

FIXED-TERM WORKERS

Since 2002, under the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations, it has been against the law to treat temporary workers less favourably than similar permanent staff.

About fixed-term workers

The government estimates that there are between 1.1 and 1.3 million people on fixed-term or temporary contracts. Around half of these work in the public sector. The public sector also accounts for over 70% of temporary staff who have been in their jobs for over two years.

Concerningly, a survey by the Department for Trade and Industry found that discrimination against fixed-term employees was more common in the public sector than the private sector. The survey found that employers in 3% of cases overall said that they had at least one difference between fixed-term and permanent workers in non-wage benefit entitlement, however the figures were 11% in public administration, 5% in education and 7% in health and social work.

Education has the largest proportion of public sector workers on fixed term contracts (56%) followed by health and social work (24%) and public administration (19%). In addition, around 60,000 people working for charities are on fixed-term contracts or work as seasonal, casual or some other form of temporary worker.

What is a fixed-term employee?

The EU Directive defines a fixed-term worker as someone “having an employment contract or relationship entered into directly between an employer and a worker where the end of the employment contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.”

Who is and is not covered by the Regulations?

The UK Regulations apply only to “employees” not to all “workers”, although people with a fixed-term employment relationship will be employees. They **do not apply** to:

- agency temps;
- apprentices; or
- some people employed on training programmes supported by the government or European social fund.

What protection do the Regulations give?

The Regulations:

- make it unlawful for an employer to treat a fixed-term employee less favourably than a permanent employee (and this includes the right not to be treated less favourably in relation to receiving training or the opportunity to secure any permanent position);
- set a limit on the extent to which fixed-term contracts can be successively renewed; and
- amend primary legislation where it currently treats fixed-term employees less favourably than comparable permanent employees.

Less favourable treatment

Employers should not treat fixed-term employees less favourably than comparable permanent employees because they are employed for a fixed-term. There are exceptions if the treatment is:

- for a reason other than the employee being employed on a fixed-term basis; or
- justified on objective grounds.

The right applies both to less favourable treatment in relation to contractual terms (including pay and pensions) and to other detrimental treatment by the employer. It applies to:

- any qualifying periods for benefits;
- opportunities to receive training; and
- opportunities to secure permanent employment with the employer. In order to be able to exercise this right, a fixed-term employee will have the right to be informed by the employer of any available vacancies in the establishment.

However, the government announced a specific exemption in 2012, stating that, from 1 April 2013, employees on fixed-term contracts “which have reached their agreed termination point” will be excluded from collective redundancy consultation obligations.

Comparing treatment

The treatment of a fixed-term employee can be compared to that of any permanent employee who does the same or similar work for the same employer in the same establishment (or in a different establishment if there is no permanent comparator in the same establishment).

The Regulations state that a “package approach” to comparing terms and conditions should be used rather than a term-by term approach. This means that the entire employment package of a fixed-term employee should be compared with that of a permanent employee rather than comparing each individual aspect of their terms and conditions. Employers may be able to argue, therefore, that worse conditions in one area can be “objectively justified” because taken as whole, a fixed-term employee’s employment package is no less favourable than that of a permanent employee (see below).

Objective justification

Less favourable treatment of a fixed term employee is allowed where it can be “objectively justified” by the employer. This will depend on the circumstances of the particular case, but might include denying access to a long-term loan scheme to someone on a short-term-contract.

Written statement

Fixed term employees, have the right, on request, to receive from the employer a written statement giving the reason for any less favourable treatment they believe has occurred. This must be supplied within 21 days of the request.

Complaints to an employment tribunal

A fixed-term employee may complain to an employment tribunal that they have been treated less favourably than a comparable permanent employee. They can also go to a tribunal if they believe they have been mistreated by their employer because they have attempted to assert their rights as a fixed-term employee.

Limiting the use of successive fixed-term contracts

Employers should not employ fixed term employees on a series of successive fixed-term contracts beyond four years unless this can be objectively justified. If an employee is continuously employed on a series of successive fixed-term contracts beyond four years, then the contract becomes as a permanent one. There is no limit on the length of a first fixed-term contract.

This statutory limit can be replaced by a collective agreement which specify a maximum duration of successive fixed term contracts, a maximum number of contracts and/or objective reasons justifying renewals of fixed-term contracts. Agreements may allow contracts to be renewed in excess of the four-year limit where it is objectively justified to do so.

Fixed-term employees have the right to receive from their employer a written statement, either confirming that their contract is to be regarded as permanent, or giving reasons why it continues as a fixed-term contract.

