## Mole Valley logo image

## Fixed Term Contracts Guidance

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## 1. Introduction

Contracts of employment are typically for an indefinite term i.e. a contract will remain in force until one of the parties terminates it. In contrast, a fixed-term contract is a contract of employment that provides up front that it will terminate on:

* *expiry of a fixed term (i.e. contract covers a specific time period e.g. one year and has agreed termination date);*
* *completion of a particular task or project e.g. to manage a housing or software transfer; or*
* *occurrence or non-occurrence of any other specific event e.g. maternity cover.*

When an individual is employed on a fixed-term contract, MVDC have a duty to ensure that they are not treated less favourably than a permanent employee doing the same or similar job. This principle applies to employees. It does not apply in the same way to workers and other specific groups including apprentices, agency workers and work experience students.

## 2. When to use a fixed-term contract

Whether or not it is appropriate to engage an individual on a fixed-term rather than permanent contract will depend on the circumstances and business requirements. Examples of when it may be appropriate to use a fixed-term contract rather than a permanent contract include when it is known in advance that:

* *the employee is needed for a specific task or project, for example to develop a new database;*
* *cover is required for an employee on maternity leave, a sabbatical or long-term sickness;*
* *the work is required for a fixed period, for example to cover a seasonal rise in tasks; or*
* *funding for the post on a longer term basis is uncertain*

**Fixed term contracts should not exceed 18 months without consideration of the implications, for which managers must seek advice from HR.**

## 3. Protection from less favourable treatment

A fixed term employee has the right not to be treated less favourably than a comparable permanent employee, unless there is a sound business reason for doing so that can be objectively justified.

**Fixed term employees are entitled to:**

* *same pay & conditions as permanent staff including same holiday pay entitlement;*
* *same or equivalent benefits;*
* *equal opportunity to receive training;*
* *information regarding any permanent vacancies within the organisation -* fixed-term employees have the right to be informed by the organisation of all available vacancies (not just vacancies for fixed-term employment).*; and*
* *protection against redundancy or dismissal.* Fixed term employees who work continually for the same organisation for 2 years or more may have redundancy rights and may be entitled to statutory redundancy payments after 2 years’ service.

They also have the right not to be **unfairly** dismissed **after 2 years’ service. Managers should be prepared to provide** a written statement of reasons for not renewing the contract where it is requested.

## 4. Ending the fixed-term contract

Non-renewal of a fixed-term contract amounts to dismissal.

Where the length of continuous service is over two years the reason for dismissal must be for one of the potentially fair reasons set out in Employment Rights Act 1996. HR advice must be sought in these cases as additional employment rights, including redundancy, may apply.

**To end the fixed term contract, the manager should[[1]](#footnote-1):**

* ***invite the fixed-term employee in writing to a meeting one month prior to the end of the contract to discuss and give notice of the intended non-renewal of the contract; and***
* ***confirm the end of the fixed term contract in writing to the employee.***

In some circumstances, a fixed-term contract may terminate automatically at the end of the term without the need for the organisation or the employee to give notice. However, as a matter of good practice, it is advised that the above procedure is followed in all cases to ensure fixed-term employees are kept informed of the organisation’s intentions around the contract's expiry.

Typically a right of appeal will not be provided following an end of fixed term contract, however the opportunity for appeal may be considered in some exceptional circumstances. This will be a matter for HR to advise on.

Prior to the expiry date of a fixed-term contract, the manager is advised to diarise a reminder to discuss the intentions around contract expiry as above.

Where there is a break clause in the contract and the contract is terminated under that clause, appropriate notice should be given in accordance with the clause. Failure to give the requisite notice under these circumstances could result in the organisation having to pay the employee in lieu of notice or to continue to employ them for the notice period even though they are no longer required (see “Termination prior to the end of a fixed term contract” section below for further information).

As noted above, provided that they have sufficient service, an employee whose fixed-term contract ends may be entitled to a redundancy payment.

## 4.1 Termination prior to the end of a fixed term contract

Generally, a fixed-term contract will terminate on a specified date, or on the occurrence of a specified event, such as the completion of a task.

Early termination of a fixed-term contract can take place provided there is:

* A provision to end early with notice; or
* A "break clause" (statement in a fixed-term contract enabling the employer (or the employee, if wished) to terminate the contract with notice before the end of the fixed period).

and there is reason to do so i.e. there is a change in circumstances that the organisation did not envisage when it first entered into the fixed-term contract e.g. funding being suddenly withdrawn, project being abandoned or scaled back, issues around the employee's conduct or performance.

The process above (under “Ending a Fixed Term Contract”) must be followed to provide the employee with notice and rationale for early termination of the contract. The outcome of the meeting must be in writing.

When the fixed-term contract includes a break clause, or provision to end early with notice, the statutory minimum periods of notice will apply as follows:

* *1 week if they have worked continuously for at least 1 month but less than 2 years.*
* *1 week for each year worked if they have worked continuously for 2 years or more up to a maximum of 12 years (12 weeks).*

## If seeking to terminate prior to the expiry of the contract, managers need to ensure that a provision to end the contract early with notice, or a break clause, is included in the employee’s contract and that they give notice in accordance with it if they want to terminate the contract early. If a manager fails to give notice in accordance with either of those provisions, the organisation will be liable for outstanding notice pay.

## 5. Extending a fixed-term contract

It may be that a fixed-term employee is needed beyond the expiry date of their fixed term (e.g. additional funding becomes available, their project is extended etc.). In this case, the existing contract can be extended. Managers will need to agree contractual terms with the employee, ideally before the contract expires. These will often be the same as the original terms but with a revised expiry date. Any changes in other terms will also need to be agreed with the employee.

HR will need to be informed of the extension via the HR Service Desk to provide written confirmation to the employee.

**The total length of the continuous fixed term contracts should not exceed 2 years without consideration of the implications, for which managers must seek advice from HR.**

## NB Employees who have been employed for 4 years or more on a series of extensions to the original fixed-term contract will be automatically deemed to have become permanent employees at the 4 year point unless the organisation can objectively justify continued use of a fixed-term contract. HR advice should be sought in these circumstances.

## 6. Failing to take action at the end of the fixed term contract

If action is not taken to agree fresh terms at the end of the fixed term contract and the employee continues to work, it is possible that they may be considered to have become a permanent employee. Should either party wish in future to terminate the contract, a reasonable notice period should be given taking into account factors such as the nature of the work and the seniority of the employee. The implied notice period will also reflect at least statutory minimum notice periods (stated above).

If the manager does not continue to employ the fixed-term employee on the expiry of that term and simply lets the contract expire, it will be deemed to have dismissed the employee at the point of that expiry.

**Please see below step by step recruitment process for Fixed Term Employees.**

1. While the [ACAS Code of Practice on Disciplinary and Grievance procedures](https://www.acas.org.uk/index.aspx?articleid=2174) does not apply to the non-renewal of a fixed-term contract on its expiry, employers should still seek to follow these basic principles set out in the code. [↑](#footnote-ref-1)