



## Changes to Fixed-Term Contracts

Starting 6 December 2023, changes are happening to fixed-term contracts.

This modification to the Fair Work Act arises from the notion that recurrent or continuous fixed-term contracts fail to provide job security.

### What constitutes a fixed-term contract, and what is the background for these changes?

A fixed-term contract stipulates that employment will terminate, as mutually agreed, upon the conclusion of a definite time period.

Certain fixed-term contracts do not stipulate any notice period. A particular risk has been the sequential use of consecutive fixed term contracts. The more these contracts persist, the riskier it is for an employer to rely solely on the contract's end date to end the employment relationship.

In such cases, the employer could still be accused of "dismissal," making them susceptible to claims of unfair dismissal under the Fair Work Act.

### What is unlawful under the amendments?

It will be deemed unlawful for an employer to enter into a fixed-term employment agreement in various situations, specifically when the fixed-term contract:

- Specifies a duration that is greater than two (2) years, including both the identifiable span and any feasible extension or renewal duration.
- Entails an option or entitlement for multiple renewals or extensions, irrespective of the duration of the first contract, whether it be for a short period of time or a longer period of time.

It will also be unlawful for the parties involved to consecutively execute a series of fixed-term contract scenarios in the following scenarios:

- When the cumulative duration of the fixed term contracts amounts to two (2) years.
- When either the preceding or ongoing contract permits renewal or extension .
- When the employee has previously been engaged through two consecutive fixed-term contracts.

### Secure Jobs, Better Pay legislation changes that affect Fixed-Term Contracts

- Imposes substantial regulations and limitations on the use of fixed-term contracts, with the new legislation aiming to confine the maximum period of employment to two years under that type of contract.
- Incorporates certain exemptions to the limitations on fixed-term contracts.
- Criminalises breaches of the prohibition on the improper application of fixed-term contracts and introduces measures to counteract evasion.
- Establishes mechanisms to apprise employees of their entitlements and to enable the Fair Work Commission to resolve disputes concerning fixed-term contracts.

# Changes to Fixed Term Contracts What Employers should know

## What consequences would employers face upon breaching these new regulations?

- Potential civil penalties, as this constitutes an offense under the FW Act
- The stipulation in the contract dictating the termination of employment at the contract's conclusion becomes null and void.



Furthermore, employers are required to provide new employees with a prescribed **Fixed-Term Contract Information Statement (FTCIS)**. Failure to fulfill this obligation will lead to civil penalties and would also be considered illegal.

*\*The FTCIS will be available to download from the [Fair Work website](#) from 6 December 2023.*

## Do exceptions exist?

Some exceptions exist, but there is not much room for negotiation.

Among the most notable exceptions are circumstances where the employee is engaged:

- In a casual capacity.
- For a distinct and specific task demanding specialised skills.
- In conjunction with a training arrangement (e.g., apprenticeships).
- To fulfill vital roles during peak periods (e.g., seasonal labor).
- To execute tasks during emergencies.
- In lieu of another employee's temporary absence (e.g., parental leave).
- With earnings surpassing the high-income threshold (currently set at \$167,500).
- In relation to a position funded partially or wholly by government allocations.
- In alignment with the governance regulations of a corporation or other association, where these regulations stipulate the duration of the appointment.



*While there are other exceptions, the main goal is to discourage employers from using fixed-term contracts for workforce management, except in limited cases. The emphasis is on permanent, secure employment, with fixed-term contracts primarily for short-term arrangements or high-earning senior employees.*

## Why does this matter?

- Employers found in violation of these new statutes will face civil penalties. In the case of a deems "serious contravention of the Fair Work Act," the maximum penalty increases significantly.
- Moreover, if a contract doesn't meet these laws, the fixed-term duration becomes invalid and unenforceable. Essentially, the contract remains in force beyond the specified term. This allows employees to use its terms and conditions even after the unlawful fixed-term period ends.

## Changes to Fixed-Term Contracts How Employers can prepare for the changes

Assess their existing employment contracts and workforce management methodologies, identifying employee groups currently engaged or regularly involved in fixed-term arrangements (and consider the viability of continuing this practice).



01



02

Seek [HR Assistance](#) to ascertain the impact of these changes on their existing employment arrangements, evaluate potential exemptions, and outline measures to pre-empt future uncertainty, liability, and penalties.

Devise or update recruitment policies and protocols that ensure the lawful utilisation of fixed-term contracts, including mechanisms for monitoring the duration of such arrangements and contingency plans for contract expirations.



03



04

Guarantee that employees are provided with the Fixed Term Contract Information Statement before or promptly after entering any fixed-term agreement.

The new changes to Fixed-Term Contracts can be difficult to navigate for businesses—especially if you want to ensure your existing contracts are compliant with the updates.

Get in touch with Now Actually to see how we can help.

[Contact Us](#)

