

Ardoideachas –
Teicneolaíocht agus Oiliúint,
An Roinn Oideachais agus Eolaíochta,
Sráid Maoilbhríde,
Baile Átha Cliath 1.



Higher Education -
Technology & Training,
Department of Education & Science,
Marlborough Street,
Dublin 1.

To: Director of each Institute of Technology,
President of Dublin Institute of Technology.

Circular Letter No: 0144/2006

Protection of Employees (Fixed Term Work) Act 2003

Phase 2 Discussions.

1. Purpose of this Circular

- 1.1 The purpose of this circular is to advise Institutes of Technology that following discussions between the managerial authorities of Institutes of Technology, the Teacher's Union of Ireland and the Departments of Education and Science and Finance further agreement has been reached on a number of issues associated with the implementation of the Protection of Employees (Fixed Term Work) Act 2003.
- 1.2 Employers are again reminded of the requirements to issue written statements under Section 8 of the Act. These are set out in paragraphs 3.4, 3.5 and 3.6 below and should be adhered to in all instances where fixed term lecturers (including pro-rata part-time lecturers) are employed. This is an *essential* requirement of the Protection of Employees (Fixed-Term) Work Act, 2003.
- 1.3 Employers are also advised that cognisance should be taken of other relevant employment legislation in dealing with issues arising from this Circular Letter.

2. Clarification of transitional arrangements

2.1 Continuation of transitional arrangements

2.1.1 The transitional agreement comprehended qualified lecturers* with more than four years successive service as at 1st September 2005 employed in Institutes of Technology to carry out the full range of duties. That agreement is now being extended to include qualified lecturers on fixed term contracts with four years or more successive service between the periods 1st September 2005 and 1st September 2006 inclusive.

* Assistant Lecturer, College Teacher, Lecturer, Lecturer 1, Structured Lecturer, Senior Lecturer 1 (Teaching), Senior Lecturer 11 & Senior Lecturer 111

2.1.2 The employer shall issue a contract of indefinite duration to any fixed term lecturer with more than four years successive service as at 1st September 2006 who is deemed to be qualified and who is not excluded by reason of one or more of the following which the employer can demonstrate

- (i) the post will not be viable within a reasonable period and that such a ground was set out as an objective ground in writing in the previous contract; or
- (ii) the staff member is covering for a post holder on an approved scheme of leave of absence; or
- (iii) there are formal written disciplinary charges of a significant nature against an individual on grounds of misconduct or other serious disciplinary offences.

The exclusions at (i) and (ii) above shall not apply where the staff member has not received a written contract setting out objective grounds since September 2002.

2.1.3 The hours of the contract of indefinite duration will be the hours for which the employee was engaged on a fixed term contract in the academic year prior to the issuing of the CID (other than those hours which are for the provision of temporary cover as set out in circular IT 15/05)

2.2 Clarification in relation to qualifications issue

A fixed-term lecturer who

- (i) has completed more than four years successive lecturing service between 1/9/05 and 1/9/06 inclusive, and
- (ii) has obtained the requisite academic qualifications at some time during the aforementioned four year timeframe and
- (iii) is otherwise eligible for a contract of indefinite duration under the terms of the transitional agreement,

shall be deemed to be qualified, if s/he is fully qualified under the criteria applicable to the post and may be offered a contract of indefinite duration.

2.3 Adjudication system

Under the Transitional Agreement a system for adjudication of appeals from aggrieved individuals was established. The adjudication system is voluntary and intended to facilitate a quick, efficient resolution of disputes arising from the award or refusal to award a contract of indefinite duration. Any party is of course free to pursue statutory relief if so desired. Departmental circular 0045/2006 sets out the details of the adjudication system. In this regard Mr Peter Ward has agreed to act as Adjudicator. Appeals against decisions made under the terms of this Circular Letter must be made within 4 working weeks of the date of notification of the decision by the employer to refuse a CID or 6 working weeks after the date of issue of this circular whichever is the later.

