



**Primary Circular 23/05**

## **TO BOARDS OF MANAGEMENT, PRINCIPAL TEACHERS AND TEACHING STAFF OF PRIMARY SCHOOLS**

### **Protection of Employees (Fixed-Term Work) Act, 2003**

#### **Entitlements of Teachers with Fixed-Term Contracts (Temporary Appointments)**

1. A primary school teacher's contract of employment is with the Board of Management of the school. Boards of Management are reminded that they should continue to enter into a formal written contract of employment with teachers employed in the school.
2. The Protection of Employees (Fixed-Term Work) Act 2003 places specific obligations on Boards of Management, as employers, towards teachers employed on a temporary basis. For the purposes of the Act, such a teacher is considered a fixed-term employee; i.e., a person, having a contract of employment entered into directly with an employer, where the end of the contract of employment concerned is determined by an objective condition such as arriving at a specific date, completing a specific task or the occurrence of a specific event.
3. If the employer proposes to renew a fixed-term contract, the fixed-term employee must be informed in writing by the employer of the objective grounds justifying the renewal of the fixed-term contract and the failure to offer a contract of indefinite duration, by the date of the renewal.
4. As an employer, a Board of Management must enter into a contract with a fixed-term teacher which, in addition to the standard information regarding terms and conditions of employment, stipulates the duration and purpose of the post (which should include any objective justification or reasons why the person is being recruited on a temporary basis). Under the terms of the Act, a fixed-term teacher must be informed in writing by his/her Board of Management as soon as practicable of the objective condition determining the contract.

5. Occasions when a Board of Management employ a temporary/fixed-term teacher include replacing a teacher on
- career break
  - secondment
  - a job-sharing arrangement
  - maternity leave
  - adoptive leave
  - parental leave
  - carer's leave
  - unpaid sick leave
  - short term unpaid leave of absence

or to cover the period while awaiting the filling of a post with a suitable qualified primary teacher.

6. Objective grounds are not defined in the legislation and are subject to scrutiny by a Rights Commissioner and the Labour Court. The Department considers the above absences to be objective grounds for not offering a contract of indefinite duration. Additionally, the fact that the person being offered the teaching position is unqualified is also considered to be an objective ground for not offering a contract of indefinite duration to that person. Boards of Management should be mindful of their obligations in relation to their duty of care to the pupils in the school and of maintaining professional standards of the staff when employing teachers and should endeavour at all times to recruit a fully qualified primary school teacher. The operation of the Redeployment Panel for Primary School Teachers is also considered to be an objective ground for not offering a contract of indefinite duration.
7. The contract entered into between the Board of Management and the fixed-term teacher should contain a clause which refers directly to the objective condition determining the contract.

Sample contract wording for a fixed-term teacher replacing a teacher on career break:

*This contract is a Fixed-Term Contract of .... duration and is offered due to the absence of a permanent teacher in the school who is currently on career break. The contract will end on the termination of the career break. A career break can be sanctioned for a period of 1 year with annual application to renew up to 5 years.*

8. Fixed-term contracts should not normally be for more than one school year in duration. The exceptions are in the case of carer's leave, where the absent teacher may be replaced for a period of up to 65 weeks and career breaks sanctioned for exceptional reasons during a school year, in which case the period of leave does not terminate before the end of the subsequent school year.

However, it remains at the discretion of the Board of Management to renew a fixed-term contract on an annual basis. In such an instance, the temporary teacher/fixed-term employee must be informed in writing by the Board of the objective grounds justifying

- a) the renewal of the fixed-term contract and
- b) the failure to offer a contract of indefinite duration

at the latest by the date of the renewal.

A typical example would be as outlined above, a temporary teacher employed for the school year to replace a permanent teacher on career break. If the permanent teacher extends the career break for a further year, the temporary teacher/fixed-term employee must receive notice in writing from the Board of Management that the contract is renewed for a further year. This notice must also state the reason why it is a fixed-term contract that is being offered i.e., the position arises as a consequence of the permanent teacher taking an additional year's career break.

9. A Fixed-Term Contract can be renewed annually, provided the procedure at 7 has been followed, for up to four years. On completion of the fourth year's contract, the Board of Management cannot offer a further fixed term contract, unless there are objective grounds. If there are no objective grounds for the fixed-term contract, the teacher is entitled to a contract of indefinite duration.
10. A Board should be aware of the legal implications of the Protection of Employees (Fixed Term Work) Act 2003 and the potential repercussions of a contract of indefinite duration being awarded for failure to comply with the Act.
11. Section 10 of the Act provides that in order for a fixed-term employee to have the same opportunity as other employees to secure a permanent position, an employer shall inform him or her in relation to relevant vacancies which occur in the establishment. As far as practicable, an employer shall facilitate access by a fixed-term employee to appropriate training opportunities to enhance his or her skills, career development and occupational mobility.
12. It is the responsibility of the Board of Management, as employer, to ensure compliance with the Protection of Employees (Fixed Term Work) Act, 2003. This circular is not intended to offer legal advice and Boards may wish to contact their own legal advisors on individual circumstances.

Primary Payments  
September, 2005.