

## Fixed Term Contracts – an update

One of the most important changes to the Labour Relations Act (the Act), which came into effect on 1 January 2015, is the added protection afforded to employees on fixed term contracts. The relevant provisions, which are contained in a new Section 198B of the Act, are summarised below.

### What is a fixed term contract?

A 'fixed term contract' is defined in the Act 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 age.

### Fixed term employment beyond 3 months

The real impact of the amendments relates to fixed term contracts that are for a period of longer than 3 months. For such contracts to be enforceable there are three main requirements that have to be met. Firstly, the nature of the work must be for a limited duration or there must be some other justifiable reason for fixing the term of the contract. Secondly, the fixed term contract must be in writing. Thirdly, the contract must specify the 'justifiable reason'.

### What is a justifiable reason?

The Act lists examples of 'justifiable reasons' for employing someone for a fixed term period of longer than 3 months. (For more details click on the link at the foot of the article)

### Additional protections

There are some additional provisions aimed at protecting employees on fixed term contracts. These are protection against unfavourable treatment compared to permanent employees, access to opportunity of access to vacancies, severance pay if the contract duration is longer than 2 years, as well as the possibility on relying on a reasonable expectation of indefinite employment in certain circumstances. (For more details click on the link at the foot of the article)

### Fixed term employment for 3 months or less

If someone is employed for 3 months or less, the provisions above do not apply. However, employees on shorter fixed term contracts should continue to enjoy the protections that existed prior to the amendments.

### Which employers are excluded?

Small businesses and their employees are generally not directly affected by these provisions. (For more details click on the link at the foot of the article)

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### **Which employees are excluded?**

The protections afforded to employees on fixed term contracts are not intended for high earners. Employees who earn more than the relevant threshold determined by the Minister from time to time are therefore excluded. (For more details click on the link at the foot of the article)

### **Implication of changes**

There is likely to be a significant increase in disputes that are referred to the CCMA. These would include unfair dismissal disputes, as well as unfair labour disputes arising out of less favourable treatment of employees employed for a fixed term or part-time. The impact will be far reaching and employers are encouraged to review their current contracts and practices to ensure compliance.

**For the full article click here: <http://www.labourwise.co.za/labour-articles/fixed-contracts-update>**

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