

A.L. 51 ta' l-2007

**ATT DWAR L-IMPIEGI U RELAZZJONIJIET
INDUSTRIJALI
(KAP. 452)**

**Regolamenti ta' l-2007 dwar Kuntratti ta' Servizz Għal Terminu
ta' Żmien Fiss**

BIS-SAHHA tas-setghat mogħtija bl-artikolu 34 tal-Att dwar l-Impiegi u r-Relazzjonijiet Industrijali, il-Ministru ta' l-Edukazzjoni, Żgħażaġh u Impiegi għamel dawn ir-regolamenti li ġejjin -

1. (1) It-titolu ta' dawn ir-regolamenti hu Regolamenti ta' l-2007 dwar Kuntratti ta' Servizz Għal Terminu ta' Żmien Fiss. Titolu u bidu fis-sehh.

(2) Dawn ir-regolamenti għandhom jidhlu fis-sehh f'dik id-data li l-Ministru jista' jistabbilixxi b'avviż fil-Gazzetta, u dati differenti jistgħu jiġu hekk stabbiliti għal disposizzjonijiet differenti tagħhom.

2. (1) Għall-finijiet ta' dawn ir-regolamenti – Tifsir.

“l-Att” tfisser l-Att dwar Impiegi u Relazzjonijiet Industrijali;

“impjegat permanenti komparabbli” tfisser impjegat *whole time* fl-istess stabbiliment li jkun impjegat b'kuntratt ta' servizz ta' tul indefinit u li jkun impjegat fl-istess xogħol jew xogħol simili jew okkupazzjoni, waqt li jiġi tenut kont ta' konsiderazzjonijiet ohra inklużi l-anzjanità, kwalifiki u hiliet:

Iżda meta ma jkun hemm ebda impjegat permanenti komparabbli fl-istess stabbiliment, it-tqabbil għandu jsir b'referenza għal ftehim kollettivi li jkunu jkopru impjegati permanenti komparabbli fi stabbilimenti ohra;

“kuntratt ta' servizz għal żmien fiss” tfisser kuntratti ta' servizz maqbul bejn il-prinċipal u l-impjegat li fihom it-tmiem tal-kuntratt jiġi determinat meta tintlahaq data speċifika, meta tintemm biċċa xogħol speċifika jew meta jiġri xi avveniment speċifiku.

(2) Bla hsara għad-disposizzjonijiet tas-subregolament (1) ta' dan ir-regolament, kliem u frażijiet użati f'dawn ir-regolamenti

għandhom, kemm-il darba r-rabta tal-kliem ma tkunx tehtieg xort'ohra, it-tifsira lillhom mogħtija fl-Att.

Applikabilità.

3. (1) Dawn ir-regolamenti għandhom japplikaw għall-impjegati li huma f'impjieg b'kuntratt ta' servizz għal żmien fiss.

(2) Dawn ir-regolamenti m'għandhomx japplikaw:

(a) għal persuni appuntati biex jaqdu dmirhom f'Bord ta' Awtorità mwaqqfa bil-liġi jew pubblika, Kummissjoni, Kumitat, Korporazzjoni, jew il-Bord ta' persuna ġuridika mwaqqfa bil-liġi jew ta' xi entità fis-settur pubbliku ohra kif imsemmija f' artiklu 80 (3) ta' l-Att;

(b) għat-tweqqig ta' xi biċċa xogħol ta' natura speċifika jew ta' biċċa xogħol li jkollha titwettaq f'perjodu ta' żmien speċifiku mogħti mill-prinċipal lill-impjegat li jkun diġà impjegat mal-prinċipal b'kuntratt ta' servizz ta' tul indefinit;

(ċ) għal persuni li jkunu qegħdin jagħmlu taħriġ jew esperjenza ta' xogħol taħt skema ta' taħriġ jew apprentistat jew borża ta' studju jew *trainee scheme* approvati;

(d) għal kuntratt ta' servizz fis-Servizz Pubbliku jew fis-Settur Pubbliku li mhux magħmul skond il-liġijiet ta' Malta applikabbli u, partikolarment, id-disposizzjonijiet tal-Kostituzzjoni.

