

# Fixed term employees

Your rights to protection against discrimination at work as a fixed-term employee



## Overview

The Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 ('The Regulations') protect you from being discriminated against because you are on a fixed-term contract. This factsheet provides a general overview of this protection.

### Who is covered by the Regulations?

The Regulations define a fixed-term employee as someone with a contract of employment which is due to end either on a specified date, when a specified event does or does not happen, or when a specified task has been completed.

The most likely situations in which you would have a fixed term contract are:

- 'Seasonal' or 'casual' work, where contracts are for a short period of time or to complete a specific task, such as agricultural work, or working at children's summer camps
- Cover for a period of maternity, paternity or sick leave
- Being hired to cover peaks in demand and where your contract expires when demand returns to normal levels. This could include when a new product comes on to the market creating great demand but as time goes on, demand decreases to normal levels
- Contracts for a specific task, for instance painting a house or setting up a new database.

### Who is excluded from the Regulations?

You are excluded from the protection of the Regulations if you are:

- A member of the armed forces
- On Government or EC institution-funded or sponsored training,

work experience or temporary work schemes

- A student on work experience for up to one year as part of a higher education course or;
- An agency worker contracted to work for an end-user company through a temporary work agency. However, if you are an agency employee working directly for the agency under contract, you will be protected.

### What are my rights under the Regulations?

The main protection for workers on fixed-term contracts is the right not to be treated less favourably than comparable permanent employees.

There is also a right not to be victimised and you also have the right to be informed by your employer of any permanent vacancies where you work.

### Who is a 'comparable permanent employee'?

A 'comparable permanent employee' is someone who is not on a fixed-term contract:

- Who is employed by the same employer as you and who does the same or broadly similar work, including, where relevant, having a similar level of qualifications, skills and experience, and
- Who works or is based at the same place as you. If there is no comparable permanent employee working or based in the same

place as you, you can use someone from another site who satisfies the other two requirements instead.

### What is less favourable treatment?

Less favourable treatment can occur where a fixed-term employee has different contractual terms to a comparable permanent employee. Benefits you might be excluded from could include:

- Free membership of a workplace gym or free lunch vouchers
- Training
- Payment for working on bank holidays
- Enhanced redundancy.

Similarly, your fixed-term status should not be a reason for you to be dismissed, selected for redundancy or denied promotion opportunities. In relation to benefits such as basic pay, bonus and holiday entitlement, these can be reduced to offer you a proportion of the benefit available to permanent employees for the period of your fixed term contract. For example, if all employees are offered a bonus based on the financial performance of the company over one financial year, but your contract provided that you were only employed for six months of the year you may be able to ask for a bonus which reflects your performance during your six month contract.

## Contact us:

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### Objective justification

Even if you have been treated less favourably, the Regulations only protect you if this is because of your fixed-term status and cannot be justified objectively. In order to justify less favourable treatment, your employer will have to either:

- Show the treatment achieves a legitimate objective (i.e. that there is a good reason for it) and that it is a necessary and suitable way to achieve that objective or;
- Show that the value of your total package is at least equal to the value of that of a comparable permanent employee.

### Written statement of reasons

If you think your rights under the Regulations have been infringed, you can request a written statement from your employer giving the reasons for any less favourable treatment.

Your employer must respond within 21 days. If your employer fails to reply or does not do so fully, an Employment Tribunal can conclude that there was not a good reason for the less favourable treatment.

### Protection from dismissal and detriment

You can claim unfair dismissal if the reason or main reason for the dismissal is that you have done, or your employer thinks you have done or are about to do, any of the following:

- Brought proceedings against your employer under the Regulations
- Requested a written statement
- Given evidence or information in connection with proceedings brought by any employee under the Regulations
- Otherwise done anything under the Regulations in relation to your employer or any other person
- Alleged that your employer

had infringed the Regulations (provided the allegation is made in good faith)

- Refused (or proposed to refuse) to give up any rights you have under the Regulations
- Declined to sign a workforce agreement for the purposes of the Regulations. Any of the reasons above are automatically unfair. You also have the right not to suffer any disadvantage because of anything your employer does, or deliberately fails to do, in relation to the above.

### Successive fixed-term contracts

If you have been continuously employed for four years or more on a series of successive fixed-term contracts, you are automatically considered to be a permanent employee, unless your employer can justify continuing to use fixed-term contracts. However, the rules on successive fixed-term contracts can be changed under a collective or workforce agreement.

If you are on a fixed-term contract and think these provisions have been triggered, you can write to your employer asking for a statement of variation of your contract to reflect the change to permanent status. Your employer must respond within 21 days, providing full reasons if they state you are still on a fixed-term contract.

### Expiry of a fixed-term contract

The law of unfair dismissal applies if your fixed-term contract is terminated. For more information, please see our '**Unfair Dismissal**' factsheet available from [www.slatergordon.co.uk](http://www.slatergordon.co.uk).

### Complaints to an Employment Tribunal

You will need to go to an Employment Tribunal to make a claim under the Regulations. Normally, you will have to do this

within three months less one day of the alleged less favourable treatment or detriment. Please note that claims will not be affected by the ACAS Code of Practice on Disciplinary and Grievance Procedures as this does not apply to fixed term employees.

If you are thinking about making an employment tribunal claim, you will first need to notify details of your claim to ACAS, who will then offer early conciliation to try to resolve the dispute. The conciliation period can be up to one month. If the claim does not settle, ACAS will issue a certificate confirming that the mandatory conciliation process has concluded.

There are changes to time periods within which to lodge claims to allow for the period during which a claim is with ACAS. The period within which a claim is with ACAS will not count for calculation of time limits; and if the time limit would usually expire during that period, or within the month after the certificate is issued, then you will have up to one month following receipt of the conciliation certificate in which to lodge a claim.

The process makes the calculation of time limits in employment tribunal cases more complicated. Claimants are advised to be aware of limitation issues and seek legal advice promptly. For further information on the ACAS early conciliation process visit: [www.acas.org.uk](http://www.acas.org.uk).

If your claim is successful, the Employment Tribunal can:

- Make a declaration on your rights and the rights of your employer in relation to the complaint
- Order your employer to pay you compensation (there is no compensation for injury to feelings)
- Recommend your employer removes or reduces the adverse effect on you within a specified period.

As with most aspects of the law, it is always better to get specialist advice as soon as possible before taking any legal action.

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