

Fixed term contracts: No longer as “fixed”

On 4 March 2014 the Labour Relations Amendment Bill 16D of 2012 (LRAB) was passed by the National Assembly and its promulgation is awaiting signature by the President.

One of the many substantial amendments now relates to the statutory regulation of fixed term contracts. A fixed term contract usually refers to the employment of an individual for a stipulated period or for the duration of the completion of a specific task. The LARB defines a fixed term contract as a contract of employment that terminates on the occurrence of a specified event, the completion of a specified task or project, or a fixed date, other than an employee's normal or agreed retirement age.

The Labour Appeal Court has held that an employee employed in terms of a fixed term contract cannot reasonably expect to receive permanent employment, even in the instance when the fixed term contract was renewed successively and where an employee alleges that she expected a renewal, which would amount to permanent employment. The expectation of a renewal on the part of the employee in this instance would not amount to a dismissal in terms of the current LRA. However, the proposed amendments to the LRA, once promulgated, will no longer generally permit an employer from employing an employee on a fixed term contract for longer than three months. The consequence of the proposed amendment is that the expectation of permanent employment will no longer be an issue.

A fixed term contract for longer than three months will only be lawful if the nature of the work for which the employee is employed is of a limited or definite duration or the employer can demonstrate any other justifiable reason for fixing the term of the contract. The LRAB sets out nine instances of when a fixed term contract of longer than three months would be considered justifiable. A justifiable reason is, however, not limited to these nine instances.

The amendments also provide that employees on a fixed term contract of longer than three months should be treated no differently from permanent employees and this will apply retrospectively to fixed term contracts entered into before the promulgation of the LRAB. Furthermore, employees employed on a fixed term contract in excess of 24 months to work exclusively on a specific project that has a limited or defined duration are entitled to severance with limited exception.

The regulation of fixed term contracts does not apply to employers that employ less than 10 employees, or if the employer's business has been in operation for less than two years and employs less than 50 employees, provided that the employer does not conduct more than one business or the business was formed by the division or dissolution for any reason of an existing business.

An employee earning in excess of R193,805 per annum (the current BCEA threshold) is excluded from the ambit of these fixed term provisions.

The purpose of the amendments is to protect vulnerable employees and/or employees earning below the threshold. The amendments do, however, make the regulation of flexible employment solutions more challenging for employers. Employers should fully consider the implications of fixed term contracts, so that they are not saddled with a permanent employee thereafter.



Key Contact



Hedda Schensema
Partner, Johannesburg
T +27 11 523 6163
hedda.schensema@hoganlovells.com



Nadeem Mahomed
Associate, Johannesburg
T +27 11 523 6014
nadeem.mahomed@hoganlovells.com

www.hoganlovells.com

"Hogan Lovells" or the "firm" is an international legal practice that includes Hogan Lovells International LLP, Hogan Lovells US LLP and their affiliated businesses.

The word "partner" is used to describe a partner or member of Hogan Lovells International LLP, Hogan Lovells US LLP or any of their affiliated entities or any employee or consultant with equivalent standing. Certain individuals, who are designated as partners, but who are not members of Hogan Lovells International LLP, do not hold qualifications equivalent to members.

For more information about Hogan Lovells, the partners and their qualifications, see www.hoganlovells.com.

Where case studies are included, results achieved do not guarantee similar outcomes for other clients. Attorney Advertising.
© Hogan Lovells 2014. All rights reserved.