



Fixed Term Employment Contracts

This paper sets out information on fixed term employment contracts (FTCs), how and when to use them, and some things to consider if you do wish to use them.

What are fixed term contracts?

The relevant law on FTCs is set out in the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

Fixed term contracts are those which are explicitly stated to be ended by:

- Reaching a specified date (eg 31 March 2020)
- Completing a particular task (eg compiling a database)
- The occurrence or non-occurrence of any other specified event (eg loss of funding)

Why use fixed term contracts?

Typically, employers use fixed term contracts because they only have funding for the post for a defined period of time, and/or because they are starting a new project and ‘testing the waters’ to see if it’s a service that will be useful. They are also used when the need for the post is just temporary, for example to provide extra assistance over a busy period, or cover for maternity or sick leave.

They can provide the employer with flexibility, and mean that employee expectations are managed as they provide clarity on the intended length of employment.

Some of the previous advantages to employers of using FTCs have been removed to prevent exploitation and to ensure more equality of treatment.

Historically, employers were able to add clauses into the contracts that prevented the employee being able to claim unfair dismissal or statutory redundancy at the end of a fixed term contract, but this is no longer possible.

Note also that it is no longer possible to keep people on FTCs indefinitely. After 4 years they effectively become ‘permanent’. See the section ‘Issuing Successive Fixed Term Contracts’ below.

Terms and conditions

The law requires you to issue any employee who will be working for you for one month or more with a written statement of particulars of employment within two months of their start date. This applies to people on FTCs as well, and here you should specify the duration of the contract or, if the length of the employment is uncertain, the period for which it is expected to continue. For example if it is to cover sick leave and you do not know the employee's exact date of return you would say 'until the post holder returns to work'.

Employees on FTCs are entitled to be treated equally with comparable permanent employees, unless this can be 'objectively justified' - in other words that there is a good reason for the less favourable treatment. If requested, this reason must be put in writing.

The employer must treat the fixed-term employee no less favourably in respect of the:

- terms of his or her contract (for example pay and benefits, including access to an occupational pension scheme);
- periods of service required to qualify for particular terms and conditions (for example access to service-related sick pay scheme);
- opportunity to receive training; or
- opportunity to secure a permanent position with the employer. The law specifically requires that FTC employees are informed of any vacancies that arise.

Notice clauses

Technically there is no need for either party to give notice to end a FTC at its' natural expiry, as the end date or event has been agreed at the start.

However, it is strongly recommended that you include a clause in every contract giving both parties the right to end it before its' natural expiry date, by giving notice. This allows for unanticipated changes in circumstances. Say for example, you have issued a fixed term contract for two years and after the first year you wished to dismiss the employee for poor performance (having followed good employment procedures; see **Go For It** Briefing 1 - Being a Good Employer). If you had not included a notice clause allowing the early end of the contract you will have breached the contract and you may well have to pay the person a lump sum for the full remaining year of their contract.

Also, see the section below 'Ending a fixed term contract' for suggested good practice.

Renewing the fixed term contract

At the end of the FTC, the employer may wish to issue a new contract or extend the existing contract. Any changes in the terms and conditions should be agreed in advance, and made clear in the new contract or letter of extension.

Issuing successive fixed term contracts

Since 2002, employees who have been continuously employed for four years or more on a series of successive fixed-term contracts (or extensions) are automatically deemed to have become permanent at the four-year point. The employee has the right to ask for a written statement to confirm permanent status. In some cases, the employer may objectively justify continued use of a fixed-term contract. For example if the task or project on which the fixed-term employee is working is definitely due to come to an end shortly after the four-year point, it may be justifiable to issue another FTC.

Ending a fixed term contract

People are often surprised to learn that the non-renewal of a fixed term contract counts as a dismissal in law. In other words, if you do not renew or extend a person's fixed term contract, you are dismissing them. An employee with two or more years' service will have the right to bring an unfair dismissal claim, if they feel justified in doing so.

As with any dismissal, the reason must fall under one of the five fair reasons for dismissal, and a fair procedure must be followed.

The five potentially fair reasons are:

- conduct
- capability
- redundancy
- statutory ban (unlawful to continue to employ them)
- some other substantial reason

In many cases, the non-renewal of a fixed-term contract will amount to a redundancy situation, where there is no longer a requirement for the individual to carry out the job in question (e.g. where funding has ceased or reduced).

In that case, where the person has two or more years' service, they will be entitled to a statutory redundancy payment. This will be based on the age and length of service of the employee, and it is the responsibility of the employer to pay it.

Suggested procedure

It is important that employers establish a fair reason (see above) for non-renewal, ahead of expiry of the fixed-term contract. As mentioned above, the fixed-term contract will terminate automatically at the end of the term, without the need for the employer or the employee to give notice. **However**, it is strongly advisable that employers should keep fixed-term employees informed of their intentions around the contract's expiry.

Invite the fixed-term employee, in writing, to a meeting to discuss the intended non-renewal of the contract, any alternatives, and provide the opportunity for him or her to appeal any decision not to renew the contract.

Things to watch out for

- Reason for dismissal. As mentioned above, any non-renewal (dismissal) must be for a fair reason and follow a fair procedure. If you are unhappy with the conduct or performance of an employee, you should follow your normal disciplinary or performance management procedures, and not simply be tempted to ignore the issue and rely on the contract ending. If you were to rely on 'redundancy' being the reason for dismissal, you should be able to demonstrate that the position is genuinely redundant and that you have carried out a fair redundancy procedure. A redundancy dismissal should in no way be linked to any conduct or performance issue with an individual.

Also, although employees need to have two years continuous service to claim 'ordinary' unfair dismissal (e.g. related to conduct, performance, redundancy), they have immediate protection from dismissal related to unlawful discrimination or asserting their statutory rights.

- Monitoring the end date. You should keep a note of the impending end of a FTC, decide in advance what to do (end it / extend or renew it) and act accordingly. If the FTC expires with no action taken, and the employee continues to be employed, it is likely that they will be deemed to be a permanent employee. That's not to say that you need to keep them forever, but that you will need to have a fair reason, and go through the normal proper procedures, and give at least statutory notice, if you subsequently wished to end it.

Resources

- GCVS Employers' Advice Service produced this briefing paper for us. They offer advice, support and training on all aspects of being an employer. Contact Linden Stables, EAS Manager, on 0141 354 6515 or email linden.stables@gcvs.org.uk
- The Church of Scotland Law Department can offer a wide range of support to **Go For It** Funded projects and potential applicants.
Contact: Jennifer Campbell - jcampbell@churchofscotland.org.uk
- acas provides information, guidance notes and help for employers.
- Gov.uk has information on employing people on fixed term contracts.