

EMPLOYMENT CONTRACT GUIDE FOR PROFESSORS

An employment relationship is based on an employment contract, which states that one party (the employee) will work for a salary or other compensation for and under the guidance and supervision of the other party (the employer). A public service relationship, on the other hand, is based on a unilateral appointment to an official or public service position.

In addition to the employment contract, the terms and conditions of an employment relationship can be determined by local agreements, established practices - including the established procedures applicable to academic research and teaching – and through practical work arrangements as commanded by the employer.

Within the employment relationship, the employer cannot act in any way that might compromise the freedom of research, arts or teaching, as intended by Section 6 of the Universities Act (558/2009).

Selection process for professors

The Employment Contracts Act (55/2001) contains no obligation for a post based on an employment contract to be publicly advertised as being vacant nor does it govern the selection procedure. According to the Universities Act, however, the public advertisement of posts is the principal rule for professors. The process of invitation is possible in a situation in which a distinguished individual is invited to fill a post or the post is filled for a fixed term. If a person has applied or is invited to take on a post that is valid until further notice or a fixed-term employment of at least two years, the university shall request, at least, two expert statements on the competency and merits of the applicant or invited person prior to the selection. The disqualification of the experts is governed by regulations under the Administrative Procedure Act (434/2003).

In its rules of procedure, an individual university can independently modify the statutory application process for professors and the obligatory procedures used in the selection of teaching personnel. Labour legislation, however, limits the freedom of recruitment in order to ensure that no discriminating or impartial practices or treatment are involved.

On the basis of the Universities Act, professors, as well as other employees, are selected by the rector, unless he/she has delegated the right of selection to another individual/group.

Qualification requirements

The qualifications required for a specific post are determined, albeit relatively freely, in the rules of procedure of the university in question. The qualification requirements for a professor shall, however, be consistent with the duties of professor as stated in the Universities Act. The qualification requirements for professors are often as follows: doctoral degree, high level scientific proficiency, experience heading up scientific research, the ability to offer high standard teaching, and demonstrated international collaboration. As a part of assessing an applicant's merits, special attention is paid to, among other things, the appli-

cant's activities within the academic community, success in external funding calls, and engagement through positions of trust. The qualification requirements can, however, differ between universities.

The Universities Act was written so as to ensure that anyone who is hired as a substitute for a professor also fulfils the qualification requirements. A person invited to fill such a post may only be an individual who undeniably fulfils the qualification requirements. If the individual intended to act as a substitute does not meet the qualification requirements for professor, the substitute shall be appointed under a different title.

No statutory right of appeal exists regarding the selection of an employee. This also applies to professors. Although there is officially no right of appeal, it is possible for a university to independently decide to enact its own remedy procedures. This is not, however, the common practice.

If the selection process runs counter to the principles of the Act on Equality between Women and Men (609/1986) or the Non-Discrimination Act (21/2004), it is possible to submit a charge of discrimination to the district courts. It is important to remember, however, that the district court only has the jurisdiction to order that compensation be paid to the discriminated party. It is not possible to get a job through court proceedings.

Establishing an employment contract

The hiring of an employee and the related terms and conditions are agreed upon in a free-form employment contract. The contract can be made in writing, orally or electronically. An employment contract can also be entered into implicitly, that is, simply by allowing the employee to begin working. In order to avoid disputes, however, even a short-term employment contract should be made in writing.

If the employer does not, regardless of request, consent to a written employment contract, the Employment Contracts Act obliges the employer to provide a written account covering the essential terms and conditions of the employment relationship for any employee whose employment is valid until further notice or a continuous fixed term of more than one month. If the employee is repeatedly hired by the same employer and under the same terms and conditions for fixed term employments lasting less than one month, the employer shall provide the employee with an account of the essential terms and conditions of the work no later than one month from the start of the first employment relationship. The employer is only under obligation to provide this type of account once if the employment relationships are successive and the terms and conditions of employment remain the same. A written account is not an employment contract, but rather the employer's view of the terms and conditions applicable to the employment relationship.

The employment contract should, at least, state the following:

- The contractual parties (university and employee) and their domicile;
- The starting date of the work;
- The duration and grounds for a fixed employment contract;
- The duration of a possible trial period;

- The site in which the work will be conducted (such as a town); if the employee does not have a primary fixed workplace, an account of the grounds by which the employee shall work in different locations (expense compensation and use of working hours);
- The employee's primary work tasks; the tasks of professors are generally outlined within legislation;
- The applicable collective agreement;
- The grounds for the determination of the salary or other compensation;
- The salary period;
- The regular working hours;
- The period of notice or the grounds for its determination. If no period of notice is agreed on, the periods of notice in accordance with the Collective Labour Agreement (TES) of the universities are applicable; when calculating the length of an employment relationship in such cases, any earlier public service relationship, which became an employment relationship on 1 January 2010, should also be taken into account. The employment contract cannot extend the employee's or decrease the employer's period of notice in comparison to the periods of notice stipulated in the TES.

The account of the essential terms and conditions of the employment relationship can be in the form of references to the relevant collective agreement or law. This method can be used in sections of the account that concern the salary, salary period, working hours, annual holiday, period of notice and the determination of these. In terms of working hours, as it concerns university professors, the employment contract shall refer to stipulations on the total working hours for teaching and research personnel.

As concerns the salary, the collective agreement serves as a so-called minimal agreement, and the salary in the employment contract may only exceed, not fall below, the salary amount specified in the collective agreement. There is no upper limit for the salary specified in the employment contract. The salary is always negotiable when an employment contract is being drawn up.

