employers with 20 or more employees, the date of introduction was 1 April 2011. Table 3 presents the percentage of hiring employers who had used a trial period by size.

**Table 3: Employment of new staff on a trial period by hiring employers, by employer size**

Employer size	Yes	No	Don't know
	%*	%*	%*
2-19 employees	58	41	0
20+ employees	62	36	2
All employers	60	40	0

Source: 2011 National Survey of Employers

Total may not sum to 100% due to rounding.

\* Percentage based on the number of employers who had hired a new staff member since trial periods were introduced.

Of the hiring employers with fewer than 20 employees (53 percent of all SME employers), 58 percent had employed one or more new employees on a trial period. When looking at SMEs by industry, there are some notable differences in use of trial periods. Employers in construction (85 percent) are more likely to use a trial period for new employees than employers in the accommodation and food services industry (61 percent) or the agriculture, forestry, fishing and related services industry (44 percent) (see Figure 1). In the 2008 Survey of Working Life,<sup>6</sup> the agriculture, forestry, fishing and related services industry had the highest rates of casual and self-employed workers across all industries, which may explain why the use of trial periods is lower in this industry.

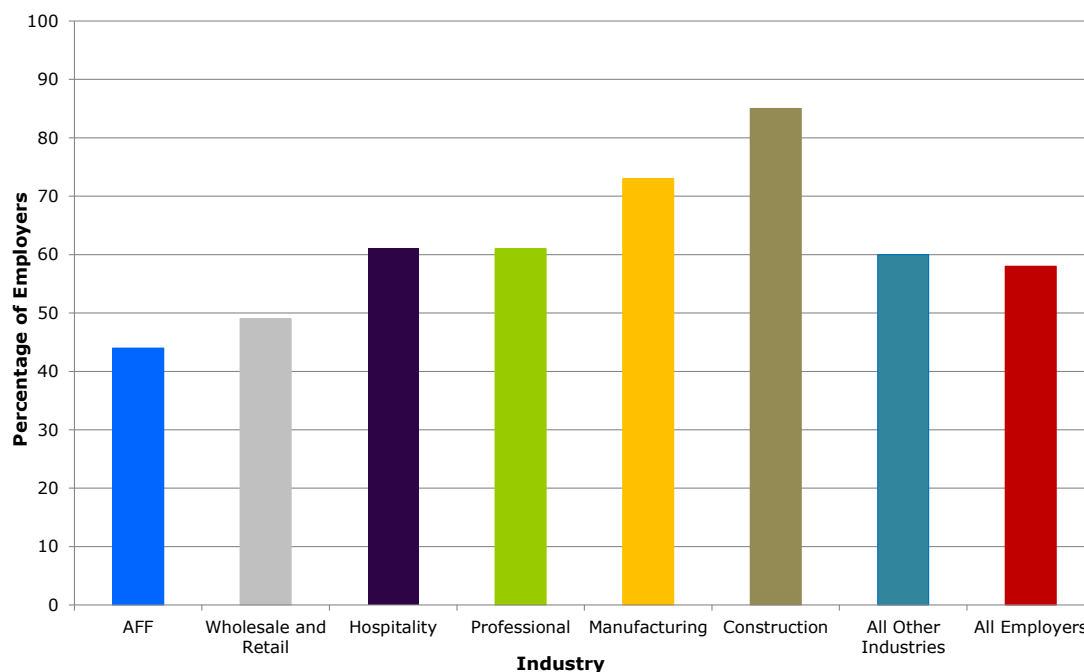
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<sup>5</sup> In this report, hiring employers refers to employers who have hired new staff since the introduction of the trial period provision amendments for businesses of their size.

<sup>6</sup> See:

<http://www.stats.govt.nz/~media/Statistics/Browse%20for%20stats/SurveyOfWorkingLife/HOTPMar08qtr/sowl-mar-08-qtr-all-tables.xls>.

**Figure 1: Percentage of hiring SMEs who used a trial period with a new employee, by industry**



Source: 2011 National Survey of Employers

Of the hiring larger employers, 62 percent had used trial periods. No statistically significant differences were found between industries within this group.

