

ACTUS WORKPLACE LAWYERS

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Fixed term contracts and unfair dismissal laws – Full Federal Court judgment

The Full Court of the Federal Court has clarified when an employee on a fixed term contract has access to the unfair dismissal laws.

In an Actus Workplace Lawyers' [news article](#) of June 2024, the judgment of Justice Raper in [Alouani-Roby v National Rugby League Ltd \[2024\] FCA 12](#) was discussed. In this judgment, Raper J held that fixed term contracts that contain notice of termination provisions (often referred to as outer limit contracts) are "contracts of employment for a specified period of time" and therefore excluded from the unfair dismissal laws as a result of s 386(2)(a) of the Fair Work Act, but only where the employee's employment is terminated at the end of the specified period of time.

In [Alouani-Roby v National Rugby League Ltd \[2024\] FCAFC 161](#), the Full Court of the Federal Court upheld Raper J's judgment. In a joint judgment, Snaden, Meagher and Needham JJ stated:

"...we think that the import of the words in which s 386(2)(a) of the FW Act is expressed is appreciably clear: a contract that is expressed, whether subject to other rights or not, to run for a nominated term is, for the purposes of s 386(2)(a) of the FW Act, a contract for a specified period; and remains as much notwithstanding that it might lawfully be brought to end otherwise than by (which is to say, before) the expiry of that period"

The following important points arise from the Full Court's judgment:

- It is open to an employer and employee to enter into a fixed term contract that allows termination by either party, with notice, before the expiry of the fixed term.
- If the employee's employment ceases at the expiry of the fixed term contract, the exclusion from the unfair dismissal laws in s 386(2)(a) of the Fair Work Act applies, and there is no jurisdiction for the Fair Work Commission to determine whether the employee has been unfairly dismissed.
- If the employee is terminated by the employer before the expiry of the fixed term contract, the exclusion from the unfair dismissal laws in s 386(2)(a) of the Fair Work Act does not apply.

When entering into fixed term contracts of employment, or extending such contracts, it is important for employers to be aware of the amendments to the Fair Work Act that were implemented as a result of the *Fair Work Legislation Amendment (Secure Job, Better Pay) Act 2022*.

Subject to various exceptions, fixed term contracts for the same role are limited to two consecutive contracts or a maximum duration of two years.

The exceptions include:

- the employee is engaged under the contract to perform only a distinct and identifiable task involving specialised skills;
- the employee is engaged under the contract in relation to a training arrangement (e.g. an apprenticeship or traineeship);

- the employee is engaged under the contract to undertake essential work during a peak demand period;
- the employee is engaged under the contract to undertake work during emergency circumstances or during a temporary absence of another employee;
- in the year the contract is entered into, the amount of the employee's earnings under the contract is above the high income threshold for that year (which is currently \$175,000);
- the contract relates to a position for the performance of work that: is funded in whole or in part by government funding or funding of a kind prescribed by the regulations for the purposes of this subparagraph; and the funding is payable for a period of more than 2 years; and there are no reasonable prospects that the funding will be renewed after the end of that period;
- the contract relates to a governance position that has a time limit under the governing rules of a corporation or association of persons;
- a modern award that covers the employee includes terms that permit a fixed term contract to be entered into, or extended, for a period of more than two years; or
- the contract is of a kind prescribed by the Fair Work Regulations.

When entering into a fixed term contract with an employee, an employer must give the employee the [*Fixed Term Contract Information Statement*](#) (as published by the Fair Work Ombudsman) before or as soon as practicable after the contract is entered into.

For further advice or assistance on any fixed term contract or termination of employment issues, please contact Stephen Smith, Principal of Actus Workplace Lawyers on 0418 461 183 or Email: stephen.smith@actuslawyers.com.au.