

**SUBSIDIARY LEGISLATION 452.81****CONTRACTS OF SERVICE FOR A FIXED TERM  
REGULATIONS**

15th June, 2007

*LEGAL NOTICE 51 of 2007, as amended by Legal Notices 427 of 2007,  
239 of 2008 and 376 of 2009.*

**1.** The title of these regulations is the Contracts of Service for a Fixed Term Regulations. Title.

**2.** (1) For the purposes of these regulations - Definitions.  
"Act" means the Employment and Industrial Relations Act; Cap. 452.

"comparable permanent employee" means a whole time employee in the same establishment employed on a contract of service of indefinite duration and who is engaged in the same or similar work or occupation, due regard being given to other considerations including seniority, qualifications and skills:

Provided that where there is no comparable permanent employee in the same establishment, the comparison shall be made by reference to collective agreements covering similar comparable permanent employees in other establishments;

"contract of service for a fixed term" means a contract of service entered into between an employer and an employee where the end of the contract is determined by reaching a specific date, or by completing a specific task, or through the occurrence of a specific event.

(2) Subject to the provisions of subregulation (1), terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

**3.** (1) These regulations shall apply to employees who are in employment under a contract of service for a fixed-term.

Applicability.  
Amended by:  
L.N. 239 of 2008;  
L.N. 376 of 2009.

(2) These regulations shall not apply to:

(a) persons appointed to serve on any board of any statutory or public authority, commission, committee, corporation or the board of any body corporate established by law or of any other public sector entity as referred to in article 80(3) of the Act;

(b) an assignment or assignments of particular responsibilities or work objectives, within the context of an indefinite contract of employment, which are for a period, alone or in aggregate, not exceeding four years:

Provided that breaks of up to a period of three months in an assignment or between successive assignments of substantially the same nature shall be included in the calculation of the four year period;

- (c) persons undergoing training or work experience under an approved training or apprenticeship or scholarship or trainee scheme.

Principle of non-discrimination.

**4.** Employees on a contract of service for a fixed term shall not be treated in a less favourable manner than comparable permanent employees solely because they have a contract of service for a fixed term:

Provided that an employer may differentiate between the conditions of employment of an employee on a fixed term contract and a comparable employee on a contract of service for an indefinite time, if:

- (a) the difference arises in view of the recognition of length of service, experience, qualifications or conditions of pay and work attached to the contract of service immediately preceding the contract of service for a fixed term, and such other differences as are justified on objective grounds; or
- (b) the task for which the employee has been employed is specific or has a top management nature and includes objective considerations which justify such differentiation.

Employer's duty to inform employees of vacancies.

**5.** (1) It shall be the duty of the employer to inform employees on a contract of service for a fixed term about vacancies which become available in the place of work and to give such employees the same opportunity as other employees to secure work on a contract of service for an indefinite time within the place of work.

(2) The employer may inform the employees by way of a general announcement to be posted up at a suitable place in the place of work.

Access to training opportunities, etc.

**6.** The employer shall endeavour to facilitate access by employees on a contract of service for a fixed term to appropriate training opportunities to enhance their skills, career development and occupational mobility.

Successive fixed term contracts.  
Amended by:  
L.N. 239 of 2008;  
L.N. 376 of 2009.

**7.** (1) Without prejudice to regulation 3(2), a contract of service for a fixed-term shall be transformed into a contract of service for an indefinite period if:

- (a) the employee has been continuously employed under such a contract for a fixed term, or under that contract taken in conjunction with a previous contract or contracts of service for a fixed term in excess of a period of continuous employment of four years; and
- (b) the employer cannot provide objective reasons as referred to in subregulation (4) to justify the limitation of a renewal of such a contract for a fixed term:

Provided that in the computation of the period of four years mentioned in paragraph (a), any period during which the employee was continuously employed prior to the coming into force of these

regulations shall also be taken into consideration.

(2) The effective date when an employee shall be considered to have been employed on an indefinite basis is the date following that when the four-year period has expired, but the period in continuous employment on one or more fixed-term contract or contracts of service shall be taken into account for all other purposes, including seniority and redundancy.

(3) This regulation shall be without prejudice to the transformation of the contract of service of an employee who was previously employed on a fixed term contract to one of an indefinite duration if the said employee is retained in employment and is not given a new contract of service for a fixed-term within the first twelve working days following the expiry of the previous contract, as established in article 34(2) of the Act.

(4) An employer may only retain an employee on a fixed term contract beyond four years when such retention is justified by objective reasons based on precise and concrete circumstances characterizing a given activity. Such circumstances may result, in particular, from the specific nature, or from inherent characteristics, of the tasks to be performed in the fixed term contract, and may, where appropriate, include situations such as where an employee:

- (a) was employed as a casual substitute or similar employee on a back to back basis or as a temporary substitute employee;
- (b) occupies -
  - (i) a top management position, or
  - (ii) a position where the maintenance of a higher level of trust is necessary by virtue of the nature of the position or where a higher level of trust is objectively an essential element of the employment relationship;
- (c) was employed by means of an appointment made to safeguard particular security or economic interests of the State:  
Provided that this shall only apply when the employee is granted a contract of employment for a minimum period of two years;
- (d) was employed on temporary assignments in missions or postings abroad for a duration not exceeding six years;
- (e) was engaged to serve as a person of trust of a particular individual who himself holds an office of a temporary nature such as persons engaged to serve in the office of holders of publicly elected office.