## 4.2 Terminating employment during the trial period

The NSE also asked employers whether they had dismissed an employee during a trial period: 80 percent of trial period employers had not.<sup>7</sup> Size of employer does not make a clear difference (see Table 3), with figures between SMEs and larger employers being within 2 percent of each other.

**Table 4: Percentage of employers using trial periods who have dismissed an employee during a trial period, by employer size**

Employer size	Yes	No	Don't know
	%*	%*	%*
2-19 employees	20	80	0
20+ employees	18	81	1
All employers	19	80	0

Source: 2011 National Survey of Employers

Total may not sum to 100% due to rounding.

\* Percentage based on the number of employers who had used a trial period since its introduction.

<sup>7</sup> In this report, 'trial period employers' refers to employers who have used a trial period since their introduction.

### 4.3 Intention to use trial periods in the future

Seventy-two percent of all employers surveyed said they intended to use trial periods in the future, with 56 percent intending to use them for all new employees and 16 percent for some employees only (see Table 5). SMEs (58 percent) were more likely than larger employers (47 percent) to employ all staff with a trial period provision.

**Table 5: Intention to use trial periods in future**

Employer size	Yes—all employees	Yes—some employees	No	Don't know
	%	%	%	%
2–19 employees	58	15	20	7
20+ employees	47	23	24	6
All employers	56	16	21	7

Source: 2011 National Survey of Employers  
Total may not sum to 100% due to rounding.

#### *Types of positions used with a trial period*

The majority of employers intending to use trial periods for some employees only were intending to use trial periods when filling entry-level positions (72 percent). Another 9 percent were intending to use them for management-level positions, and 9 percent also intended to use trial periods for non-professional roles (see Table 6). Weaker information is available on people who are new to employment: the large percentage of employers stating they would use trial periods for these roles suggests that employers may be using trial periods where they cannot confirm applicants' suitability for the role by looking at qualifications or certification, or where qualifications do not apply to the role.

**Table 6: Positions that employers intend to use trial periods for in future**

Number of employees	2–19 employees	20+ employees	All employers
	%*	%*	%*
Entry-level positions	72	68	72
Management-level positions	8	16	9
Non-professional roles	10	8	9
Depends upon the specific role/ applicant	3	11	4
All employees	0	4	1

Source: 2011 National Survey of Employers  
Total may not sum to 100% due multiple responses.

\*Sub-sample based on those employers who intend to use trial periods for some employees in the future.



## 5 BENEFITS OF USING TRIAL PERIODS

One of the rationales for implementing trial periods was to create employment opportunities for groups with high rates of unemployment. Trial periods were intended to reduce the costs of dismissing an employee should the employment relationship not work out.

The previous section showed that 72 percent of employers intended to use a trial period when employing a new staff member in the future. The reasons for using a trial period in the future can also be described as the benefits that employers see in using a trial period.

In the NSE, employers reported that the principal benefit of using a trial period in the future was being able to check an employee's ability for the job before making a commitment to employ them permanently (66 percent of employers who intended to use trial periods). Other common reasons for intending to use trial periods related to checking a person's fit in the workplace, relating more to their personality than ability or skills (see Table 7).

Other reasons given in the NSE included a belief it was fair to both parties, it being standard practice within the company, and to confirm the accuracy of a CV/ interview/references. These were all in small proportions and so have been combined in Table 7.

**Table 7: Employers' reasons for intending to use trial periods in the future**

	All employers	2-19 employees	20+ employees
	%*	%*	%*
To check an employee's ability for the job before making a commitment to employ permanently	66	67	57
To employ someone with the skills required, but where the business is unsure about their 'fit' with the workplace	35	35	36
Gives the employees a chance to see if the job/workplace is a good fit for them	27	28	26
Flexibility/less risk/safety net/can dismiss new employees more easily if needed	13	12	22
To give someone a chance/give the job to someone who might not otherwise get a job	13	13	15
To avoid incurring costs, if staff are unsuitable for the job	13	13	10
Other	12	13	12

Source: 2011 National Survey of Employers

Total may not sum to 100% due to multiple responses.

