

School Employment Manual

Fixed Term and Temporary Contracts

This document applies to all Community and Voluntary Controlled Schools and is advisory for Foundation and Voluntary Aided Schools.

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Overview

A fixed term contract is defined, in accordance with The Fixed-term (Prevention of Less Favourable Treatment) Regulations 2002, as “*a contract of employment that is due to end when a specified date is reached, a specified event does or does not happen or a specified task has been completed*”.

Fixed Term and Temporary Contracts

There may be occasions where it is appropriate to appoint a fixed term or temporary contract. When doing so, it is important the school are clear, from the outset, why they need a fixed term or temporary contract, and the reason for this must be written into the contract of employment.

Fixed Term Contract

A fixed term contract is a contract of employment for a fixed period; it has a known end date or length of contract from the outset.

Typically, contracts are for 1 year, but could be more or less, depending on the needs of the school. When recruiting a fixed term contract, the school must be able to justify the length of time the contract is for.

Examples of fixed term contracts are:

- Maternity cover (up to a maximum of 1 year)
- Linked to a particular funding that is due to last for 12 months

Temporary Contract

A temporary contract is a contract where the end date or length of the contract is unknown when the contract commences.

Examples of temporary contracts are:

- 1:1 Teaching Assistant posts which run for the duration of time the named child attends the school and continues to receive SEN funding
- Sickness Absence cover for a colleague
- Secondments (a secondment may also be a fixed term post if for example a colleague is being seconded to cover a colleague's Maternity Leave)

Rights of Fixed Term and Temporary Employees

Fixed term and temporary employees are entitled to the same terms and conditions as comparable permanent employees.

The Fixed Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 give fixed term or temporary employees rights, including:

- Not to be treated less favourably than a comparable employee on a permanent contract. This applies to pay and contractual terms and conditions
- The opportunity to receive training
- Not to be subject to any detriment on the grounds of status
- Entitlement to redundancy where the dismissal of a fixed term or temporary contract gives rise to a redundancy situation. This does not apply if the dismissal is for 'some other substantial reason'
- Limiting the use of successive contracts to no more than four years. After 4 years of successive contract extensions, they should become a permanent employee
- To be informed of, and have access to information about permanent employment opportunities within the school

The same policies and procedures apply to a fixed-term or temporary contract holder as to permanent employees.

Secondment Arrangements

There are two types of secondment arrangements that can be put in place;

1. Internal secondments (employee remains with the same school)
2. External secondments (employee is seconded from their current school to another)

Typically, secondments run up to 12 months.

Internal Secondments

There may be occasions where an employee is seconded to another position whilst remaining in the same school. This can have financial benefits for the school and are good career development opportunities for employees.

Where the grade of the seconded post is higher, the employee will be paid at that rate for the duration of the secondment agreement.

External Secondments

These can be arranged, where at the appropriate time (both financially and operationally) a member of staff is temporarily relocated to another school therefore reducing the financial burden on the school for a set period of time. The receiving school should also be in a position to benefit by temporarily filling a vacancy with an appropriately qualified and experienced member of staff. The Education Reorganisation Officer will be able to advise on recent vacancies that have been advertised.

Financial assistance may be available from the County Council in respect of travel and elements of salary in appropriate cases although this would cease if the secondment resulted in a permanent appointment at the receiving school.

For all secondments whether they be internal or external, the appropriate contractual arrangements would be agreed with the individual to ensure that they have the right to return to their original post at the end of the secondment.

The School's HR Provider will be able to provide further advice and guidance on Secondments.

Extending Fixed Term and Temporary Contracts

It is recognised that there may be occasions where forward planning the length of time the contract is required can be difficult, such as contracts covering sickness absence of a colleague and a return date of that colleague is yet to be established.

When you are considering extending/renewing or ending a fixed-term or temporary contract early or on the due date, you are advised to discuss this at the earliest opportunity with your HR Advisor particularly if the contract has previously been extended.

Once an employee has accrued 4 years continuous service under successive contract renewals, they will automatically become a permanent employee. This does not apply to 1:1 Teaching Assistant posts who have a temporary position until the named child leaves the school, or the support is no longer required.

Terminating Fixed Term and Temporary Contracts

You can legitimately end a fixed term or temporary contract where it is the original end date and reason. Where there has been an extension to the contract, the temporary nature of the role has been weakened, and this can give rise to challenge if the employee expects the role to continue.

If the work is continuing (and the contract is not linked to maternity or sickness cover) then the temporary contract cannot be terminated. In such cases, the individual employed in that post must be offered a contract extension. However, before extending, schools are encouraged to consider whether the work is required on a permanent basis and if so, the employee offered a permanent contract.

When terminating the contract, it is important that the below process is followed even if the contract is coming to an end on the original end date.

