

# Fixed-Term Contracts (Ireland)

by *Patrick Watters*, Beauchamps

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A Practice Note setting out the key issues concerning definite or fixed-term employment contracts (FTC) in Ireland. This Note discusses the different types of FTCs, advantages, and disadvantages of using FTCs, limitations on FTCs, FTC employee rights, and tips for drafting FTCs.

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In Ireland, an employer may want to employ an individual under a fixed, definite-term, or specified purpose employment contract (FTC). However, there may be limitations and restrictions on when an FTC is permitted, what constitutes an FTC, and the duration of an FTC. Consequently, other arrangements may be more appropriate for the parties.

## Law Governing FTCs

The Protection of Employee (Fixed Term Work) Act 2003 (FTW Act) is the domestic Irish legislation which transposes the framework and fixed-term employee protections envisaged under the EU Council Directive 1999/70/EC.

The central objectives of the FTW Act are to:

- Ensure that the principle of non-discrimination applies to fixed-term employees. This means that fixed-term employees must be treated no less favourably than comparable permanent employees in relation to each and every term and condition of their employment, unless the less favourable treatment can be justified on objective grounds.
- Prevent abuse arising from the use of successive FTCs by requiring the employer to demonstrate their necessity for the attainment of a legitimate business objective.
- Provide for a maximum duration of successive FTCs, after which the “temporary” designation has no effect and the employment contract is deemed to be a contract of indefinite duration, unless a legitimate business objective has been demonstrated.

In practice, FTCs are often referred to as temporary or atypical agreements, although there are no official terms that capture this working relationship beyond that of an FTC.

## FTC Employee

A fixed-term employee is defined under section 2 of the FTW Act as a person having a contract of employment entered directly with an employer, where the end of the contract of employment is determined by an objective condition, such as:

- Arriving at a specific date.
- Completing a specific task.
- The occurrence of a specific event.

Excluded from this definition of an FTC employee are:

- Employees in initial vocational training relationships or apprenticeship schemes.
- Employees with a contract of employment which has been "concluded within the framework of a specific public or publicly supported training, integration or vocational retraining programme."

## FTC Definition

On its ordinary and natural meaning, the definition of a fixed-term employee requires that the end of the contract of employment be determined by an objective condition. This objective condition can be for either:

- A fixed or defined period of work (that is, engaged to work for a defined period).
- A specified work purpose (that is, engaged to work until completion of a specified task or event).

Fundamentally, the nature of an FTC must be temporary. There are no set or prescribed limitations on when an FTC may be used, save that it must be used for a temporary and transient need. The following are examples of when an FTC may be used:

- The requirement for support or assistance will end by a specific date.
- A permanent employee's role needs to be covered for a temporary period (for example, an employee is on long-term sick leave, or an employee is on maternity leave).
- A specific funding stream, used to pay for the employee's salary, will expire upon completion of the assigned task or following a defined period.
- An associated commercial contract (that is, a contract between the employer and a third party client to deliver quantifiable or defined services) is due to expire on the completion of a particular project.
- A short-term seasonal contract is needed to meet additional demand or workload.

The majority of FTCs operate for a fixed duration, although employers are encouraged to implement specified purpose FTCs, where possible, from a best practice basis. That is, where the end date is uncertain or liable to change, best practice is for employers to engage fixed term employees on a specified purpose basis rather than for a defined term.

Generally, there is no limitation on the type of role that may be assigned as fixed-term provided it is truly temporary in nature and compliant with the terms of the FTW Act.

However, over reliance on FTCs is viewed as unusual and is carefully scrutinised by the national courts when challenged ([2011] 22 E.L.R. 229). Permanent employment is the preferred form of employment although in certain circumstances, occupations and activities, FTCs are permitted to meet the needs of the labour market.

## Advantages and Disadvantages of an FTC

A central advantage of hiring someone under an FTC is that it enables an employer to specify how and when the employment relationship will end. This affords certainty and flexibility when managing the intended duration of the employment relationship.

Further, subject to certain requirements, the termination of an employee's employment due to the expiry of an FTC's term is not subject to the protections and obligations imposed by the Unfair Dismissals Acts 1977-2021 (the UDA) (for more detail, see [Written Requirements of an FTC](#)). In such an instance, the employment terminates automatically on the expiry of the term or specified purpose, without the need for an employer to justify the termination of employment or to follow a required process.