\* Sub-sample based on those organisations which have employed new staff on a trial period, and those who intend to use trial periods for all/some new employees.

## 5.1 Reducing risk

Underlying the majority of reasons for using a trial period is reduced risk of hiring (see Table 7). This is consistent with what employers who had used a trial period said in the qualitative research.

The term 'risk' referred to different aspects of the business between industries, but all industries commented on the reduced risk of costs to the business if the employer wanted to dismiss an employee. Retail and hospitality employers were concerned about the impact that staff could have on their brand, and the quality of their service. Employers in the manufacturing industry discussed risk in terms of the damage a new hire could do to other inputs (such as sheet metal). Trial periods do not guarantee that a new staff member will not damage a brand or other inputs of businesses, but do give employers a less costly way of ending the employment arrangement if problems arise, thus decreasing the overall risk employers face when hiring.

### **Costs of dismissal**

Across all industries, trial periods were viewed as reducing the potential cost of dismissing an employee if the arrangement did not work for the employer. Only one employer had used the trial period provisions to dismiss an employee, but other employers were reassured to know that the process would not involve as much resource.

Dunedin Manufacturing:

*Because it just takes away that problem of 'My God, why the hell did we employ that person?' And you've got nothing, you then enter into a very hard road of getting, if you do wish to exit them then you're in for a long process of, of doing that, but we haven't needed to do that anyway.*

Auckland Agriculture, Forestry and Fishing:

*The trial period is very, very important on that, because you are taking a bit of a risk and it gives basically the employee, and employer, the opportunity to get over that risk.*

Hawke's Bay Agriculture, Forestry and Fishing:

*And, and then also having the probation period's important. So, things that reduce your cost and reduce your risk... Yeah, and if you got it wrong, then you can just say, 'Well look, let's part ways'.*

Wellington Hospitality:

*I think it's fantastic; it's been really good for us. Although we've never used it, but it's good having that confidence.*

### **Testing viability of positions**

One of the benefits explored by the NSE was not an explicit objective of the trial periods: the ability for employers to use trial periods to test the scope of a role in their business. The NSE asked employers who had used trial periods whether they would have filled their most recent position with someone on a trial period if they had not been able to use a trial period. This was to ascertain if employers were testing out whether a particular job was needed in a business, as opposed to whether an applicant was the right fit for an existing position. Again, employers in SMEs were more likely than those in larger firms to say they would not have filled the position if they had not been able to employ someone on a trial period (30 percent and 17 percent, respectively) (see Table 8).

**Table 8: Percentage of trial period employers who would not have filled the last position without a trial period**

<b>Employer size</b>	<b>Would not</b>	<b>Would have</b>	<b>Don't know</b>
	<b>%*</b>	<b>%*</b>	<b>%*</b>
2-19 employees	30	66	3
20+ employees	17	78	5
All employers	28	68	3

Source: 2011 National Survey of Employers  
Total may not sum to 100% due to rounding.

\*Sub-sample based on those employers who intend to use trial periods for some employees in the future.

## **5.2 Creating employment opportunities**

The NSE asked trial period employers whether they would have hired the person they most recently employed if they had not been able to use a trial period. The survey findings indicate that trial periods give employers more flexibility to take on staff they may be unsure of. Forty-one percent of employers who used a trial period said they would not have hired their most recent employee if they had not been able to use a trial period (see Table 9).

SMEs were more likely than larger employers to say that trial periods improved a new employee's chance of employment. Of SMEs, 44 percent said they would not have taken on their most recent employee if they had not been able to use a trial period. The corresponding figure for larger employers was 28 percent. This could be due to larger employers having more experience and more resource dedicated to hiring, and thus the perception of lower risk to a business from a new hire.

**Table 9: Percentage of trial period employers who would not have hired the most recent employee without a trial period, by firm size**

Employer size	Would not have hired	Would have hired anyway	Don't know
	%*	%*	%*
2-19 employees	44	50	6
20+ employees	28	67	6
All employers	41	53	6

Source: 2011 National Survey of Employers

Total may not sum to 100% due to rounding.

