

Fact Sheet

Fixed Term

Contracts

Many Employers within the Engineering Construction Industry use Fixed Term Contracts to supplement their permanent staff and it is a useful alternative when managing the changes in the level of labour required in a fluctuating business market. It is necessary however to ensure that Employers apply the use of these type of contracts correctly and that those responsible are mindful of the limits of use.

Key Facts

- last for a certain length of time (i.e. they terminate when a specific term in the contract expires)
- are set in advance
- end either on: a particular date; when a specific task is completed; or when a specific event takes place
- fixed term employees must receive no less favourable treatment in comparison with permanent staff

Legislation Overview

The legislation around fixed term contracts can be found in:

- The Employment Act 2002
- The Fixed term Employees (Prevention of Less Favourable Treatment) Regulations 2002
- The Fixed term Employees (Prevention of Less Favourable Treatment) (Amendment) Regulations 2008

Fixed Term Contract Myths

1. Fixed term contracts are cheaper than permanent contracts - **UNTRUE**

The Fixed term Employees (Prevention of Less Favourable Treatment) Regulations 2002 mean employers must not treat employees on a fixed term contract less favourably than permanent employees that do the same, or a broadly similar, job.

Employers have to provide fixed term employees with the same wage rates and benefits as permanent staff. Therefore, it would be unlawful for employers to exclude fixed term employees from benefits available to permanent employees. The cost, to an employer, of an hour's work delivered by a fixed term worker or a comparable permanent employee should be the same.

Any form of less favourable treatment is potentially unlawful for example, not offering fixed term staff the same career development opportunities offered to permanent employees (such as regular appraisals, training and access to promotion opportunities).

2. The end of a fixed term contract does not constitute a dismissal - **UNTRUE**

Failing to renew or extend a fixed term contract on its expiry still constitutes a dismissal. Therefore, employers who do not intend to renew a fixed term contract should ensure that they follow a fair process and that they have a fair reason.



The non renewal of a fixed term contract will be potentially fair dismissal by reason of redundancy. NAECI 16.5a confirms that a NAECI employee, whose employment is terminated at the expiry of a fixed term contract, will be entitled to a Contractual Severance Payment for each complete week of continuous employment up to a maximum of 103 weeks. CSP rates can be found at NEACI A.76. The NJC has issued guidelines [in NJC Guidance Note (17)01] to employers that the termination of fixed term contracts will be regarded for dispute purposes as Redundancy. Just like permanent employees, fixed term employees who have more than two years' service benefit from statutory protection against unfair dismissal.

3. Using successive fixed term employment contracts will preserve the flexibility of a fixed term contract indefinitely and avoid taking on permanent employees - **UNTRUE**

An employee who has been employed on successive fixed term contracts for at least four years will become a permanent employee unless the continued use of fixed term employment contracts can be objectively justified.

Employer should be mindful also of the conversion of a fixed term contract into a permanent contract. For example, if the contract does not include a notice provision and the employee stays on in employment (in effect as a permanent employee) beyond the fixed term stated in their contract, there is a potential for a dispute as to exactly what length of notice is required to terminate the contract.

4. When considering reducing the number of employees, an employer should just let the fixed term contracts expire rather than make any permanent employee redundant - **UNTRUE**

Failing to renew a fixed term contract constitutes a dismissal, and employers must have a fair reason and follow a fair process to be able to mount a robust defence against a claim for unfair dismissal from fixed term employees with more than two years' service. This means that employers should follow a fair redundancy process (including applying objective selection criteria to employees in the redundancy pool). Choosing those employees with a fixed term contract is likely to be unlawful less favourable treatment and give rise to a claim for unfair dismissal.