



Endeavour Multi Academy Trust

FIXED TERM CONTRACTS GUIDELINES

When to use a fixed-term contract

It is essential that Headteachers can demonstrate that there are transparent, necessary and objective business reasons for placing a post on a fixed-term contract.

Necessary and objective reasons or circumstances could include:

- the funding is of short-term duration and longer funding is unlikely
- the post is for a specific project or relates to a specific event (e.g. to cover staff absence)
- the contract is to provide a secondment of career development opportunity
- where specific or specialist expertise or recent experience is a necessary element of the job and will only be required for a specified period
- a project is shortly to come to an end
- to cover a period up to the closure of a school
- to cover a vacancy whilst recruitment for a permanent position is carried out

How to use a fixed-term contract

Whilst there will always be a need for some fixed-term contracts in school. Perhaps to cover sick or maternity leave, it will be much harder to end a series of fixed-term contracts without justification. The statements of particulars of employment for a fixed-term contract should always include:

- the reasons for the appointment
- the duration/likely duration of the period of employment
- and/or the event that will bring the termination of the contract

Fixed-term contracts should not be used to create a "trial period" or because of general anxiety of the possibility of budget problems over at an unspecified point in the future: all schools face a degree of uncertainty in terms of pupil numbers and budget from year to year.

For example if the objective reason for use of a fixed-term or temporary contract is the short-term nature of the work, this justification must be called into question where the contract is repeatedly renewed.

Under legislation, if the overall duration of the employment becomes more than four years the renewal of the contract effectively becomes a permanent contract unless employment on a fixed-term contract has been objectively justified.

When advertising a fixed-term post Headteachers should make it clear at each stage of the recruitment process that the post is for a fixed-term and why this is so.

What to do when a contract is due to expire

Teaching Staff: In accordance with Staffing Guidance under section 35(8) and 36(8) of the Education Act 2002, where it is decided to recruit a new teacher, the post should be advertised unless it is decided to accept a teacher already working at the school.

Appointment should be made in accordance with:

- the current School Teachers' Pay and Conditions Document and the guidance provided on School Teachers' Pay and Conditions
- the Conditions of Service for School Teachers in England and Wales ("the Burgundy Book")
- local terms and conditions agreed with representative unions

Support Staff: The Local Governing Body is responsible for deciding:

- who should be appointed to a post
- the hours of work in the case of those who are required to work-part time
- the duration of the contract, within certain parameters
- the grading and remuneration

Guidance relating to the Staffing Regulations, (under sections 35(8) and 36(8) of the Education Act 2002) states that there is no legal requirement for advertising support staff posts.

However, the Local Governing Body, or Headteacher under delegation, must decide on any appropriate steps to bring such posts to the attention of suitable candidates. The Trust recommends the advertisement of all vacancies in accordance with local arrangements.

Headteachers should also bring posts to the attention of a member of staff whose contract is ending, suitable jobs advertised in relevant publications. For support staff, schools should work together to retain skilled individuals across the whole school workforce.

Renewal

If a post covered by an individual employee on a fixed-term contract is to continue unchanged beyond the date of the fixed-term, the contract should be renewed. Only if the duties of the post have changed significantly can it be advertised.

Non-renewal

Non-renewal of fixed-term contracts for reasons of pregnancy or other reasons connected with pregnancy is unlawful.

Non-renewal of fixed-term contract for reasons of poor/unacceptable performance may amount to unfair dismissal. Headteachers should deal with poor/unacceptable performance as they would normally with other staff on permanent contracts, including the effective use of probationary procedures, where applicable and the maintenance of appropriate records.

Where the fixed-term contract is not renewed the statutory dismissal process must be followed.

Redundancy

The non-renewal of a temporary fixed-term contract is a dismissal and could incur redundancy rights.

The non-renewal of a temporary or fixed-term contract to cover the absence of a permanent employee, for example, one suffering from long-term illness, does not fall within the definition of redundancy. If the absent colleague does not return to work thus creating a vacancy, and the temporary employee is not offered the post, dismissal is not for redundancy but may be for "some other substantial reason".

An employee on a fixed-term contract does not have an automatic right to a post if it is decided that a "permanent" appointment will be made, for example where a member of staff decides not to return following maternity leave. The employee will however, be able to apply for this or any other suitable post as a priority under the redeployment procedures.

A redundancy will occur only where:

- the school's requirements for the employee to perform work of a particular kind, which the employee is employed to do, ceases or diminishes
- or is expected to diminish, or
- if the reason for ending the employment otherwise comes under the definition of redundancy

In these circumstances, it is important to:

- follow the recommended redundancy and redeployment procedures,
- consult with the recognised trade unions as well as with the individual, and

