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Alert

Employment, Workplace Relations & Safety

It's Time to Fix Your Fixed-Term Contracts!

By Ben Duggan & Jonathan Ikonomopoulos

Late last year, the Federal Parliament passed the *Secure Jobs, Better Pay* reforms that amend the Fair Work laws.

A target of the secure jobs component of the reforms is fixed-term contracts, which shall be regulated starting 7 December this year.

Fixed-term contracts are regularly used by businesses to engage employees for a specific period of employment that is defined by a start and an end date.

Ironically, businesses that are heavily reliant on government funding have regularly used fixed-term contracts to align their employment arrangements with the funding that they receive from the government.

Businesses have come under criticism for their use of fixed-term contracts as a tool which is used to limit their exposure to employment termination costs and risks, including:

- the cost of redundancy payments; and
- the risk of unfair dismissal applications.

The reforms discourage the use of fixed-term contracts as a contract option for business.

Businesses will be prohibited from engaging an employee under a fixed-term contract for a period of 2 years or more. If a business contravenes the new requirement, it will expose itself to the risk of adverse orders, including pecuniary penalties.

A business can also no longer rely on keeping an employee on a series of fixed-term contracts to avoid an unfair dismissal application. The reforms ensure that an employee whose employment comes to the end of a fixed-term contract that is greater than 2 years is eligible to make an unfair dismissal application.

Interestingly, there are some circumstances where the reforms do not apply to fixed-term contracts. Businesses will be able to continue to use fixed-term contracts if:

- 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;
- 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, currently $162,000.00 from 1 July 2022, for that year;

continued overleaf...

- the contract relates to a position that is government-funded (but only if 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; or
- it is permitted by a modern award or the *Fair Work Regulations.*

Businesses currently using fixed-term contracts should immediately seek legal advice to ensure they comply with the reforms and protect themselves from the risk of adverse orders.

We are currently meeting with business leaders to help them understand what the reforms mean for them and their businesses. If you would like one of our employment law experts to help you, please do not hesitate to get in touch.

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