



Job security and gender equality

Limiting the use of fixed term contracts

These amendments form part of an Australian Government commitment to improve job security and put gender equality at the centre of the workplace relations system.

What has changed?

The Australian Government believes that while fixed-term contracts continue to have a legitimate purpose, their ongoing use for some employees has become another form of insecure work.

Fixed term contracts can help businesses to source workers and be used genuinely for many purposes. Fixed term contracts can, however, exacerbate job insecurity for employees when they are used for the same role over an extended period, or where employees are subject to rolling contract renewals for jobs that would otherwise be permanent.

The *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* amends the *Fair Work Act 2009* (the Act) to limit the use of fixed term contracts for the same role beyond two years (including renewals) or two consecutive contracts - whichever is shorter. If these rules are breached, the contract will still be valid, except for the term of the contract that provides for its expiry on a set date.

A range of exceptions are available to allow fixed term contracts beyond these limits when genuinely necessary and appropriate. These include:

- performing a discrete task for a fixed period,
- apprentices and trainees,
- undertaking essential work during a peak demand period (such as a harvest),
- temporarily replacing another employee on long leave (such as workers compensation leave), or

- earning above the high-income threshold.

Exemptions also apply where fixed term contracts are permitted by an applicable modern award, and the Minister can make regulations to exempt certain types of contracts, for example to address sector specific arrangements.

Employers are required to provide a Fixed Term Contract Information Statement (the Statement) to all employees entering a fixed term contract. The Statement will be developed by the Fair Work Ombudsman and will set out details on the fixed term contract limitations, exceptions and the dispute resolution procedure.

Where employees and employers have a dispute about a fixed term contract that cannot be resolved at the workplace level, the Fair Work Commission is empowered to resolve them via conciliation, mediation or consent arbitration. In addition, the Federal Circuit and Family Court of Australia and Magistrates Courts can deal with disputes under the small claims procedure.

The changes to fixed term contracts only apply to new contracts entered into after the commencement of the legislation. However, any contract that was in place prior to the commencement will be counted towards the limits. For example, if an employer enters into a new contract with an employee after commencement, the pre-commencement contract will count towards assessing if there have been more than two contracts.

What do these changes mean?

Changes to the use of fixed term contracts mean that employers retain the flexibility to manage their workplace needs, while providing protections to employees who may be exploited by these contracts when inappropriately used.

Where a fixed term contract is made in breach of the new provisions, the employee will be considered a permanent employee. The term of the contract that provides for its expiry on a set date will be of no effect, but otherwise the contract would be valid. The employee will retain the terms and conditions of their contract while gaining access to relevant safety net provisions including:

- entitlements to notice of termination and redundancy payments, either through the National Employment Standards or their relevant industrial instrument, calculated from the start of the employment relationship, and
- access to unfair dismissal proceedings.

Employers who breach the contract limitations or do not provide a Fixed Term Information Statement may be subject to civil penalties.

When will these changes come into effect?

The changes will commence from 6 December 2023, or an earlier date to be fixed by proclamation. This will give employers time to understand their new obligations, and to allow

further consultations about whether sector specific rules are required, including through regulations.

For more information on the *Secure Jobs, Better Pay* package visit:
www.dewr.gov.au/workplace-relations.