The FTW Act places a considerable onus on employers to ensure that an FTC is being administered correctly. Failure to comply fully with its terms can have major implications for employers, such as the granting of permanent status through contracts of indefinite duration. While FTCs are a very useful management tool, employers should be fully aware of all matters in relation to the management of such contracts. In particular:

- The need to have appropriate administrative and monitoring procedures in place to deal with the recruitment and employment of FTC employees and the management of FTCs.
- The requirement, from the outset, of a statement of clear and unequivocal reasons justifying the fixed-term appointment. If an employer cannot formulate legitimate reasons (that is, the justification of a temporary or transient need) for the use of an FTC then it should not be used. Failure to justify the FTC and inform the FTC employee of such justifications when the initial FTC is executed, and later renewed, can result in the creation of a contract of indefinite duration.
- Potential redundancy payment costs for the employer at the end of the FTC period (for more detail, see [Redundancy \(Lay-off\) or Reorganisation](#)).

## FTC Employees and Indefinite Term Employees: Key Differences

Generally, FTC employees have the same employment rights as permanent employees unless the difference in treatment can be objectively justified by the employer.

The most significant and defining characteristics of an FTC, when compared with a permanent contract, are that:

- The conclusion of an FTC is determined by an objective condition which is identifiable without reference to the view, perception, or intervention of either party to the contract (*Irish Museum of Modern Art v Stanley* FTD146).
- The FTC employee's employment terminates automatically at the end of the specified period, purpose, or term for which they were hired.

In comparison, the dismissal of a permanent employee can only occur where fair procedures have been followed by the employer and there exist substantial grounds to justify the dismissal (however, see [Early Termination](#)).

There is no difference in remuneration requirements for FTC employees and comparable permanent employees because the FTW Act prohibits employers from treating FTC employees less favourably than comparable permanent employees unless the difference in treatment is objectively justifiable.

## Rights of FTC Employees

The rights of FTC employees are enshrined in the FTW Act which affords them five key protections:

- **Written statements.** Section 8 of the FTW Act requires employers to furnish FTC employees with written terms of engagement that state the objective condition which determines the end of the contract (that is, the specific date, task, or event). Upon renewal of an FTC, the employee must be informed, in writing, of the objective grounds justifying the renewal of the FTC, as opposed to a contract of indefinite duration (for more detail, see [Renewal](#)). An adjudicator or court can draw inferences if this requirement is not met by the employer.
- **Information on vacancies or training opportunities.** Section 10 of the FTW Act requires employers to inform FTC employees of all vacancies which become available at the employer. This is to ensure that they have the same opportunity to:

- secure permanent employment as other employees; and
  - to facilitate access to training opportunities.
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- **Equal treatment.** Section 6 of the FTW Act states that an FTC employee must not, in respect of their conditions of employment, be treated in a less favourable manner than a comparable permanent employee (as defined under Section 5 of the FTW Act), unless objectively justified. This includes salary, pensions, and other entitlements although an employer can apply a period of service qualification for certain benefits (such as, defined pensions, enhanced company sick pay, and so on).
  - **Successive fixed-term contracts becoming permanent contracts.** Section 9 of the FTW Act prohibits employers from abusing successive FTCs to avoid engaging employees on a permanent basis. Where an employer contravenes this provision, the FTC is automatically deemed a permanent contract, unless the employer can demonstrate objective grounds justifying the renewal. For more detail, see [Duration and Renewal of FTCs](#).
  - **Employers prohibited from penalising employees.** Section 13 of the FTW Act prohibits an employer from:
    - penalising an employee for having invoked any right provided under the FTW Act;
    - penalising an employee for opposing an act which is unlawful under the FTW Act;
    - penalising an employee for giving evidence in proceedings under the FTW Act; and
    - dismissing an employee if the dismissal is wholly or partly for, or connected with, the avoidance of an FTC being deemed a permanent contract.

## FTC Employees and Independent Contractors: Key Differences

Despite the temporary nature of FTCs, FTC employees remain personnel employed by the employer under a contract of employment and are entitled to the same benefits and contributions as comparable permanent employees for the duration of their contract (see [Rights of FTC Employees](#)). The employer controls how, when, and where the work is performed, and the employer is required to deduct PAYE and national insurance contributions from payments made to the employee.

Independent contractors differ as they are persons engaged under a contract for services, purely on a commercial basis. No employment relationship exists as the contractor is in business on their own account, enjoying considerable latitude with how and when the work is done.

The primary risk for any company engaging independent contractors is that the reality of the working relationship can later be deemed to be an employment one and therefore give rise to the individual benefitting from significant protections afforded under employment law, as well as significant tax liabilities. When determining the status of an individual, the courts look at the reality of the working relationship (for example, the extent of the control, mutuality of obligation, right of substitution, level of integration and ability to make profit), rather than relying on the written terms between the parties.

## FTC Employees and Agency Workers: Key Differences

The Protection of Employees (Temporary Agency Work) Act, 2012 (TAW Act) defines an agency worker as:

"An individual employed by an employment agency under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person other than the employment agency".

This tripartite working relationship differs from that of an FTC employee where there exists a normal, albeit temporary, employer-employee relationship.

