

Specialist advice
and support
for schools

2004

A Guide For Head Teachers And Governors on Fixed Term And Temporary Contracts

For teaching and support staff



Produced by
Schools' Personnel Service
January 2004



Schools' Personnel Service

A Guide For Head Teachers
 And Governors on Fixed Term And Temporary Contracts
 For teaching and support staff

Contents

Introduction

This guide provides the following information and advice:

- Summary of recent legislation on the subject of fixed-term contracts, and the obligations on schools that arise from this
- Advice on issuing temporary contracts, and when not to
- Guidance for employers on the employment rights of temporary employees
- Information and advice on the termination or non-renewal of a fixed-term temporary contract.

Fixed term and temporary contracts when used properly can provide schools with the flexibility to meet temporary and short term staffing needs without entering into a long term commitment. This guide has been produced to give you information on employing temporary staff. It aims to set out the current legal position and the good practices which you are expected to follow.

The law regarding employment contracts, especially those of a temporary nature, is complex. If you have any queries or doubts, you should talk to your Personnel Provider. Spending time to get it right at the beginning can avoid problems in the future.

Remember, the contract is made when you offer and the individual accepts the appointment, regardless of whether anything has been put in writing at this stage.

All rights reserved. Schools, educational institutions and organisations have permission to reproduce this publication in part for use within their organisations, provided no charge is made for them. Any other reproduction, storage or transmission of material from this publication by any means or in any form, electronic or mechanical, including photocopying, recording, or any information storage and retrieval systems, requires written permission which should be sought from the Schools Personnel Service, Sessions House, Maidstone, Kent ME14 1XQ.

Designed by Ted Lazlo

Printed by County Print

This model policy and procedure is one of a series produced by a working party involving the Kent LEA, National Professional bodies, Trade Unions, Governing Bodies and the relevant Diocese (where appropriate). It is designed for use in Kent maintained schools but can be adapted to suit other schools with the help of the Schools' Personnel Service.

© Schools' Personnel Service 2003

A Guide For Head Teachers And Governors on Fixed Term And Temporary Contracts For teaching and support staff

The Legislation

The Fixed-Term Employee (Prevention of Less Favourable Treatment) Regulations took effect from 1 October 2002. These regulations put new restrictions on the use of the following types of contracts:

- Contracts with an end date
- Contracts which terminate on completion of task
- Contracts terminating on the occurrence or non-occurrence of an event.

The regulations apply only to employees and not to all workers. Agency workers are excluded and so are students on work experience or placements of one year or less when this is part of a higher education course.

The main provisions are:-

- a) A fixed-term employee has the right not to be treated less favourably than a comparable permanent employee, as regards the terms of the contract, or to be subjected to any other detriment by any act, or deliberate failure to act, of the employer.
 - b) A fixed-term employee has the right in particular not to be treated less favourably than a comparable permanent employee in terms of service qualifications for conditions of service, training opportunities, selection for redundancy or the opportunity to secure a permanent position in the establishment.
- Less favourable treatment will be unlawful unless it can be justified on objective grounds, and an employment tribunal may award the employee compensation if the treatment is judged to be unlawful.
- c) If an employee has been on successive fixed-term contracts for four years or more from 10 July 2002, any further renewal or extension will make the contract permanent, unless you can provide objective justification.

Further details and interpretation of these regulations are available from your Personnel Provider.

Main Types of Temporary Contract covered by the Legislation

Fixed Term – A contract with an explicit fixed end date. This type of contract should be used when, at the time of appointment, it is possible to determine the date the employment will finish eg a term or a year. The reasons why the appointment is not permanent along with the date when the work will end and the circumstances under which the employment will end must be clearly communicated to the employee in advance of them starting the job and stated in the written contract.

Task or event contracts – Often it is not possible to give the exact date when the contract will end, but the work is still of a temporary nature. For example, where a person is employed for a specific project or until an occurrence or non-occurrence of an event, eg. someone employed to cover for sickness absence, to support a particular pupil, for peaks in demand or to set up a new database. In such cases the temporary employee must, in law, be given an estimate of the duration of the work and informed of the circumstances which will bring the contract to an end. This should be done prior to the appointment and stated in the written contract.

