

Important: New employees also need to be given the Fair Work Information Statement. Visit fairwork.gov.au/fwis

There are **new rules** that limit the use of fixed term contracts.

In summary, from 6 December 2023, employers can't employ someone on a fixed term contract:

- ▶ that is for longer than 2 years
- ▶ that has more than one extension option, or
- ▶ where the employee will be employed under consecutive contracts.

There are exceptions to the new rules that mean they don't apply to all fixed term contracts. These rules don't apply to casual employees.

Read this statement to find out more.

Contracts before 6 December 2023

These rules apply to new contracts entered into **after** this date. However, fixed term contracts entered into before 6 December 2023 **do have to be considered** when considering applying the consecutive contracts limitation for a new fixed term contract entered into on or after 6 December 2023.



What is a fixed term contract?

You're on a fixed term contract if you enter into a contract with an employer that terminates at the end of an identifiable period. For example, the contract ends after:

- ▶ a set date or period of time, or
- ▶ a season

Employees engaged on fixed term contracts who are engaged on a full-time or part-time basis have similar **conditions and entitlements** as permanent (ongoing) employees. This includes leave entitlements.

There are **2 main differences** between full-time or part-time fixed term employees and permanent employees:

| | Fixed term | Permanent |
|---|---|--|
| Notice of termination and redundancy | ✗ Not eligible if employment finishes at the end of the contracted period | ✓ Generally entitled to notice of termination and redundancy |
| Unfair dismissal | ✗ Generally not eligible if employment finishes because of the end of the contracted period | ✓ Eligible for unfair dismissal after 6 months (12 months for employees of a small business) |

For more information on fixed term employment, visit fairwork.gov.au/fixed-term-employees

Important:

Fixed term employees are not the same as independent contractors (sometimes called ABN workers or subcontractors). Independent contractors usually negotiate their own fees and working arrangements, have the ability to delegate or subcontract work and can work for more than one client at a time. For information on independent contracting, visit fairwork.gov.au/contractors



What are the new limitations on using fixed term contracts?

From 6 December 2023, there are rules (called limitations) about the use of fixed term contracts **after** this date. There are **3 rules**, and **all rules need to be followed** or the contract's end date will no longer apply, which means the contract won't automatically come to an end at the end of that time.

1: Time limitations

A fixed term contract can't be for longer than 2 years. This includes any extensions or renewals.

2: Renewal limitations

A fixed term contract can't have an option to:

- ▶ extend or renew the contract so that the period of employment lasts longer than 2 years, or
- ▶ extend or renew the contract more than once.

Example: Renewal limitations

Chelsea is given a contract for 6 months which has a right for her employer to extend it twice for up to 4 months each time. This contract breaches limitations because a fixed term contract can't have an option or right to extend it more than once, even if the total period is less than 2 years.

3: Consecutive contract limitations

If the first 3 points below all apply, and one or more of the scenarios in the 4th point applies, an employee can't be offered a new fixed term contract.

1. Their previous contract was also for a fixed term, **and**
2. their previous contract and the new contract are mainly for the same work, **and**
3. there is substantial continuity in the employment relationship between the previous and new contracts, **and**
4. any of the following apply:
 - a) the previous contract contained an option to extend that was used
 - b) the total period of employment for both the previous and new fixed term contract is more than 2 years
 - c) the new fixed term contract contains an option to renew or extend, or
 - d) there was an initial contract in place (before the previous contract):
 - > that was for a fixed term
 - > that was for the same or similar work, **and**
 - > where there was substantial continuity in the employment relationship.

Example: Consecutive contracts

Ahmad was employed on a fixed term contract as a site engineer for a construction company. His initial contract was for the period of 1 January 2022 to 31 December 2022. It included an option for extension, which his employer used for an additional period of one year, making the new end date 31 December 2023. On 1 January 2024 Ahmad signed a new fixed term contract for a term of one more year for the same position.

This contract breaches the limitations for reasons including:

- ▶ his initial contract contained an option to extend that was used by his employer
- ▶ the total employment period is for more than 2 years, and
- ▶ the contract is for the same position.

What are the situations where there are no limitations on the use of fixed term contracts?

The new rules don't apply to all employees on fixed term contracts. These are called the exceptions to the limitations. The table below shows which fixed term contract arrangements are not covered by the new rules:

