

The Employment Status of Temporary, Casual and Fixed Term Contracts Management Guidelines

1 Introduction

- 1.1 These management guidelines establish the employment rights of employees who hold temporary, casual or fixed term contracts of employment. They give specific examples of when to use a particular type of contract and also the terms and conditions that Havering Council have linked to each employment status which will ensure good practice is adopted and consistency is achieved across the Council's services.
- 1.2 Havering Council is committed to ensuring that all non-permanent employees are employed on the correct contract of employment.

2 Application

- 2.1 These guidelines are to be adopted by all line managers when they are considering the employment of individuals on temporary, casual or fixed term contracts.

3 Roles and Responsibilities

- 3.1 The Council Members will endorse these guidelines and will have an overview of their effectiveness.
- 3.2 Line Managers are responsible for following these guidelines to ensure sound management practice is the culture of Havering Council.
- 3.3 The Head of Human Resources will have responsibility for implementing these guidelines and monitoring its effectiveness on behalf of members.
- 3.4 The Service Cluster Personnel Manager will ensure that all employees hold the correct contract.
- 3.5 The In-House Agency will monitor their database bank and liaise with Service Cluster Personnel Managers and Corporate Human Resources.
- 3.6 The In-House Agency will be responsible for maintaining computerised and manual records for individuals on their database to ensure the Council can assess contracts and monitor them effectively.

4 Training

- 4.1 During the implementation of these guidelines, line managers will be required to attend workshops to ensure understanding of these new guidelines.
- 4.2 Advice and support will be provided to line managers by the Service Cluster Personnel Team.

- 4.3 Line managers should ensure they are up to date on changes to employment law this will be supported by Personnel Teams.

5 Monitoring

- 5.1 These guidelines will be monitored on a yearly basis and presented to Members by the Head of Human Resources.
- 5.2 Service Cluster Personnel Managers will ensure Service Cluster information is monitored and presented to their Senior Management Team and forwarded to the Corporate Human Resources.

6 References

- 6.1 Working Time Directive
Employment Rights Act 1996
Fairness at Work White Paper

7 Fixed Term Contract

7.1 Definition

- 7.1.1 A fixed term contract exists where it is agreed at the beginning of the contract that it will genuinely end on a specified date.
- 7.1.2 At common law the contract expires on the agreed date without either party needing to give notice to the other.
- 7.1.3 However, it is prudent to include provision for the contract to be terminated earlier than the specified date upon notice.
- 7.1.4 If no provision exists for the contract to be brought to an end earlier, if the Council terminates the contract prematurely, it will be liable to a claim from the employee for damages up to the end of the specified date.

7.2 When are they appropriate?

- 7.2.1 Havering will only use Fixed Term Contracts where:-
- the need for the job is expected to be temporary and there is a known end date;
or
 - the need for a particular employee to do the job is expected to be temporary.

7.3 Continuous Employment

- 7.3.1 Under the Employment Rights Act 1996 an employee on a fixed term contract will accrue continuous employment. Successive fixed term contracts can be aggregated for this purpose.

- 7.3.2 These rights will be obtained if the contract is expected to last for more than three months or if the employee has been continuously employed for more than three months.

7.4 Waiver Clauses

- 7.4.1 In order to protect employees from being denied remedies against unfair dismissal by being repeatedly engaged on a series of fixed term contracts the law stipulates that the expiry of a fixed term contract (which is not renewed) is a dismissal.
- 7.4.1 An employee on a single fixed term contract of one or more years can be asked to agree in writing, before the fixed term contract ends and ideally at the beginning of the contract, to waive their right to bring unfair dismissal claims when the contract ends. (ERA 1996).
- 7.4.1 For a fixed term contract of two or more years the employee can be asked to waive their right to claim a redundancy payment when the contract comes to an end. A waiver of this nature is only valid at the time the contract is due to come to an end. The waiver clause cannot be invoked if the employer terminates the contract before the end of the fixed term contract for some reason other than the expiry of the fixed term contract.
- 7.4.1 A waiver clause lapses when the original contract ends. Whilst there is still some uncertainty as to whether a waiver clause will be valid if the renewed fixed term contract is for a period of less than one year or less than two years (as relevant), a waiver clause should be renewed if the fixed term contract is renewed.
- 7.4.2 In certain circumstances a redundancy waiver clause may be valid when a contract is for less than two years. This is only possible if it has been preceded by an initial fixed term contract that was for two or more years (IRLR 380).
- 7.4.1 An example of a waiver clause is as follows:-

In accordance with S197 of the Employment rights Act 1996 I agree to waive my rights to:-

- a) make a complaint of unfair dismissal *
- b) a redundancy payment *

* Delete where applicable.

