

FACTSHEET: TERMINATION OF FIXED TERM CONTRACTS BY EXPIRY OR NOTICE

Termination of your employees is a complex area. The law is often not 100% clear and interpretations of the law can change following court decisions. This section of the Employers' Guidebook sets out the current situation and is intended to give general guidance rather than legal advice. As termination of employment is the main reason why disputes between employers and employees arise, if you are terminating staff and are not sure of procedures we strongly recommend seeking advice from a labour officer, a more experienced employer or a lawyer.

Fixed term contracts are contracts that have a stated expiry date. These contracts are terminated in a different manner to open ended contracts, which are dealt with in a separate factsheet in this chapter.

1. WHAT IS MEANT BY EXPIRY?

If part of the employment arrangement a last day of work is specified, then this contract is a **fixed term contract**. At the end of that fixed term the contract comes to an end, unless parties take steps to carry on the employment relationship.

2. DO I HAVE TO DO ANYTHING SPECIFIC TO END A FIXED TERM CONTRACT?

There is nothing specific you have to do. You do not need to remind your employee that the contract is ending. Instead, on or about the last day of work you need to pay the employee for any outstanding entitlements – see *factsheet: payments on termination*.

3. WHAT HAPPENS IF THE FIXED TERM CONTRACT EXPIRED BUT MY EMPLOYEE CARRIED ON WORKING, AND I CARRIED ON PAYING HER WITHOUT ANY ALTERNATIVE ARRANGEMENT?

When a fixed term contract comes to an end an employer may continue to pay the employee to work and the employee may continue to come to work. In this situation the ongoing employment relationship has no set end date, so becomes an **open ended contract** which can be terminated by notice. If a contract rolls over in this manner then any severance pay is calculated at the end date of the employment, not the end date of the fixed term contract. It is calculated from the very first day of working. It is also, of course, possible to end a fixed term contract, pay out all severance allowance, and then reemploy the employee on new terms and conditions.

Unknowingly allowing the contract to expire may suggest better staff contract administration needs to take place. It is better employment practice for an employer and an employee to discuss what they want to do as a fixed term contract nears its end. They may agree to renew the same contract, or make a new contract under different terms. Often fixed term contracts will contain a clause about how the contract can be renewed – see the *factsheet: employment contracts*.

Bizniz has employed Julie for a 6 month fixed term contract to undertake some publicity work. Bizniz wants to extend her contract after the fixed term for three months. Can Bizniz simply extend the current contract or does it have to terminate her and set up a new contract?

If Julie's current contract has not ended, then both parties can agree to extend the fixed period for the additional three months required. However, if the contract has ended and Julie has continued working then she is now on an open ended contract. Bizniz could offer Julie another fixed term contract. It could also keep her on an open ended contract and give her notice to end the employment relationship at any point in the future (refer *factsheet on termination of open ended contracts* in this chapter).

4. MY EMPLOYEE IS EMPLOYED ON A CONTRACT FOR A FIXED TERM OF 3 YEARS. I DO NOT HAVE ENOUGH WORK AND WANT TO GIVE HIM NOTICE. CAN I DO THIS? MY EMPLOYEE WANTS TO LEAVE EARLY BY GIVING NOTICE. CAN HE DO THIS?

Fixed term contracts come to an end at last day specified in the contract (section 48). This means that, in the absence of a specific clause in the employment contract permitting termination by notice, it is not possible for either party to end this contract early. If there is a notice clause in the contract then the length of notice and procedure for giving notice stated in that clause must be followed. It is recommended that employers consider including such a clause in fixed term contracts.

In the absence of a notice clause in the contract the only way an employer could terminate an employee who is employed under a fixed term contract early would be if he or she has committed an act or acts amounting to serious misconduct – see *factsheet: termination by the employer due to serious misconduct by the employee*.

Albert is on a fixed 3 year contract with Bizniz. It does not include a clause about termination by notice. There is not much work on and Bizniz wants to terminate Albert's employment by giving notice even though he still has 1 year to go on his contract. Can Bizniz do this?

No, Bizniz cannot terminate Albert's contract by giving notice. It could end the work relationship immediately by paying out the rest of Albert's contract, but this is just as costly as continuing Albert's employment.

Albert is on a fixed 3 year contract with Bizniz. It includes a clause which allows either party to terminate the contract by giving 2 week's notice without reason. There is not much work on and Bizniz wants to terminate Albert's employment by giving notice even though he still has 1 year to go on his contract. Can Bizniz do this?

Yes, Bizniz can terminate Albert's contract by giving 2 week's notice.

5. MY EMPLOYEE IS ON A FIXED TERM CONTRACT BUT HAS BECOME TOO SICK TO WORK. THERE IS NO NOTICE PERIOD IN THE CONTRACT. HOW CAN THE CONTRACT COME TO AN END?

In this situation the contract is probably *frustrated*, which means it can no longer be performed due to an external event, so comes to an end. In this situation the employee is not liable to pay damages for breaching the contract, but nor is the employer liable to pay to end the contract. It would be reasonable for an employer to expect the employee to provide medical certifications showing that it is impossible for the employee to continue working.

It should be noted that *severance allowance* needs to be paid when the contract comes to an end due to sickness which has been certified by a doctor, if the employee is otherwise eligible for it (section 54(1)(e)).