

## FIXED TERM CONTRACT EMPLOYEES

A fixed term employee is employed on an employment contract that terminates at the end of a set period. There are new rules that set limitations on the use of fixed term contracts. There are some exceptions to those that apply to some employees in the live performance industry.

### What is a fixed term contract?

A fixed term employment contract is a contract that terminates at the end of a set period, for example:

- **Fixed for a specific timeframe** with a commencement and end date to the employment (i.e., from 1 January 2024 to 31 December 2024);
- **Set for a maximum outer-limit timeframe.** This is where a contract sets an end date but allows for termination with notice prior to the end date;
- **For an 'identifiable period'** as expressed in the *Fair Work Act 2009 (Cth)* (**FW Act**), after a set date or period of time or for a project or a season.

### What are the rules for fixed term contracts?

From 6 December 2023, new rules have applied to the use of fixed term employment contracts.

The rules set out limitations on how fixed term contracts can be used. The rules are set out at [section 333E](#) of the FW Act. There are some exceptions to the rules, which mean they do not apply to all fixed term contracts. The limitations do not apply to casual employees.

Before 1 November 2024, the rules that limit the use of fixed term contracts did not apply to employees covered by the *Live Performance Award 2020 (Award)*. After 1 November 2024, the rules do not apply to certain employees covered by the Award (see below).

#### 1. Fixed Term Contract Information Statement (FCIS)

The new rules require employers to give employees engaged on a new fixed term contract a copy of the [Fixed Term Contract Information Statement](#). The FCIS must be given to employees when they enter, or as soon as possible after entering a fixed term contract. All new employees must also be provided with the [Fair Work Information Statement](#).

#### 2. Time Limitations

- **The 2-year Rule:**  
A fixed term contract cannot be longer than 2 years. This includes any extensions or renewals.
- **Renewal limitations:**  
A fixed term contract cannot include an option to:
  - extend or renew a contract so that the period of employment is for longer than 2 years;
  - extend or renew the contract more than once.
- **Consecutive Contracts**  
A new fixed term contract cannot be issued to an employee where:
  - the previous contract had an option to extend and that option was used; or
  - the total period of the previous and the new contract is more than 2 years; or
  - the contract is the 3rd contract that follows on from 2 previous fixed-term contracts of any length (even if consecutively less than 2 years); and

- the contract is for the *same or substantially similar work*; and
- there is *substantial continuity of the employment relationship* between the end of the first contract and the new contract commencing.

### 3. Contracts that were entered into before the rules applied

The rules do not apply to fixed term contracts entered into before:

- 31 December 2024 for company dancers;
- 1 November 2024 for all employees other than company dancers covered by the Award; and
- 6 December 2023 for all other employees.

However, fixed term contracts entered into before the rules commenced must be counted when applying the consecutive contract limitations for any new contracts after the above dates.

### What exceptions are there to the limitations?

There are some exceptions to the rules which means that the limitations do not apply to all fixed term employees.

#### 1. Live Performance Award exceptions

The Award contains a number of exceptions to the rules that limit the use of fixed term contracts. The Award permits the following fixed term contracts:

- **Performers, company dancers and musicians** can be issued **run of the play contracts** without limitation (see section 28.3 for weekly performers and company dancers, and section 36.1 for musicians);
- **Production and Support Staff** can be employed on **seasonal contracts** (see section 58);
- **Performers, company dancers and musicians** can be employed on fixed term contracts:
  - for a single production (a series or one contract greater than 2 years) (section 28A.1(a));
  - multiple productions (a series of contracts up to 2 years) (section 2.A.1(b));
- **Company dancers** until 31 December 2024 (section 28A.3);
- **Level 1 company dancers** can be employed for 3 years on fixed term contracts (section 28A.2).