\*Sub-sample based on those employers who intend to use trial periods for some employees in the future.

Employers viewed the reduced risk from trial periods as creating employment opportunities. Employers stated that if the risk and the cost of dismissal were lower, they were more likely to take a chance on an individual. Again, this was noted across the sectors involved in the research, and across the regions.

Auckland Agriculture, Forestry and Fishing:

*Well, I definitely think it is a good idea ... it definitely is going to allow you to take someone on that you're maybe a little bit unsure ... you're going to give them a chance whereas you wouldn't have given them a chance in the past.*

Auckland Retail:

*Oh, yes I think they're great to give particularly small businesses the opportunity to give someone a go that may not otherwise be given a go.*

Dunedin Manufacturing:

*I think there's a lot of talent out there that's just being missed, and it's just people who have got to take a chance. And I mean, with the trial period, I think that's probably the biggest step to giving the, a lot of these people a chance.*

Hawke's Bay Manufacturing:

*I'm more likely to take a chance.*

Wellington Retail:

*Yeah. In terms of government legislation, the 3-month trial period's a much, much bigger motivation in decisions for us ... it's the safety net,*

*yes it is, yes. Because if, if someone's not quite right and we didn't have the 3-month trial period, we could well sit short-staffed for much longer before we could put someone into that role. Whereas, just having that little bit of buffer to be able to put someone into that role, knowing that if it's not quite right, we do have an out. It means that we'll probably employ earlier than we would.*

## **Youth**

Employment of youth, particularly 16 and 17 year olds, is an area of focus for the Department. The qualitative interviews involved a section on employers' views about employing this age group, and on the role government initiatives are playing in their decisions to employ them. Trial periods came through as one of the preferred improvements that employers felt government had made in recent years to increase employment opportunities for youth, as they reduced the risk of hiring younger, less experienced staff. This was compared with other initiatives such as the current new entrant's minimum wage, the training minimum wage, and Work and Income subsidies.

Auckland Agriculture, Forestry and Fishing:

*Yeah, it's a good system that, because we have actually done that [taken on more 16 and 17 year olds] and benefited, and one way or the other they haven't been suitable and that makes the whole hiring process very easy and, and not a threat, whereas it used to be a problem.*

Dunedin Hospitality:

*We employ a lot of people, young people, some—many of whom haven't had a job before. So it, it allows you the ... to maybe take a bit of a, a punt.*

## **Long-term unemployed**

Long-term unemployed were also discussed in the qualitative interviews. One employer discussed the assurance given by trial periods, meaning they were more likely to take on those referred to them by government agencies, like Work and Income. Employers see trial periods as giving them the opportunity to make sure the employee is able to sustain working at the required level. Again, employers were clearly concerned about the risk to the business of hiring someone who had been unemployed for a longer period of time, and the trial periods were a way of mitigating this risk.

Hawke's Bay Manufacturing:

*Yes, it does [make a difference for hiring someone who has been unemployed for some time] ... you can put people on a month's trial and they can bluff their way through a month. They can't bluff their way through 90 days.*

### 5.3 Other benefits

The trial periods were targeted at improving employment opportunities; however, both the qualitative and quantitative data showed that employers felt they had experienced other benefits. Aside from reducing the risk and cost of dismissals, employers in the qualitative research noted two other positive impacts from the trial periods. The first was an improved attitude from staff while on the trial period, and the second was improved morale in existing staff, who did not want to work with an employee who was not working at the same rate as existing staff.

#### ***Improved attitude of new staff***

A small number of employers interviewed noted that the trial period appeared to improve new employees' work ethic, while they were on the trial period. This was also seen in two studies conducted in Europe, which found employees' rates of absenteeism were higher once their probationary period was lifted and they were given permanent employment status (Riphahn & Thalmaier 1999; Riphahn & Ichino 2001). Employers did not discuss absenteeism as an issue, but did comment on employees taking the work more seriously if there was a trial period.

