



Circular Letter 0065/2017

To: The Chief Executives of Education and Training Boards

PROTECTION OF EMPLOYEES (FIXED-TERM WORK) ACT 2003 – IMPLEMENTATION OF AGREEMENT IN RESPECT OF TUTORS EMPLOYED BY EDUCATION AND TRAINING BOARDS (ETBs)

The Minister for Education and Skills directs you to implement the terms agreed for the Protection of Employees (Fixed-Term Work) Act 2003 in so far as it applies to Tutors employed in ETBs whose posts are wholly funded by monies provided by the Oireachtas.

The regulations and procedures outlined in this circular are to be implemented by each employer with immediate effect.

Please ensure that copies of this circular are brought to the attention of the relevant staff in your employment including those on leave of absence.

Queries should be sent in the first instance to hr@etbi.ie for collation and forwarding to Department of Education and Skills where appropriate.

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

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1. Purpose of this Circular

- 1.1** The purpose of this circular is to advise Education and Training Boards (ETBs) of the terms agreed for the implementation of the Protection of Employees (Fixed Term Work) Act 2003 insofar as it applies to a tutor in a post wholly funded out of moneys provided by the Oireachtas with a contract of employment with the Education and Training Board (ETB).
- 1.2** ETBs are also advised that cognisance should be taken of other relevant employment legislation – including the Unfair Dismissals Acts - in dealing with issues arising from this Circular Letter.
- 1.3** For the purpose of this circular, the following terms shall have the meanings assigned to them here:

“Act” refers to the Protection of Employees (Fixed Term Work) Act 2003

“CID” refers to a contract of indefinite duration

“Department” refers to the Department of Education and Skills

“Employer” means the Education and Training Board (ETB)

“Employment” refers to employment as a tutor in an ETB

“Fixed-term Contract” means any contract of employment, whether full-time or part-time, where the end of the contract is determined by an objective condition having been met. In accordance with section 2 of the Act, a person who is on work placement as part of their vocational training is not an employee for the purposes of the Act.

“Minister” refers to the Minister for Education and Skills

“Objective condition” shall have the meaning assigned to it in section 8 of the Act i.e.

- a) Arriving at a specific date or
- b) Completing a specific task or
- c) The occurrence of a specific event

“Post” refers to a tutor position, whether full time or part time, which is funded out of moneys provided by the Oireachtas.

“School year” refers to the 12 months commencing on 1st September in any calendar year and ending on 31st August in the succeeding year

“Tutor” refers to a person employed as a tutor by the Education and Training Board

2. Fixed Term Contract

2.1 Terms of Employment

- 2.1.1** The principle to be applied to terms of employment in respect of fixed-term tutors is that of no less favourable treatment by the employer during the period of contract than exists for a comparable permanent tutor unless objective grounds exist for doing so.
- 2.1.2** In general, 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 to a tutor in respect of terms of employment.
- 2.1.3** A tutor engaged on a fixed term contract shall receive written terms of employment (see Terms of Employment (Information) Act 1994) within two months of the date of appointment. Both the tutor and the employer shall sign this statement. A copy of the signed statement shall be given to the tutor and the employer shall retain a signed copy on file. Each statement of terms of employment shall contain the objective conditions determining that fixed term contract.

2.2 Notification of Permanent Vacancies

- 2.2.1** Fixed-term tutors must be notified of the existence of a permanent vacancy. Management authorities 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 *“may be provided by means of a general announcement at a suitable place or undertaking or establishment”*.
- 2.2.2** The method used to bring such posts to the attention of fixed-term tutors, including those on leave of absence, shall be included in the written statement of terms of employment given to each fixed-term tutor. The methodology to be used is not prescriptive provided that it ensures that the fixed-term tutor is notified in a timely manner of the post to be filled so as to provide the tutor with the opportunity to apply for the post should s/he wish to do so.

2.3 Renewal of Contract:

2.3.1 A tutor, who was recruited initially by an employer through a formal recruitment process and was suitably qualified for the original appointment, shall not be required to engage again in a formal recruitment process for reappointment by the same employer in the same or a similar tutor post on successive fixed term contracts.

2.3.2 An employer that proposes to renew a fixed-term contract, shall inform the fixed term tutor in writing, at the latest by the date of renewal, of the objective grounds justifying:

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

3. Contract of Indefinite Duration (CID)

3.1 Par 9. (1) of the Act states
"Subject to *subsection (4)*, where on or after the passing of this Act a fixed-term employee completes or has completed his or her third year of continuous employment with his or her employer or associated employer, his or her fixed term contract may be renewed by that employer on only one occasion and any such renewal shall be for a fixed term of no longer than one year."

