

Fixed-term contracts have limitations for employers



Can fixed-term contracts be used to escape permanent employment responsibilities?

Yes - No - Maybe? This is the second part of our series for employers on the various types of employee contracts. In the previous article we spoke about *three types of employment contracts* that are often used incorrectly. These are part-time, temporary and fixed-term contracts. Employers were cautioned not to use fixed-term contracts to evade the responsibilities of permanent employment. Section 198B(1) of the Labour Relations Amendment Act, 2014 (Act No. 6 of 2014) (LRA) specifies that a fixed-term contract would terminate on the occurrence of a specific event, the completion of a specific task or on a fixed date (other than normal agreed retirement age), subject to Subsection (3) of the LRA.* **It seems then that when a fixed date has lapsed, the contract may be terminated.** This is partly true; however, as Subsection 198B(1)(c) of the LRA stipulates, Subsection 198B(3) should also be borne in mind.

Subsection 198B(3) states that a contract may only be made a fixed-term contract if:

- the nature of the work for which the employee is employed is of a limited or definite duration;

OR

- the employer had a justifiable reason for fixing the term of the contract as envisaged in Section 198B(4) of the Labour Relations Amendment Act, 2014

When looking at the nature of the work, it will be easy enough to determine whether the work is of limited or definite duration. Determining whether the reasons for fixing the term of the contract are justifiable would be a more subjective test. Subsection 198B(4) is not intended to limit the generality of Subsection 198B(3), but it partly eliminates subjectivity by prescribing the justifiable reasons for fixing contracts.

Subsection 198B(4) of the LRA - Justifiable reasons for fixing the terms of a contract:

The reasons for concluding a fixed-term contract will be justified if the employee:

- is replacing another employee who is temporarily absent from work;
- is employed on account of a temporary increase in the volume of work which is not expected to endure beyond 12 months;
- is a student or recent graduate who is employed for the purpose of being trained or gaining work experience in order to enter a job or profession;
- is employed to work exclusively on a specific project that has a limited or defined duration;
- is a non-citizen who has been granted a work permit for a defined period;
- is employed to perform seasonal work;
- is employed for the purpose of an official public works scheme or similar public job creation scheme;
- is employed in a position which is funded by an external source for a limited period;
or
- has reached the normal or agreed retirement age applicable in the employer's business

Conclusion when entering into a fixed-term contract:

When entering into a fixed-term contract with an employee, make sure that both the **fixed date and the reason for fixing the contract** are stipulated in the contract. This will serve to indicate that the contract is for a limited or definite period, such as in the case of a specific building project, or that the term is fixed for a justifiable reason as stipulated in Section 198B(4) of the LRA. If the exact time when the contract would be terminated is unknown, the specific date may be left out. The reason for fixing the contract, however, should never be omitted. If the employer wishes to make a temporary appointment, he/she is advised to consider whether a temporary contract would not be more appropriate. *SERR Synergy* deals with all types of employment contracts on behalf of our clients. *Labour Pro for Business* is an integrated labour relations programme where we guide and assist businesses in a practical and supportive way with regard to the required processes and procedures to minimise the risks to which a business is exposed to when employing staff. *About our author: Audrey Cloete obtained her LLB degree from the North-West University Potchefstroom in 2003. She completed her articles with the main focus on Criminal Law and is also an admitted Conveyancer. Audrey joined SERR Synergy in 2015 where she currently works as a Legal Compliance Advisor. *See the Exclusions of Subsection 198B(2) of the LRA*

©*SERR Synergy*, www.serr.co.za