Hawke's Bay Manufacturing:

*Oh it's good, yeah, it's good. It gives us a bit of, a bit of freedom, more leeway, so it is good, and I think the staff do tend to take the job more seriously, because they know they're under the probation period.<sup>8</sup>*

One employer suggested that the trial period option be extended to 4 months to give employers more of a chance to test an employee's commitment to the role, but this appeared more an exception than a theme of the research.

#### ***Improved morale in existing staff***

Another perceived benefit of using trial periods was the improved morale in existing staff, who were happy that if a new team member was not working at the same level as the existing team, it would be much easier for the employer to dismiss the new employee.

Wellington Hospitality:

*They like it even more than we do. Because no one wants to work with people who are incompetent, or aren't very good, or aren't performing right, nobody wants to work with them ... so they want to come to work and enjoy work. So that 90-day trial they actually like as well.*

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<sup>8</sup> Technically, a probationary period is different from a trial period, but the public often conflates the two.

## **6 ISSUES WITH USING TRIAL PERIODS**

While the majority of employers interviewed were either using trial periods or in favour of them, there were some who did not support their use. In particular, this centred on a belief that trial periods are misused and support bad practice or undermine the employment relationship, which is based on good faith. Employers reported that another significant barrier to use of trial periods was union resistance. These are discussed in greater detail in this section.

Like the qualitative research, in the NSE a minority of employers stated they would not use a trial period in the future (21 percent). Of the 21 percent who were not intending to use trial periods, one-quarter were not intending to hire. Of those intending to hire, the most common reason given was that the business's processes were already robust enough that trial periods were not needed, which is very similar to the views expressed in the qualitative research (see Table 10).

Notably, only 5 percent of employers said they do not intend to use trial periods because they are unfair to employees. Fairness to employees did not surface in the qualitative interviews. However, a related theme was of trial periods undermining the employment relationship, which is discussed in section 6.3.

Further, 5 percent of employers not intending to use a trial period stated this was because it might make it more difficult to recruit staff.

**Table 10: Reasons for not using a trial period in the future**

	All employers	2–19 employees	20+ employees
	%*	%*	%*
Business screening processes are good/will use existing HR practices for recruiting, dismissal etc	34	29	60
The business hasn't had problems with new staff in the past	15	16	10
No perceived benefit/don't believe it is necessary	9	10	7
Usually only hire casual staff/fixed-term contracts	8	5	11
The business regards trial periods as being unfair to employees	5	4	8
It might make it more difficult to recruit staff	5	6	3
The perceived legal risks	3	0	17
The business has an agreement with the union not to use trial periods	1	1	6
Company policy/part of the business/industry culture	1	0	5
Don't understand legislation/too complicated/didn't realise business could use trial periods	1	1	2

Source: 2011 National Survey of Employers

Total may not sum to 100% due multiple responses.

\* Sub-sample based on those organisations which don't intend to use trial periods for any new employees in the future.

## 6.1 Supports bad practice/not needed as processes are robust

Thirty-four percent of employers who did not intend to use trial periods reported that one of the reasons was that their existing business practices were robust enough (see Table 10). This theme also emerged in the qualitative interviews, where employers stated that they had the necessary processes in place to manage a situation where the employee was not meeting expectations. Employers believed that if an applicant made it through the recruitment stage, and then was not performing to a level required by the business, it was part of their obligation to try and work with the person first before ending the employment relationship.

Dunedin Manufacturing:

*So, I mean if we've got somebody in their first month or two of work who's not living up to expectations and meeting the requirements, we know how to manage that. We don't need a free pass from the judiciary to manage it. We know how to manage it, and we go through and we do, and we always have done. And, we didn't necessarily see that it was super important to us to indemnify us from risk of*



*proceedings, so. It's not a big deal, if someone's not working out then we just deal with it. And that includes dismissal.*

Dunedin Retail:

*We don't do trial periods... We took the view that trial periods were not a licence to be a bad employer. So basically, for them to be valid and to be used properly, they require a high level of supervision and maintenance and, and working with the employee, which should happen anyway, and they certainly shouldn't be an 'out'. We know that a lot of small owner/operator businesses tend to misuse them. They tend to sign people up on them and then abandon them for no real reason, which, if a person pushed it, would be a, a valid grievance, but only, when you're a company this size and you're a leader in the community in more than one way, yeah, there is no room to behave that way. So we, we haven't picked that up at all. We're not interested at this point, we think that there are better ways to operate than using that.*

One employer went further to say that, in their view, trial periods supported bad management practice as it gave a manager the opportunity to shortcut the stage where an employer works with an employee if they are not performing. This employer did use trial periods as it was a company-wide decision, but the employer did not agree with the practice.

Hawke's Bay Manufacturing:

*For everyone, we just installed a, we just put a clause into the agreement and said from now on when we offer we'll use a trial period, but I'm not a fan of trial periods either, to be honest. I think it causes too much, it's again we're a corporation, we expect more of our managers, we should be able to manage people, and this is a philosophical discussion, I guess, because if I talked to the global people they might say well you've got this clause and use it: it's not as easy as that, I believe, because after 3 months what do you know about a person? Well, you don't know a heck of a lot really. To be honest in, in my opinion, and if you employ someone in good faith to use as a permanent member of staff I'm talking about, you employ someone as a permanent member of staff, because you've advertised and you've interviewed and you've done everything correctly and reference checked and after 3 months you only know a little bit about what they can do, so after 3 months I wouldn't be prepared to say that they have shown us everything that they can do or cannot do. It would be more of an exception, so it would be more of an exception to use the 90-day rule and the rule to use it in my opinion, and I don't, it's not something I'm a fan of. I think it's lazy: I think it creates lazy managers, to be honest.*

## 6.2 Unions

While very few employers identified union presence as a reason not to use trial periods (see Table 10), a number of employers in the qualitative research did raise this. They noted that unions were resistant to trial periods, and this led to them not being used. This is not surprising given a union's role in protecting the employment of its members.

Auckland Hospitality:

*No. No. We made a conscious decision not to take advantage of the trial periods, because we're a workforce that has a union, and the advice we got was that the, it would be a variation to our collective agreement so there would have to be an agreement from the unions to have a trial period in that agreement.*

Auckland Manufacturing:

*No, no we don't. So we've deliberately agreed a strategy with our unions that we won't use trial periods. We have a lot of upfront intensive resourcing around our recruitment—so very stringent recruitment processes for people joining the company. So we say, we rely on that to get the right people in.*

Dunedin Manufacturing:

*We do and we don't. We don't—well it depends what you mean, if we—you mean the trial period where after 90 days we can say 'Look, son, you haven't worked out and there's no ability to bring PGs, etc'. We haven't pursued that, mainly because we would need to—well, as you know, you need to have a clause in your agreements to provide for that. And we don't believe that our unions would agree to it for a start off. And we don't propose to ask them, because it's not such a big deal for us. We would prefer because, because we're a big business we've got the resources and we put the effort into making sure we do things right and we've got the processes, so.*

## 6.3 Undermines employment relationship

Though not identified in the NSE, an employer in the qualitative interviews believed that hiring staff on trial periods sent a message that was inconsistent with the approach to employment relationships. They saw the use of a trial period for new hires as signalling to the employee that they were not working with the employee's best interests in mind, and this was not a message they wanted to send.

Auckland Hospitality:

*We felt as an employer it was kind of sending a bit of a mixed message and we wanted, we want to hire the right people from the start and ... obviously we all get that wrong sometimes, and if we do we want to be able to manage that process, at the same time giving colleagues some assurity [sic] that we have their best interests from the outset.*

## 6.4 Case law

Finally, one employer discussed the impact of recent case law decisions deterring his business from using trial periods. The employer stated that the decisions meant the costs of dismissing an employee were the same as without a trial period. Because the courts were interpreting the law strictly, trial periods were not as appealing because the costs were not lower and the risks were still there.

