

## PROBATION AND FIXED TERM CONTRACTS

**Question:** May an employer use a fixed term contract as a substitute for probation?

**Answer:** No. It is important to distinguish between probation and a fixed term contract.

**Brief explanation:** Clause 8 of the Code of Good Practice: Dismissal (Schedule 8 of the Labour Relations Act) deals specifically with probation. It states that the purpose of the probation is to give the employer an opportunity to evaluate the employee's performance before confirming the appointment. It then states: *"Probation should not be used for purposes not contemplated by this Code to deprive employees of the status of permanent employment. For example, a practice of dismissing employees who complete their probation periods and replacing them with newly-hired employees, is not consistent with the purpose of probation and constitutes an unfair labour practice."* The Code also gives employers guidance on the procedures they should follow when dealing with probationers.

Fixed term contracts serve a different purpose. In the amendments to the Labour Relations Act that came into effect on 1 January 2015, a 'fixed term contract' is defined as *"a contract of employment that terminates on –*

- (a) the occurrence of a specified event;*
- (b) the completion of a specified task or project; or*
- (c) a fixed date other than an employee's normal or agreed retirement."*

The amendments were introduced mainly to provide additional protection for lower earning employees who are employed on a fixed term contract for longer than 3 months. However, the definition above is also a clear indication that a fixed term contract cannot be used as a substitute for probation.

Where it is found that an employer has circumvented the probationary procedures by using a fixed term contract, it would be regarded as an unfair dismissal.

*Article provided by Jan Truter from Labourwise*

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