

Employment E-Brief 15

For further
information contact:

Judith Ellery

jellery@metcalfes.co.uk

0117 9453080

Paul Seath

pseath@metcalfes.co.uk

0117 9453084

Improved Rights for Fixed-Term Employees

As of yesterday, over a million fixed-term employees were given new rights to equal treatment on pay, pensions, holidays, sick pay and training. The practice of using successive fixed-term contracts in what are effectively permanent posts will also be unlawful.

The Fixed-Term Employees' (Prevention of Less Favourable Treatment) Regulations 2002 mean fixed-term employees should not be treated less favourably than similar permanent employees unless there is an objective justification for doing so. However, employers can choose to look at overall packages of terms and conditions. For example, it is open to any employer to compensate a fixed-term employee through a higher salary, in lieu of that person not having access to some other benefit, such as a pension scheme.

The Regulations also restrict the use of successive fixed-term contracts. An employee on a fixed-term contract will be regarded as a permanent employee if:

1. The current fixed-term contract has been renewed or the employee was previously employed on a fixed-term contract before the start of the current contract;
2. The employer has been continuously employed under fixed-term contracts for four years or more, discounting any period before 10 July 2002; and
3. At the time of the most recent renewal or, where the current contract has not been renewed, at the time that contract was entered into, employment under a fixed-term contract was not justified on objective grounds.

It is therefore important for employers to check the terms and conditions under which fixed-term employees are retained to ensure compliance with the Regulations. Employees will also need to appreciate that it will no longer be possible to have rolling fixed-term contracts which do not create a permanent employment relationship.

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