



Helping people living in extraordinary circumstances to live ordinary lives

Kingsley Learning Foundation Trust

Fixed Term Contract Policy

Chair Signature:

A handwritten signature in black ink, appearing to be "G. Allen".

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1 Guidance Notes on Fixed Term Contracts

This guidance takes into account the Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and provides Headteachers, Governors and other school managers with advice on how to manage staff on short term contracts.

2 Definition of a Fixed Term Contract

‘Fixed Term Contract’ means a contract of employment that will terminate. There are three types of fixed-term contracts:

- Fixed term for a specific term with an agreed termination date.
- For the completion of a particular task/project.
- For some other legitimate reason that is ‘specified’ in the contract to terminate on the occurrence/non-occurrence of a specific event, e.g. contracts to cover maternity leave, sickness absence, named pupil, expiring when the reason for the employment no longer exists.

An employee on a fixed term contract has the right not to be treated by the employer less favourably than comparable permanent employees in respect of contractual and non-contractual benefits or by being subjected to any other detriment or act, or failure to act, on the part of the employer.

3 Length of contract

Where an employee is employed on successive fixed term contracts, the cumulative length of these successive fixed term contracts will determine the period of continuous employment. Two years or more of continuous employment may give entitlement to a redundancy payment on the termination of a fixed term contract.

3.1 Contracts for periods less than two years

If an individual is employed on a fixed term contract of less than two years duration they will have no entitlement to a redundancy payment, unless the employee has previous continuous service that is also counted. However, they may have accrued continuous service of more than two years if they have had successive fixed term contracts or they have worked previously for an employer who is covered by the Modification Order (see *Appendix 1 Frequently Asked Questions*).

3.2 Contracts for more than two years

An employee who has completed more than 2 years' service on a fixed term contract may be entitled to a redundancy payment when their employment is terminated due to the contract coming to an end.

Redundancy is of the post and not the person and therefore a redundancy payment would only be due where the post will no longer exist once the member of staff has left.

Therefore if the reason for the position being fixed term is due to maternity cover, sickness cover or until an appropriately qualified person can be appointed etc. there would be no redundancy payment due as the reason for termination is 'some other substantial reason' and not redundancy as the post still exists. It is important to speak to the Advisory Team or your HR Consultant before making a decision with regard to whether a redundancy payment is due because if an employer fails to make a redundancy payment when the position will no longer exist, the employee could bring a claim before an Employment Tribunal.

If an employee has had a number of fixed term contracts which cumulatively have lasted more than two years, they may also be entitled to a redundancy payment. However, if there has been a gap of at least a week (running from Sunday to Saturday) between two contracts, continuity will be broken (except where there is a redundancy and a new job is taken up within 4 weeks when continuity of service is maintained) between successive contracts, then continuous service will have been broken and will not count. It is unlikely that an employment tribunal would consider the service to be broken if this week was during the school holidays. The service should only be broken when there is a legitimate reason and not to just break the individual's continuity of service.

3.3 Contracts continuing for more than four years

An employee on a fixed term contract for more than four years, or on successive fixed-term contracts that accrue more than four years continuous service, will be regarded as being a permanent employee. If this happens and the need for the work ceases, they can only be dismissed after a full and fair redundancy process has been conducted, and will be considered along with all other permanent staff in the same or similar roles who would also 'at risk'.

4 Process for the termination of a fixed term contract

Termination of a fixed term contract is a dismissal in law and therefore it is essential that a fair procedure for termination is followed. It is not sufficient to allow the contract to end naturally at the expiry date.

Failure to follow a fair procedure may result in the individual making a claim for unfair dismissal through an employment tribunal.

The process that needs to be followed for terminating a fixed term contract is:

- Consultation with the employee(s) concerned to discuss the reason for the fixed term contract ending.
- Take steps to ensure that fixed term employees are informed of any permanent vacancies.
- Provide the employee with written notice and ensure it is in accordance with the provisions of the Employment Rights Act 1996, if ending the contract under an early termination clause.
- The employee must be given the right of appeal against termination.

Please note: Financial consequences of termination, e.g. right to redundancy, will vary depending on the length of the fixed term contract, any period of continuous employment and the reason for termination.