On expiry of the contract on.....

I accept the appointment as..... on the above terms and conditions and that it will come to an end on

Signed..... Date.....

7.5 Dismissal

- 7.5.1 When a fixed term contract comes to an end this constitutes a dismissal, which could, providing the qualifying period is satisfied, lead to a complaint by the individual of unfair dismissal.
- 7.5.2 For the dismissal to be considered fair the manager must consult with the individual to ensure at the beginning of the contract they are aware of the fixed term nature.
- 7.5.3 The manager must also consult with the employee prior to the expiry of the fixed term contract. Therefore the manager would be prudent to seek suitable alternative employment as they would if a permanent contract was terminated as this is a factor which is considered by an Employment Tribunal when determining the fairness of the dismissal. (University of Glasgow-v- Donaldson EAT 1995).

7.6 Advantages and Disadvantages of Fixed Term Contracts

7.6.1 Advantages

- appropriate to use when it is clear that the need for a post is not permanent.
- waiver clauses.
- greater incentive for the employee to perform in order to secure the renewal of a contract.
- Authorities are able to respond more easily to changing circumstances.
- appropriate for setting up projects which can run without that role in the future.

7.6.2 Disadvantages

- Lacks continuity if employees are not the same.
- Affects the industrial relations climate.
- May be hard to attract the right candidates.
- May be difficult to dismiss employees before the expiry of the contract.

8 Temporary Contracts

8.1 Definition

- 8.1.1 A temporary contract exists where both parties are clear that the appointment is not permanent and that the reason for this is genuine and substantial.

8.2 When are they appropriate?

- 8.2.1 Temporary contracts are usually used when there is a need to:-
- Cover vacant posts whilst permanent appointments are being made;
 - Cover seasonal work e.g. summer periods;
 - Cover for absence of permanent post holder; or
 - Deal with unforeseen peaks in workload

8.3 Advantages and Disadvantages of Temporary Contracts

8.3.1 Advantages

- Appropriate to use when it is clear that the need for a post is not permanent;
- Where funding for a post is limited for a period;
- Flexibility is provided where the duration of the employment is unknown i.e. if covering a vacant post, maternity or sick leave;
- Contracts can be terminated within short timescales.

8.3.2 Disadvantages

- Where temporary contracts are not monitored or controlled the individual may accrue employment rights;
- May be hard to attract the right calibre of employees to temporary contracts;
- This may be a stop gap and temporary employees may leave at short notice to take up permanent roles.

8.4 Terms and Conditions

8.4.1 The contract of employment for Temporary appointments will be expressed in writing and an estimated duration of appointment will be included.

8.4.2 The employee must accept in writing the offer of temporary employment, this can include a signed copy of an extension to the contract.

8.4.3 The employee must be told why the appointment is temporary and what will bring the contract to an end.

8.4.4 For appointments of less than 13 weeks conditions of service will be as laid down in their contract of employment and excludes annual leave or occupational sickness benefit. However consideration must be given to previous assignments to determine whether continuity of service entitles the individual to the above.

8.4.5 For appointments of 13 weeks or more individuals will be placed on conditions of service identical to those employed on a permanent contract of appointment.

8.4.6 When one contract follows another, employment rights and continuity of employment will be accrued. When an enforced gap between contracts is established this may be deemed a temporary cessation of work and therefore continuity of employment will remain unbroken. There is no advantage of enforcing a break in employment. Service Cluster Personnel Managers are able to advise on continuity of service.

8.5 Review

8.5.1 Service Cluster Personnel Managers will monitor all temporary contracts and liaise with line managers to ensure that the anticipated duration has not been exceeded.

8.6 Extension

- 8.6.1 If the duration of the contract has been extended a letter should be sent to the individual confirming the period of the extension, the reason for the extension and to confirm that the contract is still temporary.
- 8.6.2 Individuals should accept in writing the extension to the temporary contract this can include a signed extension to the contract.

