

FIXED TERM CONTRACT LEGAL CHANGES

This guidance explains why you need to manage fixed term contracts from now on differently.

What's changing?

An employee currently needs two years' service before they can bring an ordinary unfair dismissal claim. This means you can usually short-cut the dismissal process if you wish to. From 1 January 2027, the qualifying period will reduce to six months. It will apply to employees who already have six months' service at that date, and to others once they reach six months' service.

From the same date:

- Employees will be able to ask for written reasons for their dismissal after six months' service; and
- The compensatory cap (currently the lower of 52 weeks' pay or £123,543) will be removed and therefore successful claims will be costly.

How will this affect fixed-term contracts?

The law treats the expiry of a fixed-term contract as a dismissal if it is not renewed or extended on the same terms as before. That's the case whether you expressly tell an employee that they are being dismissed because their contract has come to an end or where the contract comes to an end without you doing or saying anything.

At the moment, many fixed-term employees cannot claim unfair dismissal because their contracts end before they reach two years' service and they are not re-engaged on new contracts. For example, if an employee is on a one-year fixed term contract (perhaps to cover someone's maternity leave), they will not qualify for ordinary unfair dismissal when it ends.

However, once unfair dismissal can be claimed after six months service, more employees engaged under these contracts will be able to bring claims if they are unhappy about the way their dismissal has been handled.

What is a fair reason and fair process for not renewing a fixed or limited-term contract?

Once an employee has worked for the LA long enough to bring a claim of unfair dismissal, you must be able to demonstrate that you have:

- a fair reason for dismissing them; and
- followed a fair procedure

The potentially fair reasons under [section 98 of the Employment Rights Act 1996\(Opens in a new tab\)](#) are (as I went through in the training):

- Capability
- Conduct
- Redundancy
- Breach of a statutory duty or restriction
- Some other substantial reason (SOSR)

The expiry of a fixed-term contract is not, of itself, a fair reason for dismissal and you must establish that the dismissal falls within one of these five, potentially fair, reasons.

If you don't intend to renew the contract of an employee engaged under a fixed-term contract and that contract comes to an end, you will usually be able to argue their dismissal is for SOSR. A tribunal will want to know

- whether the contract was adopted for a genuine purpose (such as to provide cover for someone on long-term sick or to complete a specific project);
- whether the employee understood this (ideally via clear terms set out in the contract) and what happened afterwards.

There are some circumstances where the dismissal of a temporary worker will automatically be treated as SOSR where the replacement employee is dismissed to make way for the return of the original employee who has been absent for one of the following reasons:

- pregnancy or childbirth
- adoption leave
- shared parental leave, or
- medical or maternity suspension

These provisions are set out in s106 ERA 1996. To apply, you must have told the employee in writing - at the point you engage them - that their employment will come to an end once the absent employee returns to work. And you must only dismiss them in order to make it possible to give work to the returning employee.

The dismissal of a fixed-term employee will only amount to a redundancy if it meets the statutory definition such as where the fixed-term contract was tied to a specific task and the need for that work has ceased or diminished. Where a fixed-term contract is in place to cover the absence of a permanent employee, and the permanent employee returns to their old job, **there isn't a redundancy**. That's because there's no reduction in work - both before and after dismissal there was a requirement for one person to do the work required. A redundancy would be if for example HLN funding ceased and a temporary employee was engaged and told it was specifically linked to that funding.

In all cases you must follow a fair procedure. This will usually involve inviting the employee to a meeting, explaining the situation, giving them an opportunity to respond,

discussing any available vacancies, and keeping a clear record of what is discussed. You should then confirm in writing their end date and the reasons why the contract is ending. If you have communicated consistently from the outset, the outcome should not come as a surprise.

If there are other positions in school the temporary employee can fill, you will find it more difficult to persuade a tribunal that you are acting reasonably in dismissing them if you didn't consider this. Similarly, if you allow the contract to end without talking to the employee about it you are unlikely to demonstrate you have acted fairly.

It is also sensible to allow the employee to appeal against their dismissal.

What does this mean for schools?

You will need to manage fixed-term contracts more carefully and from an earlier stage in the employment relationship. In particular, you should:

- **Be clear from the outset:** the contract should state that it is for a fixed or limited term and specify the end date or the circumstances under which it will come to an end. Explain why the contract is not permanent so the employee understands the position and accepts the terms from the outset.
- **Plan ahead:** diarise the contract end date so you know when it is approaching, and what notice you have to give (if required under the terms of the contract). If you don't want to keep the employee on, and they have qualifying service, consider whether you have a fair reason for dismissal and seek HR advice to assess whether that reason is likely to withstand scrutiny at tribunal.
- **Check contract wording:** Fixed-term contracts can end automatically without the need to give notice, but this has to be clearly included in the employment contract and ideally the offer letter too. Depending on the contract clause consider whether you need to give notice to terminate the agreement on the end date and also think about a clause if you can terminate it early and on what grounds. Make sure these dates are diarised.
- **Follow a fair process:** even where you are not required under the terms of the contract to give notice to end the contract, to demonstrate that you have acted fairly, it's sensible to meet with the employee as the end date approaches and consider other vacant roles they might be able to do. Confirm in writing when their contract is ending and the reasons for this.
- **Consider alternatives:** if you are considering dismissing someone under a fixed-term contract as part of a restructure/redundancy process you will need to consult with them in the normal way and consider alternatives to dismissal. They are entitled to a redundancy payment if they have worked for you for two or more years (and that doesn't change when unfair dismissal rules change).

- **Pay a redundancy payment** if an employee has at least two years continuous service unless they are leaving as a result of the permanent postholder returning and knew that would be the case, or they are dismissed for capability or conduct reasons.

It is also important to remember that if you have concerns about an employee's performance or behaviour, you should address these at the time. However, you will only be able to dismiss them before the end of the fixed-term period if the contract contains a clause which allows you to do so. If you terminate without this, you run the risk that the employee will sue for wrongful dismissal.

You'll also need to follow a fair process - particularly if the employee has worked long enough to claim unfair dismissal (six months).

If you have any queries, please contact the HR Team.

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July 2026