Prinċipju ta' non-diskriminazzjoni.

4. Impjegati b'kuntratt ta' servizz għal żmien fiss m'għandhomx ikunu ittrattati b'mod inqas favorevoli minn impjegati permanenti komparabbli għar-raġuni wahdanija li jkollhom kuntratt ta' servizz għal żmien fiss:

Iżda prinċipal jista' jagħmel differenza bejn il-kondizzjonijiet ta' xogħol ta' impjegat b'kuntratt għal żmien fiss u impjegat komparabbli b'kuntratt ta' servizz għal żmien indefinit, jekk:

(a) id-differenza hija riżultat tar-rikonoxximent ta' tul ta' servizz, esperjenza, kwalifiki jew kondizzjonijiet ta' paga u xogħol marbutin mal-kuntratt ta' servizz li jiġi immedjatament qabel il-kuntratt ta' servizz għal żmien fiss, u daww id-differenzi l-ohra li huma ġustifikati għal raġunijiet oġġettivi; jew

(b) il-biċċa xogħol li l-impjegat ikun ġie impjegat għaliha tkun wahda speċifika jew ikollha n-natura ta' kariga għolja ta' tmexxija u tinkludi konsiderazzjonijiet oġġettivi li jiġġustifikaw tali trattamenti differenti.

5. (1) Ikun id-dmir tal-prinċipal li jinforma lil impjegati b'kuntratt ta' servizz għal żmien fiss b' vakanzi li jinholqu fil-post tax-xogħol u li jagħti lil tali impjegati l-istess opportunità daqs impjegati oħra biex dawn jakkwistaw xogħol b' kuntratt ta' servizz għal żmien indefinit fil-post tax-xogħol tagħhom.

Dmir il-prinċipal li jinforma lill-impjegati b'vakanzi.

(2) Il-prinċipal jista' jinforma lill-impjegati permezz ta' avvizz ġenerali li jintwera f' post adatt fil-post tax-xogħol tagħhom.

6. Il-prinċipal għandu jagħmel l-almu tiegħu biex jiffaċilita l-aċċess ta' l-impjegati b'kuntratt ta' servizz għal terminu ta' żmien fiss għal opportunitajiet ta' tahrig xierqa biex itejbu hiliethom, l-iżvilupp tal-karriera tagħhom u l-mobilità okkupazzjonali.

Aċċess għal opportunitajiet ta' tahrig, eċċ.

7. (1) Mingħajr preġudizzju għar-regolament 3 (2) ta' dawn ir-regolamenti, kuntratt ta' servizz għal żmien fiss għandu jinbidel f'kuntratt ta' servizz għal żmien indefinit jekk:

Kuntratti għal żmien fiss suċċessivi.

(a) l-impjegat kien impjegat kontinwament b'kuntratt bħal dak għal żmien fiss kif imsemmi, jew taht dak il-kuntratt mehud flimkien ma' kuntratt jew kuntratti ta' servizz preċedenti għal żmien fiss li jeċċedi perjodu ta' impjieg kontinwu għal aktar minn erba' snin; u

(b) il-prinċipal ma jistax jagħti raġunijiet oġġettivi kif imsemmi fil-paragrafi (i)(a), (iii)(a) jew (iv)(a) tas-subregolament (6) ta' dan ir-regolament biex jiġġustifika l-limitazzjoni tat-tiġdid ta' dak il-kuntratt għal żmien fiss:

Iżda fil-komputazzjoni tal-perjodu ta' erba' snin imsemmi fil-paragrafu (a) ta' dan is-subregolament, għandu wkoll jiġi ikkunsidrat kull perjodu li matulu l-impjegat kien kontinwament impjegat qabel id-dhul fis-seħh ta' dawn ir-regolamenti.