Par 9. (4) *Subsections (1) to (3)* shall not apply to the renewal of a contract of employment for a fixed term where there are objective grounds justifying such a renewal.

3.2 Entitlement to / Issuing of CID

3.2.1 In accordance with the Paragraph 9. (1) of the Act outlined above, employers shall issue a contract of indefinite duration to any tutor who satisfies the following conditions;

S/he has had in excess of 4 years continuous service (those employed for the first time after 14 July 2003 must have two or more successive contracts of employment) with the same employer that were paid for out of monies provided by the Oireachtas,

unless s/he is excluded by reason of one or more of the following:

- a) s/he is covering for another tutor absent on an approved scheme of leave of absence and this is set out as an objective ground in writing in the contract, or
- b) the post will not be viable within a reasonable period and this is set out as an objective ground in writing in the contract.

It is noted that tutors may have written or unwritten contracts of employment. Both may be taken into account for the purposes of this paragraph.

3.2.2 As an exceptional measure, the requirement to have two or more successive contracts of employment shall not apply to tutors appointed on or before the start of the 2013/14 school year.

3.2.3 Where an employer issues a CID and that CID is to be Oireachtas funded, the employer must comply with the terms and conditions of this Circular Letter.

3.3 Determination of lay-off periods

3.3.1 In assessing entitlement to a contract of indefinite duration (CID), under Section 9 of the Protection of Employees (Fixed Term Work) Act, 2003 the interpretation set out in the Minimum Notice and Terms of Employment Acts, is applied where '*employment is deemed continuous if an employee is absent for not more than 26 weeks because of lay-off...*'. Consequently, for tutors in the Education Sector a break in service is considered to be any period of absence in excess of 26 weeks, hence re-engagement of temporary tutors in the education sector within a period of 26 weeks is interpreted as constituting continuous service. A break of service of longer than 26 weeks may be interpreted as not breaking continuous service if the tutor can demonstrate a reasonable expectation that s/he would be re-engaged later in the same school year or in the following school year. Each case must be decided upon its own facts.

3.4 Hours of the Contract of Indefinite Duration (CID)

3.4.1 When a tutor attains a CID the tutor shall be entitled to a commitment in terms of a minimum number of hours of work per school year.

3.4.2 The hours of the CID will be those hours for which the tutor was engaged on a fixed term contract in the school year prior to the issuing of the CID other than those hours which are covered by the exclusions (objective grounds) described in paragraph 3.2.1. For example, if a tutor converts to CID status during the school year 2017-18 the minimum hours of his/her CID will be based on the total hours s/he worked in the previous school year, 2016-17, other than those hours which are covered by the exclusions (objective grounds) described in paragraph 3.2.1., and will also take into account the work pattern in the previous school year. Any change in the work pattern would be subject to agreement between the employee and the employer.

3.4.3 The above specifies the minimum number of hours of the CID. Additional hours may be available at the time the CID is being awarded. If those hours are available on an ongoing basis with no objective grounds for regarding them as temporarily available they may be offered to and accepted by the tutor as part of the CID. If those hours are available and there are objective grounds for regarding them as temporarily available they may be offered to and accepted by the tutor as an additional fixed term contract. Hence any hours over the CID minimum commitment shall be by mutual consent.

4. Implementation

- 4.1** This policy shall be implemented with effect from the commencement of the school year September 2017/18.
- 4.2** Where a CID is being given under this circular to a tutor who has a written fixed term contract, the CID will reflect that contract subject to the terms of this circular. Where a CID is being given under this circular to a tutor who does not have a written fixed term contract the employer will give the tutor a statement that s/he has a CID and setting out the working hours and pay applicable to the contract.
- 4.3** Seniority for a tutor is determined by the start date in his/her employment as a tutor, and not by the date on which a CID was given.

5. Appeals Procedure

- 5.1** Appeals should be lodged by way of the normal ETB Grievance procedure.
- 5.2** Employers, in every notification of a decision to award or to refuse a CID, shall state the closing date and time for lodgement of an appeal via the ETB Grievance procedure.
- 5.3** It is noted that tutors have the right to appeal matters relating to CIDs to the Adjudication Service of the Workplace Relations Commission and to the Labour Court in accordance with the relevant legislation. The operation of an appeal under the ETB Grievance procedure shall not in any way interfere with the operation of that right. However, the hearing of a claim by the WRC or Labour Court under the relevant legislation will automatically bring to a close any appeal under the ETB Grievance procedure.