#### 2. Fair Work Act 2009 exceptions

[Section 333F](#) of the Act sets out the exceptions to the limitations on fixed term employment contracts. An employee's fixed term employment contract is subject to the rules where the employee is:

- (a) employed to perform a distinct and identifiable task involving specialised skills (that the employer does not have);
- (b) an apprentice or trainee;
- (c) undertaking essential work during a peak demand period (seasonal);
- (d) undertaking work during emergency circumstances or while another employee is temporarily absent (e.g. parental leave, long service leave, sabbatical, workers compensation);
- (e) earning more than the high-income threshold (currently \$175,000 per year – can be pro-rata);
- (f) employed by a contract that is funded in whole or in part by government funding:
  - for a period of more than 2 years; and
  - there are no reasonable prospects that the funding will continue.
- (g) engaged in a governance role with a prescribed time-limit under the rules of a corporation or association;
- (h) employed on a contract in which the fixed-term contract is permitted under a modern award; or

- (i) the Minister makes a regulation to exempt certain types of contracts – i.e., to address sector specific arrangements. See [Fair Work Amendment \(Fixed Term Contracts—Exceptions Measures\) Regulations 2024](#)

In certain circumstances some of the above exceptions may apply to employees in the live performance industry and therefore the rules for the limitations will not apply.

#### Example: Position is subject to government funding (s 333(f))

An employee is engaged on a 3-year fixed term contract to work on an education program at a theatre company. The education program is fully funded over the 3 years by the local council, state or federal government and the funding will end after 3 years.

If the funding was likely to continue indefinitely the exception would not apply and the employee could only be engaged on maximum of a 2-year fixed term contract.

#### Example: Minister makes a regulation (s 333(i)) Subregulation 2.15(7) Charity and not-for profit sector employees

This exception applies to fixed term contracts entered into **on or after 1 November 2024 and before 1 November 2025** if the following apply:

- the employee is engaged by a **charity registered under the [Australian Charities and not-for-Profit Act 2012 \(ACNC Act\)](#)**; and
- the employer meets the meaning of charity/charitable purposes in the [Charities Act 2013](#). (The ACNC provides a [full list of recognised charitable purposes](#)).
- **the position or program is funded**; and
- that funding is provided in whole or in part:
  - by government funding such as a grant or procurement;
  - by a different philanthropic entity (which must also be a charity registered under the ACNC Act); or
  - as a testamentary gift or contribution for a charitable purpose (within the meaning of the [Charities Act 2013](#)) by a philanthropic entity.
- the **work is to be performed for a specific program or project** that the funding relates to; and
- the program or project will run for **no more than 5 years**, taking into account any period for which the program has already run; and
- the contract is for substantially the same period as the length (or remainder) of the program or project; and
- if the employee is already, or has previously been, employed, the new contract would not result in the employee being employed on a continuous or substantially continuous basis for more than 7 years in total; and
- **the funding for the contract starts on or after 1 November 2024.**

#### Case Study 1:

Naomi has worked for a dance company that is a registered charity. Naomi has worked on a fixed term employment contract for 2 years.

The dance company receives funding to run an education program for primary school children. The education program is funded by a government grant for 1 year. The dance company can employ Naomi

on a new 1 year fixed term contract to manage the education program. After 1 year the primary school education program ends.

However, the dance company has received a new grant from a philanthropy organisation to run an education program for high school students for 1 year. The dance company can engage Naomi on another 1 year fixed term contract to manage the program.

Because the dance company is a registered charity, and has received program/project specific funding they are permitted to give Naomi a new fixed term contract even though she will have been engaged on:

- more than 2 consecutive fixed term contracts; and
- fixed term contracts for more than 2 years.

### What happens if a fixed term contract is made that is not permitted?

Where a fixed term contract is made in breach of the limitations above, the contract's end date will not apply. This means the contract of employment will not come to an end at that date.

The employee will automatically become a permanent/ongoing employee and the other terms and conditions set out in the contract will continue to apply to their employment.

The employee may also gain entitlements to notice of termination and redundancy and access to unfair dismissal proceedings if dismissed (where ordinarily an employee on a fixed term contract is not eligible if the employment finishes because of the end of the contracted period).

### Anti-avoidance provisions

There are rules to prevent employers from avoiding limitations imposed on fixed term contracts (such as terminating employment, delaying re-engaging an employee, not re-engaging an employee and instead engaging another person to do substantially similar work, or change the nature of the work or tasks to be performed).

Penalties may apply for issuing contracts that are not permitted or breaching anti-avoidance rules:

- Ordinary contravention – up to \$18,780 for an individual; \$93,900 for a company;
- Serious contravention – up to \$187,800 for an individual and \$939,000 for a company.

### Who to contact for more information

For more information or queries, please contact:

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