(2) Id-data effettiva meta impjegat għandu jitqies li ġie impjegat fuq bażi indefinita hija d-data li tiġi l-ghada ta' meta jagħlaq il-perjodu ta' erba' snin, imma l-perjodu ta' impjieg kontinwu f' kuntratt wiehed jew aktar għal żmien fiss għandu jiġi ikkunsidrat għall-iskopijiet l-oħra kollha, inkluża l-anzjanità u sensja.

(3) Dan ir-regolament għandu jkun bla preġudizzju għall-bidla ta' kuntratt ta' servizz ta' impjegat li qabel kien impjegat b'kuntratt ta' servizz għal żmien fiss f'wiehed ta' tul indefinit jekk l-istess impjegat ikun inżamm fl-impjieg u ma jingħatax kuntratt ta' servizz ġdid għal żmien fiss sa tnax-il ġurnata tax-xogħol minn meta jkun għalaq il-kuntratt ta' qabel, kif stabbilit fl-artikolu 34 (2) ta' l-Att.

(4) Minghajr preġudizzju għall-ġeneralità ta' paragrafu (b) ta' subregolament (1) ta' dan ir-regolament, ir-raġunijiet oġġettivi li l-prinċipal jista' jqajjem għaż-żamma ta' impjegat fuq kuntratt għal terminu ta' żmien fiss jistgħu jinkludu li l-impjegat:

(a) kien impjegat bħala *casual substitute* jew impjegat simili fuq bażi *back to back* jew bħala impjegat meqjus *temporary substitute*;

(b) jikkupa posizzjoni ta' tmexxija inklużi impjegati fi Skali 1 sa 4 t-tnejn inklużi fis-Servizz Pubbliku jew fi grad komparabbli fis-settur pubbliku;

(c) kien impjegat ingaġġat sat-tlestija ta' biċċa xogħol speċifika jew l-okkorrenza ta' xi avveniment speċifiku jew meta tkun prevista data speċifika għat-terminazzjoni ta' l-impjieg;

(d) kien impjegat permezz ta' hatra li ssir biex thares l-interessi partikolari ta' sigurtà jew ekonomiċi ta' l-Istat jew li kien impjegat f'ambaxxati jew f' ingaġġ barra minn Malta;

(e) tkun persuna impjegata bħala persuna ta' fiduċja li taqdi dmirha f'uffiċju ta' korp elett pubblikament jew ta' detentur ta' uffiċċju elett pubblikament, jew li tkun impjegata minn persuna msemmija f' paragrafu (a) ta' subregolament (2) tar-regolament 3 biex taqdi dmirha bħala membru tal-persunal privat tiegħu jew tagħha, jew li tkun impjegata biex tagħti l-pariri jew bħala konsulent jew f'kull kapaċità oħra fis-Servizz Pubbliku jew fis-settur pubbliku jew privat bħala persuna ta' fiduċja.

(5) Għall-finijiet ta' dan ir-regolament, il-kliem "impjegat kontinwament" għandhom jinkludu dawk il-kuntratti għal żmien fiss li jiġu mġedda fi żmien sitt xhur minn meta jiskadu u dan il-perjodu ta' bejn il-kuntratti għandu jiġi inkluż fil-kalkolu tal-perjodu ta' kwalifika ta' erba' snin imsemmi f'regolament 7(1)(a) :

Iżda kuntratt ta' servizz għal żmien fiss iehor maqbul wara l-iskadenza tal-perjodu ta' sitt xhur m'għandux jiġi ikkunsidrat bħala impjieg kontinwu:

Iżda wkoll kuntratt ta' servizz għal żmien fiss iehor maqbul fi żmien il-perjodu ta' sitt xhur wara l-iskadenza tal-kuntratt ta' qablu għandu jiġi ikkunsidrat bħala impjieg kontinwu jekk il-hidmiet fil-kuntratt sussegwenti jkunu sostanzjalment l-istess bhall-hidmiet fil-kuntratt ta' xogħol precedenti:

Iżda aktar, il-hidmiet ghandhom xorta jiġu ikkunsidrati li huma sostanzjalment l-istess minkejja li jinkludu bidliet relatati mal-progress tekniku jew bidliet fil-prattiċi tax-xogħol jew fil-mod kif jiġu eżegwiti l-hidmiet jew il-kuntratt ikun jinkludi promozzjoni li tkun relatata ma' xogħol mogħti f' xi kuntratt preċedenti.

