

L.N. 429 of 2002

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT, 2002
(ACT NO. XXII OF 2002)**

Contracts of Service for a Fixed Term Regulations, 2002

IN exercise of the powers conferred by Article 34 of the Employment and Industrial Relations Act, 2002, the Deputy Prime Minister and Minister for Social Policy has made the following regulations:—

1. The title of these regulations is the Contracts of Service for a Fixed Term Regulations, 2002. Title.

2. (1) For the purposes of these regulations - Definition.

‘Act’ means the Employment and Industrial Relations Act, 2002.

‘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, qualification 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 such contracts of service entered into between the employer and an employee where the end of the contract is determined by reaching a specific date, by completing a specific task or through the occurrence of a specific event.

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

Applicability.

3. These regulations apply to fixed term workers who have an employment contract of employment relationship as defined in the Act.

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 :

(i) the difference arises in view of the recognition of length of service, experience or qualifications and such other differences are justified on objective grounds;

(ii) the task for which the employee has been employed is specific 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 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.

7. (1) This regulation is applicable to:

(a) an employee who is employed under a contract of service for a fixed term as defined under these regulations, and

(b) an employee who has previously been employed by the same employer on a contract of service for a fixed term before the start of the contract mentioned in paragraph (a) above.

(2) The provision of the contract of service for a fixed term restricting the duration of the contract shall be of no effect and the

employee shall be considered an employee employed under a contract of indefinite duration if:

(a) the employee has been continuously employed under the contract mentioned in subregulation 1 (a) or under that contract taken with a previous contract of service for a fixed term exceeding a period of four years; and

(b) the employer cannot provide objective reasons to justify the limitation of a renewal of such a contract for a fixed term:

Provided that in such situations, the effective date when an employee shall be considered to be employed on an indefinite basis is the date on which the contract mentioned in subregulation 1 (a) was entered into or in the case of successive contracts when the contract was last renewed.

Provided further that this regulation shall be without prejudice to article 34 (2) of the Act.

(3) 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:

Provided that renewal includes an extension.

(4) Collective agreements may modify the application of subregulation (2) of this regulation in relation to any employee or a specified description of employees, by substituting for the provisions of subregulation (2), one or more different provisions which in order to prevent abuse arising from the use of successive contracts of service for a fixed term, specify one or more of the following:

(a) the objective reasons justifying the renewal of such contract;

(b) the maximum total duration of successive fixed term contracts of service;

(c) the number of renewals of such successive fixed term contracts of service.

(5) Further to the provisions of article 48 of the Act, this regulation shall not be applicable to employment in the public sector.

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 what is stated in subregulation (3) of this regulation, the Industrial Tribunal shall not consider a complaint under this regulation unless it is presented within a period of three months, beginning from the date of the less favourable treatment.

(3) For the purposes of calculating the date of the less favourable treatment, where a term in an existing contract is less favourable, that treatment shall be considered to commence on the lapse of three months from the date of entry into force of these regulations.

(4) 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.

Offences.

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 five hundred liri (Lm 500).