



## **Fixed-term Contracts NEU guidance for members in England & Wales**

This fact sheet outlines the legal definitions of fixed-term or temporary contracts and explains what steps members should take if they believe that they have been treated less favourably or denied a permanent contract in breach of the fixed-term contract regulations.

### **What we say**

When you read through this document you may have questions about what happens in your particular school or workplace, and there may be collective issues that affect other members. In most circumstances, you should initially discuss the matter with your workplace rep, as they will know whether similar concerns have been raised by other members. If you do not have a rep at the moment, it would be a good idea to get members together to elect one. Further advice on this is available at: [neu.org.uk/becoming-a-rep](http://neu.org.uk/becoming-a-rep)

Although you may sometimes feel that you are the only person affected by or concerned about a particular issue, in reality this is seldom the case. Any difficulties you may experience are likely to be linked to wider conditions at your workplace and as a member of the NEU you have the advantage of being able to act collectively with your colleagues. This should give you the confidence of knowing that you have the weight of the union behind you.

### **What is a fixed-term contract?**

A fixed-term employment contract is not a permanent contract because it can be brought to an end by a trigger; it has a limited duration. There are three types of fixed-term contract according to the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (the regulations); they are distinguished by the trigger that ends the contract.

The first is a contract that will end on a specific date. This would include a contract where you are employed:

- for a fixed-term pending a new appointee filling a permanent post on a specific date
- to cover a period of secondment which is due to end on a specific date
- to cover a period of in-service or educational training with a specific end date.

The second type of contract is one that will end when a specific event does or does not happen, for example, you are employed on a fixed-term contract:

- to cover a post until the return of the substantive post holder who is absent on maternity leave or long-term sick leave
- to cover a post until the return of the substantive post holder who is absent on any other period of paid/unpaid leave where the end date is not known
- to cover a post until the return of the substantive post holder to their substantive hours after a temporary reduction in hours.



The third is a contract that will end when a particular task has been completed. In practice, 'task' contracts are less common in the education sector and, where they are used, the fixed-term posts are usually filled temporarily by existing permanent employees. Some examples are:

- to implement a new scheme of work
- to cover a short-term temporary increase in workload.

### **When is it acceptable for employers to use fixed-term contracts?**

Fixed-term contracts are acceptable if they are used appropriately to cover the genuine absence of a post holder or to cover a specific time-limited task. The union has for many years campaigned against the misuse of fixed-term and temporary contracts in the education sector. We object to circumstances being contrived to try to justify the use of fixed-term and temporary contracts. The NEU opposes the inappropriate use of fixed-term contracts, for example:

- where schools or colleges anticipate falling rolls or budgetary restrictions and wish to use fixed-term contracts as a means of achieving a reduction in staff by not renewing the contracts at a future date
- where schools or colleges wish to impose probationary periods upon staff before confirming appointments on a permanent basis.

We also oppose the repeated renewal of fixed-term contracts where a permanent post would be more appropriate.

On the other hand, for short periods of work, employment on a fixed-term or temporary contract is often preferable to employment on a supply or agency basis. Fixed-term contracts provide greater security of employment and can give access to preferential benefits such as sick leave and maternity pay.

### **What rights do I have as a fixed-term employee?**

The 2002 regulations provide that employers must not treat fixed-term employees less favourably than similar permanent employees with regard to pay, conditions of service and pensions, and place restrictions on the repeated use of fixed-term contracts. The aim of the regulations is to enhance your rights by:

- giving fixed-term employees the right not to be treated less favourably than comparable permanent employees, unless it is justified
- giving fixed-term employees the right to be informed of permanent vacancies
- banning redundancy waiver clauses
- giving more fixed-term employees the right to claim unfair dismissal if their contract is not renewed
- allowing fixed-term employees to become permanent after four years' continuous service on successive fixed-term contracts.

However, an employer may be able to objectively justify less favourable treatment in circumstances where it can show that it has a good business reason for doing so.

### **Am I covered by the regulations?**

The regulations apply to all staff employed on fixed-term contracts.



Supply teachers who have an employment contract with an employer are included, as are staff who have been introduced to a school by an agency but then enter into an employment contract with a school, local authority or academy trust.

Newly qualified teachers (NQTs) employed on fixed-term contracts during their induction year will be covered by the regulations.

Agency workers who are engaged directly by an employment agency are specifically excluded by the regulations unless they are employed on an employment contract with the agency.

Similarly, students on training courses will not be able to rely on the regulations.

### **What contractual terms and conditions should I have as a fixed-term employee?**

Employers are not prevented from using fixed-term contracts in the first place but they are prohibited from giving less favourable terms and conditions on the basis of your fixed-term status, unless they can objectively justify the treatment.

This means that you have the right on a pro rata basis to the same pay and other contractual provisions, such as pay and paid bank holidays, as your permanent counterparts. You have the same access to grievance procedures and the same rights under disciplinary and capability procedures.

### **Pay**

Your salary should be assessed on the same basis as that of comparative permanent employees according to the school or college salary policy.

