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# INTERACTION

## CHANGES TO JOB SECURITY

Fixed term contracts, job ads and small claims processes



A key focus of the recent changes to the Fair Work Act has been the enhancement of job security, limits on fixed-term contracts, and pay rates in job ads, and enhancing the small claims process. This includes new powers being provided to the Fair Work Commission (FWC) to deal with disputes, consultation-type obligations for employers in certain circumstances, and prohibitions on contractual terms.

Here is a comprehensive overview of these changes within the Fair Work Act.

## Job security

Job security has been introduced as an object of the Fair Work Act, which means the FWC must take job security into account when performing its functions or exercising powers, including dispute resolution, setting minimum wages, setting Modern Award terms and conditions, and approving enterprise agreements.

## Prohibition on fixed term contracts

Workers may apply to the FWC seeking stop sexual harassment orders for future sexual harassment and to apply for compensation for past sexual harassment.

New limits on the use of fixed-term contracts beyond a period of two years or for more than one renewal are intended to ensure that workers on fixed-term contracts have access to secure and permanent employment. The changes also ensure that fixed-term contracts are only used where appropriate, and employees are otherwise afforded due process where their employment is terminated.

The changes prohibit the use of fixed-term contracts where the term extends beyond two years or where the contract provides that it may be renewed more than once. Any contract term that has the effect of making a fixed-term contract last for more than two years or be renewed more than once will be void and severed from the contract.

These restrictions apply where the work being done under the contract or the renewable contract is the same, or substantially the same. There are also provisions about consecutive contracts where you have two contracts which together run for more than two years.

There are some exemptions where fixed-term contracts will continue to be allowed, including, for example where the:

- Employee is performing a distinct and identifiable task involving specialised skills
- Employee is performing government funded work, or work subject to other funding, where the funding is payable for more than two years and is unlikely to be renewed after that time
- Contract covers another employee's temporary absence
- Employee earns over the high-income threshold
- Employee is engaged on a training arrangement, such as a traineeship or apprenticeship
- Employee is engaged to perform essential work during a peak demand period
- Contract is to undertake work during emergency circumstances
- Contract relates to a governance position in a corporation or association with a time limit under the relevant governing rules
- Modern Award covers the employee and includes terms that permit a longer period.

There are anti-avoidance provisions; for example, dismissing for a period and re-engaging, delaying re-engaging, changing duties, or hiring a different employee to perform the same work. The Fair Work Ombudsman will also prepare a fixed-term employee information statement that must be provided to fixed-term employees.

The FWC will be empowered to deal with disputes relating to fixed-term contracts, including by consent arbitration. Employees may also use the small claims process for a declaration of contract obligations or to get entitlements to redundancy pay or notice on termination.

This is a civil remedy provision which means penalties may be imposed.

### Prohibition on incorrect pay rates in job advertisements

Jobs cannot be advertised at a lower rate than required by the Fair Work Act, a Modern Award or enterprise agreement. Casual roles must include reference to the casual loading and piecework roles must specify the applicable piecework rate or that periodic rates apply. If the applicable pay rates change during the advertising period, the advertisement must be updated to reflect the new pay rates.

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## Enhancing the small claims process

Further, an increase to the small claims threshold will provide a simpler pathway for employees to attempt to recover underpayments.

The threshold for a small claims application to recover unpaid entitlements in the Court has been increased from \$20,000 to \$100,000 (exclusive of interest). Successful claimants will also be able to recover filing fees as costs.

## Managing psychosocial hazards

Starting 1 April 2023, this code aims to help you manage employees' mental health and emotional wellbeing at work. Make an effort to assess the workplace environment, promote wellbeing, provide an Employee Assistance Program, and support proactive resolutions for issues related to workload, isolation, or interpersonal conflict.

You can support these changes by:

- Conducting a thorough assessment of your workplace to identify potential psychosocial hazards and implementing measures to address them
- Providing training to managers and HR staff on identifying and addressing stressors, promoting mental wellbeing, and supporting employees through difficult situations
- Regularly evaluating the effectiveness of interventions, support programs, and policies to ensure continuous improvement in employee wellbeing and satisfaction.

## Stay informed and seek assistance

By staying informed and fostering a supportive environment, you and your HR team can successfully navigate these changes and ensure a thriving work culture and a resilient organisation.

And remember, you don't have to face these changes alone. Interaction Consulting is here to assist you in navigating these changes through effective strategy consultation, cultural improvement, and policy support. We're just a call away, ready to help you create a workplace that's compliant, supportive, and ready for the future.

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