

# #91 HR Newsletter

## Sept 2016: Fixed-term Contracts

### Dealing fairly with Fixed-term Contracts

Engaging employees under fixed-term contracts can provide employers with workforce flexibility. Fixed-term employees have an array of rights, in particular under the Fixed-term Employees Regulations.

We look at five points that employers should watch out for.

#### 1. When is an employee on a fixed-term contract?

Employees are engaged on a fixed-term contract subject to the Fixed-term Employees Regulations where the contract will end automatically in three situations.

The first situation is where the contract ends after a specified period, for example the end of 12 months' cover for maternity leave.

The second is automatic termination on completion of a task, such as the employee finishing a project.

The third is where the contract ends when a particular event occurs and this could be, for example, the non-renewal of external funding for a post.

#### 2. Less favourable treatment across contracts

An employee may be able to bring, without being time barred, a claim for less favourable treatment contrary to the Fixed-term Employees Regulations in respect of earlier fixed-term contracts as well as the last. The claim will be possible if the employer's actions amount to "a series of similar acts" that continue across the individual fixed-term contracts, even where they are separated by periods of time.

#### 3. Exclusions from scope of Regulations

In addition to the exclusion of workers who are not employees, the Fixed-term Employees Regulations do not apply to agency workers, apprentices and work experience placements.

#### 4. Permanent status

An employee who has been continuously employed on successive fixed-term contracts for four years or more, will automatically become a permanent employee, unless the employer can justify the renewals. The courts have indicated that is difficult for the employer to justify renewal where it has a permanent need for the employee. Acceptable justifications have included the use of successive fixed-term contracts to provide cover for absent employees and also to enable individuals to resume their professional career at the end of the contracts.

## 5. Termination

The expiry of a fixed-term contract without renewal is deemed to be a dismissal, even though the employer and employee agree at the outset when the contract will automatically terminate. This rule means that an employee with at least two years' service can claim unfair dismissal, so the employer must ensure that the dismissal is fair.

### **The employee may also be entitled to statutory redundancy pay.**

Although not a requirement, it is always wise to "re-issue" notice to the fixed-term employee so that they are reminded their contract is coming to an end and you don't need to pay notice after the termination date.