

# Factsheet

## 24: Frequently asked questions about fixed-term contracts

To offer employment on a fixed-term contract is common practice for many organisations, especially when posts are funded only for a set period of time.

So when the funding expires, and no new funding has been secured, then the employee just reaches the end of their contract and leaves...right? In reality it isn't as simple as that. Many employers assume that the contract can just run its course and no further action needs to be taken. However, termination at the end of a fixed-term contract is still a dismissal and employers should always act carefully when bringing employment to an end.

Likewise, some employers can view fixed-term contracts as a cheap way to take on employees as they don't need to be given the same terms and conditions as permanent employees. Again, this is one of the many 'myths' about the use of fixed-term contracts.

This fact-sheet aims to clear up the confusion surrounding fixed-term contracts by answering some of the most frequently asked questions about this subject.

### 1. What is a fixed term contract?

An employee is on a fixed-term contract if they have an employment contract with the organisation which is:

- made for a specific period and ends on a certain date, or
- set to end after a task has been completed or an event has occurred

For example, fixed terms contracts may be used to cover maternity leave, to bring in a specialist for a specific project or to provide cover at peak times. However, situations such as a worker who has a contract with an agency, or a trainee who is on work experience, would not be classed as fixed-term employment contracts.

### 2. What rights do fixed term employees have?

Fixed-term employees are protected by The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002. With regards to their terms and conditions of employment, fixed-term employees have the right not to be treated less favourably than a permanent employee doing the same (or very similar) role unless the employer can objectively justify doing so.

Fixed-term employees also have the right:

1. to be informed of suitable permanent vacancies in the organisation
2. to have their contracts converted to unfixed ones after four years
3. not to be selected for redundancy or be unfairly dismissed if the main reason for the selection was because they were a fixed-term employee
4. to make a complaint to a tribunal seeking a written statement which sets out the reasons for the less favourable treatment complained of

### 3. So does this mean that a fixed-term employee has to be given the same pay and benefits as a permanent employee?

The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 cover all terms and conditions including pay and pensions. Therefore, regarding the terms of their contract, fixed-term workers have the right to no less favourable treatment than a comparable permanent employee. This means that employers have to be able to justify a business case for not offering the same terms and conditions. It would need to be demonstrated that:

- there is a good reason for not giving the fixed-term employee a particular benefit, or
- the value of the fixed-term employee's total package of terms and conditions is at least equal to the value of the comparable permanent employee's total package of terms and conditions

#### **4. Why does a fixed-term employee have a notice period clause in their contract if their employment already has an end date?**

Although it may seem confusing an employee can still be a fixed-term employee if there is a provision for notice in the contract. In fact, it is wise for employers to consider a notice clause when drawing up the terms of a contract. This is because fixed term contracts are really just an agreement that both parties will work together for a set period of time unless either of them gives notice before then.

So, if the employer wants to end the contract before the expiry of the fixed-term, then what happens would depend on the terms of the contract. If:

- the contract says nothing about being ended early, the employer may be in breach of contract
- it says it can be ended early, and the employer has given proper notice, the contract can be ended

Therefore early termination of a fixed-term contract will be a breach of contract, unless the contract contains an early termination clause allowing either party to give notice.

It also important to remember that fixed-term employees should not have a shorter notice period than comparable permanent employees unless the different treatment can be justified on objective grounds.

#### **5. What claims could a fixed-term employee make if they believe their rights have been infringed?**

The first point to make is that, in some ways, employees on fixed-term contracts have more rights than permanent employees because they have the security of the specific legislation designed to protect them. Some employers think that employment on a fixed-term contract removes some of the employment rights that permanent employees enjoy. This is not the case.

There are three main claims available to a fixed-term employees whose rights have been infringed.

- **Fixed-term claim** An employee on a fixed-term contract can complain to an employment tribunal if they feel their rights under The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 have been breached
- **Unfair dismissal** An employee on a fixed-term contract may also be able to claim unfair dismissal if their contract is not renewed. The possibility of such a claim can occur if the employer ends the contract without following the necessary procedures or if there is not a fair reason to dismiss the employee
- **Wrongful dismissal/breach of contract** An employee on a fixed-term contract may be entitled to damages for wrongful dismissal which would be a payment up to the end of the contract period. What many employers do not realise is that, if a specific length is defined in the contract, then that is a part of the employee's contractual terms. Therefore, it is very important to include an early termination clause within the contract so that either party can give notice to bring the agreement to an early end

## 6. Is it still possible to employ people on a series of fixed-term contracts to avoid offering them a permanent contract?

If an employee has four year's continuous service under a fixed-term contract (or series of contracts), the contract will be treated as if it were a permanent contract. This is unless the continued use of a fixed-term contract can be objectively justified. The Regulations state that to be entitled to the permanent contract the employee must have been placed on two or more successive fixed-term contracts.

Once the four years of continuous service has gone by, an employer should write to the employee confirming the conversion of the contract into a permanent one. Unless there is a clear contractual right to make variations to terms and conditions, then the terms of the fixed-term employee's contract will remain the same following conversion into a permanent contract.

## 7. What procedure needs to be followed when a fixed-term contract expires?

Perhaps the most significant point is that the expiration and non-renewal of a fixed-term contract is a dismissal. If an employee has at least one year's services (or two years' if their employment starts on or after 6 April 2012), they will have a claim for unfair dismissal if the employer fails to renew the contract without a fair reason and without following a fair procedure.

Fixed-term employees are also entitled to:

- a written statement of reasons for not renewing the contract (after one year's service)
- the same redundancy rights as a permanent employee (if they have worked continually for the same employer for two years or more)

There is no specific procedure that applies when a fixed-term contract is not being renewed. The most important thing that an employer must do in this situation is follow their own dismissal or redundancy procedure as applicable. Employers need to be careful and it is advisable to follow a procedure which includes at least the three steps (that is letter /meeting /appeal) to try and minimise the risk of any claims.

Yes it is true that a fixed-term contract will usually terminate on a specified date, or on the occurrence of a specified event, such as the completion of a task. However, before it elapses employers must communicate with the employee about the expiry.

#### **8. What happens if an employer allows a fixed-term contract to expire and the employee continues working past the specified date?**

If an employer allows a fixed-term contract to expire, and the employee continues working past the specified date, then it will be viewed that the arrangement is continuing as an open ended contract. This means that the employee's contract has been extended without a fixed termination date.

#### **9. So, with all this considered, should employers just avoid using fixed-term contracts altogether?**

No, not necessarily. Fixed-term contracts can still be useful and serve an important purpose for some organisations. However, what employers should avoid is using fixed-term contracts as a way to casually 'hire and fire' employees on an ad-hoc basis.

Instead employers need to be fully aware of what employing somebody on a fixed-term actually means, and make themselves familiar with the rights of fixed-term employees. The risk of any claims against employers for unfair dismissal, or for failure to consult on redundancy, can be considerably reduced by ensuring that clear contract terms are drawn up and that fixed-term workers are including in any consultation process.

#### **Notes compiled by Clare Cooper with information from the following sources:**

1. CIPD
2. Acas
3. [www.gov.uk](http://www.gov.uk)

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