Dunedin Manufacturing:

*Well it, as far as I understand it, the usual Employment Relations Act warnings and mediation needs to occur before you can get rid of them, so the actual spirit of the law which was: 'Well, we'll take you on, give you a chance for 90 days, but after 90 days if it didn't work out then we're free to let you go,' I don't actually think it works like that, and I think I'd be very reticent to, to try it. I would probably certainly include it as part of any contract, but I don't think that I would rely on it.*

This was a single opinion, but it is important to consider the implications of case law in any discussion of trial periods.

## **7 DISCUSSION**

There was a high level of awareness of trial periods in both the NSE and the qualitative interviews. The majority of employers maintained the view that trial periods have been a positive for their business and improved the hiring process. The results of the NSE and the qualitative interviews were consistent with each other, and with the previous evaluation of SMEs in 2010, suggesting they accurately reflect employers' view of trial periods.

### **7.1 Use**

Just over half (60 percent) of hiring employers in the NSE had used a trial period for a new employee since they were introduced, slightly up from the level found in the 2010 evaluation (49 percent).

Employers in the NSE most commonly intended to use trial periods for entry-level roles, which suggests they are used for employees who are new to the workforce or new to the industry, and for roles less likely to require formal qualifications.

### **7.2 Risk reduction**

Employers in both the NSE and the qualitative interviews reported that one of the key benefits of the trial periods is the reduction of risk that employers perceive they face when hiring new staff.

The most common risk employers raised was the potential cost associated with dismissing an employee. The trial periods were an opportunity for employers to see if an employee had the right skills, attitude, or personality for their workplace before committing to a permanent employment relationship. Risk was also discussed in potential damage that could be done to the brand by employers in the hospitality and retail industries, and damage to other inputs in the manufacturing industry.

While trial periods cannot remove the risk to brand or other inputs of a new staff member, they do reduce the overall level of risk when hiring. This reduction in risk was seen to bolster employers' confidence to hire, and employers reported that they were more likely to hire applicants in general, as well as youth and long-term unemployed.

### **7.3 Improving employment opportunities**

As found with the 2010 evaluation, trial periods do appear to still be improving employment opportunities. Employers are more willing to take on new hires even if they are not entirely certain about them at their interview. SMEs are significantly more likely to use trial periods to take a risk on an employee, with 44 percent saying they would not have taken on their last trial period employee without it, compared to 28 percent of larger employers.

There is evidence that this is true for two groups considered disadvantaged in the labour market: youth and long-term unemployed. Employers interviewed in the qualitative research said the trial periods had contributed to increasing the chances they'd take on youth and long-term unemployed. The reasons for this

will be explored in greater detail in a forthcoming report on employment of these two groups, but is related to the perceived risks that these two groups pose to the business.

#### **7.4 Dismissal during a trial period**

The majority of employers who had used a trial period since their introduction had not dismissed an employee during the trial period (80 percent). The NSE did not ask the reason for dismissal, so it cannot be determined if any of the 20 percent were dismissed in a way that misused the trial period. However, the majority of employers who are using trial periods are retaining staff at the end of the 3 months.

Unfortunately there is no data on the proportion of staff who were dismissed in the first 3 months before trial periods were introduced, so it cannot be determined if this figure is higher now. The data being used is solely from the employer's perspective. Data from the employee's perspective would be an interesting extension of the work and give a fuller picture of dismissals during trial periods, and trial periods overall.

#### **7.5 Not needed if processes are robust**

Some employers were not interested in using trial periods for their staff. In both the NSE and the qualitative research, the predominant reason for this was the feeling that their existing recruitment and Human Resources processes were robust enough already to deal with staff if they were not meeting the required standard. Larger employers are more likely to have more formalised employment systems as they have greater resource in this area than smaller employers. This could in part explain why larger employers are less likely to use trial periods than smaller employers, as they believe their existing systems reduce the level of risk to the organisation.

