

L.N. 51 of 2007

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)**

Contracts of Service for a Fixed Term Regulations, 2007

IN exercise of the powers conferred by article 34 of the Employment and Industrial Relations Act, 2002, the Minister of Education, Youth and Employment has made the following regulations –

Title and
commencement.

1. (1) The title of these regulations is the Contracts of Service for a Fixed Term Regulations, 2007.

(2) These regulations shall come into force on such date as the Minister may establish by notice in the Gazette, and different dates may be so established for different provisions thereof.

Definitions.

2. (1) For the purposes of these regulations –

“the Act” means the Employment and Industrial Relations Act.

“comparable permanent employee” means a whole time employee in the same establishment employed on a contract of service of indefinite duration and who is engaged in the same or similar work or occupation, due regard being given to other considerations including seniority, qualifications and skills:

Provided that where there is no comparable permanent employee in the same establishment, the comparison shall be made by reference to collective agreements covering similar comparable permanent employees in other establishments;

“contract of service for a fixed term” means a contract of service entered into between an employer and an employee where the end of the contract is determined by reaching a specific date, or by completing a specific task, or through the occurrence of a specific event.

(2) Subject to the provisions of sub-regulation (1) of this regulation, terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

3. (1) These regulations shall apply to employees who are in employment under a contract of service for a fixed-term. Applicability.

(2) These regulations shall not apply to:

(a) persons appointed to serve on any Board of any statutory or public Authority, Commission, Committee, Corporation or the Board of any body corporate established by law or of any other public sector entity as referred to in article 80(3) of the Act;

(b) assignments for the performance of a task of a specific nature or a specific task to be performed in a specified period of time given by the employer to an employee who is already employed with the employer on an indefinite contract of service;

(c) persons undergoing training or work experience under an approved training or apprenticeship or scholarship or trainee scheme;

(d) a contract of service in the Public Service or the Public Sector not made in accordance with the applicable laws of Malta and in particular, the provisions of the Constitution.

4. Employees on a contract of service for a fixed term shall not be treated in a less favourable manner than comparable permanent employees solely because they have a contract of service for a fixed term: Principle of non-discrimination.

Provided that an employer may differentiate between the conditions of employment of an employee on a fixed term contract and a comparable employee on a contract of service for an indefinite time, if:

(a) the difference arises in view of the recognition of length of service, experience, qualifications or conditions of pay and work attached to the contract of service immediately preceding the contract of service for a fixed term, and such other differences as are justified on objective grounds; or

(b) the task for which the employee has been employed is specific or has a top management nature and includes objective considerations which justify such differentiation.

5. (1) It shall be the duty of the employer to inform employees on a contract of service for a fixed term about vacancies which become available in the place of work and to give such employees the same Employer's duty to inform employees of vacancies.

opportunity as other employees to secure work on a contract of service for an indefinite time within the place of work.

(2) The employer may inform the employees by way of a general announcement to be posted up at a suitable place in the place of work.

Access to training opportunities etc.

6. The employer shall endeavour to facilitate access by employees on a contract of service for a fixed term to appropriate training opportunities to enhance their skills, career development and occupational mobility.

Successive Fixed Term Contracts.

7. (1) Without prejudice to regulation 3(2) hereof, a contract of service for a fixed-term shall be transformed into a contract of service for an indefinite period if:

(a) the employee has been continuously employed under such a contract for a fixed term, or under that contract taken in conjunction with a previous contract or contracts of service for a fixed term in excess of a period of continuous employment of four years; and

(b) the employer cannot provide objective reasons as referred to in paragraphs (i)(a), (iii)(a) or (iv)(a) of sub-regulation (6) of this regulation to justify the limitation of a renewal of such a contract for a fixed term:

Provided that in the computation of the period of four years mentioned in paragraph (a) above, any period during which the employee was continuously employed prior to the coming into force of these regulations shall also be taken into consideration.

(2) The effective date when an employee shall be considered to have been employed on an indefinite basis is the date following that when the four-year period has expired, but the period in continuous employment on one or more fixed-term contract or contracts of service shall be taken into account for all other purposes, including seniority and redundancy.

(3) This regulation shall be without prejudice to the transformation of the contract of service of an employee who was previously employed on a fixed term contract to one of an indefinite duration if the said employee is retained in employment and is not given a new contract of service for a fixed-term within the first twelve working days following the expiry of the previous contract, as established in article 34 (2) of the Act.

(4) Without prejudice to the generality of paragraph (b) of sub-regulation (1) of this regulation, the objective reasons which the employer may plead for the retention of an employee on a fixed-term contract may include that the employee:

(a) was employed as a casual substitute or similar employee on a back to back basis or as a temporary substitute employee;

(b) occupies a management position including employees in Scales 1 to 4 inclusive in the Public Service or a comparable grade in the public sector;

(c) was engaged till the completion of a specific task or the occurrence of a specific event or when a specific date is forecast for the termination of employment;

(d) was employed by means of an appointment made to safeguard particular security or economic interests of the State or was employed in missions or postings abroad;

(e) is a person employed as a person of trust to serve in the office of a publicly elected body or of a holder of a publicly elected office, or is employed by a person referred to in paragraph (a) of sub-regulation (2) of regulation 3 to serve as a member of the private staff, or is employed to serve as advisor or consultant or in any other capacity in the Public Service or public or private sector as a person of trust.