(5) For the purposes of this regulation, the term "continuously employed" shall include those contracts of a fixed-term which are renewed within six months from their termination and this period between the contracts shall be included in the calculation of the four year qualifying period referred to in subregulation (1)(a):

Provided that another contract of service for a fixed-term entered into after the lapse of the six month period shall not be considered as continuous employment:

Provided further that another contract of service for a fixed-term entered into within the six month period after the termination of a previous contract shall be considered as continuous employment if the tasks under the subsequent contract are substantially the same as the tasks under the previous contract of employment:

Provided also that the tasks shall still be considered to be substantially the same even though they encompass changes related to technical progress or changes in work practices or in the way the tasks are carried out or the contract includes a promotion related to work assigned in any previous contract.

- (6) (i) Without prejudice to the rights of the employee under these regulations, whenever an employer intends to enter into a contract of service for a fixed term with a prospective employee the employer shall list in writing in that contract:
  - (a) the objective reasons, if any, why the contract to be entered into should not be converted into one of indefinite duration if the employee is continuously employed on one or more successive fixed-term contracts for a period exceeding four years, or
  - (b) the actual wages and other conditions of employment attached to the contract of service if this will automatically become indefinite in the absence of objective reasons.
- (ii) If an employee on a fixed term contract is continuously employed on one or more successive contracts for a period exceeding four years:
  - (a) in the absence of compliance with paragraph (i)(a), the employee's contract of employment shall automatically become an indefinite contract of employment, and
  - (b) in the absence of compliance with paragraph (i)(b), the employee shall enjoy the same conditions of employment enjoyed under the fixed-term contract.
- (iii) In the case of an employee on a fixed-term contract whose period of continuous employment has not exceeded four years on the date of entry into force of this paragraph, the employer shall, either before the expiry of the current contract or within a period of six months from the date of entry into force of these regulations, whichever is the earlier, furnish the employee in writing with:
  - (a) the objective reasons, if any, why the contract which had been entered into should not be

- converted into one of indefinite duration if the employee is employed on one or more successive contracts for a continuous period exceeding four years, or
- (b) the actual wages and other conditions of employment attached to the contract once this automatically becomes indefinite in the absence of objective reasons.
- (iv) In the case of an employee in the public service or public sector on a fixed-term contract whose period of continuous employment on one or more successive fixed-term contracts has exceeded four years and who is still in employment on the date of entry into force of this paragraph, the employer shall furnish that employee in writing, within a six month period from the date of entry into force of this paragraph, with:
- (a) the objective reasons, if any, why the contract which had been entered into should not be converted into one of indefinite duration if the employee has been employed on one or more successive contracts for a continuous period exceeding four years, or
- (b) the actual wages and other conditions of employment attached to the contract once this automatically becomes indefinite in the absence of objective reasons.
- (v) If an employee on a fixed term contract referred to in paragraph (iii) or (iv) has been employed or is subsequently employed on one or more successive contracts for a continuous period exceeding four years:
- (a) in the absence of a document listing the reasons as referred to in paragraphs (iii)(a) or (iv)(a) and furnished to the employee within the relevant applicable period, the employee's contract of employment shall automatically become an indefinite contract of employment as provided for in subregulations (2) or (7) as the case may be, and
- (b) in the absence of written information referred to in paragraphs (iii)(b) and (iv)(b) and furnished to the employee within the relevant applicable period, the employee shall on conversion to an indefinite contract of service enjoy the same conditions of employment enjoyed under the fixed-term contract.
- (7) Subject to subregulation (6)(iv), employees in employment in the public service or public sector on the date of entry into force of these regulations who, during the period between 1st May 2004 and the date of the said entry into force, completed a period of more than four years continuous employment and in respect of whom there is no objective reason justifying their retention on a fixed-term contract as referred to in subregulation (4), shall be deemed to

have become employees on an indefinite contract with effect from the day following that when the said four-year period expired.

(8) Nothing in subregulation (7) shall be interpreted as having the effect of reviving any employment relationship which has been terminated prior to the date of entry into force of these regulations or of invalidating any such termination.

(9) Without prejudice to the provisions of subregulation (6)(iv)(b) and (v)(b), nothing in these regulations shall be interpreted as conferring on employees who have acquired an indefinite status the right to carry with this status benefits which are particular to definite contracts.

(10) Nothing in these regulations shall confer a right to employment on an indefinite contract under these regulations when a person is in an employment relationship in the public service or in the public sector which has not been made in accordance with the Constitution or with any law which applies to employment in the public service or the public sector:

Provided that if such an employment relationship in the public service or in the public sector is terminated after it has lasted for a period in excess of four years on the grounds that it had not been made in accordance with the Constitution or with any law which applies to employment in the public service or the public sector, the employee whose employment has been so terminated may claim compensation from his former employer and may for this purpose refer his case to the Industrial Tribunal, within four months from the date of the said termination, and if the Tribunal is satisfied that the reason for the termination of the employment was that the employment was not made in accordance with the Constitution or with any other law referred to above, it shall grant an award of compensation which is, in the opinion of the Tribunal, sufficiently effective and constitutes a deterrent against abuse in the recruitment process and, in any case, such compensation shall be calculated as one month's wages for each year in employment, provided that this amount shall not be less than an amount equivalent to the total wages payable to such a person for a six month period of employment.

Complaints to the  
Industrial Tribunal.

**8.** (1) An employee may present a complaint to the Industrial Tribunal that his employer has infringed a right conferred on him by these regulations.

(2) Subject to the provisions of subregulation (3), the Industrial Tribunal shall not consider a complaint under this regulation unless it is presented within a period of four months, beginning from the date of the less favourable treatment.

(3) Where an employee presents a complaint under this regulation and the employer claims that the treatment is justified on objective grounds, it shall be incumbent on the employer to prove that the less favourable treatment is so justified on objective grounds.

**9.** Any person contravening the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine of not more than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69).

Offences.  
*Amended by:*  
*L.N. 427 of 2007.*

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