

## Fixed Term Employees

*From 10 July 2006 employees who have been engaged upon successive fixed term contracts for 4 years or more with the same employer will be entitled to permanent employment, unless their employer can objectively justify a renewal or extension of their fixed term status. James Warren, solicitor, Field Fisher Waterhouse LLP, reports.*

The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 require employers to treat employees on fixed term contracts no less favourably than comparable permanent staff, and declare that after 4 years of successive fixed term contracts such employees will be entitled to permanent employment. Although the Regulations came into force on 1 October 2002, the European Council Directive (1999/70/EC) which they implement required the government to have put in place legislation by 10 July 2002. It is therefore from this date that the right to permanent employment after 4 years of successive fixed term contracts is first counted.

### Which employees are covered by the Regulations?

Only employees who are engaged under a fixed term contract are covered. A fixed term contract is not just one which has a specific end date, it also includes contracts which will terminate on completion of a particular task, or on the occurrence (or non-occurrence) of a specific event.

Individuals who are not employees, such as agency workers or the self-employed will not be covered by the Regulations. In addition, apprentices, employees on publicly funded training, reintegration and work schemes, students on work placements of one year or less as part of a higher education course and members of the armed forces are expressly excluded from protection under the Regulations.

### How exactly will fixed term staff become permanent employees?

From 10 July 2006 employees who are on their second or later fixed term contract, and who have reached four years continuous service, will automatically have their contracts converted. In such cases the fixed term provisions will be of no effect (unless the employer can demonstrate that continuing fixed term status is justified on objective grounds).

Employees with a contract with a fixed term greater than 4 years who are still employed under their first contract will not automatically become permanent employees simply by acquiring 4 years service. However, at the conclusion of their contract, any attempt to renew with a fixed term will be ineffective and they will acquire permanent status.

Will employers have to issue new contracts?

No, the existing terms and conditions will continue except that the fixed term provisions will have no effect. Employers who wish to ensure that there is no confusion may wish to issue new contracts or to write to employees to confirm their status.

Employees who believe they have acquired permanent status are entitled to request a written statement confirming their permanent position. This must be provided within 21 days of receiving a written request, either confirming the permanent status or setting out the reasons which the employer considers justify the employee remaining on a fixed term contract.

What might be “justification on objective grounds” allowing a further offer of a fixed term contract to an employee with 4 years service?

Objective justification requires an employer to show particular business reasons which establish that a fixed term contract is more appropriate than a permanent position. An example where appropriate justification might exist would be a role on a short term project which depends on its funding from an external client. However, even then it will be very difficult to prove justification where the individual has been employed on a succession of contracts, as this implies that there is in fact an ongoing role.

Can I avoid fixed term employees obtaining permanent employment status by not renewing their contracts or dismissing them now?

In general, no. Any dismissals which are made solely on the grounds of avoiding a fixed term employee acquiring permanent status are likely to be unfair and in breach of the Regulations. A decision not to renew a fixed term contract is expressly regarded in law as a “dismissal” in the same way as a positive decision to terminate an employee’s contract.

Fixed term employees with more than a year’s service are entitled not to be unfairly dismissed. Furthermore, whatever their length of service, fixed term employees can bring claims in relation to any treatment which is less favourable than that offered to comparable permanent employees (unless that treatment can be objectively justified).

If I ensure that there is a gap between one fixed term contract and the next, will this break the continuity of employment?

Although there is some legal uncertainty in this area, in general it may be safest to assume that any planned gaps in employment will not break continuity, especially if they are for a short period when compared to the overall length of employment, or indeed, are designed solely to avoid the impact of the Regulations.

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