3. Mechanism for Future Recruitment of Fixed-Term Personnel

- 3.1 An anticipated vacancy of more than 22 weeks duration should be advertised and filled through a formal recruitment process using the same procedures and criteria as for permanent vacancies.
- 3.2 There is a requirement to recruit suitably qualified persons for all vacancies regardless of duration.
- 3.3 Where a lecturer is engaged on successive contracts in the same or similar positions with the same employer, an interview process is required for the initial appointment only.
- 3.4 Written contracts of employment are to be issued to all temporary (fixed-term) appointees as soon as practicable after their appointment. Best practice would be to issue the terms and conditions of appointment no later than the date of commencement of employment. The terms and conditions should be signed by the employee and the employer. The employee should receive a copy of the document and the employer is to retain a copy on file.
- 3.5 Each statement of terms must contain the objective conditions determining the contract whether it is:
 - finishing on a certain date
 - completing a specific task, or
 - the occurrence of a specific event.
- 3.6 Where an employer proposes to renew a fixed-term contract, the fixed term employee shall 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 at the latest by the date of renewal.

4. Access to Permanent Vacancies in the Existing Employment

Temporary (fixed-term) lecturers must be notified of the existence of the permanent vacancy. It is not possible to be prescriptive in respect of the methodology to be used in respect of each sector. Methods may include: the use of the employer website/notifications to individuals outside of term time/the Institute notice board during term time. The method which will be used for the advertising of permanent vacancies is to be included in the written statement of terms given to each fixed-term lecturer. The objective is to ensure that the fixed-term lecturer is notified of the vacancy in a timely manner so as to allow that lecturer the opportunity to apply for the position should s/he wish to do so. All employers should note the provisions of the Protection of Employees (Fixed-Term) Work Act, 2003 which at section 10.2 provides that the information regarding a vacancy "*maybe provided by means of a general announcement at a suitable place or undertaking or establishment*".

5. Access to Training for Fixed-term employees

In-Service Training

All fixed-term employees shall have equal access to in-service training as comparable permanent employees. Such access shall not be confined to the days on which the fixed-term (including part-time) employee would ordinarily be employed.

Post Graduate training

Fixed-term employees shall be eligible to apply for access to Post Graduate courses on the same basis as their comparable permanent employee. Payment for attendance at such courses (where it applies) shall be on the same basis as the comparable permanent employee and shall not exceed the duration of the contract of the fixed-term employee.

6. Conditions of Employment for fixed-term employees

Conditions of employment of a fixed term lecturer during the period of his/her contract are subject to the principle of no less favourable treatment than is applicable to permanent lecturers unless objective grounds exist for doing so. In general it is agreed that the expiry of a contract and, as a consequence, the termination of the employment relationship, marks the end of any obligation on the part of the employer in respect of conditions of employment. However it is recognised that renewable contracts and the continuation of the post for which the fixed term lecturer was employed may result in an ongoing commitment to the fixed term employee in certain limited circumstances beyond the initial expiry date of the contract.

Career-Breaks:

Fixed-term lecturers shall have access to the career break scheme on the same basis as comparable permanent lecturers within their sector. Applications for career breaks shall not be rejected solely on the grounds of the status of the applicant as a fixed-term employee. The reason for rejecting an application for a career break shall be given in writing by the Institute. Access to the career break scheme will cease in all instances on the expiry and non-renewal of the fixed-term contract.

Job Sharing:

Fixed-term lecturers shall have access to job-sharing on the same basis as comparable permanent lecturers within the same sector. Applications for job-sharing shall not be rejected solely on the basis of the status of the applicant as a fixed-term lecturer. Access to job-sharing will cease on the same basis as for permanent lecturers and in all instances on the expiry and non-renewal of the contract for which they were engaged as a jobsharer.

Sick Leave during the period of contract:

A fixed term lecturer shall have, in the case of leave which is

- certified: the same entitlement as a comparable permanent lecturer
- uncertified: the same entitlement as a comparable permanent lecturer

Compassionate Leave:

A fixed-term lecturer shall have the same entitlement to compassionate leave as a comparable permanent lecturer.

Parental Leave:

A fixed term lecturer shall have the same entitlement to parental leave as a comparable permanent lecturer.

Paternity Leave:

A fixed-term lecturer shall have the same entitlement to paternity leave as a comparable permanent lecturer.