Issuing Fixed Term and Temporary Contracts

When issuing any type of temporary contract, regardless of its duration, the following steps should be taken.

- Consider the full facts of the situation. Is it clearly identifiable that the nature of the work is temporary?
- State the reason for the temporary nature of the job at each stage of the recruitment process – starting with the advert. This reason should be as precise as possible
- The reason for the temporary appointment must be explained to the individual at the interview and again when the post is offered. You must ensure that they fully understand the terms and the subsequent implications
- The offer of employment must be expressed in writing as temporary and give an end date or an estimate of the likely duration of the appointment along with details of the circumstances under which the employment will end
- The employee must confirm their acceptance of the contract in writing
- The employee must be given a written statement setting out the particulars of the employment (see over).

A Guide For Head Teachers And Governors on Fixed Term And Temporary Contracts For teaching and support staff

Written Particulars

In law, all employees whose employment lasts for at least a month are entitled to receive 'written particulars' of their employment within eight weeks of starting. This includes information on the duration of a temporary or fixed term contract and the circumstances which will bring the employment to an end.

When Not to Use Fixed Term and Temporary Contracts

Fixed term and temporary contracts should not be used for the following purposes.

- In anticipation of budget cuts and staff reductions which may or may not happen in the future. Where it is known with certainty, that budget and staff reductions will need to be made within the following two terms, then it is acceptable to employ new staff on a temporary basis in order to safeguard the employment stability of permanent staff. School closures are to be dealt with separately
- To deny employment rights
- In anticipation that a better or more highly qualified candidate might turn up some time in the future. It would be acceptable to employ someone on a temporary basis to cover for a vacant post for a term until a permanent appointment can be made.

However, please note that schools are required to find qualified teachers and the appointment of unqualified teachers therefore needs to be fixed-term or temporary pending the appointment of a qualified teacher.

- To employ a succession of newly qualified teachers on fixed term contracts because they are cheap.
- To test an employee's suitability for a job, The non-renewal of the contract because they are not capable would need to be in line with the competence procedure.

Using fixed term and temporary contracts improperly may not only have legal consequences, but can adversely affect the morale of temporary employees, leading to lack of commitment and poor performance. This can also have a knock-on effect on the performance and morale of permanent staff which can lead to poor employee relations. Unnecessary reliance on these contracts can also have a negative impact on the ability of the school to recruit, and in some cases on maintaining stability for pupils.

You should also consider whether in fact you can determine a minimum number of hours in a permanent part-time contract, with additional hours as required on a fixed-term, variable or casual basis.

Discrimination

Under the 2002 regulations, employing staff on fixed term or temporary contracts to stop them from accruing their employment rights will be construed as being discriminatory, and may also discriminate against women because such contracts mostly apply to the employment of women.

There is no qualifying period of services for bringing complaints of discrimination to an employment tribunal. This means that if a case for discrimination can be made, anti-discrimination legislation can be used, even where the individual does not qualify for protection from unfair dismissal. You should be aware that discrimination cases can attract much higher levels of compensation than those relating to unfair dismissal.

Employment Rights

Staff employed on fixed term or temporary contracts who have either:-

One or more years continuous service accrue certain employment rights, in law, such as:-

- protection against unfair dismissal
- and after two years, the right to redundancy payment, if applicable

(other rights can also accrue)

Employees moving from a community school to another community school with no break of service may already have one or more years of continuous service.

Continuous service for the calculation of redundancy pay can include previous employment with other public sector employers as set out in the Redundancy Payments (Continuity of Employment and Local Government etc) (Modification) Order 1999. For more information on this speak to your Personnel Provider.

Trying to prevent staff from building up continuous service by employing them on a series of temporary or fixed term contracts with breaks between each contact is not a sure way of breaking

continuity. In testing whether or not an employee has continuous service an employment tribunal will look at the nature, duration and reason for the breaks in service, and may disregard them for the purpose of accruing employment rights.

A Guide For Head Teachers And Governors on Fixed Term And Temporary Contracts For teaching and support staff

Renewal

At any stage during the contract you can decide to renew it provided it is for a genuine and fair reason. This has to be done in agreement with the employee and the reasons must be clearly communicated and accepted in writing. The steps for issuing a contract set out above must be followed for each subsequent offer and acceptance of renewal of the contract.

