

KNOW YOUR RIGHTS

Fixed Term Contracts of Employment: Unfair Dismissal and Reasonable expectation

A fixed-term contract is one entered into for a definite period, for completion of a specific project, or until a specified event occurs, e.g. where someone fills the position of another person who is temporarily absent. It is a contract, the duration of which is agreed in advance between the employer and the employee. The fixed term element can also be not a specified date or dates, but can be specified as the completion of a specific project, the actual date of completion being uncertain.

When the employer continues to renew the contract every time it expires – rolling over the contract for over 3 times, In most cases the rolling over of the contract gives the employee the right to have what is known as reasonable expectation, the expectation is justifiable notwithstanding the provision of a contractual clause by the employer that commonly states that “the employee shall have no reasonable expectation for the renewal of the contract.

Section 186 (1) (b) makes provision that one of the definitions of a dismissal is that an employee reasonably expected the employer 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 to renew it at all.

The Labour Relations Act has been silent on the issue of reasonable expectation until recent amendments in new Section 198B came into effect on 01 January 2015 which provides for the need for the employer to provide justifiable reasons for concluding a fixed term contract of over three months, for such a contract to be enforceable; nature of the work must be for a limited duration or there must be some other justifiable reason for fixing the term of the contract. Secondly, the fixed term contract must be in writing. Thirdly, the contract must specify the justifiable reason. Should the employer fail to comply with the above requirement, the employee will be regarded as having been employed on an indefinite (permanent) basis.

The following are the key features afforded by precedence and Section 186(1) (b) to determine the justifiability of the employee’s reasonable expectation of renewal; the onus is therefore on the employee to prove that the employer created the expectation. An evaluation of all the surrounding circumstances will however have to be considered such as:

- undertakings by the employer,
- practice or custom in regard to the permanent appointment of employees previously appointed on fixed term contracts,
- the availability of work,
- the purpose of or the reason for concluding the fixed term contract,
- the nature of the employer's business.

In conclusion it will therefore be possible for an employee that was appointed on a fixed term contract (also for employees on probation) to claim that expectation of

indefinite or permanent employment was created as a result of the behaviour of the employer.

Basic Conditions of Employment Act	Labour Relations Act	CCMA	Employment Relations Policies	Wits Employment Contract
<p>Chapter five (5), Sections, 36; 37; 38 Termination of Contract. Fixed term contracts do not carry the many benefits and statutory obligations the offered by the BCEA and other legislation in the case of a permanent type of an employment contract. This Chapter does not apply to an employee who works less than 24 hours in a month for an employer. The LRA amended sections mentioned above and in the next column aim to hold to account these evasive practices by employers.</p>	<p>section 186 (1) (b) was included in the Labour Relations Act, Act 66 of 1995 which in essence stipulates that failure to renew such contracts, or their renewal on different terms, is now regarded as a form of dismissal but only when the employee has a reasonable expectation that the contract would be renewed on the same or similar terms.</p>	<p>Recourse for an employee who has sufficient grounds to prove reasonable expectation of contractual renewal on basis mentioned above is available at the CCMA.</p>	<p>HRG30 C2007/509 makes no provision as to whether or not an employee shall have reasonable expectation of renewal at the termination of the fixed term period, however the University's contracts of employment do by stating in a clause that the employee shall have no expectation of the renewal of the contract. The courts and recent legislation as mentioned above give no weight to this clause. Surrounding circumstances and the provisions of applicable legislation (LRA section 186 (1) (b) are now the basis to judge reasonable expectation</p>	<p>In dealing with fixed term contracts, HR usually adds the clause that says the employee shall have no expectation for the renewal of the contract, as mentioned, this clause doesn't stand as the determining factor to negate reasonable expectation on the part of the employee, however new appointees are strongly urged to request the review of this clause before signing an employment contract. Furthermore, Section 29 of the BCEA provides that if an employer does not provide a letter of appointment or contract to an employee not later than the first day of commencement of work, all legislative provisions on recourse will apply to the employee as though he was appointed on permanent basis.</p>