### **Sick leave**

Qualification for sick pay and leave should be the same as for your permanent counterparts. For most teachers, entitlement is based upon your continuous aggregated teaching service in state schools, not just your continuous service with the current employer.

### **Maternity leave**

Entitlement to contractual maternity leave and pay is based on the length of your continuous service, which for school staff may be with one or more local authorities. It is often also dependent on returning to the same job for a length of time after the end of maternity leave. If your contract expires lawfully before you can fulfil this condition, you may not be entitled to maternity pay other than basic statutory maternity pay (SMP). The fact that you are, or have been, on maternity leave should not be used as a reason for not renewing your contract and thereby denying you the full maternity pay entitlement. If your contract is terminated or not renewed while you are pregnant or on statutory maternity leave, you are entitled to written reasons for your dismissal.

### **Other leave**

Qualification for other leave should be the same as for permanent staff. It would be less favourable treatment to require you to have completed a longer period of service with an employer than a permanent member of staff to qualify for a benefit.



### **Notice**

When a fixed-term contract ends on the date specified in the contract, the employer will not normally need to give notice although it is good employment practice to do so. If there is no specified end date but a task ends or the substantive post holder returns earlier than expected, notice must be given by the employer in accordance with the contract.

If you are a teacher employed under the Burgundy Book (the national agreement on teachers' conditions of service in England and Wales), employed for more than one term, and you are not covering for a permanently appointed teacher absent for a reason such as secondment, prolonged illness or maternity, the usual notice periods as set out in the Burgundy Book apply, should you or your employer wish to terminate the contract before it expires.

### **Pension**

If you are a teacher employed on a full-time fixed-term or temporary contract, you automatically pay pension contributions to the Teachers' Pension Scheme unless you choose to opt out; if you are employed on a part-time contract, you pay contributions automatically if you started part-time teaching after 1 January 2007. If you started part-time teaching before 1 January 2007, you will need to elect to pay contributions if you have not already done so.

### **What statutory employment rights do I have as a fixed-term employee?**

Your employer should not treat you less favourably on the grounds of your fixed-term status in the way it applies statutory employment rights to you unless it can objectively justify the treatment.

### **Continuous employment**

Many employment rights depend upon you having completed a specific period of continuous service with the same employer. Rights to complain about unfair dismissal are acquired after two years' continuous employment and rights to redundancy payments may be acquired after two years' continuous employment.

These provisions apply to employees on fixed-term employees in the same way as to other employees. If you have been employed by the same employer on a series of fixed-term contracts which have followed on from one another, you will acquire these employment rights after the appropriate period of continuous service, even if your current contract of employment is, for example, only one term in duration. In some cases, short breaks of service may not break continuity of employment if they are 'temporary cessations of work' between contracts with the same employer.

### **Unfair dismissal**

The non-renewal of a fixed-term contract is in law a dismissal. Providing you have two year's continuous employment, you have the right not to be unfairly dismissed and to make a complaint of unfair dismissal if your employer fails to renew your contract without a fair reason.



A 'fair' dismissal could be, for example, on the return of the substantive post holder or the completion of the task for which the fixed-term contract was created. Dismissal could be unfair if your contract is not renewed and another person is appointed to do the job on another fixed-term contract.

Dismissal due to redundancy is unfair if the selection for redundancy is solely on the basis of the contract being fixed-term. Dismissal on grounds of redundancy may be unfair where consultation procedures have not been complied with, where selection has been discriminatory or the employer has failed to consider alternative employment for the person involved.

### **Redundancy pay**

If you have completed two years' continuous service with your employer, you have the statutory right to a redundancy payment if the reason for the non-renewal of your contract is redundancy. In addition, employees on fixed-term contracts are entitled to the same level of contractual redundancy payments as permanent employees unless the different treatment can be justified by the employer. If your work ends after two years' service you may be entitled to a redundancy payment, and will be entitled to the same redundancy rights as a permanent employee in comparable work.

### **Entitlement to a permanent contract**

The 2002 regulations include a mechanism for restricting the use of successive fixed-term contracts. Successive fixed-term contracts will not be allowed to last longer than a combined period of four years. A fixed-term employee who has been engaged for four years on two or more fixed-term contracts will be entitled to become a permanent member of staff, unless the use of a fixed-term contract is objectively justified.

### **Access to training**

The regulations state that employees on fixed-term contracts should have the same opportunity to receive training as permanent employees unless less favourable treatment can be justified. The NEU does not envisage any circumstances where treating such employees differently could be justified.

### **Notification of vacancies**

The regulations also state that employees on fixed-term contracts have the right to be informed of available vacancies at their workplace. Posting of vacancies on a public notice board, website or employer intranet would be an acceptable way of doing this.

### **Equality**

You have the right not to be subjected to any detriment, act or failure to act by the employer on grounds that you are a fixed-term employee. In addition, all workers have specific protection from discrimination at work on grounds of age, disability, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation and transgender status under the Equality Act 2010. You are protected whether you are permanent, fixed-term, full-time, part-time, supply or agency. Your colleagues, managers and governors are prohibited from discriminating against you.



