



WEEKLY LABOUR BULLETIN

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CAPPING-OFF/LIMITS ON RENEWAL OF FIXED TERM CONTRACTS

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CAPPING-OFF/LIMITS ON RENEWAL OF FIXED TERM CONTRACTS

INTRODUCTION

In the previous bulletin on contracts in the agriculture industry, on the contract of fixed term, we mentioned the capping-off times a contract can be renewed. In this bulletin, we explain in detail what those entail.

Capping means the period after which a contract of fixed duration shall be deemed to be a contract without limit of time. Under Labour Amendment number 5 of 2015, a new sub-section (3a) was added to section 12 of the Labour Act [Chapter 28:01], which reads:

" (3a) A contract of employment that specifies its duration or date of termination, including a contract for casual work or seasonal work or for the performance of some specific service, shall, despite such specification, be deemed to be a contract of employment without limitation of time upon the expiry of such period of continuous service as is—

- (a) fixed by the appropriate employment council; or*
- (b) prescribed by the Minister, if there is no employment council for the undertaking concerned, or where the employment council fixes no such period;*

and thereupon the employee concerned shall be afforded the same benefits as are in this Act or any collective bargaining agreement provided for those employees who engaged without limit of time."

This means that there is a limit to the number of times a contract of employment with a stipulated period can be renewed and once that limit has been reached, such employee/s will become employees on a contract without limit of time. In the agricultural sector, we have limits that have been fixed by the Council (NEC) for each sub-sector. The sub-sectors have different capping periods hence each farmer must be aware of the capping periods applicable to their sub-sector. Below are the capping periods for the sub-sectors in the agricultural industry.

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SUB-SECTOR CAPPING PERIODS

Subsector	Current S.I	Duration of Fixed-Term Contract	Max. No#. of renewals	Capping Period
General Agri	S.I 77 of 2017	9 Months	6	4.5 Years
Agro	S.I 111 of 2020	N/A	N/A	3 Years of continuous service.
Horticulture	S.I 112 of 2020	N/A	N/A	3 Years of continuous service.
Timber	S.I 113 of 2020	12 Months	3	3 Years
Kapenta	S.I 68 of 2017	11 months	1	11 Months
Tea & Coffee	S.I 69 of 2017	10 Months	7	5 years 10 months
Sugarcane	S.I 149 of 2020	9 Months	2	1.5 years

**For more detailed information in each sub-sector, refer to the current S.I: downloadable on our website - cfuzim.org*

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Once such an employee becomes an employee on a contract without limit, they shall be entitled to the same benefits as are in the Labour Act or any collective bargaining agreement provided for such employees.

WHAT IS CONTINUOUS SERVICE

According to S.I 41 of 2022, the principal CBA, it means a period of unbroken service with an employer by an employee. According to section 23 (1) of SI 41 of 2022, continuous service shall be deemed to be broken only by death, resignation, retirement, or other termination of the employee's employment for any reason. What this entails is that if any of these situations occur, it means that continuous service would have been broken and section 12 (3a) therefore will not apply.

The instances where continuous service is broken, that is by death, resignation or retirement are quite clear on what those entail. The one which has a grey area is the one which states: "other termination of the employee's employment for any reason." Effluxion/expiration of a fixed term contract is a termination of an employee's employment. For example, a tobacco farmer employs an employee for 9 months, it means that at the end of the contract, their employment would have been terminated, the question that arises is whether this means that continuous service has been broken and the farmer can renew their contract as often as they want without section 12 (3a) of the Labour Act kicking in?

It is important to note that the time between the expiring of a contract and the giving/renewing of a contract must be reasonable to constitute a break in continuous service. One day is not sufficient to constitute a break in service. Neither the principal CBA nor the Labour Act stipulate a timeframe that constitutes a break in continuous service. It is therefore crucial that the farmer ensures that there is a reasonable time between the subsequent contracts. However, what constitutes a reasonable time will depend on the facts of a particular case and circumstances surrounding the case.

CONCLUSION

Exceeding the capping periods will result in an employee becoming a permanent employee by operation of the law, even if an employee is given a contract that stipulates an end date. Farmers therefore need to ensure that they keep records and keep track of the number of fixed term contracts that have been given to an employee. If the farmer is not sure how to deal with this, it is better to seek guidance than to do what will become costly in the future.

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Disclaimer: This article is issued to serve as a general guide to farmers and does not substitute legal advice that may be required to address a particular situation with peculiar circumstances.

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