| The exception | Example |
|--|--|
| <p>Specialised skills for a specific task</p> <p>Work only on a specific task that requires your specialised skills.</p> | <p>Vivian is a technology professional who is engaged to provide specialised technology support on a particular project. Her contract is for a period of 6 months, with 3 options to extend for one month in case of delays.</p> |
| <p>Training arrangements</p> <p>A contract for a formal training arrangement made under State or Territory law. This is an arrangement that combines work with study for a qualification like an apprenticeship or traineeship.</p> | <p>Javier has started a plumbing apprenticeship and has been given a 4 year fixed term contract for the duration of his apprenticeship.</p> |
| <p>Essential work</p> <p>Performing essential work during a peak demand period.</p> | <p>Kevin is an experienced ski patroller with strong first aid skills. He is hired by a ski resort on a 2 month contract during the ski season, with the opportunity for 2 renewals of one month each depending on ski conditions.</p> |
| <p>Emergency circumstances or temporary replacement of an employee</p> <p>Working in emergency circumstances, or if you're replacing someone who is temporarily away.</p> | <p>Gerry is engaged on a fixed term contract to replace Christina who is taking 24 months parental leave. During this time, Christina has another child and takes an additional 12 months leave. Gerry's contract is renewed for an additional 12 months to cover this leave period.</p> |
| <p>High-income employees</p> <p>If your guaranteed salary is more than the high-income threshold in the year the contract is entered into (pro rata for part-time employees or employees that work for less than a year).</p> <p>Note: For information on how the high-income threshold is calculated for part-time or part-year employees, go to fairwork.gov.au/fixed-term-employees</p> | <p>Esther is hired as an IT project manager earning \$240,000 per year on a 3 year fixed term contract.</p> |
| <p>Positions subject to government funding</p> <p>Where the employee's position is funded by government funding (completely or in part), the funding is for more than 2 years and the funding is unlikely to be renewed afterwards.</p> <p>Note: This isn't the same as working for a government agency or department on a fixed term contract.</p> | <p>Lu is engaged on a 3 year fixed term contract to work on creating a community garden for a community organisation. The project is fully funded over 3 years by the local government and the funding ends at the end of this period.</p> |
| <p>Governance positions</p> <p>A contract for a governance position that is for a limited time (based on the rules of the corporation or association).</p> | <p>Sunita has been given a 5 year contract on the executive board of a land-management council.</p> |
| <p>Award provisions</p> <p>If an award covers your employment and it allows any of the circumstances limited by the new rules.</p> | <p>Ravi is covered by an award that allows him to work contract-to-contract. The award expressly allows for multiple (more than one) contract renewals as agreed between the employee and employer.</p> |

Additional exceptions for contracts made between 6 December 2023 and 30 June 2024

There are some additional exceptions under the Fair Work Regulations. These exceptions only apply if the contract is entered into on or after 6 December 2023 and before 1 July 2024. These exceptions are explained below.

For more information on the Fair Work Regulations visit fairwork.gov.au/fixed-term-employees

Organised sport: Some types of employees engaged by particular organised sporting bodies primarily to work as certain types of athletes, coaches, performance support professionals or match officials.

Live performance industry employees: Employees covered by the Live Performance Award 2020 who enter a contract for 12 months or less.

Higher education employees: Employees covered by the Higher Education Industry – Academic Staff Award 2020 or the Higher Education Industry – General Staff Award 2020.

High performance sport (international events): Some types of employees engaged by certain types of organisations to primarily directly support the administration or organisation of an international event for a high performance sport that is not regularly held in Australia.

Funded by a philanthropic entity or testamentary gift or contribution: Some employees of organisations that are funded (wholly or in part) by certain philanthropic entities registered under the Australian Charities and Not-for-profits Commission Act 2012 or as a result of certain types of testamentary gifts or contributions, in certain circumstances.

What happens if a contract doesn't meet the limitations and exceptions rules?

If your fixed term contract doesn't meet the rules, the end date in the contract will no longer apply, which means the contract won't automatically come to an end at the end of that time. This will not affect the validity of any other terms of your contract. If the limitations are breached, civil penalties could apply to an individual or a company.

What happens if my employer and I disagree about whether a limitation or an exception applies to my fixed term contract?

If you and your employer disagree about whether the limitations or exceptions apply, there are **steps you can take to resolve it**.

Step 1: First, you must try to resolve the disagreement with your employer by discussing the issue with them.

Step 2: If you can't resolve it at the workplace level, you or your employer can refer your dispute to the Fair Work Commission (the Commission). The Commission can deal with disputes about limitations and exceptions on fixed term contracts.

If the matter is referred to the Commission, they must deal with the disagreement. They can deal with the disagreement in a range of ways including mediation or conciliation. If both parties agree, the Commission can deal with the dispute by arbitration (for example, at a hearing).

Depending on your circumstances, you may be able to have someone to support or represent you through the dispute process (which could include a union entitled to represent you).

Evidence

In a formal proceeding (such as a hearing at the Commission), if an employer believes a fixed term contract meets the criteria of one of the exceptions, they will have to show evidence to support that the exception applies. Examples of evidence can include financial reports or other contracts, such as funding and commercial contracts.

Get help with conversations in the workplace

Find free online courses to help you have difficult conversations in the workplace at [fairwork.gov.au/learning](https://www.fairwork.gov.au/learning)

Can my employer avoid following the rules?

Your employer **can't do certain things** to avoid the rules. These are called the **anti-avoidance** protections. This includes:

- ▶ ending your employment or not re-employing you for a period of time
- ▶ employing someone else to do the same or substantially similar work instead of you, or
- ▶ changing the type of work or tasks that you do or changing your employment relationship.

If an employer does any of these things in order to avoid the rules, it may also be adverse action. Adverse action is where an employer takes an unlawful action against you because you have a workplace right (which includes the fixed term contracts rules). If adverse action is found to have occurred, civil penalties could apply. For more information, visit [fairwork.gov.au/protections](https://www.fairwork.gov.au/protections)

Who can help?

Fair Work Ombudsman

- ▶ has information and advice about pay and entitlements
- ▶ provides free calculators, templates and online courses
- ▶ helps fix workplace problems
- ▶ enforces workplace laws and seeks penalties for breaches of workplace laws.

Visit [fairwork.gov.au](https://www.fairwork.gov.au) or call **13 13 94**

Fair Work Commission

- ▶ deals with disputes about a range of issues, including unfair dismissal, bullying, sexual harassment, discrimination and 'adverse action' at work
- ▶ approves, varies and terminates enterprise agreements
- ▶ makes, reviews and varies awards
- ▶ issues entry permits and resolves industrial disputes
- ▶ regulates registered organisations.

Visit [fwc.gov.au](https://www.fwc.gov.au) or call **1300 799 675**