### **How can I tell if I have been treated less favourably?**

You would have to compare your contractual terms or treatment to that of a 'permanent employee' who, at the time that the less favourable treatment is alleged, is:

- employed by the same employer, and
- engaged in broadly similar work, and
- based at the same establishment or, if there is no comparable permanent employee at the same establishment, at a different establishment.

The comparator should have a similar level of qualification and skills as you, but they need not have similar experience.

In practice, a fixed-term school teacher should be able to compare their terms and conditions to the teacher for whom they are covering (if maternity, sickness or secondment absence, for example) or to another permanent teacher in the same school with a similar level of qualification and skills.

A teaching assistant in a local authority maintained school could select a comparable permanent employee in the same school or, if there were none, in another maintained school within the same authority.

Similarly, a centrally employed teacher who is not school-based could select a comparable permanent teacher in the service in which they work, or if there is none, a comparable permanent teacher in another service or in a school where they work.

### **Can employers avoid liability?**

Employers may avoid liability for discrimination against fixed-term employees if they can justify the less favourable treatment on objective grounds.

This means that an employer might agree that a fixed-term employee has been treated less favourably but that there were objective grounds justifying that different treatment. It is for an employment tribunal to determine whether or not the less favourable treatment has been justified objectively.

Further, if an employer agrees that you do have a less favourable contractual term than a permanent employee which cannot in itself be justified on objective grounds, the employer could raise a further defence that the total 'package' of terms and conditions offered to you is not less favourable than the total package offered to permanent employees.

### **How do the regulations affect part-time fixed-term teachers?**

If you are a part-time fixed-term worker, you have the right not to be treated less favourably on the grounds that you are part-time as well as on the grounds that you are on a fixed-term contract.

### **What should I do if I think I have been treated less favourably?**

Gather all the written evidence that you have, for example, job adverts, letters, emails and relevant screenshots. Keep a diary of all incidents of less favourable treatment



including dates, times, places, the names of any witnesses and your response to the treatment.

It is not always immediately clear whether certain treatment is on grounds of fixed-term status or for some other genuine reason, so it is sensible to record all the treatment you are concerned about. The objective should be to find out the real reason for the treatment, to stop the treatment if it is less favourable and to secure appropriate action, for example, to secure a benefit that you have been denied.

Ask your workplace rep or school or college office for copies of relevant workplace policies, for example, recruitment policies, capability procedures, redundancy policies.

The NEU urges all employers to adopt policies and procedures which prohibit unfair treatment of fixed-term staff and which allow employers to identify and tackle less favourable treatment fairly and quickly.

Discuss your concerns with your workplace rep. Your colleagues may have made similar complaints and you may be advised to tackle the issue with them collectively.

You may request your employer to provide a written statement of the reasons for the less favourable treatment. The employer must provide, within 21 days of the request, a written statement which may be submitted as evidence if the matter proceeds to an employment tribunal. The statement should explain clearly why you are receiving less favourable treatment or have a less favourable contractual term. You or your rep might decide to contact the union for further advice. The NEU will be able to advise what steps you should take.

### **How can I, as a fixed-term teacher, become permanent?**

You will become permanent if you accrue four years' continuous service on two or more fixed-term contracts with the same employer unless the previous fixed-term contract or the renewal is justified on objective grounds.

Continuous service accrues where you are employed with the same employer every week or part of a week. There is no requirement for a minimum number of hours to be worked each week. Also, temporary cessations of work due to school closures and absences by arrangement or custom where there is a stable employment relationship and an intention to return to work should not break the continuity.

If you consider that your contract has become permanent, you are entitled to request a written statement from your employer that your contract is no longer fixed-term or that you are now permanent.

The employer must provide a written statement within 21 days stating whether the contract is permanent or fixed-term.

If the employer agrees that you are permanent, the contract becomes permanent from the date on which you acquired four years' continuous employment or, if later, the date on which the current contract was entered into or renewed. Any contractual term which limits the duration of the contract will be void.



If the employer asserts that you remain on a fixed-term contract, they must explain why. Employers may avoid converting fixed-term contracts to permanent contracts by claiming that there were objective grounds for engaging you under a fixed-term contract or for renewing the contract on a fixed-term basis. An explanation of those objective grounds should be included in the written statement.

**What more can I do to protect myself and colleagues from less favourable treatment at work?**

Employers in the education sector have responsibilities towards their fixed-term staff. They also have a statutory duty to be proactive in eliminating discrimination and promoting equality of opportunity for staff. They must assess the impact of their policies and procedures on the people affected by them and take steps to remove any barriers that come to light where it is proportionate to do so. Contact your workplace rep or branch secretary if you want to get involved in reviewing the impact of policies and procedures on fixed-term staff in your workplace.

**What should I do next?**

If further advice is needed, contact your NEU workplace rep in the first instance. If there is no NEU rep in your workplace, or the peripatetic nature of your employment makes contact with a workplace rep difficult, contact the NEU Adviceline in England on 0345 811 8111 or NEU Cymru in Wales on 029 2046 5000.

Further contact details may be found at: [neu.org.uk/contact-us](https://neu.org.uk/contact-us)