



NEWSLETTER

DEALING WITH FIXED TERM CONTRACTS *RECENT LRA AMENDMENTS*

The first point to note is the additional protection offered to fixed term employees under section 186(1)(b)(ii) (see the highlighted/italics section below):

Section 186(1)(b) – Fixed term Contracts

An employee employed in terms of a fixed term contract of employment reasonably expected the employer –

1. to renew a fixed term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it; or
2. to retain the employee in employment on an indefinite basis but otherwise on the same or similar terms as the fixed term contract, but the employer offered to retain the employee on less favourable terms, or did not offer to retain the employee.

Basically, this means that the 'expectation' of employment has now been broadened to include not just an expectation of a fixed term contract being renewed, but also an expectation that a fixed term contract has become one of permanent employment.

Section 198B - Further legislation dealing with fixed term contractors

The strict provisions of this section are only applicable to fixed term employees earning under the threshold of earnings, i.e., R205433.30 per annum (R17119.44 per month). (This threshold appears to be remaining unchanged for now. It was due to be increased as of 1/7/15 but the minister of Labour has held back on increasing the amount).

The LRA now states that fixed term contractors should only be engaged for a maximum period of 3 months.

The question is whether the fixed term contract can be for a longer period than 3 months?

The answer is yes, fixed term contracts can be longer than 3 months if there is a justifiable reason to do so. The Act provides examples of such justifiable reasons, namely:

- replacing a temporarily absent employee;
- if there is a temporary increase in the volume of work not exceeding 12 months;
- is a student, graduate, learner being trained or gaining work experience;
- is employed to specifically work on a fixed term project;
- is a non-citizen with a work permit of limited duration;
- is employed for official public works scheme or similar public job creation scheme;
- is employed in a position funded by an external source for a limited period;
- has reached the normal agreed retirement age.

Remember the onus will always be on the employer to prove that there is a justifiable reason to employ a person on a fixed term contract. In the absence of a justifiable reason, the employee can be deemed a permanent employee. It is important that the reason is stipulated in the fixed term contract.

Severance pay for fixed term contractors

Another addition to the legislation is that fixed term employees are entitled to severance pay if they have worked longer than 24 months. This is calculated at one week per completed year of service. The employee may forfeit the severance pay if he/she unreasonably refuses alternative employment.

Can fixed term contracts be renewed?

Yes, this section allows for employers to renew or have successive fixed term contracts if the nature of the continued work is of a fixed term nature. Again reasons for the fixed term contract or need to renew the fixed term contract should be stipulated in the agreement.

Can an employer remunerate a fixed term employee differently to a permanent employee in the same position?

Yes (Section 198(D)) – the employer may remunerate the fixed term employee differently if there is a justifiable reason to do so such as:

- Seniority, experience, length of service;
- Merit;
- The quality or quantity of worked performed;
- Any other criteria of a similar nature.

However if the employer cannot distinguish between fixed term employees and permanent employees in respect of the exceptions above, then the fixed term employee must not be treated less favourably than permanent employees if employed for longer than 3 months.

*Andre Rabe
Chairman*

Please contact the GEO offices should you need assistance on fixed term contracts. Our number is 0861 436 436.

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In this issue

- RECENT LRA AMENDMENTS DEALING WITH FIXED TERM CONTRACTS

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In this issue

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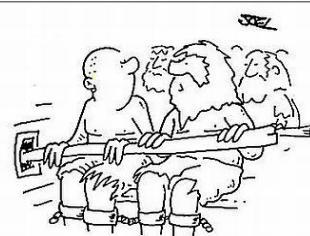
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"Well I'd prefer short term contracts."