

Employment

Fixed-term and part-time contracts of employment

It is a common misconception that fixed-term ('FT') and part-time ('PT') employees are a secondary class of employee and may be treated differently to permanent or full-time employees. However, FT and PT employees have the legal right not to be treated less favourably than the employer treats comparable permanent and full-time employees:

- as regards the terms and conditions of employment; or
- by being subjected to any other detriment by the employer.

There is no minimum period of employment required for these rights and so the protection applies to FT or PT employees from the outset of their employment.

The protection means that FT and PT workers should not be excluded from enjoying any particular benefits such as a bonus, health insurance or holiday entitlement simply because they are not on a permanent or full-time contract. They must also not be treated less favourably in terms of the minimum length of service required for any particular benefit. For example, it would not be permitted for an employer to make a bonus payable only if an employee worked for more than 250 days of the year as this would exclude most PT workers from receiving a bonus.



This protection does not mean that a FT employee's contract must be renewed. However, employers should bear in mind a series of back-to-back FT contracts without a break of at least one whole week will count as one continuous period of employment. An employee will therefore obtain their unfair dismissal rights after two years even if they are employed on FT contracts. Terminating a FT contract after a period of two years' service without a fair reason will likely result in compensation for the employee. Employers should also note that, where an employee has been continuously employed under one or more fixed term contracts for a period of four years or more, they will be automatically converted onto a permanent contract.

Generally, in order to determine whether a FT or PT employee has been treated less favourably, a pro rata principle will be applied. This means that the FT or PT employee will be entitled to an appropriate proportion of the pay or benefits offered to a permanent or full time employee based on the length of their contract or the number of hours/days they work.

If the FT or PT employee is subjected to less favourable treatment then the employer may justify the treatment on objective grounds but this will not be straightforward. Generally, it is safer to pro-rate the terms of the FT or PT employee if the employer wishes to avoid any claims.

In considering whether less favourable treatment is justified, the terms of the whole contract will be considered. If the terms of the FT or PT employee's contract, when taken as a whole, are at least as favourable as the terms of the comparable permanent or full-time employee's contract then the employer may avoid a claim. For example, an employer may consider paying a FT employee a higher rate of pay in exchange for not receiving an annual bonus that is paid to the permanent employees.

Because of the protection afforded to FT and PT employees, there will generally be no benefit to the employer to put employees on these contracts without good reason. In particular, when considering whether to put an employee on a FT contract, the employer should always use a permanent contract unless, at the outset, the need for the employee is known to be for a fixed period such as maternity leave. FT contracts should never be used as a substitute for a probation period or for management of an employee's performance, conduct or attendance.

If you have any questions about the use of FT or PT contracts, please contact a member of our employment team.

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