

Terms of Reference
ILAW Future of Labor Law Database
Fixed Term Contracts

Future of Labor Law Database

The ILAW Network is building an on-line member-accessible database that would contain model legislation that addresses priority topics, accompanied by a range of supporting documents and commentary that speak to content, process, and implementation concerns. Other databases, including ones administered by the ILO, already contain labor law legislation currently existing in different countries. However, we are not aware of any database that purports to offer the recommendations as to what could and should exist, much less one that is created, maintained, and updated by the global community of labor and worker rights lawyers, themselves. We are of course mindful that around the world there are different legal systems, cultures and histories, and that any recommendations will need to be adapted to local circumstances, though we believe that many of the principles will be transferable.

As legal, legislative, or political circumstances evolve, we expect that members will be continuously involved in providing updates or changes to posted provisions and memos, triggering further committee evaluation. Members will also be encouraged to post updates regarding their efforts to seek passage of ILAW Network proposals or other provisions on the same topic, and/or whatever use they have made (e.g. collective bargaining) of the model language as they see fit.

Problem to be Addressed:

Around the world, millions of workers are hired on short-term/fixed-duration contracts. Of course, recourse to short-term employment may be legitimate for work that is truly temporary in nature. This would include, for example, substitution for a worker who is absent on sick leave or parental leave, or assignment to work that has a limited duration (e.g., warehouse or retail work during a holiday surge) or that is for a specific project. However, many workers who are hired on short-term contracts are performing work of a permanent nature and may work for years on a series of short-term contracts. Workers on such contracts frequently experience, among other abuses, greater job insecurity, lower rates of compensation and benefits, reduced opportunities for training and promotion, little to no paid leave, including maternity leave, and gender-based violence and harassment. This is a problem that is likely to increase as employers hire workers post-pandemic to shed costs.

While some governments have attempted to curb the abuse of short-term contracts, including by specifying the limited bases allowed for hiring someone on a short-term contract, or by setting a cap on the number of consecutive contracts or on the total time permitted for consecutive short-term contracts (after which the contract is converted to an indefinite-term), these limitations are usually observed in the breach. For example, an employer facing a two-year maximum employment period under short-term contracts will make sure the contract

relationship ends just short of the 2-year cap and will not renew it. A worker whose contract was not renewed or converted will usually bear the burden to show that the work was, in fact, permanent in nature and that it was continued by another, newly-hired worker (and that the failure to renew the contract was a subterfuge to prevent the conversion to an indefinite term contract). As such, these practices are rarely contested as workers on fixed-duration contracts rarely have the time or resources to challenge the non-renewal of their contracts.

In addition to the the issue of employment instability and other inferior terms and conditions of employment outlined above, the use of short-term contracts has many other deleterious impacts. First, such workers are often unlikely to form or join trade unions, as an employer will simply not renew a contract if the worker engages in any union activity. In some countries, workers must have worked in an enterprise or a sector for a period of time to form a union or to run for union office, which is also an obstacle in an industry which relies heavily on short-term contracts. If no one has enough seniority to run for union office, then a union will never be formed. As noted above, the workers on such contracts will typically have lower wages since they are unlikely to be covered by a collective bargaining agreement. In addition, local law may also require a minimum amount of time with an employer to be eligible for maternity leave, to accrue pension benefits, and to qualify for other forms of social protection.

In many countries and/or sectors, workers on short-term contracts are often women and/or members of racial/ethnic/religious marginalized groups. As such, the workforce will bifurcate among a population, with largely male workers, with “permanent” and secure jobs, on the one hand, and women and workers from marginalized groups, who will more or less indefinitely remain on a series of short-term contracts, with lower wages and few benefits, on the other.

All of these problems are further compounded when the short-term contract is not with the direct employer but with an intermediary (e.g., a private employment agency). Even if a worker is able to convert the short-term contract to an indefinite one, it may be one with the agency, not the employer.

Labor inspectors also appear unable or unwilling to address this issue in any meaningful way.

Research:

The ILAW Network seeks to identify the elements of an effective regulatory and legislative framework which union and worker rights lawyers and other advocates in countries around the world could draw upon as the basis for eliminating and preventing the widespread abuse of these fixed duration contracts. This framework would include appropriate measures needed to deter employer abuse in the first instance, as well as to offer workers expeditious and low-cost mechanisms to contest the misuse of such contracts, along with effective remedies.

Such model regulation/legislation, along with necessary explanatory memos, commentary, and supporting documents, would become a part of the ILAW Network’s Future of Labor Law

Database, a wiki-style on-line, member-accessible database that will address both content and implementation concerns.

The research needed on this particular topic will likely need to begin with a survey of legal, regulatory, and administrative measures that some countries have put in place and that have been (relatively) successful in preventing the widespread abuse of these contracts. Most likely, even while some countries have elements of an effective apparatus, no one country has developed a complete framework. The research will therefore need to examine ways that these selective best practices, among others, can be combined so that if adopted, as a whole, they could have the effect of preventing, eliminating, or at least substantially reducing the misuse of these contracts.

Conditions:

ILAW seeks this work to be conducted by September 30, 2021. Compensation to be negotiated.