



**LEGAL  
MATTERS**  
Marius Rieger



# FIXED TERM CONTRACTS

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LWO EMPLOYERS ORGANISATION

**ABOUT LEGISLATION IS** applicable to all employers and employees and aims to regulate labour relations ensuring fairness in the workplace. At times the legislator sets apart a specific group that needs additional protection from being exploited according to the legislature, such as regulations regarding the usage of fixed term contracts with regards to duration and status.

The first limitation is the period of engagement. Employees employed on a fixed term basis for longer than three months will be deemed to be permanent employees unless the longer fixed term period is justifiable. The second limitation is the limited list of justifiable reasons, stipulated in the LRA, for employing an employee on a fixed term contract. Justifiable reasons for employing an employee on a fixed term contract for longer than three months include:

- replacement of another employee who is temporarily absent;
- temporary increase in work volume (expected duration up to 12 months);
- student or graduate internships;
- project work;
- non-citizens that have been granted a work permit for a defined period;
- seasonal work;
- public works or job creation schemes;
- positions funded by external sources for a limited period;
- after retirement age was reached; or
- any other justifiable reason.

Using a fixed term contract as a probation period is not a justifiable reason in terms of the LRA and constitutes unfair

labour practice. Termination of the contract after completion of the fixed term may be seen as unfair dismissal.

In essence, the permanent employment contract is used for a position of permanent or indefinite nature. The fixed term employment contract is used for a position where employment is not permanent and of a temporary nature, referring to either a specific time period or a specific project.

## CAN A FIXED TERM EMPLOYMENT CONTRACT BE RENEWED?

The employer must be careful not to create an expectation of permanent employment with the employee, which can easily happen when a fixed-term employment contract is renewed. When renewing such a contract (for a second, similar period), the employer must inform the employee in writing that there will be no further renewals and confirm the expiry date of the contract. The more frequently an employer rolls over a fixed term contract, the more reasonable becomes the employee's expectation that it will continue to be rolled over in the future, hence creating an expectation of permanent employment.

If a fixed term employment contract comes to an end and the employee remains in this position, the legislation states that that employee will be considered a permanent employee. This means that the contract will be deemed to have been tacitly renewed on the same terms, except that the relationship will now be a permanent duration and the contract may only be terminated by dismissal, the employee's resignation or death.

Employers must clearly understand that to disguise what is actually permanent employment in the form of a fixed term contract, is illegal.

## BE PROACTIVE

The most important rules with regards to fixed-term employment contracts are:

- Never create an expectation of permanent employment;
- Make sure that you will be able to motivate why a person is appointed on a fixed term in terms of the listed grounds as referred to in the LRA;
- If a fixed term contract is renewed, ensure that it does not create an expectation and amend the contract timeously with good reason;
- Fixed term employees must be treated the same as permanent employees with regards to wages, leave and other benefits. Employees on fixed-term contracts must also be given equal access to opportunities to apply for vacancies as well as be entitled to severance pay upon termination of employment where the employee is employed on a fixed term contract exceeding 24 months.

We advise employers to ensure that their employment contracts comply with applicable labour legislation and that expiration of fixed-term contracts are managed properly and with the necessary care.



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Contact the LWO Employers Organisation at 0861 101 828 | [info@lwo.co.za](mailto:info@lwo.co.za) | [www.lwo.co.za](http://www.lwo.co.za) for information or assistance. Available 24/7. ❖