

FIXED TERM CONTRACTS CAN NOW BECOME PERMANENT

We are now at the four year point where, for the first time, fixed-term contracts can become permanent. This is set out in the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 SI 2002/2034.

The Regulations came into effect on 1 October 2002. For the purposes of fixed-term contracts becoming permanent, continuous service prior to 10 July 2002 is not counted.

What does this mean?

From 10 July 2006, employees who have been employed on successive fixed-term contracts (that is, they have had the contract renewed previously or have been employed on more than one) for a period of four continuous years, will be able to ask their employer for a statement confirming that they are permanent and/or no longer on a fixed-term contract. Employers have to issue this statement or one giving objective reasons why the contract remains fixed-term within 21 days of the employee's request. The employer can only keep them on the fixed-term contract if they can objectively justify it at the point it was last renewed.

What can happen if I don't issue a statement or issue one saying the contract is still fixed-term?

As long as your employee has requested the statement, and is still employed by you, they could apply to an employment tribunal for a declaration.

If the tribunal considers you have deliberately failed to provide the statement without a good reason, or you have provided one that is evasive they are entitled to draw any inference that they feel it is just and equitable to draw.

Can I agree with my employees to set a different time period before fixed-term contracts become permanent?

You can only do this for an employee or particular group of employees of a specified description, as long as it is done through a collective or workforce agreement.

You can agree on one or more of the following:

- the maximum duration of successive fixed-term contracts,
- the maximum number of successive fixed-term contracts or renewals of them, or
- the objective grounds for justifying renewal of fixed-term contracts or engagement of employees under successive fixed-term contracts.



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I have an employee who has been employed on a series of 2-year fixed-term contracts, since 1 January 2000. The latest renewal of the contract took effect from 1 January 2006 and lasts until 31 Dec 2007.

What will happen?

Service prior to 10 July 2002 is not taken into account towards the four year's continuous service before the fixed term contract becomes permanent, under these provisions.

However, from 10 July 2006 (once the employee has the four year's continuous employment), the clause limiting the contract to a fixed duration becomes ineffective. This means that the contract will become permanent unless the employer can objectively justify employment of the employee on the fixed-term contract at the point it was last renewed, in this case 1 January 2006.

Where the employee believes the contract should now be permanent they should ask the employer for a statement that the contract is no longer a fixed-term one or that they are now a permanent employee. The employer has to issue this statement, or a statement giving reasons as to why the contract remains fixed-term, within 21 days of employee's request.

Where the employer fails to give such a statement, or gives a statement of reasons that the contract remains fixed-term, the employee can make a claim to an employment tribunal for a declaration. They can only do this if they have made a request for the statement and are still employed by that employer at the time they made their claim.

I have an employee who has been employed on successive fixed-term contracts, who will reach their four year's continuous employment in September. Do I need to do anything if they don't ask me for the written statement?

Rather than do nothing it may be advisable for you to write to the employee to confirm the situation, in order to avoid potential later pitfalls.

Are you able to objectively justify having kept that employee on the fixed term contract at the point it was last renewed, or if it has not been renewed then when it was entered into? If not, then you are advised to write to your employee to confirm that they are now permanent. The letter should inform them that the date of expiry of the fixed term contract no longer applies and you should also let them know about the notice periods required to bring the contract to an end. You should do this within one month of when the employee reaches four year's continuous employment.

The reason for this is that since the Employment Act 2002, failure to notify employees in writing of a change to one or more of the particulars required in a written statement can lead to an award of two or four weeks' pay (EA 2002 S.38). This applies where claims have been made to an ET under certain jurisdictions (including unfair dismissal or detriment (EA 2002 Sch.5)) and no award has been made in relation to the proceedings.

Use of successive fixed-term contracts may be justified where these are to meet the needs of a particular profession or business need of the employer. Where this is the case employers may want to consider drawing up a collective or workforce agreement that covers when and for how long fixed-term contracts can be used.