(6) (i) Minghajr preġudizzju għad-drittijiet ta' l-impjegat taħt dawn ir-regolamenti, kull meta prinċipal ikollu intenzjoni li jagħmel kuntratt ta' servizz għal żmien fiss ma' impjegat prospettiv il-prinċipal għandu jniżżel bil-miktub f'dak il-kuntratt:

(a) ir-raġunijiet oġġettivi, jekk ikun hemm, għaliex il-kuntratt li jkun ser isir m'għandux jiġi mibdul f'wiehed ta' tul indefinit jekk l-impjegat ikun ser jiġi impjegat kontinwament f' wiehed jew aktar kuntratti b'terminu fiss suċċessivi għal perjodu li jaqbeż l-erba' snin, jew

(b) il-pagi attwali u kondizzjonijiet oħra ta' xogħol marbutin mal-kuntratt ta' servizz jekk dan awtomatikament isir kuntratt indefinit fl-assenza ta' raġunijiet oġġettivi.

(ii) Jekk impjegat b'kuntratt għal żmien fiss jiġi impjegat kontinwament b' kuntratt wiehed jew aktar suċċessivi għal perjodu li jaqbeż l-erba' snin:

(a) fin-nuqqas ta' konformità mas-subparagrafu (a) ta' paragrafu (i) ta' dan is-subregolament, il-kuntratt ta' l-impjegat ta' l-impjegat għandu awtomatikament isir kuntratt ta' impjegat indefinit, u

(b) fin-nuqqas ta' konformità mas-subparagrafu (b) ta' paragrafu (i) ta' dan is-subregolament, l-impjegat għandu jgawdi l-istess kondizzjonijiet ta' xogħol imgawda taħt il-kuntratt għal żmien fiss.

(iii) Fil-każ ta' impjegat b' kuntratt għal żmien fiss li jkollu perjodu ta' impjegat kontinwu li ma jkunx qabeż l-erba' snin fid-data meta jidhol fis-seħħ dan is-subparagrafu, il-prinċipal għandu, jew qabel l-iskadenza tal-kuntratt kurrenti jew fi żmien sitt xhur mid-data tad-dhul fis-seħħ ta' dawn ir-regolamenti, skond liema minnhom jiġi l-ewwel, jipprovdi lill-impjegat bil-miktub:

(a) ir-raġunijiet oġġettivi, jekk ikun hemm, għaliex il-kuntratt li jkun sar m'għandux jinbidel f'wiehed ta' tul indefinit jekk l-impjegat kien ġie impjegat kontinwament b'kuntratt wiehed jew aktar suċċessivi għal perjodu li jaqbeż l-erba' snin, jew

(b) il-pagi attwali u l-kondizzjonijiet l-ohra tax-xoghol marbutin mal-kuntratt għaladarba dan awtomatikament isir kuntratt indefinit fl-assenza ta' raġunijiet oġġettivi.