8.7 Termination

- 8.7.1 Individuals should be given the statutory minimum period of notice in writing.
- 8.7.2 They must be advised in writing of the reasons for the termination of employment.
- 8.7.3 If the post is being filled as a permanent appointment the individual should be given equal treatment in making their application and throughout the selection process.
- 8.7.4 Service Cluster Personnel Managers should make reasonable attempts to offer suitable alternative employment to the individual.
- 8.7.5 If there is the possibility that an individual can make a claim for a redundancy payment of unfair dismissal - formal consultation with a relevant recognised Trade Union should be initiated at the earliest opportunity. Whilst there is no statutory minimum period for consultation for less than 20 employees. Havering Council would normally expect a 30 days consultation period. Prior to the dismissal being effective. (Refer to Guidelines on the Delegation of HR Issues).
- 8.7.6 A claim for unfair dismissal can be made to an Employment Tribunal by an individual who has at least two years' continuous Service with the Council. Currently complaints to an employment tribunal where an employee has less than two years continuous service are being referred to a chairman of the employment tribunal for consideration as to whether or not the complaint should be stayed pending a decision on reduction of the "2 year qualifying period."
- 8.7.7 There must be a specific reason for terminating a temporary contract which meets legal requirement. If there is no redundancy situation then the reason must be for "Some Other Substantial Reason" if the contract has come to an end due to the specific event occurring (which was disclosed at the commencement of the contract).
- 8.7.8 A temporary contract may also be terminated at an earlier date in accordance with contractual provisions for conduct or capability.
- 8.7.9 Where redundancy payment entitlements exist for temporary employees this will be calculated in accordance with the minimum statutory redundancy payment legislation.

9 Casual Employees

9.1 Definition

- 9.1.1 The definition of a casual worker is that an individual is offered work on an as-and-when basis and may choose whether or not to accept it. There is no guarantee of work being provided nor is the individual obliged to accept it.
- 9.1.2 Although casual employees face difficulties establishing their entitlement to most employment protection rights, because there is a doubt as to whether they are employees under a contract of employment and there is difficulty with establishing the continuity of employment, it is possible that a regular casual worker could be found to be an employee.

9.2 When are they appropriate?

- 9.2.1 Casual employees are used on the following basis:-
- a) Single one off periods of limited duration (ad hoc).
 - b) On an irregular or unpredictable basis for a few days at a time. Hovering need to ensure continuity does not arise.

9.3 Continuity of Employment

- 9.3.1 Successive casual arrangements without interruption can be linked for the purpose of calculating continuous service. However the complete weeks or months of not working do not count under the main provisions regarding continuity, if there is no contractual arrangement governing the period of the break. In order to ensure a break of service exists it is advisable to ensure that a gap of seven days exists with a weekend occurring at the end or beginning of the period, and to have no identifiable arrangement with the worker with regards to work after the break.
- 9.3.2 The following statutory rights are available to casual employees operating as employees but are not dependent on continuous employment:
- Time off for Trade Union activities and duties;
 - Time off for public duties;
 - Time off for ante natal care and maternity leave (14 weeks) and protection against dismissal for pregnancy;
 - Protection against dismissal and action short of dismissal and selection for redundancies on the grounds of non membership of a Trade Union or involvement in Trade Union activities, health and safety activities, acting as pension scheme trustee employee representative, refusing to work on Sundays;
 - Itemised pay statements;
 - Written statement of main terms and conditions of employment and of any changes;
 - Protection against an employers insolvency;
 - Protection against dismissal for asserting various statutory employment rights.
- 9.3.3 Individuals who have the right to refuse work when offered are not entitled to guarantee payments or statutory notice.

