

Fixed-Term Contracts Guide

Overview

Composite Legal Expenses Insurance provides advice to thousands of businesses and individuals each year through its legal advice helpline. The vast majority of calls to the helpline come from businesses seeking help on employment related matters.

Our expert lawyers have used their years of experience dealing with these matters to create this guide for you to use as a reference tool.

The guide has been condensed as much as possible to make sure you only get an overview of the area, for that reason it should not be viewed as comprehensive or as a substitute for specific legal advice.

If you have the benefit of a legal expenses policy with us, then the guide can be used in addition to the advice we provide and you should contact our advisors for advice in relation to any specific situations.

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FIXED-TERM CONTRACTS

Fixed-Term Contracts

Occasionally there will be a requirement for employers to use fixed-term contracts. They can allow flexibility and give a business and an employee certainty about the length of the relationship. They will usually be appropriate in the following circumstances:

- To provide cover for someone on maternity leave or long term sick
- Where the role is reliant on certain funding and will not be renewed after a fixed period
- To deal with a specific task or project

It is important to understand that employees on fixed-term contracts will still have various rights. For this reason, they should only be used in appropriate circumstances and any additional rights employees may have should be taken into consideration.

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (“The Regulations”)

The Regulations came into force in October 2002.

The Regulations only apply to employees on Fixed-Term contracts and not to workers (see our **Employment Status Guide**). A Fixed-Term contract means a contract of employment that will terminate:

- On the expiry of a Fixed-Term;
- On completion of a particular task; or
- On the occurrence or non-occurrence of any other specific event.

It will always be the expiry, or the end-point, which is the defining feature of a Fixed-Term contract.

If *notice* is required to bring the contract to an end, without which the contract would continue, the contract will not be a fixed-term contract.

The Regulations provide protection from ***less favourable treatment*** when compared to comparable *permanent* employees. There is a defence, if any ***less favourable treatment*** can be ***objectively justified***.

Less favourable treatment could occur when an employee on a fixed-term contract doesn't receive the same benefits or has less favourable terms than permanent employees.

Objective justification would have to be looked at on an individual basis. Generally, when looking at objective justification employers should ask themselves whether there is a good reason for the difference in treatment. A balancing exercise should then be undertaken, between the rights of the employee and the business objectives.

If an employee on a fixed-term contract believes that they have been treated less favourably they can pursue a stand-alone claim to an employment tribunal.

If an employee is dismissed as a result of seeking to enforce their rights under The Regulations, then the dismissal will be automatically unfair. This will apply even if the employee in question has been employed for less than two years.

Successive fixed-term contracts

Under The Regulations, employees who have been continuously employed for four years or more on a series of successive fixed-term contracts are automatically deemed to be permanent employees unless the use of a fixed-term contract can be objectively justified.

Termination

The expiry and non-renewal of a fixed-term contract will be deemed to constitute a dismissal. It is therefore important to note that if an employee has worked for more than two years, the employer will need to establish a fair reason for the dismissal. This is because the employee will have acquired the usual rights for protection from unfair dismissal (see our **Employment Rights Guide**).

Often this reason will be redundancy, because the term will have been linked to work that will now no longer continue. In these circumstances the employee will usually still be entitled to a redundancy payment.