

What happens when a fixed-term contract comes to an end?

What is a fixed-term contract?

An employer may have a need for someone to fill a specific position or do a specific job. To meet this need, the employer may use a fixed-term employment contract.

A fixed-term contract is defined for purposes of in section 198B of the Labour Relations Act 55 of 1996 (LRA) as one which expires upon:

- a) the occurrence of a specified event;
- b) the completion of a specified task or project;
- c) a fixed date, other than an employee's normal or agreed retirement age.

Note that section 198B of the LRA applies to employees who earn below a specific threshold as set out in section 6 of the Basic Conditions of Employment Act 75 of 1997.

For more information on section 198 contracts, see the Information Sheet "Different forms of non-standard employment contracts and when they are used".

See Information Sheet: Different forms of non-standard employment contracts and when they are used

See CCMA Information Sheet: S198A-D of the LRA (non-standard employment

What constitutes a dismissal in terms of section 186 (1) (b) of the LRA?

A dismissal arises, in terms of section 186 (1) (b) of the LRA if:

"...an employee employed in terms of a fixed-term contract of employment reasonably expected the employer-

(i) to renew a fixed-term contract of employment on the same or similar terms but the employer offered to renew it on less favourable terms, or did not renew it; or

(ii) to retain the employee in employment on an indefinite basis but otherwise on the same or similar terms as the fixed-term contract, but the employer offered to retain the employee on less favourable terms, or did not offer to retain the employee..."

If the contract period has expired, the contract comes to an end automatically. In such a case there is no dismissal.

Fixed-term contracts may terminate prior to a fixed date for a reason recognised in law – e.g. misconduct or poor performance. However, a fair procedure has to be followed as per the requirements of the LRA.

What must the employee prove in order to succeed with a claim of dismissal?

In terms of section 192 of the LRA, an employee bears the duty of proving that there was a dismissal. To prove that s/he was dismissed an employee must prove:

- a) the existence of a fixed-term contract of employment;
- b) conduct on the part of the employer that led the employee to **reasonably expect**:

- the employer to renew the contract on the same or similar terms, but the employer offered to renew it on less favourable terms, or the employer did not renew it, or
- to be retained in employment on an indefinite basis but on the same or similar terms but the employer offered to retain the employee on less favourable terms, or the employer did not offer to retain the employee.

What situations are envisaged as dismissals in terms of section 186(1) (b)?

Four kinds of situations are envisaged:

1. The first, the most common, is where the employer does not renew the fixed term contract at all.
2. The second situation where this provision may come into play, is where the employer does renew the contract, but on less favourable terms than before.
3. The third is where the employer does offer to retain an employee in employment on an indefinite basis, but on less favourable terms.
4. The last situation is where the employer fails to offer to retain the employee on an indefinite basis.

What is meant by a reasonable expectation of renewal?

The fact that the employer does not renew the contract does not in itself amount to a dismissal. It is only if the employee had a reasonable expectation that the contract would be renewed that section 186(1) (b) comes into play.

The Labour Appeal Court has made a number of important points in this regard:

- The duty is on the employee to prove that s/he had a reasonable expectation of renewal.
- To discharge this duty, the employee must place facts before the commissioner to show what the expectation was based on. The test is objective: it does not focus solely on the employee's wish or subjective feelings or perceptions.
- The test can be summarised as follows: *“The enquiry is whether a reasonable employee, in the circumstances prevailing at the time, would have expected the employer to renew his or her fixed-term contract on the same or similar terms”*.
- Fixed-term contracts almost always contain a clause stating that the employee should have no expectation of renewal. However, if there is such a clause in the contract, the employee will have to present even more evidence to show that he or she had a reasonable expectation of renewal. The employee's evidence must, in such a case, be even more compelling.

Fixed-term contracts are often over-used or used inappropriately by employers.

Employees on fixed-term contracts have the same rights and obligations as indefinite-period employees. Therefore, if a fixed-term contract employee commits misconduct, this should be dealt with through the normal disciplinary procedures.

