



Guide to the Management of Temporary Employment

Introduction

The Unfair Dismissals (Amendment) Act 1993 and the Protection of Employees (Fixed Term Work) Act 2003 (FTWA) are the main pieces of legislation governing the employment of temporary workers. The purpose of the FTWA is:

- (i) To improve the quality of fixed-term work through the application of the principle of non-discrimination by ensuring that fixed term / temporary workers are not treated less favourably than comparable permanent workers
- (ii) To prevent abuse arising from the use of successive fixed-term employment contracts by regulating the use of fixed-term / temporary employment contracts.
- (iii) To provide for a maximum duration of successive fixed term contracts after which the “temporary” designation has no effect and the contract concerned shall be deemed to be a contract of indefinite duration.

Third party decisions under the legislation have reinforced the importance of the correct administration of fixed term contracts, both at the initial stage and the renewal stage. The FTWA itself stipulates certain information must be provided to all fixed term employees in their contracts of employment. Heads/PIs/Managers must be extremely vigilant to ensure that the temporary contract reflects the specific circumstance of each individual’s temporary employment.

Initial Fixed Term Contract

At the commencement of an employee’s temporary employment s/he should be provided with a contract, which in addition to providing the standard information relating to the terms and conditions of employment, should include information relating to the employment circumstances and the objective reason which will bring about the termination of the contract, i.e.

- Reaching a specific date, e.g. 31st December 2014
- Completing a specific task, e.g. until the research project has been completed



- The occurrence of a specific event, e.g. the employee whom the individual has replaced returns from maternity leave

These conditions must be specified in writing in the contract of employment.

Fixed term contracts (specifying the cessation date) should only be used where the cessation date can be precisely determined at the outset.

Renewing a Fixed Term Contract

The Unfair Dismissals (Amendment) Act 1993 introduced an anti-abuse provision to prevent employers successively renewing fixed term contracts. Thus, it is not possible to employ someone on a succession of fixed term contracts and retain immunity from the Unfair Dismissals Acts, 1977 – 2001.

If the Rights Commissioner, the Employment Appeals Tribunal or the Circuit Court consider that the employer was trying to avoid liability under the legislation, the employee will retain continuity of employment (including any break in service) and the Unfair Dismissals Acts 1977 – 2001, will apply to the dismissal.

Additionally, the Protection of Employees (Fixed-Term) Work Act, 2003 places further limitations on the renewal of fixed-term or specified-purpose contracts. Where a fixed term contract (with an end date) has been issued and it is intended to extend or renew such contract, the employer must specify in writing the grounds which will bring about the termination of the contract:

- Arriving at a specific date, e.g. 1st July; or
- Completing a specific task, e.g. finishing a research project; or
- The occurrence of a specific event, e.g. the return of a permanent employee following secondment.

The employee must be advised in writing of the objective reasons for the renewal of the fixed term contract and the reason as to why s/he is not being offered a contract of indefinite duration. Heads/PIs/Managers should ensure that this information is set out in writing to the employee a month before the date of the renewal. Employers cannot retrospectively supply this information to the employee.



Objective Grounds

Section 8 of the Protection of Employee (Fixed Term Work) Act 2003 requires an employer to clearly establish that it has no option but to renew the contract on a temporary basis. Employers must be able to show that they gave proper consideration to granting the employee a contract of indefinite duration, but real and objective reasons exist for continuing the employee on a fixed term basis and these reasons are set out to the employee in their renewal contract, i.e. the operational reality of the person's employment is outlined to the employee in the paperwork that is furnished to them. The continuation of employees employed on a fixed term basis must correspond to a real need on behalf of the organisation and reflect the reality of that need, i.e. the contract renewal shouldn't merely be a function of administration.

Example: A person has been employed on a fixed term basis to cover another member of staff's maternity leave. The permanent employee has now returned from maternity leave so the purpose for which the fixed term employee was employed has been fulfilled. However another member of staff has gone on sick leave and you wish to retain the person on a temporary basis to cover the vacancy caused by the sick leave. The following detail must be inserted in the renewed contract:

"You are employed to cover for Ms Anne Smith while she is on sick leave. Your employment with the College will terminate when Ms Smith returns from sick leave. You are not being offered a contract of indefinite duration as Ms Smith is the substantive holder of this post."

Specified Purpose Contracts

Many fixed term employees (e.g. Researchers) are employed for a specific purpose, the length of time for which they will be employed may not be capable of being determined at the initial appointment stage. This type of fixed term employee should be issued with a Specific Purpose Contract, which clearly stipulates the specific purpose for which they are employed and the specific event which will bring about the contract's termination.

Example 1: *"This appointment is offered with effect on and from 01 February 2014. The specific purpose of this employment is to undertake research on the 'Individualised Diagnostics and Rehabilitation of Attention' research project under Professor Smith*



(Principal Investigator). This research project is externally funded by Science Foundation Ireland. This employment is not offered on an indefinite basis as this project is finite. Termination of this contract will occur upon completion of the work in which you are engaged in, or in the event of the funding stream being terminated or withdrawn by the external funding agency.”

