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Part-time and fixed-term employees - know the difference



Do you know the difference between part-time and fixed-term employees?

Maybe or maybe not? There should be no confusion when answering this important question.

Employers often use the terms part-time, fixed-term, temporary, and casual employee loosely or incorrectly. Apart from casual employees, each type of employee is clearly described in the Labour Relations Act, 2014 (Act No. 6 of 2014) (LRA).

Part-time employees

Section 198C of the LRA makes reference to part-time employees and full-time employees. Section 198C(b) confirms that a full-time employee is an employee who is remunerated wholly or partly by reference to the time that the employee works and who is identifiable as a full-time employee in terms of the customs and practice of the employer of that employee. A part-time employee, on the other hand, will work fewer hours than a full-time employee and will be remunerated wholly or partly for the number of hours worked. These two types of employees are easier to differentiate as the one works full time and the other part time, that is “part of the time” that a full-time employee works. Comparing part-time employees to temporary or fixed-term employees requires more insight into the way their contracts are drafted and the reason for their appointment.

Temporary employees

A temporary employee refers to an employee who is appointed:

- for a period not exceeding three months;
- as a substitute for an employee who is temporarily absent; or
- in a category of work or for a period that is determined as temporary in terms of any collective agreement or sectorial determination.

In general therefore, it is not the number of hours worked, but rather the duration of and reason for the appointment that would render an appointment temporary.

Fixed-term employees

Fixed-term employees are also appointed for a specific time, as is the case with a temporary employee, although it might be for longer than 3 months. A common mistake employers make is to appoint an employee on a fixed-term contract in the belief that they will not have to deal with termination of employment as in the case of a full-time employee because the fixed-term employment terminates by law at the end of the fixed term. T

he LRA circumvents this practice by stipulating the basis for termination of a fixed-term contract. A fixed-term contract would terminate on the occurrence of a specific event, the completion of a specific task or a fixed date (other than normal agreed retirement age).

Employers are cautioned not to make a contract of employment subject to the existence of a service contract with a client. In *AMCU obo Members v Piet Wes Civils cc and Waterkloofskoonmaakdienste cc* (Case no J2834/2016) the court found as follows: *“The very purpose of the enactment of Section 198B was to provide security of employment, except in circumstances where a fixed term contract is clearly justified.....To make the worker’s employment contingent upon the whims of a third party that can simply terminate the contract between it and the employer on notice, does not fit that purpose.”*

All of the *above-mentioned types of contracts, namely part-time, temporary and fixed-term contracts, are discussed in the LRA*. The term “casual employee” is not used or defined. It is an old term used in the 1983 Basic Conditions of Employment Act and referred to employees who worked 3 days or less per week. For the sake of correctness, **employers should only refer to part-time, fixed-term or temporary employment.**

About our author: Audrey Cloete obtained her LLB degree from the North-West University Potchefstroom in 2003. She completed her articles with the main focus on Criminal Law and is also an admitted Conveyancer. Audrey joined *SERR Synergy* in 2015 where she currently works as a Legal Compliance Advisor.

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