
Fixed Term Employment Agreements

OVERVIEW

A fixed term employment agreement is similar to a permanent individual employment agreement, except that the employment relationship is set to end on a specified date or when a certain event has occurred. Employers and fixed term employees are required to sign a written fixed term employment agreement.

1. **What are the similarities and differences between a fixed term employment agreement and a regular individual employment agreement?**

Fixed term employees have the same rights and responsibilities as permanent employees. The main difference is that their employment ends at the end of a fixed term and depending on the length of employment, there may be differences in how they receive certain entitlements.

Similar to a regular individual employment agreement, a fixed term employment agreement includes all the relevant details of an employment relationship and what is to be expected of both parties.

If an employer wishes to terminate a fixed term employment relationship, a full disciplinary and dismissal process must be followed in the same way it would for other permanent employees.

2. **What must a fixed term employment agreement include?**

Fixed term employment agreements are strictly regulated under the Employment Relations Act 2000. If the legal requirements are not met, a fixed term agreement may be held to be invalid resulting in an employee being considered a permanent employee instead.

An employee may only be employed under a fixed term agreement if:

- The employer and the employee both agree that the employment will end on a specific date, the end of a specific period, on the occurrence of a specified event or at the conclusion of a specified project;
- The employer has a *genuine reason based on reasonable grounds* for specifying that the employment is for a fixed term only; and
- The employee is aware of the employer's genuine reasons.

3. What is a genuine reason based on reasonable grounds?

A genuine reason for hiring a fixed term employee could be:

- Replacing another employee before a permanent employee is found;
- Filling a role while an employee is on parental leave;
- Covering a seasonal peak or busy period at work; or
- Having more hands on deck to complete a project.

Intending to exclude or limit the rights of an employee regarding their leave entitlements is not considered a 'genuine reason' for employment being fixed term.

An employee is entitled to raise a personal grievance for unjustified dismissal at the end of their fixed-term employment if the reason for the employment being fixed-term is not genuine, even if the employee has signed and agreed.

4. Is a sincere belief that a fixed term employment agreement is reasonable in the circumstances enough to be considered genuine?

No. What is reasonable is not determined by personal feelings or interpretations.

A sincere belief that an employer has a genuine reason based on what are believed to be reasonable grounds for entering into a fixed term employment agreement will not be enough to satisfy the legal requirements under the Employment Relation Act 2000.

The reason for placing an employee on a fixed term agreement must be genuine from an objective standpoint (what would a reasonable person looking in think was reasonable) for the fixed term provision to be valid.

5. Important factors to note when considering a fixed term employment agreement:

A fixed term employment agreement cannot be used as a way to trial an employee before offering them permanent employment.

A fixed term employee hired to complete a project is different to hiring a contractor. A contractor has different entitlements and it is important each relationship is clearly defined.

If an employer is renewing fixed term employment agreements with an employee more than once, they may need to consider hiring a permanent employee.

It is crucial to get fixed term agreements right, otherwise employers run the risk of their employees raising a personal grievance for unjustified dismissal if their employment ends for a reason not considered to be 'genuine'. Employees have the right to raise a personal grievance even if they signed the fixed term employment agreement and were aware of the employer's reasoning.

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If you are considering employing someone on a fixed term, we can help you with the specific clauses you need to include in your fixed term employment agreement. Get in touch so we can help.

Contact:

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W www.tradielaw.co.nz/tradie-law/contact/

One of our team will be in touch to assist you within 24 hours.