

Terminating a fixed term employment relationship Getting it right



1 Introduction

From experience, it is more likely than not that whenever an employment relationship is ended by an employer, the employee will file a complaint of unlawful or unfair termination before the Labour Office and subsequently the Industrial Court in Uganda regardless of the merits of the grievance. Extra care therefore needs to be taken by employers while ending employment relationships with their employees to mitigate the possibility of being found liable for unlawful or unfair termination with punitive consequences in the event of escalation to adjudication. This article thus discusses the key considerations in ending a fixed term employment relationship.

2 Fixed term employment relationship

A fixed term employment relationship is one that is limited by time and both the employer and employee are aware of when this relationship starts and ends. There is certainty with fixed-term employment relationships because the duration of the employment is known. Organizations constrained by resources are able to meet their human capital needs with fixed term employment relationships during periods of economic uncertainty or where the long-term nature of the work is uncertain. An employer can equally cover for absent employees whose return date is unknown either due to long term sickness or leave through fixed term employment contracts.

3 Termination of fixed term employment

While fixed term employment relationships terminate automatically by effluxion of time on the date specified in the underlying contract, it is also possible to end the employment relationship earlier than the specified date as explained further below on how fixed term employment can be ended.

a) Expiry of time

Unless communicated otherwise, a fixed term employment relationship terminates on the date specified in the contract as the end of the employment relationship.

b) Mutual agreement of the parties

Employers and employees can also end their employment relationship early on the basis of mutually

agreed terms and conditions releasing each other from the subsisting obligations and responsibilities under the fixed term contract.

c) Frustration

A fixed term employment contract can be ended by frustration when an unexpected event prevents one or both parties from meeting the basic requirements of the employment contract. In case this happens, the parties are relieved from performing any obligations arising from the performance of the contract.

Frustration can arise through death or indefinite sickness of the employee. When an employee dies, the contract is automatically brought to an end. Furthermore, where the employee is indefinitely sick, the contract can be terminated for frustration. According to Uganda's Employment Act, sickness does not necessitate one to terminate the contract of employment so long as it is not more than three months. Therefore, sickness as a ground for terminating a fixed term employment relationship needs to be handled carefully.

d) Notice on early termination

As a general rule, there is no requirement for notice while ending a fixed-term employment contract because it is self-regulated. It specifies the duration of the employment relationship. Fixed term employment contracts however normally set out how the relationship can be ended early. It is common to include the requirement for notice should either party seek to end early the employment relationship before it contractually lapses. In this case, one must give advance notice of the intention to terminate the contract or make a payment in lieu of the notice period agreed upon if the contract is to terminate immediately. *See Barclays Bank of Uganda v Godfrey Mubiru (SCCA No.1 of 1998).*

The terms of this notice period must be strictly adhered to. Uganda's Supreme Court in, *Gulaballi versus Kampala Pharmaceuticals Limited Civil Appeal 6 of 1998*, held that the employer will owe the employee the amount of pay one would have received from the moment of the early termination to the initially agreed date of termination. The rationale is that "if there was no (wrongful) termination, the employee would serve the full period and receive the full remuneration, and as such, court awards this as

damages.

4 Presumption of renewal of fixed-term contract

A fixed term employment relationship ordinarily terminates on the date set out in the underlying contract. Uganda's Employment Act provides that a fixed-term contract is treated as extinguished if it is not renewed within a period of one week from the date of expiry.

Fixed term contracts may also provide for a possibility of renewal. There are also instances despite the expiration of the contractual period, the employer continues to engage the employee and even allocates work. The Industrial Court in, *NSSF v Khainza Pauline LDA 024 of 2018*, has previously ruled that 'where a contract of service is silent on renewal, the presumption is that it will not be renewed until the contrary is proved by the conduct of the parties.' It further ruled that 'where there is a provision of renewal

in the contract, the presumption is that the parties intended to renew the same, other factors being constant and therefore the subsequent behavior of the parties after the expiration of the contract may be interpreted to mean that the contract was in fact renewed.'

5 Conclusion

Therefore, upon or towards the expiration of a fixed term contract, the employer should communicate clearly to employee on whether the employment contract will be renewed or not otherwise the silence of the employer especially when the employee remains at work might be construed as a renewal. It is also imperative that a fixed term employment clearly defines the period of notice for early termination of the employment relationship. If the contract is silent on this, courts are likely to rely on the statutory notice periods set out in the Employment Act.

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