
GUIDELINES REGULATING FIXED-TERM APPOINTMENTS EXCEEDING 3 (THREE) MONTHS¹

1. Objective

The objective of these guidelines is to regulate the appointment of employees on a fixed-term contract exceeding three months, in line with the provisions of relevant labour legislation, specifically the Basic Conditions of Employment Act (BCEA), the Labour Relations Act and the Employment Equity Act. Any aspects not covered by these guidelines will be regulated by the relevant legislation.

2. Context

Changes to various statutes regulating labour relations require the University to scrutinise its current policies, guidelines and procedures governing the employment of atypical categories of employees. In addition, cognisance needs to be taken of the changes to the Employment Equity Act with regard to fair practices and procedures relating to conditions of employment, remuneration and benefits for persons doing comparable work. These specific guidelines have been drafted to ensure that the University operates within the ambit of the applicable legislation.

3. Application

These guidelines apply to employees:

- 3.1. who are appointed on fixed-term contracts exceeding three months (including student appointments); and
- 3.2. who earn less than the earnings threshold (March 2021: R211 596.30) set by the Minister of Labour from time to time in terms of the BCEA.²

¹ These guidelines only apply to fixed-term employees earning less than the earnings threshold determined by the Minister of Labour from time to time in terms of the Basic Conditions of Employment Act 75 of 1997 (BCEA). The University's Remuneration Policy shall apply in respect of the appointment of fixed-term employees earning above this threshold..

² February 2015, the threshold was R211 596.30.

4. Definitions

‘Fixed-term appointment:

Where employees render services for a specified task or project in respect of which they have been employed for a limited or defined period of time. Such employment may be on a full-time or part-time basis.

‘Permanent appointment’:

Where employees render services in respect of which they have been employed for an undefined period of time. Such employment may be on a full-time or part-time basis.

‘Roll-over of contracts’:

The renewal of an existing fixed-term contract on the same or similar terms. For the purposes of these guidelines, the renewal of a contract following a break in service of 12 (twelve) months or less will be regarded as a roll-over.

5. General principles

- 5.1. All offers to employ an employee on a fixed-term contract, or to renew such a fixed-term contract, must be made in writing, and the letter of employment must clearly state justifiable reasons for the conclusion of such a fixed-term contract, as contemplated in point (b)–(d) below.
- 5.2. The University must justify the employment of persons on fixed-term contracts exceeding 3 (three) months and at remuneration of less than the earnings threshold determined by the Minister of Labour from time to time.
- 5.3. The University must be able to either show that the nature of the work is of a limited or defined duration or demonstrate the existence of any other justifiable reason for fixing the term of a contract, failing which the contract shall be deemed to be of indefinite duration.
- 5.4. Other justifications include:
 - a. the need for a replacement where someone is temporarily absent from work;
 - b. a temporary increase in the volume of work (which is not expected to extend beyond 12 months);
 - c. the appointment of a non-citizen who is only allowed to work for a defined period in terms of South African immigration laws;
 - d. filling a position that is externally funded for a limited period;
 - e. the appointment of a retiree;
 - f. the appointment of a student or recent graduate to afford such person the opportunity to receive training or gain work experience; and
 - g. employment for seasonal work.

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- 5.5. The roll-over of contracts may create an expectation of permanent employment with the employee. Should such a contract not be renewed where this expectation exists, it shall be deemed a dismissal for purposes of the Labour Relations Act. For this reason, the roll-over of contracts must only be considered in very specific circumstances and in consultation with Human Resources. Contracts may only be renewed if the environment is able to demonstrate that the nature of the work is of a limited or defined duration or that there is a justifiable reason for fixing the term of the contract (i.e. the same requirements as set upon the conclusion of the original fixed-term contract). Environments must therefore properly determine whether a position is of a defined or an undefined duration. The Human Resources Division should be consulted in this regard.
- 5.6. An employee on a fixed-term contract (irrespective of the duration) must be afforded the same access to opportunities to apply for vacancies at the University as is available to permanent employees..

6. Conditions of employment:

- 6.1. An employee on any fixed-term contract exceeding three months, irrespective of the remuneration level, must not be treated less favourably than an employee employed on a permanent basis and performing the same or similar work, unless there is a justifiable reason for such differentiation. Such reasons include the application of a system that takes into account factors such as seniority, experience, length of service, merit and the quality or quantity of work performed. The Human Resources Division should be consulted in this regard. Environments must ensure that the calculation of the remuneration package (cost of employment) includes the cash component, monetary value of benefits, and all contributions to benefit funds.
- 6.2. Where persons are employed on fixed-term contracts of less than 12 (twelve) months, although no less than three months, they must be paid the monetary value of benefits such as medical aid and provident-fund contributions.
- 6.3. Where persons on a fixed-term contract of 12 (twelve) months and longer choose not to participate in the full complement of benefits applicable to permanent employees, they should not be penalised in terms of their total remuneration package.

7. Filling of positions:

- 7.1. All fixed-term appointments³ exceeding three months must be made in line with these guidelines and must adhere to any other, relevant University recruitment and selection policies, guidelines and procedures, particularly the Code for Management Practice.
- 7.2. In order to minimise the risk of potential disputes, all appointments must be approved for compliance by the Human Resources Division. Only employment contracts approved by the Human Resources Division will be regarded as valid employment contracts.
- 7.3. No verbal or any other form of non-written representation must be made to persons, as these can lead to an expectation of rights. All representations must be reduced to writing and must comply with these guidelines. This must be strictly enforced.

8. Students

Where the University employs students to perform various tasks, it does so for different reasons, including affording them the opportunity to receive training and gain work experience. This constitutes a justifiable reason for employing students on a fixed-term contract exceeding three months. This category of employees is known as student assistants and includes tutors.

Due to the nature of the work performed and working hours, the general terms and conditions of employment pertaining to student assistants may differ from one environment to the next. This may include differences in the rate of pay.

The fixed-term contract of a student assistant terminates upon the expiry of the contract or when the person is no longer a student. No person other than a student registered at Stellenbosch University may under any circumstances be employed as a student assistant.

Student assistants do not qualify for retirement funding, medical aid or any other service benefits.

Individuals that receive payment via a post-doctoral fellowship are not viewed as employees and are therefore excluded from this legislation.

³ These guidelines apply to the appointment of employees earning less than the BCEA threshold.

9. Severance payment

Fixed-term employees appointed to work exclusively on a specific project that has a limited or defined duration of more than 24 months must receive 1 (one) week's remuneration for each completed year of service. Environments must make budgetary provision for this payment.

In determining the length of the employee's employment in order to calculate severance pay, previous employment with the University must be taken into account if the break between the different periods of employment was less than one year. However, if the jobs previously performed are genuinely and significantly distinct, the contracts may in no way be viewed as continuous service, but must be regarded as independent of each other and therefore no severance pay will be paid.

TRANSITIONAL ARRANGEMENT FOR 2015: Where a contract already existed prior to 1 January 2015, the employee is entitled to severance pay in respect of any period worked subsequent to this date. For example, if a contract commenced on 1 January 2013 and ends on 31 December 2015, the employee shall be entitled to one week's severance pay, as (s)he will have completed a full year of service subsequent to 1 January 2015. If, however, the employee's contract ends in June 2015, no severance is payable, as the employee will not have completed a year of service subsequent to 1 January 2015.

10. Termination of appointment

Environments must ensure that employees do not work beyond the termination date of their contracts.

Where operational factors require contracts to be terminated prior to their expiry, the environment must inform Human Resources, who will provide the necessary support in facilitating the processes prescribed by law to fairly terminate the contracts.