Dismissal Process

Where a fixed term or temporary contract is ending the Head Teacher should:

- Meet with the employee to inform them of the proposal to bring the contract to an end
- Formally confirm this proposal in writing and offer a Representations Meeting
- Hold Representations Meeting (if the employee wishes to exercise this right). Guidance on the format of this meeting can be found in the [Managing Change Guidance](#)
- Consider the feedback
- Confirm the decision in writing; if the decision to dismiss remains,
- Provide contractual notice of the end of the contract
- Inform the employee the Right of Appeal to Governors (If the employee wishes to appeal the decision, this will be managed in accordance with the Schools Appeal Policy).

If the School are ending a fixed term or temporary contract but have identified the need for a new fixed term/temporary contract to commence immediately after, please discuss this with your HR Advisor at the earliest opportunity. (See Suitable Alternative Employment section below)

Notice Periods

If following the representations meeting, the Head Teacher's decision to terminate the contract still stands, notice should be issued in accordance with the appropriate terms and conditions.

Community, Controlled, Community Special and Maintained Nursery Schools

The Head Teacher must notify Lincolnshire County Council of the decision to dismiss and the reason for this once the process is complete. LCC will issue notification of the termination of the contract to the employee.

If a subsequent appeal reverses the dismissal decision the termination notice will be rescinded.

Foundation, Aided and Foundation Special Schools

The notification of termination of contract should be issued by the School following the initial dismissal decision. If a subsequent appeal reverses the dismissal decision the termination notice will be rescinded

Redundancy Entitlement

In legal terms, when a fixed term or temporary contract is ended because the work no longer exists, this is a dismissal on the grounds of 'redundancy'. Therefore, a redundancy payment may be due in certain circumstances when a temporary or fixed term contract comes to an end and the employee is not offered a renewal of the contract.

Individuals with 2 or more years' continuous service (whether it be a permanent, fixed term or temporary contract ending) may be entitled to redundancy pay. For the purpose of redundancy payments, periods of continuous service include service with other Local Authorities, Community, Voluntary Controlled, Foundation and Voluntary Aided Schools, Academies or other appropriate organisations. The Enhanced Ready Reckoner can help a school to determine the amount of redundancy pay an individual will likely receive based on actual weeks' pay.

Entitlement to redundancy pay includes when a 1:1 Teaching Assistant contract comes to an end as the result of the named child leaving the school or no longer receiving SEN funding.

Whilst the contract may be ending on the grounds of redundancy, a redundancy payment (if so entitled) only applies where there is no further employment secured. Taking up further employment with a 'public body' including but not limited to maintained schools and academies could negate any entitlement to a redundancy payment which the individual might have under the terms of the Employment Protection legislation but only if it is offered (whether or not in writing) before the end of the current contract and commences within four weeks thereafter.

The listing of 'public bodies' within the legislation currently identifies over 100 other employers; if there is any doubt over whether an individual has gained employment within a 'public body' HR advice should be sought.

Pension Costs in Redundancy Cases

If the leaver is over 55 and in the Local Government Pension Scheme (LGPS) there is an automatic release of pension and as such there can be a pension strain cost payable by the school if the individual is leaving before their normal retirement age. In this situation it is advisable that you obtain a pension estimate including the associated employer costs.

Employees require 2 years pensionable service in the LGPS for their pension to be released following their contract ending; this applies even if the employee has been in the position coming to an end for less than 2 years. Under the Teachers Pensions guidance, premature retirement benefits are not available for Teachers aged 55 at the end of a fixed term contract. If a Teacher wishes to access their pension at the end of a fixed term contract, this would be on an actuarially reduced basis and as such there would not be any employer pension strain costs to fall back on the school.

Some Other Substantial Reason

There are a few circumstances where a fixed term or temporary contract can end without redundancy entitlement; where the reason for ending those contracts is due to the substantive post-holder returning rather than due to a diminution of work or where the reason for ending the temporary contract is due to the completion of training, such as:

- Secondment cover
- Maternity cover

- Sickness cover
- Apprenticeship
- Early Careers Teacher (ECT) on a specific temporary contract linked to their ECT year(s)

Instead, these contracts are brought to an end on the grounds of 'some other substantial reason' and the post holder is not entitled to redundancy pay.

Suitable Alternative Employment

Employers should prevent redundancy wherever possible. Should a post become available within your school during an employee's notice period; for which that individual has the appropriate knowledge, skills and level of experience, that post must be offered to them as suitable alternative employment.

Where there are more contracts ending than there are vacancies, an objective selection process eg interview, will be required and an offer of appointment made according to the outcomes of that process.

Refusal of an offer of suitable alternative employment without good reason has the legal effect that the employee loses their right to redundancy pay.

Therefore, should an employee choose to decline an offer of suitable alternative employment that is made to them before the end of their existing contract and is due to commence within four weeks of the existing contract coming to an end, they will not be entitled to redundancy payment.