



A-Z OF EMPLOYING

Fixed Term Employment

Our guide for Employers and Managers

**SUPPORTING,
FACILITATING &
REPRESENTING
BUSINESS**

Business**Central** 

Fixed Term Employment

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This is only a guide.
It should not be a
substitute for
professional advice.

Please seek advice
from our AdviceLine
Team if you require
specific assistance.

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Use this guide to understand

- ▶ When a fixed term employment agreement can be legally used
- ▶ In what circumstances are using fixed term agreements prohibited
- ▶ How to correctly create a legitimate fixed term employment agreement

Fixed Term Employment Agreements

Fixed term employment is a legitimate and versatile contractual option used in a variety of workplaces for a diversity of reasons. Fixed term employment may be used to cover the parental leave of an employee, for a particular engineering project, or for a pilot study. Often referred to as “temporary” employment, it allows employers to respond to the often transient labour needs that occur in an ever changing business environment.

The provisions of the Employment Relations Act 2000 (“the Act”) apply to any fixed term employment relationship entered into after 2 October 2000.

For any employment relationship entered into prior to 2 October 2000, the case law developed under the Employment Contracts Act 1991 will apply.

This **A-Z Guide** will largely deal with fixed term employment relationships governed by the Employment Relations Act 2000. If you have concerns or questions about a pre-existing fixed term relationship that is on-going, and, that are not answered by anything covered in this guide then you should contact the BC AdviceLine Team or your BC Advice Employment Relations Consultant for advice based on your particular circumstances.

The Definition of Fixed Term Employment

Fixed term employment may be part-time or full-time, but it is not permanent. Fixed term employment is employment that will end either:

- ▶ On a specified date or at the end of a specified period; or
- ▶ On the occurrence of a specified event; or
- ▶ At the conclusion of a specified project.

The term “temporary” employee may describe an employee employed under a fixed term employment agreement. However, the term is sometimes used to describe a “casual” employee which may be inappropriate.

Refer to the **A-Z Guide on Casual Employees** for a guide to understanding the term “casual”.

Fixed Terms Historically

The Employment Contracts Act 1991 placed no restrictions on fixed term contracts. The parties to a fixed term contract were free to contract as they saw fit. However, there were a number of court decisions on fixed term contracts. Generally speaking, the expiry of a fixed term contract could not give rise to a claim of unjustified dismissal unless the reason for it expiring at the time it expired was not justifiable on operational grounds.

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In 1997, the Court of Appeal stated that an employer who allows a fixed term contract to expire through the passing of time does not dismiss an employee. Therefore, the expiration of a fixed term could not give rise to a claim of unjustified dismissal. The Court of Appeal held that the expiry of a fixed term contract could only give rise to a claim for unjustified dismissal if it was a “sham”. There was no dismissal if the relationship terminated on the grounds stated in the employment contract.

Fixed Terms under the Employment Relations Act 2000

Must have genuine reasons

It is a requirement that there are genuine reasons based on reasonable grounds for putting an employee on a fixed term employment agreement as opposed to having them as a permanent member of staff. Genuine reasons relate to the operations of the business and the requirements of the role. They should not, generally, relate to the person who is being hired in the position.

Reasonable grounds for placing someone in a fixed term position include providing cover for a permanent employee who is on a long period of leave, completing a short term project or when there is an increase in a business’s workload and there is a specific date on which this increased workload will cease (for example when work is seasonal).

The Act does not state that the genuine reasons based on reasonable grounds for fixed term employment must be specified in writing in the employment agreement. However, the Employment Relations Authority has found that where several fixed term employments were ended for reasons other than those specified in the agreements, the employer did not end those agreements for genuine reasons (because those reasons differed from those set out in writing). Therefore, it is important to make it clear why and how the fixed term will come to an end and make sure that you follow through with what has been agreed.

If you would like to place someone in a fixed term position but it does not fit into one of these traditional scenarios, please contact BC AdviceLine for advice on your particular situation.

Terms in writing

The terms of the fixed term agreement should be clearly stated in a written individual employment agreement.

A fixed term employment agreement must state in writing both the way in which the employment will end for example: a specified date, the occurrence of a specific event, or the conclusion of a specified project, and the reason for it ending in that way. The employment agreement will still be valid if you do not comply with these requirements. However, you will not be able to rely on the fixed term nature of the employment agreement if your employee elects to treat the unwritten terms as ineffective.

Restrictions on fixed terms

The Act makes it clear when fixed term employment agreements cannot be used. You are prohibited from using a fixed term employment agreement to exclude or limit the rights of an employee under

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the Employment Relations Act 2000 or the Holidays Act 2003 OR to establish the suitability of an employee for permanent employment.

Consequences of not meeting requirements

If you do not have genuine reasons for putting an employee on a fixed term or do not comply with the requirement to have the fixed term in writing, then any term agreed upon to end the employee's employment will be ineffective.

The requirements under the Act are cumulative. This means that each of the requirements stated above must be met. If any of these requirements are not met, then the fixed term will be held to be invalid.

However, the overall employment agreement will still be valid. This means in practice that the employee will be deemed to be an employee of indefinite duration (a permanent employee) and not a fixed term employee.

Employment Agreements

An employment agreement should clearly reflect the intentions and obligations that the parties to the agreement have agreed upon. The prospective employee must have been advised of the reasons for fixed term employment and when or how the employment will end, so it is preferable that the employment agreement reiterate those.

The fixed term agreement should also provide, in writing, for the employment to end due to redundancy. If this is not included in the employment agreement, the employee may be able to argue that the employment has not been terminated for genuine reasons. The employer may then be liable to pay the redundant employee for the remaining length of the fixed term.

Please refer to the **A-Z guide on Restructuring and Redundancy** for more information.

Before contemplating offering employment on a fixed term basis you should consider:

- ▶ Why is the employment for a fixed term?
- ▶ Are there other factors that could impact the employment?
- ▶ Should any other contingencies be contemplated?
- ▶ Could restructuring affect the employment?
- ▶ Is there a chance of renewal or extension?

It is strongly recommended that your fixed term employment agreements contemplate as many events as possible without limiting your ability to bring the employment agreement to an end for unforeseen reasons. This requires skilled drafting taking into account the particular circumstances of the employment.

Business Central encourages employers to seek their professional advice with matters such as this before entering into fixed term agreements and BC Advice Employment Relations Consultants can assist with the drafting of fixed term employment agreements.

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You can contact one of our employer advisors for telephone advice and assistance: **0800 800 362** or email the BC AdviceLine at advice@businesscentral.org.nz

Remember:

- ▶ Always call AdviceLine to check you have the latest guide (refer to the publication date below).
- ▶ Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your fact situation.
- ▶ Use our AdviceLine employment advisors as a sounding board to test your views.
- ▶ Get one of our consultants to draft an agreement template that's tailor-made for your business.
- ▶ Visit our website www.businesscentral.org.nz regularly.
- ▶ Attend our member briefings to keep up to date with all changes.
- ▶ Send your staff to BC Learning courses and conferences designed for those who manage employees.

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