It should be noted that once this procedure has concluded, an employee who feels that he or she has been unfairly dismissed has 3 months in which to bring a claim for unfair dismissal before an Employment Tribunal, provided that he or she has been employed continuously for at least 12 months.

5 Redundancy payments

In situations where the post will no longer exist, the length of the contract of employment determines whether a redundancy payment is due, e.g. 2 years and over. You must also take into consideration the employee's previous service under the Modification Order which gives the right to continuity of employment. It is therefore important that the potential cost of redundancy is factored into the real staffing cost of any fixed term contract role.

6 Maternity, Adoption, Paternity rights and redundancy

Employees absent on maternity, adoption or paternity leave have protected rights under the Equality Act 2010. The continuity of employment of an employee on this leave is not broken by their absence from work. The employee has a right to return to the job in which she/he was employed before the absence on terms and conditions not less favourable than those which would have applied if he/she had not been absent.

Furthermore, where an employee on maternity, adoption or paternity leave is to be made redundant, the employee is entitled to be offered as prior consideration any suitable available vacancy or alternate employment with the same employer under a new contract of employment.

Appendix 1 - Frequently Asked Questions

Q. What happens if an employee is made redundant and then re-employed at a later date?

A. This position is governed by the Employment Rights Act 1996 which states that the continuity is broken and then re-starts afresh as regards redundancy pay entitlements only where a redundancy payment has previously been paid to the employee.

If the employee takes up employment with the same employer or an employer who is covered by the Modification Order within 4 weeks of being made redundant, they would not be entitled to any redundancy payment but retain continuous service.

Q. Is it possible to use successive fixed term contracts?

A. Yes, it is possible to use successive fixed term contracts where there is a legitimate temporary need, however, remember that once four years continuous service has been accrued, the position will become permanent. It is also not good practice to continually renew a fixed term contract arrangement once it is clear the need is ongoing (i.e. likely to be needed for more than four years) and should be filled by a permanent appointment.

Q. Can I just terminate the last person at the end of their contract and then seek to appoint a new person in the same job at a later date without it becoming permanent?

A. No, dismissing an employee and then employing somebody else to do the same job will provide potential evidence of unfair dismissal as the need for the work is continued. If a fixed term position later becomes permanent, the post should still be advertised; however, the post holder must be made aware of the vacancy and is likely to be appointed unless they have been formally advised that there are problems with their capability attendance or conduct or if they were appointed temporarily until someone with the correct level of skills and knowledge could be appointed.

Q. Should we make all staff permanent as it seems that fixed term workers have the same rights as permanent workers?

A. No, there are still good reasons why fixed term contracts should be used where a position is genuinely temporary, e.g. only have a temporary budget, maternity cover, or named child. If you employ someone permanently and the contract comes to an end, all staff in the same position would be at risk of redundancy and a full procedure would have to be followed where as if someone has been appointed temporarily and the reason for the temporary appointment is clear, then their contract will come to an end at that point even if it involves making a redundancy payment.

Q. Do the Regulations apply to specific purpose contracts?

A. The regulations apply to any contract of a fixed term nature, including specific purpose contracts (i.e. named-pupil contracts). A specific purpose contract is a fixed contract that will terminate on the completion of a particular task, for example, in the case of a named pupil contract, when the pupil leaves the school or no longer requires support.

Q. Can I ask applicants about their continuous employment during the recruitment and selection process?

A. No, asking questions of this nature could potentially lead to a claim that the recruitment process was unfair and that the employer was seeking to discriminate against those candidates who had previous employment covered by Modification Order. Questions of this type must be avoided as previous service will be linked to age and experience and therefore, could become grounds for a tribunal claim under age discrimination. You should always appoint the best candidate for the job and be able to defend your decision to any potential Employment Tribunal.

Q. What is the 'Modification Order'?

A. It's the short title for the statutory document called 'The Redundancy Payments (Continuity of Employment in Local Government, etc.) (Modification) Order 1999'

This document sets out lists of public sector organisations who are "associated employers". If an employee moves out from one associated employer to another, they carry with them rights for continuous service. This is important when calculating redundancy payments. If they take up employment with another associated employer either whilst at risk of redundancy or within 4 weeks of being made redundant, they would not be entitled to any redundancy payment.