



## Legal Pointer

For January 2016 (Number 18)

- **Fixed Duration Contract**

### *Reference*

1. Labour Law 1997
2. Arbitral Awards of the Arbitration Council

# Fixed Duration Contract



The Labour Law, Paragraph 1 of Article 65, stipulates that “A labor contract establishes working relations between the worker and the employer. It is subject to common law and can be made in a form that is agreed upon by the contracting parties.” In addition, Article 664 of the Civil Code stipulates that “A contract of employment is formed by the promise of one party to perform services for the other party and the other party promises to pay wages for the services.”

The content of the employment contract stipulated in the Labour Law and Civil Code add up each other and provide an identity of an employment contract according to the above two norms that an employment contract is a contract that creates working relations between workers and the employer and can be made according to the form agreed upon by the parties (request and offer) and the condition must be in accordance with the Labour Law and under the common law.

In addition, the Labour Law 1997 classifies an employment contract into two types: fixed duration contract and undetermined duration contract. The Labour Law states clearly the procedures of making and ending an employment contract of the two types. The Labour Law 1997 stipulates the condition of ending or terminating an employment contract of a worker which is considered correct in accordance with the law in order to prevent any end or termination of the employment contract of a worker by the employer without a valid reason or against the law. With this, a worker is obliged when they violate the condition of the employment contract.

Now we will make an interpretation on only fixed duration contract. This legal pointer will discuss and focus on termination or end of a fixed duration contract and legal compensation in case the end of the contract is not made in accordance with the Labour Law.

## **Section 1: Identity of Fix Duration Contract**

A fixed duration contract has its qualification as follows:

- State the starting and ending date clearly
- Have an exact duration that does not exceed 2 years
- A contract that is made in writing.

Sometimes, a fixed duration contract cannot have a specific date if it meets the following conditions:

- When it is the contract to a person who come to temporarily substitute another worker’s work.

- Seasonal work
- Occasional increase of work or unusual work of the enterprise.

Meanwhile, although it does not have a specific date, this contract will end if the following three conditions are met:

- When the worker who was temporarily absent returns to work or terminate the contract.
- End of the season
- When the occasional increase of the work or unusual work of the enterprise has ended.

## **Consequences:**

As Article 67 and Article 73 of the Labour Law are not clear, leading to a different interpretation as follows:

- ***Renewal one time or multiple times***: means that a fixed duration contract can be renewed in the same condition or in a different condition and the renewal is made when the previous contract expires. This renewal, although it is like or not like the previous contract, can be made one time or multiple times.

- ***As long as the maximum duration of the renewal does not exceed 2 years***: This determination is made for the purpose of preventing a confusion that a fixed duration contract can exceed 2 years when making an initial contract or original contract. In addition, the above paragraph also means that all the renewal must comply with the previous principle, meaning that each renewal must not exceed 2 years (meaning that it can be renewed many times but must not exceed 2 years).

- ***Paragraph 5 of Article 73 of the Labour Law stipulates that “...This notice period is extended to fifteen days for contracts that have a duration of more than one year. If there is no prior notice, the contract shall be extended for a length of time equal to its initial duration or deemed as a contract of unspecified duration if its total length exceeds the time limit specified in Article 67.”***

- Meanwhile, there is a different interpretation of fixed duration contract from the Arbitration Council which interpreted it with their precedent that ***“A fixed duration contract becomes an undetermined duration contract if there is no notice of the termination and if the total length exceeds the length stipulated in Article 67, Paragraph 2 (referring to the maximum total length, not the length of each renewal.)***

## **Section 2 End and termination and of fixed duration contract**

In principle, a fixed duration contract set a specific date, so the termination or end must comply with the principle and conditions that are required by the law. Failure to comply with the regally required conditions, the termination or end of the contract is considered illegal. Below will explain the basis of end and termination under two types of situations (1) end of contract with legal reason and (2) termination with illegal reason.

## 1. End of contract with legal reason

### A. Expiration on the due date

This fixed duration contract shall normally expire on the due date. The employer shall give notice to the workers about the end or renewal of the contract according to the length as shown in the following table:

Length of notice for fixed duration contract	
Length of contract	Length of notice
6 months or less	0 day
Less than 1 year but more than 6 months	10 days
More than 1 year	15 days

If there is no notice, the contract will continue with the same length as the length of the previous contract or is considered undetermined duration contract if the total length of the contracts exceeds 2 years. In this case, the seniority of the worker shall be counted from the date of signing the fixed duration contract, not counting from the time when the contract is changed from fixed duration contract to undetermined duration contract.

