

# Briefing on ...

## The Law on Fixed Term Employment Rights

### The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002

#### Basic Principles

All employees have basic legal rights based on their status as employees and their length of service, regardless of whether they are permanent or temporary. In particular, they all have the same rights in relation to:

- Protection from unfair dismissal
- Redundancy Pay
- Contractual rights, including pay and pensions

- Holiday Pay
- Protection from discrimination or harassment on the grounds of gender, race, disability, age and sexual orientation.

Fixed term or temporary workers have additional protection under the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002.

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#### What is a fixed term contract?

Any contract that states when it will come to an end or under what circumstances it will end is a fixed term contract. So a contract that states it will end on

a particular date, or after a specified length of time, or on the occurrence of a specific event, is a fixed term contract. Anyone employed on this type of contract is protected under the regulations

#### The Regulations

The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 make it unlawful for an employer to treat fixed term employees less favourably than permanent employees. They have a wide application and extend not only to all contractual terms but to *any detriment by any act or failure to act by the employer.*

The Regulations make specific provisions for the rights of fixed term employees to be given the same opportunity as permanent employees in relation to:

- length of service benefits,
- training opportunities and
- the opportunity to secure a permanent position.

If an employer excludes fixed term employees from any benefit they are acting unlawfully, unless the action can be objectively justified.

### **Objective Justification**

If less favourable treatment is objectively justified, the employee is not protected by the regulations. There are two types of objective justification. The first is where a particular term which is less favourable is objectively justified on the grounds that the benefits package as a whole is equal. So, if a fixed term is not provided with a car, but is paid more to cover the cost of travel, that may be objectively justified.

Secondly, there is general objective justification, where the legal test is whether the less favourable treatment is to achieve a legitimate end, is necessary to achieve that end and is an appropriate way to achieve that end. This could apply where an employee is on a short fixed term contract and to provide access to a long term benefit would be costly to the employer and of no benefit to the employee, because they would not still be employed when the benefit accrued.

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### **Redundancy**

The regulations protect fixed term employees from being treated less favourably in a redundancy situation.

### **Selection**

The previously widespread practice of employers selecting fixed term employees for dismissal before applying selection criteria for redundancy to the permanent staff would be less favourable treatment. It would be difficult to argue objective justification of this practice given that it has also previously been held to constitute indirect sex discrimination.

### **Alternative Employment**

The regulations specifically provide that fixed term employees must be given the same access to permanent vacancies as permanent staff, so fixed term staff at risk of redundancy should be given the same access to redeployment and retraining.

### **Redundancy Pay**

Where a fixed term employee is dismissed because of a reduction in the amount of jobs available, and they have the necessary 2 years service, they will qualify for a redundancy payment.

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### **Successive fixed term contracts – The 4 year rule**

The regulations introduced default permanent employment where an employee is given a further fixed term contract after being employed for 4

years or more. The new contract will be treated as a permanent contract unless the employer can show that there are objective grounds for continuing the fixed term nature of the contract.

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### **Action for Branches**

Branches should review the employers' redundancy policies, including any collective term employees are not treated less favourably. Branch officers and stewards should also remind fixed term employees that they

should have equal access to employment benefits and opportunities.