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Fixed Term Contracts

A fixed term contract is one that one entered into by an employer and an employee which is due to end when

- a specific date is reached, or
- a specific task has been completed, or
- a specified event does or does not happen.

Examples of fixed-term employment are:

- additional staff taken on for a fixed period to cover a peak period,
- a specialist employee taken on for the duration of a particular project,
- someone employed to cover during another employee's maternity leave

The EC Fixed-Term Work Directive, protecting fixed-term workers against discrimination came into force on 10 July 2002. This resulted in the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 being introduced.

The regulations give fixed-term employees the right not to be treated less favourably than comparable permanent employees.

- The regulations cover pay and pensions as well as other benefits and there is a specific right not to be treated less favourably in relation to any service qualification relevant to a condition of service or to the opportunity to receive training or to secure permanent employment, coupled with the right to be told of available vacancies.

The pro-rata principle should (unless inappropriate) be applied to determine less favourable treatment. To take a simple example, a fixed-term worker on a six month contract should be entitled to half the annual leave entitlement of a permanent employee.

- The regulations provide that where an employer renews a fixed-term contract, and the employee has been working for four or more years under a series of fixed-term contracts which have not broken the employee's continuity of service, it will be deemed to become an indefinite contract unless the renewal as a fixed-term contract is justified objectively.

Any periods of continuity of employment prior to the regulations coming into force do not count.

Under the regulations collective or workplace agreements can agree some other arrangements provided they specify a maximum duration or number of fixed term contracts, and/or objective reasons justifying renewals. This is intended to recognise that in some sectors, notably professional sport and the theatre, fixed term contracts are practically the only means of employment.

- The regulations include the right of an employee to receive a written statement after four years of working on a fixed-term basis either giving reasons why his/her contract remains fixed-term beyond the four year limitation period or confirming that it has become open –ended.
- Fixed-term workers are no longer able to waive their rights to statutory redundancy payments after two years service. This applies to contracts signed, extended or renewed after 10 July 2002.
- If a fixed-term contract expires and is not renewed on the same terms, that will count as a dismissal. If the contract or series of contracts have lasted for four or more then, the employee also has the right to statutory notice of termination.
- Included in the regulations is the right for a fixed-term worker who suspects they have received less favourable treatment to obtain (within 21 days) written reasons for the treatment
- The regulations do not provide for permanent employees to have the right to compare themselves with fixed-term employees, and so it is possible to treat the latter more favourably than the former provided, of course, that no other aspect of employment law is infringed, such as sex, race or disability discrimination.
- An employee working under a fixed-term contract has the right to be informed of any permanent suitable vacancies.

Checklist

Employers should ensure that the following are observed

- Fixed-term employees must receive at least the same rate of pay as permanent staff, including overtime, bonuses, shift and unsocial work payments.
- Contractual sick and maternity pay rates must be the same for fixed-term employees and must be available after the same length of service and payable for the same period of time.
- Having a fixed-term contract should not be a bar to promotion or to the availability of training.
- There must be no discrimination between permanent and fixed-term employees with regard to annual leave and career breaks.
- Redundancy criteria must be applied in a way which does not discriminate against fixed-term employees.
- Benefits such as pension schemes, profit sharing and share option schemes, health insurance, subsidies and staff discounts must be available to all permanent and fixed-term employees on the same terms.

If there are any possible areas of discrimination, employers should consider whether to remedy them or whether there are objective reasons to justify any different treatment. If so, these reasons should be documented.

Termination of Fixed Term contracts

- An employee who is under a fixed term contract that expires at the end of the specified period, is not entitled to notice unless the fixed term was for one month or less but the actual period of employment has been three months or more.
- If a fixed term contract or a succession of fixed term contracts results in an employee being employed for four years or more, the contract will become a contract of indefinite duration and not of fixed term.

- If a fixed term contract expires and it is not renewed then that amounts to dismissal which could be the subject of an unfair dismissal claim if the employer cannot show that he acted reasonably in not renewing the contract.
- If a termination of employment is to occur as a result of expiry of a fixed term contract, then the statutory dismissal and disciplinary procedure set out in the Dispute Resolution Regulations 2004 must be followed (see Guidance Note “Dispute Resolution Regulations 2004”).

NB When reviewing fixed-term contracts, employers should bear in mind that early termination of a fixed-term contract may leave the employer open to a breach of contract claim for the unexpired portion of the term. The contract should, therefore, include a clause that specifically allows for the early termination of the contract.

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