



### **FIXED-TERM CONTRACTS:**

A fixed-term contract is one that commences on a particular date and ends on a particular date or completion of a certain project stipulated in the contract of employment.

Members must remember that they cannot enter into a fixed term contract with a new employee to evade the duties put on employers concerning employees employed on a probation period.

There is a duty on an employer to evaluate, counsel and assist employees on probation and inform them when their work performance is not up to standard. After each counseling session, the employee must be given a reasonable time to improve his/her standard of performance. If there was no improvement after being given enough opportunities to improve, the employer can either inform the employee that his/her services will be terminated after the probation period has expired or if the employer feels that there is potential of future improvement, the probation period can be extended.

The employee's services can also be terminated during the probation period for misconduct and under these circumstances the employer needs less compelling reasons to justify a sanction of summary dismissal.

Where an employer fails to renew a fixed-term contract or renews it on less favourable terms, an employee can refer a dispute to the CCMA or Bargaining Council for unfair dismissal if he can prove that the employer created a reasonable expectation that the contract would be renewed or be renewed on similar terms.

The proposed amendments to the Labour Relation Act require that an employer must appoint an employee permanently, unless the employer can establish a justification for employment on a fixed term.

The proposed amendments to the Basic Conditions of Employment Act will furthermore require that employees appointed on a fixed term contract should be given the same benefits as permanent employed employees.

It is clear from the above that Government wants to give similar labour status to fixed term and permanent employees.

It frequently happens that the employer allows an employee to continue working beyond the expiry date as stipulated in the contract of employment or after the project for which he had been employed had been completed.

In cases like this the employee can argue that by allowing him to work beyond the expiry date of his contract, the employer changed his status from a fixed-term employee to a permanent employee. If the employer does not have a contract of employment proving the contrary, the employee could be successful

in his claim for unfair dismissal and the award could entail re-instatement or compensation for the period the employee was unemployed after his fixed term contract "expired".

Members are advised to make sure that they do not allow an employee to continue working after the fixed term contract has expired or to put any renewal or extension of the contract of employment in writing before the expiry date.

In order not to be contractually obligated for the full contractual period of a fixed-term contract, members are advised to include a provision in their fixed-term contracts of employment for the premature termination of the contract in accordance with the statutory procedures in the case of conduct, capacity or the operational requirements of the employer. The MBA has a standard fixed term contract available to our members which covers all the loop holes available to the employee.

To avoid unnecessary trouble with fixed term contracts, our members are advised not to appointing employees on a fixed term contract, unless the position is of a truly temporary nature.

(GO)