

GUIDELINE FOR FIXED-TERM CONTRACT OF EMPLOYMENT

This contract should only be used for work that is of a genuine temporary nature, or where there is some other justifiable reason for fixing the term of the contract and where the employee works on a full time, part time or variable time basis.

NOTE:

If there is no justifiable reason for fixing the term, the employee will be deemed to be a permanent employee if the agreement endures (or is renewed) beyond a period of three months.

Justifiable reasons for a fixed-term contract

- This type of contract must include a clause which sets out possible justifiable reasons in terms of section 198B(4) of the LRA, for fixing the term of the contract.
- These are not the only possible reasons, but any other justifiable reason must be specified and should be of a similar nature to the ones listed in section 198B(4) above.
- Probation is not a valid reason for a fixed-term contract, and nor is affordability.
- The reason for entering into a fixed-term contract **MUST** be recorded in the contract.
- The most common reason for entering into a fixed-term contract is where there is a temporary need for work to be done, for example, on a building project.
- The term can either be fixed with reference to time (a specific end date) or to the work to be done (contract expires on completion of the project, or the work allocated to the employee).

See Information Sheet (other): Different Forms of s198 contracts and when they are used

See CCMA Information Sheet: S198A-Dof the LRA non-standard employment

Expiry of a fixed-term contract: reasonable expectation (Clause 1.4)

- Expiry of a fixed-term contract may be determined with reference to time or the happening of a specific event or completion of a task.
- Normally the expiry of a fixed-term contract does not constitute a dismissal.
- However, if an employee is given a reasonable expectation that the contract will be renewed on the same or similar terms, and it is not, or if he/she is given a reasonable expectation of permanent employment, and he/she is not permanently employed; this may give rise to a claim of unfair dismissal. The employee should be dismissed only for a fair reason.
- For this reason, this is an important clause in the contract.
- The name of the person, or the position authorised to give approval for renewal of the contract or permanent appointment should be specified.

See Information Sheet (other): Ending employment when a fixed term contract ends

Lunch breaks

- Employers are required to grant a lunch break of one hour after five continuous hours of work. The lunch break is excluded from the calculation of daily or weekly working hours.
- This lunch break can be reduced to 30 minutes with the agreement of the employee. Work will be seen as continuous if the interruption is less than 60 minutes.

Working hours – full-time, part-time or variable time

An employer must regulate the working hours of employees, provided that: -

- Maximum ordinary working hours per week is 45 hours, and 9 hours per day if employees work 5 days a week.
- Legislation provides for procedures to reduce this to 40 hours.
- The contract can be for a full-time, part-time or variable time as per the operational requirements of the job. The relevant provisions in this section should be completed and the other provisions deleted.

Statutory deductions

Employers are required by the law to make deductions from employee salaries and wages, and these statutory deductions are: -

- Employee taxes
- Unemployment Insurance Fund (UIF)

Deduction other than statutory deductions

- Deduction other than statutory deductions may only be made with the agreement of the employee.
- This would include union subscriptions, if the employee has signed a stop-order form authorising this and the union has organisational rights to stop-orders.
- Deductions in respect of money owed by the employee to the employer may not exceed 25 % of the employee's monthly remuneration and must be made in line with section 34 of the BCEA.

Overtime

- Overtime is only payable to employees earning less than the threshold amount set by the Minister of Labour from time to time.
- As at 01 March 2023, the threshold is R241 110,59 per annum.
- Overtime is limited to ten hours per week and is paid at 1.5 times the normal hourly rate for work from Monday to Saturday.
- Overtime on Sundays and public holidays is more complicated to calculate but is essentially paid at double the normal hourly rate unless Sunday is an ordinary day of work in which event it is paid at 1.5 times the normal hourly rate. Some sectors, however, such as retail are covered by sectoral determinations that provide for different Sunday rates when certain conditions are met.
- Refer to sections 16 and 18 of the Basic Conditions of Employment Act 75 of 1997(BCEA).



See Information Sheet (other): Terms and conditions of employment

Probation

- Probation is normally between three and six months but may be less or more if circumstances require, for instance, the nature of position and level of responsibility.
- The probationary period may be extended, if necessary, after engagement with the employee.
- Prior to termination within a probationary period, the employee must be given an opportunity to make representations, with the assistance of a fellow employee (including a shop steward, if any).
- If the employee proves to be unsuitable during a probationary period, his/her employment may be terminated with a minimum of legal formalities, and for reasons that may be less compelling than would be required outside of a probationary period.
- It is important however that an employer gives the employee reasonable and appropriate training, guidance, instruction, counselling and evaluation during the probationary period - a “sink or swim” approach should not be adopted.
- Training in company-specific systems, work methods, policies and procedures will be particularly important as the employee cannot be expected to be aware of these.

See How to Guide: Probation

See How to Guide: Ending employment where is on probation

Retirement age

- There is no mandatory retirement age in terms of the Labour Relations Act 66 of 1995.
- It is important to specify a retirement age in the contract to avoid possible future claims of discrimination on the grounds of age.
- If an employer wants to continue employing the employee past retirement age, this can be done by way of fixed-term contracts specifically provided for in the Labour Relations Act (LRA).

See Information Sheet (other): What happens when an employee retires

Written Disciplinary Code and Grievance Procedure

- If an employer has a written disciplinary code and grievance procedure, and that this should be attached to the contract of employment as an annexure.
- It is advisable to request the employee to sign an acknowledgement of receipt of the document.
- If the code and procedure is attached to the contract as an annexure, clause 14 can be amended to read as follows: “A copy of the Disciplinary Code and Grievance Procedure is attached hereto as Annexure B”.



See Information Sheet (other): An overview of workplace discipline

See How to Guide: Where the employee has a grievance

See Model: Disciplinary code and grievance procedure