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Fixed-term contracts in South Africa: the three-month rule

Under section 198B of the Labour Relations Act (LRA), an employer may keep an employee earning at or below the earnings threshold (currently R269,600.90 a year) on a fixed-term contract, or a series of them, for longer than three months only if the work is of limited duration or there's another justifiable reason. Otherwise the employee is treated as permanent. The rule doesn't apply to employees above the threshold or to certain small and new employers, but every employer can still face a claim if the employee reasonably expected the contract to be renewed.

REVIEWED BY THE ELS TEAM

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AT A GLANCE

- Applies to employees earning **at or below R269,600.90** a year.
- Beyond **three months**, you need a justifiable reason.
- Without one, the job is **deemed permanent**.
- Renewal expectations can create a dismissal claim for **any** employee.

What counts as a fixed-term contract?

Under section 198B, a fixed-term contract is a contract of employment that ends on:

- A specified event, such as a permanent employee returning from leave.
- The completion of a specified task or project.
- A fixed date, other than the employee's normal retirement age.

Who the three-month rule applies to

- The employee earns at or below the BCEA earnings threshold, **R269,600.90 a year** from 1 May 2026.
- The employer isn't exempt as a small or new business: employers with fewer than 10 employees, and employers with fewer than 50 employees in their first two years (with some exceptions).
- The contract, or series of contracts, runs for longer than three months.

The rule

An employer may employ an employee on a fixed-term contract, or successive contracts, for longer than three months only if the nature of the work is of a limited or definite duration, or the employer can show another justifiable reason.

If there's no reason. The employment is deemed to be of indefinite duration, meaning the employee is treated as permanent. In a dispute, the employer must prove there was a justifiable reason and that the term was agreed.

Justifiable reasons the LRA recognises

Section 198B(4) lists reasons including where the employee:

1. Is replacing an employee who is temporarily absent.
2. Is employed because of a temporary increase in work not expected to last more than 12 months.

3 Is a student or recent graduate employed for training or work experience.

4 Is employed to work exclusively on a specific project with a limited duration.

5 Is a non-citizen with a work permit for a defined period.

6 Is doing seasonal work.

7 Is employed on an official public works or job creation scheme.

8 Is in a position funded by an external source for a limited period.

9 Has reached the normal or agreed retirement age.

The list isn't closed, but the employer must be able to prove any other reason. Write the reason into the contract.

Equal treatment after three months

Once a fixed-term employee covered by section 198B has worked more than three months, they must not be treated less favourably than a permanent employee doing the same or similar work, unless there's a justifiable reason such as seniority, experience or the quality or quantity of work.

Projects longer than 24 months

Where a covered employee works on a project-based fixed-term contract for longer than 24 months, the employer must generally pay one week's remuneration for each completed year of the contract when it ends, unless it offers or arranges employment on the same or similar terms starting when the contract ends.

Renewal expectations apply to everyone

Even where section 198B doesn't apply, ending a fixed-term contract isn't always risk-free. It can be a dismissal if the employee reasonably expected the contract to be renewed on the same or similar terms and it wasn't. Repeated renewals, promises and permanent-type work all build that expectation.

Five common mistakes

1 **Rolling three-month contracts to avoid permanence.** Successive contracts count together.

2 **No reason written in the contract.** You'll have to prove it later.

3 **Using fixed-term contracts for permanent work.**

4 **Paying fixed-term staff less for the same work** after three months, without a justifiable reason.

5 **Hinting at renewal.** Promises create a reasonable expectation.

Frequently asked questions

Can I renew a fixed-term contract several times?

You can, but successive contracts count together. For covered employees, going past three months needs a justifiable reason, and repeated renewals increase the risk of a renewal-expectation claim for everyone.

Does the three-month rule apply above the threshold?

No. Section 198B doesn't apply to employees earning above the threshold, but the reasonable-expectation rule still does.

Is a probation period the same as a fixed-term contract?

No. Probation is part of permanent employment. A fixed-term contract has a defined end.

What happens if the contract is deemed permanent?

The employee has the same rights as any permanent employee. Ending the employment then needs a fair reason and a fair procedure.

Get the contract right

The ELS Employment Agreement is drafted for South African law. For a fixed-term hire, record the end date, event or project and the justifiable reason for the fixed term in the agreement. For a first hire, the Employer Starter Pack adds your POPIA documents for staff data. Not sure what you need? Take the free Legal Health Check.

SEE THE EMPLOYMENT AGREEMENT

TAKE THE FREE LEGAL HEALTH CHECK

INFORMATION, NOT ADVICE

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