

LEGAL Q&A | FIXED-TERM CONTRACTS

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German employment law provides for rather strong dismissal protection. This is the main reason why more and more employers are hiring employees on a fixed-term basis, since this will in most cases end employment legally sound, may save the company a lawsuit and possibly a severance payment. But there are some things to keep in mind if you want to use fixed-term contracts in Germany. This Q&A two pager gives an overview of the basics.

1. Can fixed-term contracts be used and what types of fixed-term contracts are accepted?

Yes, fixed-term contracts can be used, subject to the restrictions outlined below. There are two types of fixed term contracts:

- limited to a certain date; and
- limited by purpose.

A fixed-term contract limited to a certain date ends at the expiration of the agreed period. A fixed-term employment contract limited by purpose ends upon achieving the purpose, but no earlier than two weeks after delivery of the employer's written notification to the employee on the point of time the purpose is achieved.

A limitation of the term is only valid if (i) such limitation can be justified on objective grounds (see below Q2) or (ii) under certain restrictions for new hires without objective grounds as outlined below (Q3). If the limitation is not legally valid, then the employment agreement with the limited term will be deemed to have been concluded for an indefinite period.

2. Does the use of fixed-term contracts have to be justified and, if so, what justifications are acceptable?

The limitation of a fixed-term contract is in any case valid if justified on objective grounds. The most important examples of such objective grounds are the following:

- the operational need for the work involved is only temporary, which is the case if at the beginning of the contract it is already evident and certain that the manpower requirements will cease to exist in the future, e.g., increased demand due to a specific project;
- the term is fixed following training or study to facilitate the employee's transition to a subsequent job;

- the employee is hired to fill in for another employee who is e.g., sick or on parental leave;
- the type of work involved justifies a fixed-term, which is e.g., generally accepted regarding employment of artists or soccer coaches;
- the fixed-term is merely a probationary period;
- there are reasons in the person of the employee which justify the fixed-term, e.g., a limited residence permit;
- the fixed-term is based on a court settlement.

For example, a limitation in term will be justified by the employer's need to hire a replacement for an employee on parental leave or a specific project.

However, experience shows that it is rather difficult to validly justify the limitation of a contract on objective grounds. The examples above are construed in a very restrictive way. Therefore, in most cases employment contracts are limited in time without objective grounds according to the terms set out below (Q3).

3. Can fixed-term contracts be used without objective grounds justifying the term?

Yes, subject to the following restrictions:

A fixed-term contract, which cannot be justified on objective grounds, may be limited to a term of two years at the maximum. During this two-year period, the employer may extend the term up to three times. For example, it would be possible to conclude a contract with an initial fixed-term of six months and extend this contract three times by six months.

In the first four years after the formation of a company, a fixed-term contract may be extended repeatedly for a maximum term up to four years in total (this exception does not apply in case the company was established in connection with a group restructuring).

However, with only few exceptions, it is not possible to conclude such a fixed-term contract with an employee, if a fixed or unlimited term employment relationship had previously existed in the past with the same employee.

4. Are there form requirements?

Yes, to be effective, the limitation of the contract must be in written form, i.e., wet ink signature by employer and employee is required; e-mail, scan or e-signing will not suffice. Otherwise, an indefinite employment relationship is being established.

5. Are there restrictions on the proportion of the workforce that can be on a fixed-term contract?

No. However, if fixed-term contracts are only used for certain groups of employees (for example, female or disabled employees), there may be grounds for a discrimination claim.

6. Is the use of fixed-term contracts subject to consultation or negotiation with the works council, if any?

It is in the employer's discretion whether it wants to use fixed-term contracts or contracts, which are not limited in time. However, the employer must inform the employee representative body of the number of employees working under fixed-term contracts and their percentage of the total employees of the establishment and the company.

7. Are there separation costs to be incurred at the end of a fixed-term contract, e.g., redundancy payments?

No, there are no separation costs to be incurred at the end of a fixed-term contract, unless the individual employment contract, a works agreement or a collective bargaining agreement provides for any payments in case the fixed-term contract will not be prolonged.

8. Can fixed-term contracts be terminated early if this is provided for in the employment contract?

Yes, fixed-term contracts can be terminated early if this has been agreed in the employment contract (or the applicable collective bargaining agreement). Such early termination is, however, subject to dismissal protection.

9. Can fixed-term contracts be terminated early if this is not provided for in the employment contract?

No, if the employment contract does not provide for such possibility the fixed-term contract cannot be terminated early, unless there is reason for a dismissal for cause.

10. How many times can a fixed-term contract be renewed before it is deemed to be a permanent contract?

Until now, there are no restrictions regarding renewals in case the fixed-term contract and each new fixed-term contract are justified on objective grounds. However, the longer the term of the limitation is, the more difficult it will be to validly justify the limitation on objective grounds.

If there are no objective grounds, the fixed-term contract can be renewed three times up to a total term of two years. In the first four years after the formation of a company, a fixed-term contract may be extended repeatedly for a term up to four years (see above Q3).

11. What is the total length of a fixed-term contract allowed before there is deemed to be a permanent contract in place?

There are no restrictions regarding the total length in case the fixed-term contract is justified on objective grounds. If there are no objective grounds, the maximum length is two years resp. four years (see above Q3).

12. If a fixed-term contract ends but the employee is allowed to continue working in the same role, does the contract automatically become permanent, or does it roll over into another fixed-term contract?

If, upon expiration of the term for which it was entered to, or after the purpose has been achieved, the employment relationship is continued with the employer's knowledge, then it is deemed to have been extended for an indefinite period if the employer does not object without delay.

13. Are there other significant legal restrictions on the use of fixed-term contracts?

An employee employed for a fixed term must not be treated worse due to the limited term than a comparable employee employed for an unlimited term unless there are objective grounds justifying different treatment. The employee must not be paid a lower remuneration due to the fixed term of employment, nor must she/he be discriminated against regarding other terms and conditions, e.g., vacation entitlements.

14. Are there significant benefits to using fixed-term contracts in respect of the law, e.g., the avoidance of more restrictive employment legislation relating to permanent employees?

Since under German employment law employees enjoy rather strong dismissal protection, it is rather difficult to terminate an employment relationship. Therefore, the major benefit for the employer using fixed-term contracts is that in such case the employment contracts terminate upon the expiration of the agreed period, resp. the achievement of the purpose. Other than that, employment legislation is the same for fixed-term and permanent employees.

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