In any event the new regulations convert a successively renewed fixed-term contract into a permanent contract after four years or more.

Termination before Expected End Date

You can terminate a contract at any stage before its natural expiry date. Such a termination would be regarded as dismissal, so the normal dismissal procedures and legislation would apply.

You need to be aware that if a fixed term or temporary contract is terminated for reasons of competency, conduct or redundancy then the individual has the same rights as permanent staff to the relevant procedures, including hearings and appeals. You will need to speak to your Personnel Provider before taking any action.

Failure to follow a contractual procedure would be a breach of contract and may result in a claim for compensation.

Notice provision

Fixed term contracts do not require you to give notice on natural termination. However, you should include a written provision to allow a fixed term or temporary contract to be terminated by either party before it is due to end. Without such a provision, if the contract is terminated prematurely by the employer, for whatever reason, the employee may be able to claim for damages for unpaid remuneration in respect of the rest of the contract.

(Also see section below on Non-Renewal.)

Non-Renewal of Fixed Term and Temporary Contracts

Non-renewal of a fixed term contract is regarded as dismissal and you must ensure that it is for the reason stated in the contract and carried out fairly. Provided that the reasons (which should be fair and genuine) for the temporary contract and the end date (in respect of fixed term) or circumstances for termination (in respect of temporary) have been explicitly stated then the non-renewal should be straightforward.

The reason for dismissal is likely to fall within the category of a 'substantial reason' when it can be established that a genuine short term need has come to an end eg covering absence or secondment or until a permanent appointment is made.

If the dismissal is due to the fact that a) the employer has ceased to carry on the business for the purposes for which the person was employed or in the place employed or b) the requirement for employees to carry on work of a particular kind or in the place originally employed have ceased or diminished or are expected to do so then it will be a dismissal on the grounds of redundancy. If the employees have two years or more continuous service they will be entitled to redundancy payments.

Under the Trade Union Reform and Employment Rights Act 1993 dismissal for reasons other than those relating to the individual (eg conduct, competence) is, for consultation purposes only, to be regarded as redundancy and there is a requirement to consult with the appropriate recognised unions. This requirement exists even if the employee concerned is not a member of these unions and regardless of their length of service.

You should give the individual as much warning of the non-renewal as possible. If the contract is temporary as opposed to fixed term (including 'event' contracts) then the employee is entitled to not less than the statutory period of notice.

The details of the non-renewal should be set out in writing to the employee including the reasons why the contract is not being renewed. If the employee has been continuously employed for more than one year then this becomes a legal entitlement.

It is now a legal requirement that you give an employee on a fixed term contract the opportunity to find a permanent position in your school, and this means that you need to make the employees aware of any vacancies that arise. When doing this you can also refer the employee to the Teacher Recruitment Team for possible vacancies elsewhere.

For all purposes it would therefore be good practice for Headteachers to remind employees of the end date half way through the contract if it is short, and at regular intervals if it is for more than a year.

A Guide For Head Teachers And Governors on Fixed Term And Temporary Contracts For teaching and support staff

Some Specific Examples

i) Overseas Trained Teachers – unless and until they have Qualified Teachers Status, should be appointed on fixed-term contracts. This will make it clear that you intended to appoint a qualified teacher by the contract end date, and will enable the teacher to plan for their next appointment.

ii) Contracts attached to named pupils – where these contracts started after 1 October 2002, the employees have all the rights under the new regulations. So if the pupils leave, the contract will simply terminate but the school is obliged to help redeploy the employee at this stage. Clearly it would be good practice to treat all employees on fixed-term contracts the same even if their contracts started before 10 October 2003, but note the different legal position. For this group it should also be noted that where schools have in practice used an employee with this type of contract to support a wider group of pupils, they may in any event be entitled to a redundancy payment on termination of the contract.

iii) Supply Teachers and other casual staff – unless the person has been appointed on a longer-term cover arrangement, you should assume that the employment terminates when the cover (or other reason) is no longer required. The 2002 regulations do not apply in any event to agency staff.