It is recommended that the essential terms and conditions of the employment relationship be recorded in a valid employment contract. This will help discourage disputes and will spare the employer from having to provide a separate written account of the relevant terms of the job.

Always demand a written employment contract so that you can, if necessary, show what you have agreed on. Before signing the employment contract, review it completely with a shop steward or union representative to make sure that you have understood everything correctly. If you do not receive a written employment contract or some essential information is missing from your contract, you should immediately contact your shop steward. If, however, you are still unable to obtain an account of the essential terms of the employment contract, you will need to contact your occupational safety representative or regional inspectorate.

Intellectual property rights in the employment contract

Patent rights are regulated by the Act on the Rights to University Inventions (369/2006). Therefore, there is no reason to include patent rights in the employment contract. If you decide to do so, however, the document should also specify the related compensation.

According to the Copyright Act (404/1961), copyright belongs to a person who creates a specific literary or artistic work. Based on the law, university researchers hold copyright on

any computer software and databases they create. Copyright includes the exclusive right to any profit/compensation resulting from the creation of the work in question. There is no reason to transfer the profit/compensation right in general to the university in the employment contract. A separate agreement must be made as concerns any possible transfer of rights and related compensations. This applies to both new professors and professors that are already employed in university posts.

Business and trade secrets and competition

The template drawn up by the employer cites the Employment Contracts Act for the points concerning business and trade secrets and non-competition. There is no need to include such a citation in the employment contract. Universities rarely have any business and trade secrets, with the exception of commissioned research and the like.

As opposed to the Public Service Act (705/1994), the Employment Contracts Act does not recognise any permit or ban concerning secondary occupations. The issue is approached in the Employment Contracts Act through the stipulations concerning business and trade secrets and non-competition. There is, however, no reason not to include in the contract relevant information regarding possible secondary occupations. An employee should avoid anything that conflicts with his/her position.

Trial period

The employer and employee can agree on a trial period of no longer than four months from the date on which the work begins. Legally, professors can also be subjected to a trial period. The Union feels, however, that the trial period practice is not suitable for university professors.

Normally, either party to the contract can terminate the contract for immediate effect during the trial period without giving notice. During the trial period, the threshold to terminate an employment relationship is lower than normal. The employment contract cannot, however, be terminated for discriminatory grounds or those considered unfounded in terms of the nature of the trial period, such as pregnancy or illness. Prior to the termination, the employee must be given a chance to be heard with regard to the termination of the contract, and shall be given, upon request, the termination date of the employment contract and grounds for termination in writing. The employee has the right to have counsel present at the hearing.

Fixed term employment relationships

According to the Employment Contracts Act, a fixed term employment relationship is considered an exception to the rule. An employment contract is generally valid until further notice unless there is a justifiable reason to make it for a fixed term.

The grounds or justifiable reason for a fixed term employment relationship shall be assessed on a case-by-case basis. The grounds for a fixed term shall be stated in the employment contract. Open positions may not be filled on a temporary basis only because of an unwillingness to fill the position permanently.

An employer is not entitled to hire someone for a fixed term employment relationship simply to provide time to assure the employee's suitability for the position. The trial period system serves this purpose.

In cases in which a fixed term employment contract has been drawn up for a period longer than 5 years, both the employer and employee can terminate the contract under the same grounds and procedure as applicable to contracts that are valid until further notice once 5 years have elapsed from the date on which the contract was signed.

The Association of Finnish Independent Education Employers (Sivistystyönantajat), which represents the universities, and the employee organisations have jointly drafted a recommendation concerning good practices related to fixed term employments for the use of representatives of both the universities and local chapters. See the Union's website under Work > Employment relationships and their termination.

Unfounded fixed terms may result in a liability for damages.

Neither party can terminate fixed term employment relationships during the course of the term unless this has been explicitly agreed on in the employment contract.

Grounds for fixed term employment

One typical justification for a fixed term employment is a substitution. If an individual works successively as a substitute, this is not the same as the chaining of fixed term employments, which is prohibited. If an employer has, however, a permanent need for a substitute in a particular post, the employer is under obligation to hire the individual working these successive terms within an employment relationship that is valid until further notice. If the employer has a permanent need, the employment contract may not be made for a fixed term.

A lack of competency generally entitles an employer to hire an individual on a fixed term basis. The intention of the regulations regarding qualification requirements is to preserve the high standard of research/teaching. If an individual is not qualified for a professorship, he/she can be hired under a different title.

A fixed term can be based on the duration of a specific research project or teaching need. Researchers, for example, might be hired for the known duration of a clearly defined fixed term research project. On the other hand, the temporary nature or insecurity related to budget appropriations does not entitle the employer to hire on a fixed term basis. Neither is any experimental post in itself sufficient justification for a fixed term employment.

Organisational changes that are underway may entitle the use of fixed term employments. The change must already be underway on the basis of an earlier decision. The insecurity caused by organisational changes should, ideally, affect tasks that are filled on a fixed term basis. Genuine financial insecurity with significance and impact on certain specific tasks may provide grounds for a fixed term employment.

External funding, as a basis for a fixed term, is a difficult question of interpretation. The essential issue is whether the employer has the facilities to offer work on a permanent basis or only for a specific duration. As assessment of this situation calls for an overall evaluation that takes into account the amount of the external funding in relation to other funding, the situation once the fixed term has expired (as concerns the likelihood of additional funding), among other issues. Furthermore, it is important to remember that the depletion



of funds does entitle an employer to dismiss an employee on financial and production-related grounds.