To: Presidents of all Universities

Presidents of all Institutes of Technology

Guidance Note on the Use of Fixed Term Contracts

Dear President,

The Education Sector Oversight Group established under the National Agreements has engaged with unions representing administrative, technical, support, library and management staff in the Universities and Institutes of Technology on the issue of the prevalence of the use of Fixed-Term contracts for the filling of administrative, technical, support, library and management posts. Following that engagement, this Department is issuing this guidance note, designed to inform the use of fixed-term contracts for filling of vacancies by Universities and Institutes of Technology in the context of current legislation and best HR practice.

Please bear in mind that this guidance note refers only to administrative, technical, support, library and management staff. Employers will already be aware that the Cush Report sets out arrangements applicable to fixed-term and part-time employment in lecturing.

Protection of Employees (Fixed-Term Work) Act 2003

The purpose of the Protection of Employees (Fixed-Term Work) Act 2003 is:

(i) to provide for the improvement of the quality of fixed-term work by ensuring the application of the principle of non-discrimination (i.e. fixed-term workers may not be treated less favourably than comparable permanent workers) and

(ii) to provide for the removal of discrimination against fixed-term workers where such exists and the establishment of a framework to prevent abuse arising from the use of successive fixed-term employment contracts.¹

The Department is of the view that the application of the Act is the minimum standard expected from employers.

¹ Protection of Employees (Fixed-Term Work) Act 2003 – Explanatory Booklet for Employers and Employees – Issued by Department of Jobs, Enterprise and Innovation
Department's Position

The Department’s view is that in accordance with normal public service recruitment and retention practices, when appointing staff to what are normally considered permanent positions e.g. when permanent staff leave or retire, or when new vacancies are being filled, then such appointments should be made on a permanent basis.

Please note that this should not prevent institutions offering fixed-term contracts in circumstances where there are legitimate and sustainable objective grounds for doing so. Therefore, for example, replacing a staff member who is on a period of extended leave, a period of sick leave, career break or maternity leave with a person on a fixed-term contract is acceptable. Another example would where a person was appointed for a specific purpose.

The objective grounds for awarding a fixed-term contract are set out in the Act and direct that an employee shall be informed in writing by his or her employer as soon as practicable of the objective condition determining the contract i.e. whether it is

(a) arriving at a specific date,
(b) completing a specific task, or
(c) the occurrence of a specific event.

If none of the above conditions apply to the position, then it would be appropriate that the employer would make the appointment on a permanent basis.

In this regard it should be borne in mind that a possibility of funding becoming unavailable or uncertain at some unspecified future date should not be regarded as objective grounds for avoiding permanent employment.

*It should be noted that nothing in this guidance note prevents employers from using appropriate probation policies in conjunction with the awarding of permanent contracts.*

Examples

The following sets out a number of examples that illustrate the appropriate use of fixed-term and permanent contracts in the context of this guidance note.

*Scenario 1*

A general operative resigns or retires from their permanent position and the employer decides that the resulting vacancy needs to be filled. In this situation, it would be reasonable to expect that the employer would advertise the position as a permanent appointment and the successful candidate would be appointed on a permanent basis, subject to the employer’s policy on probation.

*Scenario 2*

A Grade III staff member has applied for a two-year career break and the employer needs someone to fill the role for that period. In this case it would be reasonable to expect that the employer would advertise and fill the vacancy on fixed-term basis.
Scenario 3

A Grade IV staff member has been promoted from their current permanent position and the employer decides that the resulting vacancy needs to be filled. In this situation, it would be reasonable to expect that the employer would advertise the position as a permanent appointment and the successful candidate would be appointed on a permanent basis, subject to the employer’s policy on probation.

Scenario 4

A project has been set up to achieve a specific task and a staff member on a fixed-term contract for that project resigns and needs to be replaced. In this situation it would be reasonable to expect that the appointment of the replacement would be on a fixed-term basis.

Existing Staff

If there are fixed term staff currently appointed in posts which would be considered as permanent positions taking cognisance of the guidance contained in this note, then employers are requested to take immediate steps to regularise the position and to offer permanent contracts to those staff affected.

If you have any queries regarding this matter please contact esr@education.gov.ie or your contact within the External Staff Relations Unit in the Department.

Yours sincerely,

[Signature]

Philip Crosby
Principal
External Staff Relations

4th August 2017