### B. End before expiration

- **End with agreement:** Contrary to the principle of the termination of the contract, a fixed duration contract can be ended before the expiration date with agreement from both parties of the contract which must be made in writing before the labour inspector and with signature of the two parties.
- **End due to serious misconduct or act of God:** If there is no agreement from both parties, a fixed duration contract can be ended before the due date in case of serious misconduct of either party or act of God. It should be noted that serious misconduct is also the same as act of God and they are a legal reason for either party of the contract to take it as a basis for their decision to end the fixed duration contract unilaterally without paying damages. However, the Labour Law demands the employer take measures within 7 days from the day they gave notice of the serious misconduct, otherwise it will be considered abandoning the right to end the contract.

Beside these two reasons, any end of fixed duration contract by either the employer or the worker must be obliged to pay damages by the violator of the contract.

## 2. End of contract with illegal reason

The following actions will be considered termination of contract with illegal reason if:

- Termination by unilateral party before the expiration of the contract without an agreement from the other party.

- Not resulting from serious misconduct of the other party
- Not resulting from act of God

#### **A. Illegal termination of contract by the worker**

If a worker terminates the contract without a valid reason in accordance with the law, the employer has the right to get damages equivalent to the damages they provide to the worker (Article 73, Paragraph 4 of the Labour Law). But for the decision not to renew the contract by the work party when the contract reaches its expiration date, even though the worker fails to give notice, the decision not to renew the contract is not illegal except that it was clearly stated in the contract that the worker is required to give notice. Article 73, Paragraph 5 of the Labour Law, does not oblige workers to give notice.

### **Section 3: Legal compensation**

#### **1. Right to receive**

##### **A. Termination with legal reason**

In case a fixed duration contract reaches its expiration date or has an agreement from the workers before the labour inspector, the employer must provide their workers with the following benefits:

- Last month's wage
- Payment instead of the remaining annual leave, if any
- Severance pay equal to the amount agreed upon in the CBA or at least 5% of the total wages paid during the contract. (Article 73, Paragraph 6 of the Labour Law)

##### **B. Termination without legal reason**

###### **B.1 Termination of contract before the expiration date**

In case the employer terminates a fixed duration contract before the expiration date unilaterally without an agreement from the work party or not resulting from the serious misconduct of the worker or act of God, the employer must provide the workers with the following wages and benefits:

- Last month's wage
- Payment instead of the remaining annual leave, if any
- Severance pay of the contract at least equal to 5% of the wages paid during the contract in case it is not stipulated in the CBA. (Article 73, paragraph 6 of the Labour Law)
- Damages at least equal to the amount the worker has received until the end of the contract. (Article 73, Paragraph 3 of the Labour Law).

###### **B.2 Non-renewal upon the expiration date without notice**

According to Article 73, paragraph 5 of the Labour Law, the employer has an obligation to give notice to the workers about the non-renewal or renewal of the contract if the contract has its duration more than 6 months. Without notice, the contract will be renewed with the same duration as the duration of the

previous contract and it will be considered undetermined duration contract if the total duration of the contracts exceeds the duration stipulated in Article 67.

In many cases, the Arbitration Council ruled that the termination of a fixed duration contract without notice is a termination against the law. According to this interpretation, the workers have the right to get damages from the termination of the contract. But how much is a worker entitled to damages?

According to Article 73, paragraph 5 of the Labour Law, we can classify it into two cases as follows:

- **Case 1:** The contract must be renewed with the same duration as the duration of the previous contract if there is no notice and the previous contract and the renewed contract has their total duration less than 2 years, the contract that has been renewed silently will have its duration equal to the previous one. So the worker will be entitled to the following:

- Last month's wage
- Payment instead of the remaining annual leave and other benefits, if any
- Payment instead of notice (Article 73, Paragraph 5)
- Severance pay equal to 5% of the wages paid during the contract in case it is not stipulated in CBA. (Article 73, paragraph 6, of the Labour Law)

- Damages at least equal to the amount the worker will be paid until the end of the new contract that has been renewed silently. (Article 73, Paragraph 3, of the Labour Law)

- **Case 2:** is considered undetermined duration contract if there is no notice and the duration of the previous contract and the duration of the silently renewed contract exceed 2 years. So the worker will receive the same severance pay as the one of the undetermined duration contract that is illegally terminated.

Formulated by:

GMAC Legal and Labour Team

Disclaimer: This legal pointer intends to provide members with legal information only and does not serve as legal advice. GMAC is not responsible for any damage resulting from the implementation of this legal pointer. GMAC encourages members to seek additional explanation from legal experts before implementing this legal pointer. For further information, please contact GMAC at 023 301 181 or email: [kimpichda@gmac-cambodia.org](mailto:kimpichda@gmac-cambodia.org)