Unlike the FTW Act, which prohibits any less favourable treatment in relation to a comparable employee, the TAW Act provides that agency workers should be afforded the same basic working and employment conditions as employees directly hired by the hirer to do the same or similar work.

"Basic working and employment conditions" are defined under the TAW Act as:

- Terms and conditions of employment by virtue of any enactment or collective agreement.
- Any other arrangement that applies generally in respect of employees, or any class of employees, of a hirer, and which relate to the following core conditions:
  - pay;
  - working time;
  - rest periods;
  - rest breaks during the working day;
  - night work;
  - overtime;
  - annual leave; or
  - public holidays.

The exclusion of the UDA does not extend to agency workers. Where a dismissal is challenged by an agency worker, section 13 of the Unfair Dismissals (Amendment) Act 1993 deems the hirer to be the employer of the agency worker rather than the employment agency. Accordingly, it is recommended that hirers ensure that their contract with the employment agency contains appropriate indemnities in this respect.

## Written Requirements of an FTC

As stated above (see *Rights of FTC Employees*), an employer must provide a written FTC that states the objective condition or event that determines the conclusion of the FTC employment. Further, in the event of a renewal of the FTC the employer must provide, in writing, the objective grounds justifying the fixed-term renewal (that is, the legitimate temporary need) rather than converting to an on-going indefinite-term employment.

Employers are not obliged to translate employment contracts into other languages. A prudent employer might consider translating employment documents if they employ a large international workforce, however this is not mandatory.

For an employer to validly rely on the exclusion contained in section 2(2)(b) of the UDA (that is, unfair dismissal protections and obligations do not apply to a termination due to the expiry of the FTC) the FTC must be executed in accordance with the following criteria:

- The contract must be in writing.
- The contract must be signed by, or on behalf of, the employer.
- The contract must be signed by the employee.
- The contract must state that UDA will not apply to a dismissal consisting only of the expiry of the fixed-term or the cessation of the specified purpose.

## Duration and Renewal of FTCs

### Duration

There is no maximum duration for an initial FTC.

The FTW Act focuses on successive FTCs and seeks to prohibit employers from abusing successive FTCs to avoid employing employees on a permanent basis.

Section 9(2) of the FTW Act states:

"where an employee is employed...on two or more continuous fixed-term employment contracts...the aggregate duration of the contracts cannot exceed four years".

If an employer contravenes this provision, then the FTC is automatically deemed a permanent contract unless the employer can demonstrate objective grounds justifying the renewal (that is, the legitimate temporary need).

### Renewal

An FTC employee does not enjoy an automatic right to have their FTC renewed upon its expiry. While FTCs are useful tools for employers, caution is advised when considering a renewal or extension.

Normally, an employer is expected to make an FTC employee a permanent employee if their services are still required at the end of the FTC, unless objective grounds justify the renewal of the FTC.

Under section 8(2) of the FTW Act, where an employer proposes to renew an FTC, they must:

- Notify the FTC employee in writing of their intention to renew the FTC.
- Cite the objective grounds for not issuing the FTC employee with a permanent contract.
- Inform the FTC employee of the specific grounds which will bring about the termination of the new FTC contract.

This notification requirement is considered mandatory and must be satisfied, at the very latest, by the date of the FTC renewal. Otherwise, an adjudicator can draw such inferences as they consider just and equitable in the circumstances (that may be that the employment is that of an indefinite term) (see *Practical Tips When Entering into FTCs*).

## Exceeding Limits on Duration or Length of FTC

In the event an employee is employed under two or more successive FTCs for an aggregate duration beyond four years, without objective justifying grounds, the contract is automatically deemed to be permanent, by operation of law. The on-going employment will enjoy all the attributes and protections of a permanent contract.

To avoid the risk that an employee successfully argues their employment has converted into that of an indefinite term, employers should ensure that FTCs do not run over their agreed term without a revised termination date being agreed in writing (and that the extension of the FTC continues to be justified). The labour court has indicated that in these circumstances, it would examine the whole employment relationship, its context and the intentions of the parties, as opposed to focusing solely on the terms of the first contract and the lack of a new written termination date, when considering the on-going status of the employee (that is, whether the employee is employed under an FTC or an indefinite term contract) (*Akina Dada Wa Africa v Claudia Horeau UDD/18/237* (determination number UDD216)).

## What to Consider When Terminating Employment Under an FTC

### Notice

#### Expiry of the Term

The employment of an employee employed under an FTC terminates automatically, without the need for notice from either party, at the end of the specified period, purpose, or term for which the employee was hired. The requirements and protections against termination of employment provided by the UDA do not apply when the employment terminates due to the expiry of the term, subject to complying with 2(2)(b) of the UDA (for more detail, see *Written Requirements of an FTC*).