- 9.3.4 A worker is not entitled to medical suspension payments if his/her contract is for 3 months or less, or his/her work is not expected to last for more than 3 months.
- 9.3.5 Individuals who have 13 weeks continuous employment are entitled to 3 weeks paid annual leave (rising to 4 weeks on 23 November 1999). Once a break of service exists the employee will then have to accumulate a further 13 weeks continuous service. To calculate leave No. of weeks x 3 weeks 52
- 9.3.6 Managers will bear the cost of leave accrued in the period within their section even if the leave is taken by the individual when they are working on another assignment. This will be co-ordinated by the In-House Agency.
- 9.3.7 If casual contracts are used correctly there is unlikely to be an accumulation of entitlement for paid annual leave.
- 9.3.8 If a manager knows that a work assignment is likely to be for a number of weeks continuously it would be more appropriate to employ them on a temporary contract of employment.
- 9.3.9 An Employment Tribunal will ask the following questions to determine the employment status of a casual worker:-
- Whether there was an agreement between the parties;
 - What were the terms expressed and implied upon which they had agreed;
 - Whether the parties had entered into a contractually binding relationship;
 - Whether the nature of that relationship was a contract of employment.
- 9.3.10 Casual employees may be entitled to Maternity leave and pay this is dependent on each individual case and the continuity of employment. Managers should discuss this with their Service Cluster Personnel Teams to determine eligibility.
- 9.3.11 Casual employees must request to become part of the superannuation scheme by contacting the pensions section.
- 9.3.12 Managers should advise casual employees at the earliest opportunity of when their assignment is due to end. However half a days notice is a guideline for managers to follow which will assist individuals to seek alternative assignments.
- 9.3.13 If an allegation is made about a casual employee relating to conduct or capability the line manager will investigate the issue fully and advise the individual whether they will remain on the casual register or not. This should be confirmed in writing. The In-House Agency will advise Service Cluster Personnel Managers to ensure that individuals who are also employed on a permanent basis are considered in line with the disciplinary or capability procedure in respect of their permanent role.

10 Appointment Procedure for Temporary and Fixed Term Employees

- 10.1 Any Service Cluster wishing to engage temporary employees should first contact either their Service Cluster Personnel Manager, In-House Agency or external agency to arrange the necessary cover.
- 10.2 The charges for this service by the In-House Agency in addition to the basic wage plus overheads (20%), will be £2.00 per placement per day. (Basic wage will be in line with the evaluated grade of the post being filled).
- 10.3 The information the In-House Agency will require via Service Cluster Personnel Manager is as follows:
- Department/ Section
 - Name of Supervisor
 - Telephone number
 - Category of employees required
 - Job Description / Person Specification which has been evaluated
 - Date required
 - Estimated end of placement
 - Reason for placement including post number, grade
 - Expenditure Code
 - Name and telephone number of officer requesting placement.
- 10.4 Individuals employed in a temporary capacity must be issued with a contract of employment by an authorised person.
- 10.5 Individuals employed in a temporary capacity continuously for 13 weeks or more must be granted the appropriate annual leave entitlement and become entitled to payment for Bank Holidays, in accordance with the appropriate NJC terms and conditions of employment.
- 10.6 Service Clusters must ensure that medical clearance, satisfactory references and the Department of Health clearance is obtained before temporary employees commence their assignment.
- 10.7 When someone is employed on a temporary or fixed term contract and their contract continues to be renewed it is important to remember that after 2 years they will accrue employment rights. (note this is currently being legally challenged and is likely to be reduced to 1 year).
- 10.8 The In-House Agency will monitor all registered individuals on their database to ensure they are in receipt of the appropriate employment rights and notify relevant Service Cluster Personnel Manager of the individuals accrued rights to ensure they are included in the contract of employment. Where employees are employed by the Service Clusters, the Executive Director is responsible for ensuring appropriate monitoring is in place.
- 10.9 Prior to temporary and fixed terms positions being advertised, consultation will take place with Trade Union representative's in the department.

11 Appointment Procedure for Agency Employees

- 11.1 The procedure for dealing with In-House Agency employees is the same as

temporary.

- 11.2 External agency employees are not used except when the post cannot be filled by the In-House Agency. This is where specialist skills or trained employees are required. The agency employees remain the employees of the agency and do not become the Council's employees. The agency will invoice the authorised individual on a regular basis.

12 Appointment Procedure for Casual Employees

- 12.1 Casual employees should have formal notification of the actual terms of their working relationship. They will not receive additions for weekend working or bank holidays only flat rate for the hours they work irrespective of when they are worked. All casual employees will have medical clearance, meet Department of Health requirements and have satisfactory references prior to being offered individuals an assignment.
- 12.2 The In-House Agency will ensure contracts are issued to casual employees who are registered with them. The Agency will also monitor the pattern of work to ensure they are in receipt of the correct entitlements. Where casual employees are directly employed by Service Clusters, the Executive Director is responsible for ensuring appropriate monitoring of patterns of work for continuous service are in place.