(iv) Fil-każ ta' impjegat fis-Servizz Pubbliku jew fis-settur pubbliku b'kuntratt għal żmien fiss li jkollu perjodu ta' impjieg kontinwu b'kuntratt għal żmien fiss wiehed jew aktar suċċessivi li jkun qabeż l-erba' snin u li jkun għadu fl-impjieg fid-data tad-dhul fis-sehh ta' dan is-subparagrafu, il-prinċipal għandu jagħti lil dak l-impjegat bil-miktub, fi żmien sitt xhur mid-data tad-dhul fis-sehh ta' dan is-subparagrafu:

(a) ir-raġunijiet oġġettivi, jekk ikun hemm, għaliex il-kuntratt li jkun sar m'għandux jinbidel f'wiehed ta' tul indefinit jekk l-impjegat ikun ġie impjegat b'kuntratt wiehed jew aktar suċċessivi għal perjodu kontinwu li jaqbeż l-erba' snin, jew

(b) il-pagi attwali u l-kondizzjonijiet tax-xoghol l-ohra marbutin mal-kuntratt għaladarba dan awtomatikament isir kuntratt indefinit fl-assenza ta' raġunijiet oġġettivi.

(v) Jekk impjegat b'kuntratt għal żmien fiss kif imsemmi fil-paragrafi (iii) jew (iv) ta' dan is-subregolament kien impjegat jew ġie sussegwentement impjegat b'kuntratt wiehed jew aktar suċċessivi għal perjodu kontinwu li jaqbeż l-erba' snin:

(a) fl-assenza ta' dokument li jelenka r-raġunijiet imsemmija f'paragrafi (iii)(a) jew (iv)(a) ta' dan is-subregolament u mogħti lill-impjegat fiż-żmien rilevanti applikabbli, il-kuntratt ta' impjieg ta' l-impjegat għandu awtomatikament isir kuntratt ta' impjieg indefinit kif imsemmi fis-subregolamenti (2) jew (7) ta' dan ir-regolament skond il-każ, u

(b) fl-assenza ta' informazzjoni bil-miktub kif imsemmi f'paragrafi (iii)(b) u (iv)(b) ta' dan is-subregolament u mogħtija lill-impjegat fiż-żmien rilevanti applikabbli, l-impjegat għandu, mal-bidla għal kuntratt ta' servizz indefinit, igawdi l-istess kondizzjonijiet ta' xoghol imgawda taht il-kuntratt għal żmien fiss.

(7) Bla hsara għall-paragrafu (iv) tas-subregolament (6) ta' dan ir-regolament, impjegati fl-impjieg mas-Servizz Pubbliku jew fis-settur pubbliku fid-data tad-dhul fis-sehh ta' dawn ir-regolamenti li, matul il-perjodu bejn l-ewwel ta' Mejju 2004 u d-data tad-dhul fis-sehh, li jkunu għalqu perjodu ta' aktar minn erba' snin f' impjieg kontinwu u li fil-konfront tagħhom ma jkunx hemm raġuni oġġettiva li tiġġustifika ż-żamma tagħhom b' kuntratt għal żmien fiss kif imsemmi

fis-subregolament (4) ta' dan ir-regolament, ghandhom jitqiesu li saru impjegati b'kuntratt indefinit b'effett mid-data li tigi l-ghada ta' meta jiskadi l-perjodu imsemmi ta' erba' snin.

(8) Ebda haġa fis-subregolament (7) ta' dan ir-regolament m'ghandha tiftiehem li ghandha l-effett li terġa' ġġib fis-sehh xi relazzjoni ta' impjieg li kienet mitmuma qabel id-data tad-dhul fis-sehh ta' dawn ir-regolamenti jew li tinvalida xi terminazzjoni bhal dik.

(9) Minghajr preġudizzju ghad-disposizzjonijiet ta' paragrafi (iv)(b) u (v)(b) tas-subregolament (6) ta' dan ir-regolament, ebda haġa f'dawn ir-regolamenti m'ghandha tigi interpretata li taghti lill-impjegati li jkunu akkwistaw stat indefinit id-dritt li jgħorru ma' l-istess stat benefiċċji li huma partikolari għall-kuntratti definiti.

8. (1) Impjegat jista' jressaq ilment lit-Tribunal Industrijali li l-prinċipal tiegħu jkun kiser dritt mogħti lilu b'dawn ir-regolamenti. Ilment lit-Tribunal Industrijali.