(5) For the purposes of this regulation, the term “continuously employed” shall include those contracts of a fixed-term which are renewed within six months from their termination and this period between the contracts shall be included in the calculation of the four year qualifying period referred to in regulation 7(1)(a):

Provided that another contract of service for a fixed-term entered into after the lapse of the six month period shall not be considered as continuous employment :

Provided further that another contract of service for a fixed-term entered into within the six month period after the termination of a previous contract shall be considered as continuous employment if the tasks under the subsequent contract are substantially the same as the tasks under the previous contract of employment:

Provided also that the tasks shall still be considered to be substantially the same even though they encompass changes related to technical progress or changes in work practices or in the way the tasks are carried out or the contract includes a promotion related to work assigned in any previous contract.

(6) (i) Without prejudice to the rights of the employee under these regulations, whenever an employer intends to enter into a contract of service for a fixed term with a prospective employee the employer shall list in writing in that contract:

(a) the objective reasons, if any, why the contract to be entered into should not be converted into one of indefinite duration if the employee is continuously employed on one or more successive fixed-term contracts for a period exceeding four years, or

(b) the actual wages and other conditions of employment attached to the contract of service if this will automatically become indefinite in the absence of objective reasons.

(ii) If an employee on a fixed term contract is continuously employed on one or more successive contracts for a period exceeding four years:

(a) in the absence of compliance with sub-paragraph (a) of paragraph (i) hereof, the employee's contract of employment shall automatically become an indefinite contract of employment, and

(b) in the absence of compliance with sub-paragraph (b) of paragraph (i) hereof, the employee shall enjoy the same conditions of employment enjoyed under the fixed-term contract.

(iii) In the case of an employee on a fixed-term contract whose period of continuous employment has not exceeded four years on the date of entry into force of this sub-paragraph, the employer shall, either before the expiry of the current contract or within a period of six months from the date of entry into force of these regulations, whichever is the earlier, furnish the employee in writing with:

(a) the objective reasons, if any, why the contract which had been entered into should not be converted into one of indefinite duration if the employee is employed on one or more successive contracts for a continuous period exceeding four years, or

(b) the actual wages and other conditions of employment attached to the contract once this automatically becomes indefinite in the absence of objective reasons.

(iv) In the case of an employee in the Public Service or public sector on a fixed-term contract whose period of continuous employment on one or more successive fixed-term contracts has exceeded four years and who is still in employment on the date of entry into force of this sub-paragraph, the employer shall furnish that employee in writing, within a six month period from the date of entry into force of this sub-paragraph, with:

(a) the objective reasons, if any, why the contract which had been entered into should not be converted into one of indefinite duration if the employee has been employed on one or more successive contracts for a continuous period exceeding four years, or

(b) the actual wages and other conditions of employment attached to the contract once this automatically becomes indefinite in the absence of objective reasons.

(v) If an employee on a fixed term contract referred to in paragraph (iii) or (iv) above has been employed or is subsequently employed on one or more successive contracts for a continuous period exceeding four years:

(a) in the absence of a document listing the reasons as referred to in paragraphs (iii)(a) or (iv)(a) hereof and furnished to the employee within the relevant applicable period, the employee's contract of employment shall automatically become an indefinite contract of employment as provided for in sub-regulations (2) or (7) hereof as the case may be, and

(b) in the absence of written information referred to in paragraphs (iii)(b) and (iv)(b) hereof and furnished to the employee within the relevant applicable period, the employee shall on conversion to an indefinite contract of service enjoy the same conditions of employment enjoyed under the fixed-term contract.

(7) Subject to paragraph (iv) of sub-regulation (6) hereof, employees in employment in the public service or public sector on the date of entry into force of these regulations who, during the period between 1st May 2004 and the date of the said entry into force, completed a period of more than four years continuous employment and in respect of whom there is no objective reason justifying their retention on a

fixed-term contract as referred to in sub-regulation (4) hereof, shall be deemed to have become employees on an indefinite contract with effect from the day following that when the said four-year period expired.

(8) Nothing in sub-regulation (7) hereof shall be interpreted as having the effect of reviving any employment relationship which has been terminated prior to the date of entry into force of these regulations or of invalidating any such termination.

(9) Without prejudice to the provisions of paragraphs (iv)(b) and (v)(b) of sub-regulation (6) hereof, nothing in these regulations shall be interpreted as conferring on employees who have acquired an indefinite status the right to carry with this status benefits which are particular to definite contracts.

Complaints to the
Industrial Tribunal.

8. (1) An employee may present a complaint to the Industrial Tribunal that his employer has infringed a right conferred on him by these regulations.

(2) Subject to the provisions of sub-regulation (3) of this regulation, the Industrial Tribunal shall not consider a complaint under this regulation unless it is presented within a period of four months, beginning from the date of the less favourable treatment.

(3) Where an employee presents a complaint under this regulation and the employer claims that the treatment is justified on objective grounds, it shall be incumbent on the employer to prove that the less favourable treatment is so justified on objective grounds.

Offences.

9. Any person contravening the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine of not more than five hundred liri (Lm500).

Revokes L.N. 429
of 2002.

10. The Contracts of Service for a Fixed Term Regulations, 2002, are hereby being revoked.