#### **7.6 Impact on employment relationship**

Secondary to this in the qualitative research was the feeling that it undermined the employment relationship from the start. Employers who were not in favour of trial periods stated that the concept of a trial period was contrary to that of acting in good faith and offering permanent employment. However, when considering the policy wording, it is clear that the principle of good faith still applies, as do all conditions of permanent employment. This argument would suggest that any clause relating to dismissal of an employee was contrary to the good faith principle, yet most contracts include clauses for termination of employment. This notion could stem from a conflation of the definitions of trial periods and probationary periods. Probationary periods tend to be more like casual employment agreements for a period of time, before becoming permanent. Trial periods are for permanent positions, with one provision that does not allow for a personal grievance, on the grounds of unjustified dismissal, to be raised if dismissed.

## 7.7 Union resistance

Finally, employers in both the NSE and the qualitative interviews said that union resistance to trial periods was deterring employers from using them. Given a union's role in the employment relationship, this is not surprising—however, unions were not mentioned in the 2010 evaluation. This could be due to the exclusion of larger employers in the first phase of the trial periods. Larger employers were only permitted to use trial periods from 1 April 2011, so they were not part of the 2010 evaluation. In the NSE, SMEs (1 percent) were far less likely than larger employers (8 percent) to say that unions were part of their decision not to use trial periods in the future. This is an unexpected result given that the strength of unions draws on the size of their membership, so they are more likely to have influence in larger employers.

## 7.8 Case law

Decisions made by the Employment Court affected one employer's attitude towards trial periods. The employer stated that he would not use trial periods as they create risk to the business through being unclear about what is needed to dismiss an employee during their trial period. While this view was singular, it raises the issues of how the trial period provisions are interpreted, and the need for clear information. A number of cases recently have shown that some employers did not understand the technical aspects of the trial period provisions, which has led to former employees winning cases against them (see *Smith v Stokes Valley Pharmacy*<sup>9</sup> and *Ricky Blackmore v Honick Properties Limited*<sup>10</sup>). The Employment Court found that the employers in these two cases had not met the applicable requirements for giving notice, the need to agree to the trial period before employment commences, and the need for employees to be given a chance to seek advice and raise any issues with the provision. The Court ruled that the trial period provision was not valid. The case law highlights the importance of providing information when new legislation is introduced. The data from the qualitative interviews suggest that employers still need clear guidelines so that trial periods are conducted in accordance with the legal requirements, and employers feel reassured about using them.

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<sup>9</sup> *Smith v Stokes Valley Pharmacy (2009) Limited* [2010] NZEmpC 111.

<sup>10</sup> *Ricky Blackmore v Honick Properties Limited* [2011] NZEmpC 152.

## 8 CONCLUSION

This report has discussed employers' views of trial periods, based on quantitative data from the NSE and qualitative interviews undertaken as part of a study on the minimum wage system. The qualitative and quantitative data are consistent with each other and with a previous evaluation undertaken on trial periods in 2010 (though this only looked at employers with fewer than 20 employees).

The objectives of trial periods can be summarised as follows:

- to encourage enterprises to take on employees
- to reduce employment relationship problems
- to provide opportunities for those who might suffer disadvantage in the labour market, including:
  - women
  - youth
  - first-time workers
  - Māori and Pasifika
  - people returning to work after a period of unemployment or child-rearing
  - people with disabilities or mental illness
  - migrants
  - people with overseas qualifications.

(Johri & Fawthorpe 2010)

From an employer's perspective, trial periods have met one of their objectives: they have been successful in improving the likelihood of employers hiring staff. There is evidence to suggest that trial periods have influenced employers' decisions when employing two groups considered disadvantaged in the labour market: youth and long-term unemployed, which suggests that trial periods are meeting another of their objectives. This research did not uncover whether the trial periods have reduced the number of employment relationship problems in firms. This topic is part of a forthcoming second review of trial periods to be undertaken in late 2012.

This report does not include the employees' perspective, which would enhance the understanding of trial periods and the experience of those subject to them. Interviews with employees on their experience of trial periods are forthcoming in the second review of trial periods.

Further data from the datasets used in this report will also be presented in two more forthcoming reports. The first will look at employers' views of the minimum wage system. The second will focus on employment of youth and long-term unemployed. These are due for release in May/June 2012.

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