

# University of Sussex

## Fixed-term appointments: management guidance

### 1. Introduction

- 1.1 The University employs a number of staff on fixed-term contracts (FTCs), and has made significant efforts in recent years to limit the use of such contracts to situations where there are transparent, necessary and objective reasons for doing so. The following guidance ensures that the University follows good employment practice and meets its legal obligations.

### 2. Definition

- 2.1 A fixed-term contract (FTC) is one that **either**:

(i) is for a stated period e.g. two years. This period can, however, be shortened by appropriate notice given by either side within the specified period, **or**

(ii) ends when a specific task or job has been completed (known as a “task contract”), for example, the implementation of a new payroll system, **or**

(iii) ends when a specified event happens, for example the return of the substantive postholder from a period of maternity leave, or does not happen, for example a planned new course fails to run due to insufficient interest.

- 2.2 The expression ‘temporary contract’ has often been used to define appointments made under (ii) and (iii) above, but these contracts are treated as FTCs, as are certain casual contracts. Advice should be sought from Human Resources if unsure.

### 3. Use of FTCs

- 3.1 FTCs should be used only when there is a genuine and objectively justified reason, for example:

(a) the post requires specialist expertise or recent experience not currently available within the University;

(b) to cover staff absence as appropriate (e.g. maternity leave, long-term sickness, sabbatical leave or secondment);

(c) the contract is to provide a secondment or career development opportunity either for the original postholder or his/her replacement. In such cases the individuals would normally revert to their substantive posts at the end of the period of secondment, where applicable;

(d) input from specialist practitioners;

(e) where the student or other business demand is particularly uncertain;

(f) where funding is limited to a specified period.

- 3.2 The reason for the fixed-term nature of the contract must be stated in the FTC. In cases of doubt as to whether to fill a post on a fixed-term or permanent basis, advice should be sought from an HR Adviser.
- 3.3 A fixed-term contract cannot be used to 'test out' somebody in what is actually a permanent post, or to shortcut the recruitment process.
- 3.4 When authorising the appointment of a member of staff on a FTC, Heads of School are responsible for ensuring that funds are available to pay for any redundancy payment that may arise on the expiry of the contract.

#### **4. Summary of legislation relating to fixed-term staff**

4.1 The Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations (2002) provide for:

- the prevention of less favourable treatment of a fixed-term member of staff when compared with a comparable permanent member of staff;
- a four year limit on the use of successive FTCs;
- the notion of objective justification in relation to either less favourable treatment or an extension of the four year limit;
- an obligation to inform staff on FTCs of any permanent vacancies;

4.2 Agency workers<sup>1</sup>, apprentices and students on work placements are exempt from the fixed-term employment regulations.

#### **5. Management of FTCs**

5.1 Managers are responsible for ensuring that staff on FTCs are treated fairly, including:

- ensuring that they receive information on, and have the opportunity to apply for, vacancies in the same way as other staff;
- providing appropriate opportunities to enhance skills and career development (in association with Staff Development and the Teaching and Learning Development Unit (TLDU) where appropriate);
- in situations where there has been objective justification for employing an individual on a series of FTCs over a period approaching four years, reviewing the position with a view to making the appointment indefinite, or if this is not appropriate, being able to objectively justify the continuation of the FTC;
- ensuring that the termination of any FTC complies with relevant legislation.

Further guidance is available from an HR Adviser.

#### **6. Extension of a FTC**

6.1 To avoid a dismissal occurring:

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<sup>1</sup> Agency workers are, however, covered by the Agency Workers Regulations 2010 – see HR website for guidance on the employment of agency workers.

- (i) a FTC must be extended before the end date of the contract, and be effective within four weeks of the expiry of the contract, or
- (ii) where there has been no extension prior to the expiry of the previous contract, a new contract must begin within a week of the previous one expiring.

6.2 In cases where there is a temporary cessation of work this gap is excluded, and continuity is maintained provided the FTC is extended to take effect from within 4 weeks of the end of the period of temporary cessation of work.

6.3 In order to minimise staff anxiety, managers are encouraged to give as much notice as possible of the extension of a FTC.

## 7. Termination of a FTC

7.1 The end of a FTC is a **dismissal** in law. This means that the University must follow its relevant dismissal procedure as detailed in either the Redundancy Procedure (Regulation 32) or the Procedure for Dismissal on Ground of Some Other Substantial Reason or Statutory Bar (Regulation 36). If a FTC expires and is not extended, the individual may be entitled to a redundancy payment and/or may be entitled to claim unfair dismissal, provided s/he has the requisite qualifying period of continuous service (two years for a redundancy payment and either one or two years for unfair dismissal<sup>2</sup>).

7.2 In some situations, for example, the fixed-term member of staff was covering for an absent member of staff who is now returning, the reason for the dismissal arising on the expiry of the contract would be for 'some other substantial reason' and the University's Procedure for Dismissal on Ground of Some Other Substantial Reason or Statutory Bar (Regulation 36) applies. In such cases, there is no entitlement to a redundancy payment.

7.3 In the majority of cases, however, the reason for the dismissal will be **redundancy**, and the University's Redundancy Procedure will apply (Regulation 32).

7.4 In situations where the **performance** of an individual appointed on a FTC has been unsatisfactory, but the work will be continuing, the reason for any termination would be incapability (or possibly misconduct), rather than redundancy. In such cases, the dismissal is only likely to be fair if the University has followed its Capability Procedure (Regulation 33) (or its disciplinary procedure – Regulation 31).

## 8. Changing a post from fixed-term to indefinite

8.1 In situations where the reason for the fixed-term nature of a post is no longer valid, and there is justification for filling the post on an indefinite basis, a request should be made to the Director of Human Resources to make the

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<sup>2</sup> Unfair dismissal qualifying periods are one year for staff appointed before 1 April 2012, and 2 years for those appointed on or after 1 April 2012.

post indefinite. In such circumstances, the postholder would normally be transferred to an indefinite contract, unless a different course of action can be objectively justified.

- 8.2 Where an individual has four or more years' continuous service with the University and has been employed on two or more successive fixed term contracts for a continuous period of four years they may write to the University to claim indefinite status. The University must respond within 21 days and, if not prepared to grant indefinite status, must give reasons why the employment remains fixed term. The individual can challenge the explanation at an Employment Tribunal.

HR/JAR/Dec 12