

# Fixed-Term Contracts of Employment

## 1. Fixed-Term Contracts

- 1.1. A fixed-term contract is a contract for a fixed period of employment for a specified reason recorded at the time of entering into the contract. The date of termination of the contract must be stated.
- 1.2. A further condition before a contract can be regarded as being for a fixed-term is that it must be for a maximum defined period, not expressed as a minimum period with provision for future extensions. However, an existing fixed-term contract can be extended or renewed by agreement of the parties at any stage of its existence.
- 1.3. The Fixed-Term Workers (Prevention of Less Favourable Treatment) Regulations 2002 broadly follow the rights given to part timers in 2000. They cover two main areas:
  - Prevention of discrimination against fixed-term employees when compared to similar permanent employees in respect of their terms and conditions of employment.
  - Prevention of abuse arising from the use of successive fixed-term contracts.
- 1.4. Fixed-term employees have the right to be informed of job vacancies within the School or Trust. Therefore, it is important to make sure that information about job vacancies is provided to anyone in the School or Trust employed on a fixed term contract.
- 1.5. The Burgundy Book (The Conditions of Service for School Teachers' in England Wales) states that where a teacher is on a fixed-term contract then the last day of the contract should be the final day of term i.e. 31 August, 31 December 30 April (or, in the case of a teacher resigning to take up an appointment with another employer, to the day preceding the day on which the School under the new employer opens for the Summer term if this be earlier than May 1). The above does not apply to teachers who are covering for an absent colleague or who are undertaking a contract for a period of one term or less.
- 1.6. There is a flow diagram at the end of this document which provides guidance on the expiry of a fixed-term contract.

## 2. Expiry of Fixed-Term Contracts

- 2.1. The expiry of a fixed-term contract without its renewal under the same contract is a dismissal in law. Consequently, an employee with two or more years continuous employment with the employer will have a right to make a claim of unfair dismissal to an Employment Tribunal (ET) upon the expiry of a fixed-term contract.
- 2.2. The dismissal must fall under one of the following fair reasons for dismissal:
  - **Misconduct** - A reason related to an employee's conduct. The School's disciplinary process would need to be followed to fairly terminate a contract for this reason unless the employee is within their probationary period.
  - **Capability** - A reason related to an employee's capability or qualifications for the job. The School's capability process would need to be followed to fairly terminate a contract for this reason unless the employee is within their probationary period.

- **Redundancy** – Due to redundancy. The School’s redundancy policy and process would need to be followed to fairly terminate a contract for this reason which may require formal consultation undertaken with the relevant trade unions.
  - **Statutory Enactment** – Because a statutory duty or restriction prohibits the employment being continued, e.g. an employee’s work permit or visa has expired.
  - **Some Other Substantial Reason (SOSR)** - Some other substantial reason of a kind which justifies the dismissal. This can only to be used in exceptional circumstances.
- 2.3. If, as is often the case, the reason for not renewing the contract is that the School or Trust no longer has the need to employ the employee, this may be a redundancy and the employee may have an entitlement to a redundancy payment.
- 2.4. It is therefore particularly important to dismiss an employee fairly if it is decided not to renew the fixed-term contract of an employee whose length of continuous service with the School or Trust qualifies them for unfair dismissal. If there is a right of unfair dismissal and this is exercised, an ET will decide whether the School or Trust acted reasonably in the circumstances. Generally, tribunals are ready to accept a reasonable explanation for not renewing a contract, or not offering a new one, but will expect that the employer’s procedure(s) has been followed and that the School or Trust had considered whether alternative employment could or should have been offered, even though, after due consideration, it was decided not to do so in a given instance.
- 2.5. This means that all HR policies and procedures including dismissal (unless there are specific exemptions) apply to and must be followed for fixed-term workers. Where the employer does not plan to renew the contract because the employee is underperforming, it should follow its performance management process. Where there are conduct issues, the employer should follow its normal disciplinary procedure. The employer should not dispense with a proper investigation and fair procedure simply because the employee's fixed-term contract is due to expire.