Amendments to primary legislation

The Regulations amend provisions in the *Employment Rights Act 1996* and *Social Security Contributions and Benefits Act 1992* which treated fixed-term employees less favourably than permanent employees in some circumstances as follows:

Removal of redundancy waiver

Fixed term employees on contracts of two years or more will no longer be able to waive their statutory right to receive redundancy payments if they are made redundant at the end of their contracts. This applies to any contracts signed, extended or renewed after the Regulations come into force.

Task contracts

The *Employment Rights Act* has been amended so that where a contract of employment ends automatically on the completion of a particular task or the occurrence or non-occurrence of a particular event, the termination will be classed in law as a dismissal. This means employees on such “task contracts” will have a number of statutory rights including:

- the right not to be unfairly dismissed;
- the right to a written statement of reasons for dismissal; and
- the right to statutory redundancy payments.

Notice periods

The *Employment Rights Act* has been amended so that employees on task contracts expected to last three months or less have the right to minimum notice periods on the same basis as permanent employees and those on other fixed-term contracts (previously they were subject to extra qualifying periods).

Guarantee payments, medical suspension and SSP

Fixed-term employees now have the right to receive guarantee payments, medical suspension payments and statutory sick pay (SSP) on the same basis as permanent employees (previously they were subject to extra qualifying periods).

UNISON's response

UNISON made detailed submissions to the two consultation exercises conducted by the Government on the draft Fixed-Term Work Regulations. A number of the demands made by UNISON were incorporated into the final Regulations, including the right to equal treatment in respect of pay and pensions which had been specifically excluded.

However UNISON believes the Regulations are inadequate in a number of other important respects. We believe:

- the regulations should cover all workers not simply those defined as employees;
- agency workers and apprentices should also be covered ;
- many employees will not have a permanent employee in the same (or another) workplace with whom to compare themselves – the Regulations should have included provision for a hypothetical comparator;
- terms and condition should be compared on a term-by-term basis rather than a package approach; and
- the four year limit for successive renewals of fixed-term contracts is far too long.

How can branches use the Regulations effectively?

Despite their limitations, the Regulations nevertheless do give temporary employees new rights. These should be used to full effect and built upon through negotiated agreements.

A first step will be for UNISON branches to “map the workforce” to identify those staff on fixed-term contracts. This can be a useful exercise in itself in helping the branch keep up to date with the profile of the workforce. Clearly any non-members should be approached to join the union. A targeted leaflet, advising temporary staff of their rights under the Regulations and explaining how UNISON campaigns for improved rights for temporary staff could be a useful recruitment tool.

The branch may also want to analyse where temporary staff are being used and why. Is it to cover legitimate short-term staffing needs, such as seasonal requirements? or are employers simply using temporary staff as an alternative to permanent staff because they are seen to be more flexible? Alternatively they may be taking on temporary staff instead of tackling underlying recruitment and retention difficulties? If so, these may be issues the branch will need to tackle head on.

The next step is to look at the terms and conditions offered to staff on fixed-term contracts. Are these as good as those available to comparable permanent employees? If not the employer is likely to be in breach of the law.

The Regulations lay down the minimum standards to which staff on fixed-term contracts are entitled. Negotiated agreements can improve upon these minimum requirements. Areas for negotiation might include:

- agreement on the circumstances in which temporary staff are employed;
- ensuring that the union branch receives regular reports on the number and locations of temporary staff employed;
- agreement that the union has access to temporary staff for recruitment purposes;
- ensuring that all temporary workers are covered by any agreement;
- ensuring that temporary staff are entitled to the same rights and terms and conditions as permanent staff and that comparisons of the terms and conditions of temporary and permanent staff are made on a term-by-term basis;
- reasonable limits on the number of times temporary contracts are renewed or the length of time a temp can remain on a temporary contract. Once these limits are reached, temps should be offered permanent contracts. This is likely to be well below the four-year limit in the Regulations. Collective agreements can specify a maximum duration of successive fixed-term contracts, a maximum number of contracts/and or objective reasons justifying renewals; and
- where temps become permanent members of staff, their service as a temp should be included in the count towards their overall service with the organisation.

Many branches will already have agreements which give better rights to temporary staff than those laid down in the Regulations. This may be a good opportunity to review agreements and see if there are areas where further improvements could be negotiated.

Your Comments

UNISON welcomes comments on this Factsheet. Please either write to or Email us at the address below.

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