(2) Bla hsara ghad-disposizzjonijiet tas-subregolament (3) ta' dan ir-regolament, it-Tribunal Industrijali m'ghandux jikkunsidra ilment taht dan ir-regolament kemm-il darba dan ma jgħix ipprezentat fi żmien erba' xhur li jibdedw għaddejjin mid-data tat-ttrattament l-anqas favorevoli.

(3) Meta impjegat jipprezenta lment taht dan ir-regolament u l-prinċipal iżomm li t-ttrattament hu wiehed ġustifikat għal raġunijiet oġġettivi, ikun id-dmir tal-prinċipal li jipprova li t-ttrattament inqas favorevoli ikun hekk ġustifikat għal raġunijiet oġġettivi.

9. Kull persuna li tikser id-disposizzjonijiet ta' dawn ir-regolamenti tkun hatja ta' reat u tista', meta tinstab hatja, tehel multa ta' mhux iżjed minn hames mitt lira (Lm500). Reati.

10. Ir-Regolamenti ta' l-2002 dwar Kuntratti ta' Servizz għal Terminu ta' Żmien Fiss, huma b'dawn imhassrin. Ihassar A.L. 429 ta' l-2002.

L.N. 51 of 2007

**EMPLOYMENT AND INDUSTRIAL RELATIONS ACT
(CAP. 452)**

Contracts of Service for a Fixed Term Regulations, 2007

IN exercise of the powers conferred by article 34 of the Employment and Industrial Relations Act, 2002, the Minister of Education, Youth and Employment has made the following regulations –

Title and commencement.

1. (1) The title of these regulations is the Contracts of Service for a Fixed Term Regulations, 2007.

(2) These regulations shall come into force on such date as the Minister may establish by notice in the Gazette, and different dates may be so established for different provisions thereof.

Definitions.

2. (1) For the purposes of these regulations –

“the Act” means the Employment and Industrial Relations Act.

“comparable permanent employee” means a whole time employee in the same establishment employed on a contract of service of indefinite duration and who is engaged in the same or similar work or occupation, due regard being given to other considerations including seniority, qualifications and skills:

Provided that where there is no comparable permanent employee in the same establishment, the comparison shall be made by reference to collective agreements covering similar comparable permanent employees in other establishments;

“contract of service for a fixed term” means a contract of service entered into between an employer and an employee where the end of the contract is determined by reaching a specific date, or by completing a specific task, or through the occurrence of a specific event.

(2) Subject to the provisions of sub-regulation (1) of this regulation, terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

3. (1) These regulations shall apply to employees who are in employment under a contract of service for a fixed-term. Applicability.

(2) These regulations shall not apply to:

(a) persons appointed to serve on any Board of any statutory or public Authority, Commission, Committee, Corporation or the Board of any body corporate established by law or of any other public sector entity as referred to in article 80(3) of the Act;

(b) assignments for the performance of a task of a specific nature or a specific task to be performed in a specified period of time given by the employer to an employee who is already employed with the employer on an indefinite contract of service;

(c) persons undergoing training or work experience under an approved training or apprenticeship or scholarship or trainee scheme;

(d) a contract of service in the Public Service or the Public Sector not made in accordance with the applicable laws of Malta and in particular, the provisions of the Constitution.

4. Employees on a contract of service for a fixed term shall not be treated in a less favourable manner than comparable permanent employees solely because they have a contract of service for a fixed term: Principle of non-discrimination.

Provided that an employer may differentiate between the conditions of employment of an employee on a fixed term contract and a comparable employee on a contract of service for an indefinite time, if:

(a) the difference arises in view of the recognition of length of service, experience, qualifications or conditions of pay and work attached to the contract of service immediately preceding the contract of service for a fixed term, and such other differences as are justified on objective grounds; or

(b) the task for which the employee has been employed is specific or has a top management nature and includes objective considerations which justify such differentiation.

5. (1) It shall be the duty of the employer to inform employees on a contract of service for a fixed term about vacancies which become available in the place of work and to give such employees the same Employer's duty to inform employees of vacancies.

opportunity as other employees to secure work on a contract of service for an indefinite time within the place of work.