### 3. Suitable Alternative Employment

- 3.1. An employee on a fixed-term contract is entitled to be informed of permanent vacancies in the School or Trust in which they are employed. This applies throughout the course of their employment.
- 3.2. Where the reason for ending a fixed-term contract is redundancy and the employee is either pregnant or on maternity leave, they must be offered a suitable vacancy before any other employee otherwise their dismissal may be automatically unfair.

### 4. Less Favourable Treatment

- 4.1. Under the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002, a fixed-term employee has the right to be treated no less favourably than a comparable permanent employee as regards the terms of their contract or be subjected to any other detriment by an act, or deliberate failure to act, of the School acting as, or on behalf of, the employer. The Regulations apply to employees on contracts that last for a specified period of time or will end when a specified task has been completed or a specified event does or does not happen. Examples of this are employees covering for maternity leave and SEN named child contracts. The Regulations do not apply to agency workers.
- 4.2. Employers should be aware that this protection extends to the reason and method of dismissal and should ensure that they do not treat employees less favourably because of their fixed-term status, unless they can objectively justify the difference in treatment.

## **5. Continuity of Service between Local Authority Maintained Schools**

5.1. Maintained schools, (which includes aided and foundation schools) within the same local authority (LA) are regarded in some cases as one employer for the purposes of determining continuity of service. Employees who move from a voluntary aided or foundation school to a community or voluntary controlled school or vice versa without a break in service have continuity of service. This continuity of service would apply to:

- The right not to be unfairly dismissed
- The right to submit a flexible working request
- Entitlement to any statutory payments such as Statutory Sick Pay and Maternity Pay
- The right to shared parental leave, ordinary parental leave and paternity leave.

However, even if they are maintained by the same LA, the continuity of employment provision is not extended to employees moving between:

- Two foundation schools
- Two aided schools
- A foundation school and an aided school.
- This continuity of service provision does not apply to academies or free schools.

Please note, for the purposes of calculating entitlement to a redundancy payment continuous service under the Local Government Redundancy Modification Order (which covers most types of school and some other public bodies) is used rather than continuity under a single employer.

In addition, where an employer recognises the Green Book the continuous service date used for calculating a redundancy payment is also used to calculate entitlement to Annual Leave, the Occupational Sickness Scheme and the Occupational Maternity Scheme.

## **6. Continuity of Service within a Multi-Academy Trust**

6.1. Academies within a multi-academy trust, are regarded as one employer for the purposes of determining continuity of service. Employees who move between academies within a multi-academy trust without a break in service maintain continuity of service. This continuity of service would apply to:

- The right not to be unfairly dismissed
- The right to submit a flexible working request
- Entitlement to any statutory payments such as Statutory Sick Pay and Maternity Pay
- The right to shared parental leave, ordinary parental leave and paternity leave.

## **7. Limitations on Renewing Fixed-Term Contracts**

7.1. An employee who is on a fixed-term contract for four years or more will automatically become a permanent employee, unless the employer can demonstrate that there is a good business reason not to do so or a collective agreement is in place that removes this automatic right.

## **8. Temporary Reasons**

8.1. In law, a fixed-term contract must be due to the position only being available for a fixed period and not a reason linked to the post holder. The reason for creating a fixed-term contract must be genuine, appropriate and objectively justifiable. Examples include:

- To cover another employee off sick/on maternity
- To cover another employee on secondment
- Due to the funding being linked to external sources
- To work one-on-one with a statemented child for the duration of their time at the school.

## **9. Appraisal**

9.1. Employees who are employed on a fixed-term contract will have their performance managed in accordance with the principles underpinning the Appraisal and Capability Policy or an equivalent policy. The length of the review period and interim review will be determined by the duration of the fixed-term contract.

# Flow Diagram: Reasonableness of Decision to Terminate or not to Renew Fixed Term Contracts

