

YOU RAISE THE ISSUE

FIXED TERM CONTRACTS



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Question: A person has worked for me for ten years under fixed-term contracts of two-year terms each which have been renewed five consecutive times. I would like to terminate his employment. Can I rely on the notice period in the contract and not renew his contract for another term?

The critical issue is whether the employee was employed under a fixed-term contract or whether at some point the contract was converted into an indefinite period contract by virtue of the successive renewals. The key factors you need to consider before taking any action in terminating the contract are:

1. The wording of the contract. If the contract is at all ambiguous it will be interpreted against whoever drafted it, usually the employer. The Courts are very careful in their review of fixed-term contracts to ensure that the contract was only to be for a specified period and was not to be renewed. A literal interpretation of the contract will not be applied where it would lead to a result that is unrealistic or was not contemplated by the parties. This may include the situation where the employee did not understand that his employment would terminate at the end of the term and not be renewed, even if reason was provided.

2. The length of the employee's service under the successive fixed-term contracts. The longer this person has worked for you, the more likely it is that he would be found to be an employee, and as such entitled to reasonable notice of termination beyond what is set out in the fixed-term contract.

3. The number of successive fixed-term contracts. Again, the more successive contracts this person has been awarded the more likely it is that he would be found to be employed for an indefinite period.

4. The length of each fixed-term contract. It is more likely that he would be found to be an employee if he had successive fixed-term contracts that are for long terms, such as 10 years as opposed to 6 months.

5. The degree of negotiation and number of changes made between each successive fixed-term contract. If no significant changes were made to the contracts, or if changes were made to only one or a few sections (for example to the termination date

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or salary), then it is more reasonable to conclude that this person is a permanent employee. Conversely, if there were extensive negotiations and changes, it is more likely that this person has remained under the fixed-term contract of employment.

6. The expectations of the parties. All of the above factors lead to the question of the expectations of the parties to the contract. If the fixed-term contract was continually renewed with few or no changes, then it becomes expected that the contracts will be renewed in the future. In that case, this person's employment relationship likely converted to that of a permanent employee who can only be terminated by being given reasonable notice under the common law.

The Courts are particularly vigilant when employees work for several years under a series of alleged fixed-term contracts. It has been held employers should not be able to evade the traditional protections of Employment Standards legislation and the common law simply by using the label of 'fixed-term contract' when the underlying reality of the employment relationship is actually quite different. Nonetheless, fixed-term contracts are legal and will be enforced so long as their terms are clear and are strictly followed.

If, after a review of the factors listed above, it is clear that your employee is employed under a fixed-term contract, then refer to the terms of the contract and follow the requirements and provision for termination notice as they are set out. If however, it is clear that the expectations and the history of the employment relationship reveal otherwise, you will have to provide him reasonable notice under the common law before terminating his employment. If you are at all uncertain as to the nature of the relationship, you should seek legal advice.

DISCLAIMER this article should not be interpreted as providing legal advice. Consult your legal adviser before acting on any of the information contained in it. Questions, comments, suggestions and address updates are most appreciated and should be directed to the author:

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