

Recent amendments to labour law – interim regulations

March 09 2016 | Contributed by [Sołtysiński Kawecki & Szlęzak](#)

Introduction
Interim regulations
Comment

Introduction

The June 25 2015 amendments to the Labour Code (*Journal of Laws* 2015, Item 1220) came into force on February 22 2016 and made long-expected changes to fixed-term employment contracts. The amendments aim to eliminate the abuse of fixed-term contracts by employers (for further information please see "[Reform of fixed-term agreements](#)").

Outlined below are the most important interim regulations included in the amendments, which apply to fixed-term contracts executed under the previous regulations, but which were still in force on February 22 2016. Each provision is examined using a case study to illustrate the problematic characteristics of the interim regulations.

Interim regulations

Fixed-term employment contracts with notice period pending on February 22 2016

The previous legislation will continue to apply to fixed-term contracts in force on February 22 2016 if the notice of termination was given prior to that date. This means that the previously applicable general two-week notice period still applies to those contracts.

An example of this scenario would be a fixed-term contract executed for January 1 2015 to December 31 2016. Where a notice of termination was served on February 19 2016, the termination period would lapse on March 4 2016, as the previous regulations and the two-week notice period would continue to apply.

Non-terminable fixed-term contracts

Fixed-term contracts executed for up to six months, or longer than six months but without an early termination clause, were non-terminable under the previous regulations. The interim provisions did not introduce any changes in this regard, so contracts already in force on February 22 2016 continue to be non-terminable. The amendments did introduce a general rule of terminability for all fixed-term contracts. However, for contracts executed before the new law came into force, the previous rules apply.

An example of this scenario would be a fixed-term contract executed on February 1 2016 for two years, in which the possibility of earlier termination on notice has not been included. Therefore, before and after February 22 2016, it would not be possible to terminate the contract on notice.

Terminable fixed-term contracts

Fixed-term contracts executed before February 22 2016 for a period longer than six months that contain an early termination clause (and are therefore terminable), can also be terminated on notice after February 22 2016. However, the following notice periods must be applied:

AUTHORS

[Roch Pałubicki](#)



[Karolina
Kancierz](#)



- two weeks, if the employee has been employed for less than six months;
- one month, if the employee has been employed for at least six months; or
- three months, if the employee has been employed for at least three years.

Employers must consider that when calculating the length of notice periods for terminating such contracts, only employment from February 22 2016 is applicable. Any prior period of employment is irrelevant. It should be stressed that this rule applies only to the termination of contracts which were already in force on February 22 2016 and not to contracts executed on that day or thereafter.

An example of this scenario would be a fixed-term contract executed on January 1 2015 for three years, where the employer served the employee a notice of termination on March 1 2016. The notice period applicable would be two weeks, as under the interim provisions only employment from February 22 2016 should be included when calculating a notice period (ie, a few working weeks in this case and not the 13 months from January 1 2015).

Fixed-term contract limits

The '3/33' rule (ie, a maximum of three contracts lasting no longer than 33 months for an individual employee) is applicable to contracts executed before the effective date of the amendments. If an employee was employed under one or two previous fixed-term contracts prior to February 22 2016, they are considered to be the first or second contract under the new provisions. Therefore, two or only one further fixed-term contract respectively is allowed.

As for the maximum length of fixed-term employment, the limit of 33 months starts from February 22 2016, regardless of the previous fixed-term employment period.

An example of this scenario would be an employee employed from January 1 2015 to June 30 2016 on his first employment contract with the given employer. The parties would be allowed to execute two more fixed-term contracts. Under the amendments, the period from February 22 2016 to June 30 2016 is subtracted from the 33-month period of fixed-term employment.

Long-term contracts

A situation may exist where parties executed long-lasting fixed-term contracts in the past that will last longer than 33 months. Due to the new limits, these contracts will transform into open-ended contracts after the lapse of the permissible 33-month period.

An example of this scenario would be an employee employed from January 1 2014 for five years. Following the end of 33 months, counted from February 22 2016, the contract would become open-ended. If a given contract did not include a clause allowing its termination on notice, the employer may not benefit from the earlier termination of such problematic contracts on notice (there is an option relating to termination due to operational/economic reasons, which is beyond the scope of this update).

Exceptions to limits

The amendment states that the temporal and contractual limits outlined above will not apply if the execution of a contract is necessary and serves to fulfil an employer's legitimate and seasonal demand for one of the following reasons:

- to replace an absent employee;
- for contingent (casual) or seasonal work;
- for work performed under an appointment during a term of office (tenure);
- for an employer's other business-related needs.

It is also possible to apply the abovementioned exceptions to fixed-term contracts which were already in force on February 22 2016, but the parties thereto must supplement the contract with information concerning these circumstances. The timeframe for supplementation is three months as of February 22 2016. The State Labour Inspectorate must be notified within five days of a contract being supplemented for an employer's other business-related needs.

Comment

As the interim regulations are still relatively ambiguous, employers should carefully examine each case not only alongside the provisions of the Labour Code, but in light of the interim provisions which may govern the particular situation differently to the newly introduced provisions.

For further information on this topic please contact [Roch Pałubicki](#) or [Karolina Kanclerz](#) at Soltysiński Kawecki & Szlęzak by telephone (+48 22 608 7000) or email (roch.palubicki@skslegal.pl or karolina.kanclerz@skslegal.pl). The Soltysiński Kawecki & Szlęzak website can be accessed at www.skslegal.pl.

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).