(2) The employer may inform the employees by way of a general announcement to be posted up at a suitable place in the place of work.

Access to training opportunities etc.

6. The employer shall endeavour to facilitate access by employees on a contract of service for a fixed term to appropriate training opportunities to enhance their skills, career development and occupational mobility.

Successive Fixed Term Contracts.

7. (1) Without prejudice to regulation 3(2) hereof, a contract of service for a fixed-term shall be transformed into a contract of service for an indefinite period if:

(a) the employee has been continuously employed under such a contract for a fixed term, or under that contract taken in conjunction with a previous contract or contracts of service for a fixed term in excess of a period of continuous employment of four years; and

(b) the employer cannot provide objective reasons as referred to in paragraphs (i)(a), (iii)(a) or (iv)(a) of sub-regulation (6) of this regulation to justify the limitation of a renewal of such a contract for a fixed term:

Provided that in the computation of the period of four years mentioned in paragraph (a) above, any period during which the employee was continuously employed prior to the coming into force of these regulations shall also be taken into consideration.

(2) The effective date when an employee shall be considered to have been employed on an indefinite basis is the date following that when the four-year period has expired, but the period in continuous employment on one or more fixed-term contract or contracts of service shall be taken into account for all other purposes, including seniority and redundancy.

(3) This regulation shall be without prejudice to the transformation of the contract of service of an employee who was previously employed on a fixed term contract to one of an indefinite duration if the said employee is retained in employment and is not given a new contract of service for a fixed-term within the first twelve working days following the expiry of the previous contract, as established in article 34 (2) of the Act.

(4) Without prejudice to the generality of paragraph (b) of sub-regulation (1) of this regulation, the objective reasons which the employer may plead for the retention of an employee on a fixed-term contract may include that the employee:

(a) was employed as a casual substitute or similar employee on a back to back basis or as a temporary substitute employee;

(b) occupies a management position including employees in Scales 1 to 4 inclusive in the Public Service or a comparable grade in the public sector;

(c) was engaged till the completion of a specific task or the occurrence of a specific event or when a specific date is forecast for the termination of employment;

(d) was employed by means of an appointment made to safeguard particular security or economic interests of the State or was employed in missions or postings abroad;

(e) is a person employed as a person of trust to serve in the office of a publicly elected body or of a holder of a publicly elected office, or is employed by a person referred to in paragraph (a) of sub-regulation (2) of regulation 3 to serve as a member of the private staff, or is employed to serve as advisor or consultant or in any other capacity in the Public Service or public or private sector as a person of trust.

(5) For the purposes of this regulation, the term “continuously employed” shall include those contracts of a fixed-term which are renewed within six months from their termination and this period between the contracts shall be included in the calculation of the four year qualifying period referred to in regulation 7(1)(a):

Provided that another contract of service for a fixed-term entered into after the lapse of the six month period shall not be considered as continuous employment :

Provided further that another contract of service for a fixed-term entered into within the six month period after the termination of a previous contract shall be considered as continuous employment if the tasks under the subsequent contract are substantially the same as the tasks under the previous contract of employment:

Provided also that the tasks shall still be considered to be substantially the same even though they encompass changes related to technical progress or changes in work practices or in the way the tasks are carried out or the contract includes a promotion related to work assigned in any previous contract.

(6) (i) Without prejudice to the rights of the employee under these regulations, whenever an employer intends to enter into a contract of service for a fixed term with a prospective employee the employer shall list in writing in that contract:

(a) the objective reasons, if any, why the contract to be entered into should not be converted into one of indefinite duration if the employee is continuously employed on one or more successive fixed-term contracts for a period exceeding four years, or

(b) the actual wages and other conditions of employment attached to the contract of service if this will automatically become indefinite in the absence of objective reasons.