Example 2: You are employed pending the filling of the post on a permanent basis through open competition. Your employment will terminate when the permanent employee takes up duty.

Example 3: You are employed to cover the career break of Ms. Jones. Your employment will terminate upon Ms. Jones returning to work at the termination of her career break.

If the person's employment is terminated at the cessor of the purpose specified in the contract or on the expiry date of the initial fixed term contract (i.e. there is no renewal), the employee has no further entitlements under this legislation and s/he will not qualify for a contract of indefinite duration. **Specific purpose contracts should not be renewed except in very exceptional circumstances.**

The difficulty with these contracts is that the employee involved can only be required to work on the project/purpose in question and if they are required to engage in other work it is likely that the contract will be regarded as something other than a genuine specific purpose contract. Thus the exclusion of the Unfair Dismissals Act, 1977 – 2001 would be ineffective and an unfair dismissal claim could be taken.

Hirers should inform employees engaged on specified purpose and fixed term contracts of their cessation in employment at least two months prior to the cessor of the purpose or fixed term.

Croke Park and Haddington Road Agreements

The Government gave a commitment under Clause 1.6 of the Public Service Agreement that *compulsory redundancy will not apply within the Public Service, save where existing exit provisions apply*. The College has a long standing practice of exiting staff upon the cessation of their supporting external funding or upon the completion of the work in which they are



engaged. This *existing exit provision* was put to the test in a number of College cases before the Labour Court.

Trinity College Labour Court Cases

In Labour Court Recommendation LCR20292, April 2012, the College was directed by the Labour Court to reinstate three employees who had attained contract of indefinite duration status and whom the College made redundant upon the cessation of their supporting external funding. The Court considered that:

“the claimants’ individual employment history, for reasons specific to each of them individually, entitles each of them to rely on the commitment set out in Clause 1.6 of the Public Service Agreement 2010 – 2014.”

The Court did not comment on whether or not the College had *an existing exit provision*.

In November 2013 two further claims of College breach of the no compulsory redundancy provision of the PSA were heard by the Court, one of which was upheld, the other rejected. Both determinations are very significant in that the College’s *existing exit provision* is clearly acknowledged. The Trinity cases also established three tests (externally funded; exclusively employed on research; length of service) against which the claimants were assessed.

In LCR20647, November 2013, the Labour Court were:

“not satisfied that the Claimant came within the exemption (from protection against redundancy). Her post was not externally funded in at least the latter period of her employment. Nor was she exclusively engaged in research. Her length of service with the University (16 years) was also such as to place her outside the type of circumstances in which the exemption could be reasonably held to apply.”

In LCR20652, November 2013, the Labour Court determined:

“By virtue of the terms of the Agreement (Haddington Road) and the clarification given (by the Implementation Body), the Court is of the view that employees who are exclusively employed on externally funded research work and where such funding ceases they become a direct charge of the College, thereby putting the onus on the College to endeavour to provide alternative duties for the employee in accordance



with the terms of the Agreement and where such alternative employment is not possible then redundancy is the only alternative.

The Court has taken full account of the Claimant's employment history and her contracts of employment. The Court notes that her work wholly and exclusively related to Environmental Protection Agency projects and was funded by that organisation until all funding ceased. The Court notes that the College made efforts to find suitable alternative employment opportunities for the Claimant's area of expertise. Accordingly the Court finds that the Claimant's employment was terminated in accordance with the College's existing exit provisions in line with Clause 1.6 of the Agreement.

Good Practice Checklist

To assist Heads/Pis/Managers in managing temporary hires the following is recommended:

- Determine from the outset the reason the employee is being recruited on a temporary basis and where possible a Specified Purpose Contract should issue, without an end date. If this is not possible, a fixed term contract should be issued. Pay close attention to the salary offered at the outset, as this will be the salary commitment if COID status is subsequently conferred and the staff member becomes comprehended by the no compulsory redundancy protection of a national public service agreement.

Meet with the staff member at least two months (or longer, if contractually obliged to provide a longer notice period) prior to the intended cessation date and explain the reasons for the cessation (i.e. project coming to an end, cessation of funding etc.). Subsequently confirm the decision in writing to the employee.

- Cease the employment upon the cessation of the stated purpose or expiry of the fixed term.

Where it is intended to extend or renew a fixed term contract, Heads/Pis/Managers must specify the objective the reasons for the renewal of the fixed term contract and the reason as to why a contract of indefinite duration is not being offered. This information should be provided to the employee one month prior to the date of the



proposed renewal of contract.

The use of Staff Transfer forms for Research grades should be restricted to the situation where there has been a change in the external supporting funding. If there is any other change to the original purpose of the employment (i.e. different project/role/duties), then a new contract should issue setting out the new purpose.

- Research grades should be solely engaged in research work and exclusively funded by external, non-core funding. School/Area core funding should not be used to bridge gaps in external research funding.
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