#### Early Termination

If terminating an FTC prior to completion of the agreed term or specified purpose, and the employee has completed more than 12 months' continuous employment service, the requirements and protections of the UDA apply (see *Employee Rights on*



*Termination of the FTC*). It is therefore important in such an instance to ensure that an employer has a fair reason and follows a fair process when they intend early termination of an FTC (however, see *Probation Periods*).

Concerning notice requirements when terminating an FTC early, it is advisable to insert a provision into the FTC permitting either party to terminate the employment relationship early if desired. The notice periods do not need to be mutual and there is no maximum permitted notice period, but they should be realistic in the context of the contract's duration.

If the FTC is silent on early termination, the minimum notice period prescribed under the Minimum Notice and Terms of Employment Act 1973-2005 applies.

### **Probation Periods**

Probation periods are permitted during an FTC, save that the length of the probation period must be proportionate to the expected length of the FTC and the nature of the work. An FTC employee cannot be subject to a new probationary period if their FTC is renewed.

Dismissal without cause or reason during the probationary period can be implemented provided the contract of employment contains the following:

- A probation period of no more than six months' duration.
- A right to extend the probation period only in exceptional circumstances.
- A specific provision that the disciplinary procedure will not apply to termination of employment during the probationary period or any extension of the probationary period.
- A short notice period for termination during the probation period. This can be as short as one week.
- A right to dismiss without cause or reason during the probation period.
- A right of the employer to pay salary in lieu of notice.

### **Employee Rights on Termination of the FTC**

With respect to the UDA:

- The UDA does not apply, subject to complying with 2(2)(b) of the UDA, when the employment terminates due only to the expiry of the FTC (for more detail, see *Written Requirements of an FTC*).
- The UDA applies when an FTC is terminated before the expiry of the term and the employee has completed more than 12 months' continuous service (that is, the employee qualifies for unfair dismissal protection). In such circumstances, to lawfully terminate an employee's employment, an employer requires a substantial reason and to have followed a fair process.

The statutory protections afforded under the FTW Act cannot be waived by an employee. On the contrary, section 12 of the FTW Act states that a provision in an agreement shall be void insofar as it purports to exclude or limit the application of, or is inconsistent with, any provision of the FTW Act.

There are no claims exclusive to an FTC employee upon termination, which are not also available to permanent employees.

## Redundancy (Lay-off) or Reorganisation

FTC employees may qualify, on the expiry of the FTC or early termination of the FTC, for a statutory redundancy payment if they meet the criteria for redundancy under the Redundancy Payments Acts 1967-2014 (this includes having two years of continuous employment service).

An FTC cannot be selected for redundancy solely on the ground of their fixed-term status. Further, any exclusion of FTC employees from enhanced redundancy payments will amount to unlawful less favourable treatment unless it is objectively justified.

The expiry of an FTC is not included among collective redundancy considerations (however, the proposed early termination of an FTC that has yet to expire would be included).

## Severance Pay

Fixed-term employees are not entitled to severance pay upon termination of employment unless they qualify for a statutory redundancy payment (see *Redundancy (Lay-off) or Reorganisation*).

## Employee Challenging Validity of the FTC

In the event an employee wants to challenge that their employment is that of an indefinite term rather than an FTC, the prescribed procedure for claiming redress under the FTW Act is to present a complaint to the Director General of the Workplace Relations Commission. The complaint is determined in accordance with Part 4 of the Workplace Relations Act 2015, with the nature of the redress prescribed under section 14 of the FTW Act. The complaint is heard initially by an adjudication officer who can:

- Determine whether the complaint is well founded or not.
- Require the employer to comply with the relevant provision of the FTW Act.
- Require the employer to reinstate or reengage the employee (including on a contract of indefinite duration).
- Require the employer to pay to the employee compensation of such amount (if any) as the adjudication officer considers just and equitable having regard to all the circumstances, but not exceeding two years' remuneration in respect of the employee's employment.

There is a right of appeal against an adjudication officer's decision to the labour court. The labour court can affirm, vary, or set aside the decision of the adjudication officer. Thereafter, there is a right of appeal to the High Court on a point of law against the determination of the labour court.

## Practical Tips When Entering into FTCs

As a matter of good practice, employers should:

- Consider what type of working arrangements best suit the needs of their business (that is, FTC or indefinite term employment).
- Familiarise themselves with their obligations under the FTW Act.
- Review the terms of the FTC to make sure they are fit for purpose and contain appropriate language, exclusions, and indemnities, where applicable.
- Ensure that, prior to the engagement of the FTC employee, FTC appropriately defines both:
  - The purpose of an FTC.
  - The expiry date of the FTC.
- Establish a system of monitoring to ensure FTCs:
  - Are compliant with the FTW Act (and other legislation as appropriate).
  - Do not become contracts of indefinite duration through oversight.

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