(ii) If an employee on a fixed term contract is continuously employed on one or more successive contracts for a period exceeding four years:

(a) in the absence of compliance with sub-paragraph (a) of paragraph (i) hereof, the employee's contract of employment shall automatically become an indefinite contract of employment, and

(b) in the absence of compliance with sub-paragraph (b) of paragraph (i) hereof, the employee shall enjoy the same conditions of employment enjoyed under the fixed-term contract.

(iii) In the case of an employee on a fixed-term contract whose period of continuous employment has not exceeded four years on the date of entry into force of this sub-paragraph, the employer shall, either before the expiry of the current contract or within a period of six months from the date of entry into force of these regulations, whichever is the earlier, furnish the employee in writing with:

(a) the objective reasons, if any, why the contract which had been entered into should not be converted into one of indefinite duration if the employee is employed on one or more successive contracts for a continuous period exceeding four years, or

(b) the actual wages and other conditions of employment attached to the contract once this automatically becomes indefinite in the absence of objective reasons.

(iv) In the case of an employee in the Public Service or public sector on a fixed-term contract whose period of continuous employment on one or more successive fixed-term contracts has exceeded four years and who is still in employment on the date of entry into force of this sub-paragraph, the employer shall furnish that employee in writing, within a six month period from the date of entry into force of this sub-paragraph, with:

(a) the objective reasons, if any, why the contract which had been entered into should not be converted into one of indefinite duration if the employee has been employed on one or more successive contracts for a continuous period exceeding four years, or

(b) the actual wages and other conditions of employment attached to the contract once this automatically becomes indefinite in the absence of objective reasons.

(v) If an employee on a fixed term contract referred to in paragraph (iii) or (iv) above has been employed or is subsequently employed on one or more successive contracts for a continuous period exceeding four years:

(a) in the absence of a document listing the reasons as referred to in paragraphs (iii)(a) or (iv)(a) hereof and furnished to the employee within the relevant applicable period, the employee's contract of employment shall automatically become an indefinite contract of employment as provided for in sub-regulations (2) or (7) hereof as the case may be, and

(b) in the absence of written information referred to in paragraphs (iii)(b) and (iv)(b) hereof and furnished to the employee within the relevant applicable period, the employee shall on conversion to an indefinite contract of service enjoy the same conditions of employment enjoyed under the fixed-term contract.

(7) Subject to paragraph (iv) of sub-regulation (6) hereof, employees in employment in the public service or public sector on the date of entry into force of these regulations who, during the period between 1st May 2004 and the date of the said entry into force, completed a period of more than four years continuous employment and in respect of whom there is no objective reason justifying their retention on a

fixed-term contract as referred to in sub-regulation (4) hereof, shall be deemed to have become employees on an indefinite contract with effect from the day following that when the said four-year period expired.

(8) Nothing in sub-regulation (7) hereof shall be interpreted as having the effect of reviving any employment relationship which has been terminated prior to the date of entry into force of these regulations or of invalidating any such termination.

(9) Without prejudice to the provisions of paragraphs (iv)(b) and (v)(b) of sub-regulation (6) hereof, nothing in these regulations shall be interpreted as conferring on employees who have acquired an indefinite status the right to carry with this status benefits which are particular to definite contracts.

Complaints to the
Industrial Tribunal.

8. (1) An employee may present a complaint to the Industrial Tribunal that his employer has infringed a right conferred on him by these regulations.

(2) Subject to the provisions of sub-regulation (3) of this regulation, the Industrial Tribunal shall not consider a complaint under this regulation unless it is presented within a period of four months, beginning from the date of the less favourable treatment.

(3) Where an employee presents a complaint under this regulation and the employer claims that the treatment is justified on objective grounds, it shall be incumbent on the employer to prove that the less favourable treatment is so justified on objective grounds.

Offences.

9. Any person contravening the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to a fine of not more than five hundred liri (Lm500).

Revokes L.N. 429
of 2002.

10. The Contracts of Service for a Fixed Term Regulations, 2002, are hereby being revoked.