

DMCCA Guidance Note for Members

Limited term contracts and notice periods

References to the "Labour Law" are to Federal Law No. 8 of 1980, as amended.

1. When should I use a limited term contract?

An employer is free to enter into a limited term contract (also known as a fixed term contract) or an unlimited term contract with an employee. The Labour Law does not prescribe the circumstances in which a particular type of contract must be used. There are pros and cons to using each type of contract and DMCCA would encourage its members to take specialist legal advice when assessing what type of contract is suitable in its business and/or for particular roles.

By way of very general guidance, a limited term contract would ordinarily be used for specific projects where the employer knows for how long the employee will be required.

2. How can a limited term contract be terminated?

A limited term contract will generally terminate on the agreed expiry date unless it continues to be enforced after the expiry date without any written agreement to this effect (i.e. if the employee continues working for the employer) or the parties contractually agree to renew the contract.

Under the Labour Law, a limited term contract may not be terminated by either party prior to the expiry date (save in the limited circumstances set out in the

Labour Law i.e. where the employer terminates under Article 120 of the Labour Law or where the employee terminates under Article 121 of the Labour Law). This means that under the Labour Law a notice period is not required in a limited term contract.

Where either the employer or the employee terminates a limited term contract prior to the expiry date (save in one of the limited circumstances set out in the Labour Law) compensation is payable for three months or, if shorter, for the remainder of the contract (this is referred to in the remainder of this note as Early Termination Compensation). Where the employer is the terminating party, Early Termination Compensation is at full pay and where the employee is the terminating party, Early Termination Compensation is at half pay.

DMCCA would encourage its members not to include a notice period in limited term contracts (for the reasons set out below). If you are using the DMCC limited employment contract template and you do not wish to include a notice period in the limited term contract, you should insert “0” in the “[NUMBER] of days’ advance written notice” and this will mean that no notice period is applicable.

3. Can I include a notice period in a limited term contract?

Yes, DMCCA acknowledges that some employers do wish to include a notice period in a limited term contract. If you are using the DMCC limited employment contract template and wish to include a notice period in the limited term contract then you should insert the number of days’ notice that you require. DMCCA recommends that this is between 30 (which is the statutory minimum notice period under the Labour Law) and 90 days. DMCCA, however, recommends that an employer takes specialist legal advice when assessing whether or not to include a notice period in a limited term contract to ensure it understands the consequences of doing so.

If you do choose to include a notice period in a limited term contract you should be aware of the following guidance:

- It is not possible to contract out of the Labour Law, although it is possible to enhance it to an employee's advantage. Including a notice period in a limited term contract does not therefore allow an employer to avoid the provisions relating to Early Termination Compensation where invoking the notice provision would put the employee in a worse position than they would have been in had a notice period not been included.
- By way of example, if an employer includes a 30 day notice period in a 2 year limited term contract and the employer dismisses the employee after 15 months, in the event of a dispute, the Labour Court may require the employer to pay Early Termination Compensation plus payment for the notice period (i.e. 3 months' Early Termination Compensation and 30 days' notice). Meanwhile, if the employee is the terminating party, the Labour Court may, in the event of a dispute, allow the employee to resign on notice and without the obligation to pay Early Termination Compensation on the basis that the parties have contractually agreed an arrangement (i.e. that the employee may terminate the limited term contract on notice) which is more favourable than that set out under the Labour Law.

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