Force Majeure Leave:

A fixed-term lecturer shall have the same entitlement to force majeure leave as a comparable permanent lecturer.

Carers Leave:

A fixed-term lecturer shall have the same entitlement to carers leave as a comparable permanent lecturer.

Brief absences:

A fixed-term lecturer shall have the same entitlements to brief absences as a comparable permanent lecturer.

Maternity Leave:

A fixed-term lecturer shall have the same entitlement to maternity leave and, while on maternity leave which occurs during the term of their contract, shall have the same entitlement to pay as a comparable permanent lecturer.

Where the contract under which the lecturer was employed expires and is not renewed and the employment ceases, the entitlement to paid maternity leave also ceases.

Where the contract under which the lecturer was employed is renewed by a successive contract a dismissal shall not be effected and maternity pay shall continue to be paid until the cessation of maternity pay under the maternity leave scheme or the expiry of the successive contract, whichever is the sooner.

7. Mechanism for the Alignment of Posts and available Personnel

- 7.1 The method for determining the allocations of posts will continue as heretofore.
- 7.2 For the purposes of calculating the number of lecturers in posts to whom there is an ongoing contractual commitment, it will be necessary to combine the number of permanent lecturers with the number on contracts of indefinite duration. Based on the agreed definition of an employee on a contract of indefinite duration, those on CIDS have effectively the same tenure rights as a permanent lecturer.
- 7.3 Where a permanent vacancy occurs, the employer must assess whether an existing fixed-term lecturer qualifies for a Contract of Indefinite Duration in accordance with the terms of Circular IT 15/05. If a permanent vacancy is identified and an existing fixed-term lecturer does not qualify for a contract of indefinite duration under the terms of Departmental Circulars, all such permanent vacancies must be advertised in the normal manner i.e. by advertisement or utilisation of the panel arrangement as appropriate to the sector.
- 7.4 There is no re-deployment arrangement between the IOTs due, in the main, to geographical considerations. The specialist nature of the posts provides some opportunity to provide alternative employment within the same Institute and every reasonable opportunity for such redeployment should be explored and additional training support should also be provided to support the opportunities for re-deployment which do exist.
- 7.5 The Unfair Dismissals Acts at Section 6 Sub Section 3 states:

Without prejudice to the generality of sub-section (1) of this section, if an employee was dismissed due to redundancy but the circumstances constituting the redundancy applied equally to one or more other employees in similar employment with the same employer who have not been dismissed, and either

(b) he was selected for dismissal in contravention of a procedure (being a procedure that has been agreed upon by or on behalf of the employer and by the employee or a trade union, or an excepted body under the Trade Union Acts 1941 and 1971 (as amended by the Industrial Relations Act, 1990, representing him or has been established by the custom and practice of the employment concerned) relating to redundancy and there was no special reason justifying a departure from that procedure,

then the dismissal shall be deemed for the purposes of this Act, to be an unfair dismissal.

7.6 In order to comply with the terms of the Act it is proposed to put in place a procedure in the IOT sector where the employer identifies a situation where there are teaching staff surplus to requirements. The following options are to be applied sequentially:

- (a) Re-deployment within the Institute to suitable alternative posts for which the surplus staff are qualified.
- (b) Re-training to provide the additional qualifications required to be re-deployed to an identifiable vacancy
- (c) Reduction of hours (and pay) involving one or more staff – on a voluntary basis.
- (d) Termination of the employment of fixed-term employees whose contract has expired (with payment of redundancy pay). This option would be severely limited in cases where the fixed-term employee would otherwise be due to receive a contract of indefinite duration. It may also be necessary to insert the terms of the collective agreement into future fixed-term contracts.
- (e) Agreement to the filling of a vacant permanent post on a fixed-term basis for up to two years where it is agreed that the post is unlikely to be viable beyond that period.
- (f) Voluntary severance arrangements to be agreed at the Institutes of Technology Industrial Relations Forum.
- (g) These terms to be reviewed at the request of either party no earlier than May 2007 unless agreed by both parties.

This circular can be accessed on the Department's website www.education.ie

Queries concerning this circular letter should be emailed to Breda Quirke at the following address: mailto:breda_quirke@education.gov.ie

Gerry Murray
Principal Officer
7th December 2006