



Irish Nurses and Midwives Organisation
Working Together

Entitlements of Fixed-Term Employees

(Nurses/Midwives Working in the Private Sector)

The largest Professional Union
for Nurses and Midwives in Ireland
representing over 41,000 members

1. Introduction

This leaflet sets out guidelines on the entitlements of employees employed on fixed-term contracts, based on the Protection of Employees (Fixed-Term Work) Act, 2003. It is not a legal interpretation of the Act.

2. What is the purpose of the Act?

The Act, which came into operation on 14th July, 2003, implements the provisions of the EU Directive on fixed term work. Its main objective is to ensure that fixed-term employees are not treated less favourably than their 'comparable permanent' colleagues in respect of terms and conditions of employment, including pay, pensions, entitlement to sick pay, overtime, etc. The Act also aims to eliminate the practice of keeping employees on successive fixed-term contracts.

3. Who is covered?

The Act generally applies to all employees who are employed under a fixed-term contract of employment. You do not have to have worked for any particular period of time with your employer or work a minimum number of hours per week in order to be covered by the Act. **It does not, however, apply to those employed on fixed term contracts through employment agencies (e.g. agency nurses/ midwives), apprentices, nurses/midwives in training, trainee gardai or members of the defence forces.**

4. Who is a fixed-term employee?

The Act defines a fixed-term employee as one who is employed on a fixed term contract, i.e. where the end of the contract is brought about by an 'objective condition' such

as the arrival of a specific date or where specific employment circumstances have occurred.

5. Who is considered a permanent employee?

The Act defines a 'permanent employee' as one who is not a fixed-term employee.

6. When can a fixed-term employee be compared to a permanent employee?

A fixed-term employee can be compared to a permanent employee:

- where both the fixed-term employee and permanent employee are employed by the same or associated employer, or
- where both are employed in the same industry or sector of employment; **and**
- where the fixed-term employee performs work which is the same or similar to, or (where different) is equal or greater in value to the work performed by the 'comparable permanent' employee.

7. Can a fixed-term employee ever be treated in a less favourable manner?

Yes, less favourable treatment is permitted if the employer can show such treatment is 'justified by objective grounds', where the less favourable treatment is intended to help the employer achieve a 'legitimate objective', and it is 'appropriate and necessary' for that purpose. Less favourable treatment based solely on the fixed-term status

of the employee is not an 'objective ground' and is therefore prohibited by the Act.

8. What must an employer do when issuing a fixed-term contract?

Anyone who is employed on a fixed-term contract must be informed in writing by the employer, as soon as practicable, of the 'objective condition' which will cause their contract to come to an end, i.e.

- **Arrival of a specific date** (e.g. contract ends on 31 Oct);
- **Completion of a specific task** (e.g. contract ends on completion of research project); or
- **The occurrence of a specific event** (e.g. contract ends when permanent employee returns from maternity leave).

9. What must an employer do when renewing a fixed-term contract?

Where an employer wishes to renew a fixed-term contract, he/she must inform the employee in writing as soon as possible not later than the date of renewal, of the objective grounds justifying the renewal of the fixed-term contract 'and the failure to offer a contract of indefinite duration' (i.e. permanent contract).

For example, a staff nurse/midwife is recruited on a 1 year fixed-term contract to replace a permanent staff nurse/midwife who is taking special leave. However, towards the end of that year, the permanent staff nurse/midwife extends her special leave for a further year and the replacement nurse/midwife is offered a further

fixed-term contract of 1 year to cover the extended absence. In such a case, the employer would have objective grounds justifying the renewal of the fixed-term contract for a further year.

As in paragraph 8, the employer must specify in writing the 'objective condition' which will bring the contract to an end, which is, in the case of the above example, the return of the permanent staff nurse/midwife from special leave.

10. How often can my employer renew my fixed-term contract?

The legislation forces employers to review their practice of keeping employees on fixed-term contracts over a number of years.

Where your fixed-term contract commenced after the 14th July 2003 and your contract is renewed on a fixed term basis on one or more occasions, the total duration of your combined fixed-term contracts cannot exceed four years, except where there are objective grounds justifying such renewal.

Any attempt by your employer to get around this provision will have no effect and will mean that your contract will be deemed to be one of indefinite duration, i.e. a permanent contract.

11. What other rights does the Act give me?

- Fixed-term employees must be informed of permanent vacancies that become available.
- Any service requirement which relates to a condition of employment must be the same for both fixed-term and

comparable permanent employees (except where it can be justified on objective grounds). For example, requirement to have 'x' number of years service to be eligible to compete for promotional posts.

- Employers are to facilitate, as far as is practicable, access by fixed-term employees to training courses.

12. Disputes and Appeals

Any complaints relating to the provisions of the Act can be made to the Adjudication Service of the WRC with the right of appeal to the Labour Court. If you believe your employer has failed to provide you with an entitlement to which you are due under the Act, you should contact your Industrial Relations Officer/Executive.

13. Further Information

Should you have any further queries in relation to your rights and entitlements under the Protection of Employees (Fixed-Term Work) Act 2003, please contact the Information Office on 01 664 0610 or 01 6640619.

This leaflet is not a legal interpretation of the Protection of Employees (Fixed-Term) Work Act 2003, (errors and omissions accepted).

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