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LABOUR NEWS

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THE CONTRACT CONUNDRUM

Are You Using the Right Contract for Your Business?

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PERMANENT, FIXED-TERM, LIMITED-DURATION, PROJECT-BASED OR INDEPENDENT CONTRACTOR?

THE CONTRACT MAY HAVE A TITLE — BUT THE LAW LOOKS AT THE SUBSTANCE.

Choosing the right contractual arrangement is about more than deciding whether someone should be "permanent" or "temporary."

A business may need a **permanent employee for an ongoing role, a fixed-term employee for a genuine temporary need, a limited-duration or project-based employee for work with a defined end point, or an independent contractor for a genuinely independent specialised service**.

But choosing the **wrong arrangement** can **create unnecessary labour-law risk.**

Before simply copying an old contract and changing the employee's name, **ask yourself:**



"What is the actual nature, purpose and duration of this relationship?"

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EMPLOYMENT CONTRACT MATRIX

A PRACTICAL EMPLOYER GUIDE:
WHAT TO USE, WHEN TO USE IT, DURATION AND KEY RISKS



THE QUICK RULE

Ongoing role → Permanent. Temporary role → Fixed-term, subject to the 3-month rule and any justifiable reason.Specific project → use a fixed-term arrangement tied to the project.

CONTRACT / ARRANGEMENT	WHEN TO USE	DURATION / KEY RULE	KEY LEGAL REFERENCE	RISKS
Permanent / Indefinite Contract	Use where the employee is appointed to an ongoing position forming part of the normal workforce.	No predetermined end date.	LRA; BCEA; EEA; NMWA; applicable bargaining council / collective agreement.	• Do not use a temporary arrangement for an ongoing role. • Update the contract when the role materially changes. • "Permanent" does not mean the employee cannot be dismissed. • Manage probation and performance appropriately.
Fixed-Term Contract	Use where employment is genuinely temporary and ends on a fixed date, specified event, task or project.	Generally, a maximum of 3 months for employees covered by S198B, unless the nature of the work is limited/definite or there is another justifiable reason for fixing the term. A fixed-term contract may therefore exceed 3 months where properly justified: -Maternity Leave -Seasonal work Temporary Increase in Work	LRA S198B; BCEA S29.	• Do not use rolling contracts to avoid permanent employment. • Put the reason for the fixed term in writing where required. • State the end date/event/task clearly. • Do not assume a contract becomes lawful merely because it has an end date.

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Project-Based Contract also referred to as a Limited Duration Contract	Use where the employee is engaged specifically and exclusively for a genuine, defined project or task with a limited/defined duration.	May exceed 3 months where the project provides a justifiable basis for the fixed term.	LRA S198B; BCEA S29.	• A "project" must be genuine, not ordinary ongoing work given a project name. • Define the project scope and completion point. • Link the contract's end to the project/task where appropriate. • Do not continue the arrangement indefinitely after the project ends.
Part-Time Employment	Use where an employee works fewer hours than a comparable full-time employee.	Can be indefinite or fixed-term, depending on the underlying employment arrangement.	LRA S198C; BCEA.	• Part-time does not mean independent contractor. • Specify hours, remuneration and working arrangements. • Apply applicable statutory protections and check the employee's status.
Learnership	Use for formal workplace learning leading towards an occupational qualification.	For the agreed learnership period.	Skills Development Act S16–18; BCEA; applicable SETA requirements.	• Do not label an ordinary employee an "intern/learner". • Structure and register the learnership correctly. • Check applicable SETA requirements.

EMPLOYMENT CONTRACT MATRIX (NON-EMPLOYEES)

CONTRACT / ARRANGEMENT	WHEN TO USE	DURATION / KEY RULE	KEY LEGAL REFERENCE	RISKS
Independent Contractor	Use only where the person genuinely provides services as an independent business/service provider rather than as an employee.	Usually linked to a service, assignment or project.	LRA S200A; BCEA S83A; common-law principles.	• The contract title is not decisive. • Consider the overall relationship, including control, integration, economic dependence and how the work is actually performed. • Consider the recognised "dominant impression" approach. • Check the applicable threshold and the nature/duration of the placement. • Understand the 3-month temporary-service provisions. • Know when the client may become the deemed employer.

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FIXED-TERM: JUSTIFIABLE REASONS (CONDENSED)

THESE ARE THE KEY EXAMPLES RECOGNISED BY S198B; THE LIST IS NOT A SUBSTITUTE FOR ASSESSING THE FACTS OF THE SPECIFIC APPOINTMENT.

1. Temporary replacement of an employee who is absent.	2. Temporary increase in work not expected to last beyond 12 months.	3. Student/recent graduate employed for training or work experience.
4. Exclusive employment on a specific project with a limited/defined duration.	5. Non-citizen whose work authorisation is for a defined period.	6. Seasonal work.



SPECIAL CIRCUMSTANCES - NOT AUTOMATICALLY SEPARATE CONTRACT TYPES

SEASONAL EMPLOYMENT / TEMPORARY REPLACEMENT /FOREIGN-NATIONAL EMPLOYMENT / TEMPORARY INCREASE IN WORK / SPECIFIC EXTERNALLY FUNDED POSITIONS

These circumstances may fall within a fixed-term, limited-duration or project-based arrangement depending on the facts.

The key question is: **What objectively makes the employment temporary?**

Employer note: The 3-month rule in S198B applies subject to the section's scope and exclusions.

Always check the employee's earnings threshold, employer-size exclusions, applicable statute/sectoral determination/collective agreement and the facts of the appointment before selecting or extending a temporary arrangement.

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THE GOLDEN RULE

DO NOT CHOOSE THE CONTRACT BASED ONLY ON WHAT IS CONVENIENT.

CHOOSE THE ARRANGEMENT BASED ON:

THE NATURE OF THE WORK + THE REASON FOR THE ARRANGEMENT + THE EXPECTED DURATION + HOW THE RELATIONSHIP WILL ACTUALLY OPERATE.

3 THE 3-MONTH RULE: DON'T GET CAUGHT OUT

One of the biggest misconceptions surrounding fixed-term contracts is:

"If I put an expiry date on the contract, I can simply end it on that date."

NOT NECESSARILY.

Where section 198B of the Labour Relations Act applies, an employer may employ an employee on a fixed-term contract for longer than three months only where the nature of the work is of a limited or definite duration, or where another justifiable reason exists for fixing the term. If the requirements of section 198B are not met, the employment may be deemed to be of indefinite duration.



Three months is not a licence to dismiss someone after three months.

It is a statutory rule concerning certain fixed-term employment arrangements. It should not be confused with probation.

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PROBATION IS NOT A FIXED-TERM CONTRACT

A permanent employee can be placed on **probation.**

Probation is used to assess an employee's suitability for the position; it does **not automatically convert permanent employment into temporary employment.**

DID YOU KNOW?

A project-based employee can still be an employee.
Calling someone "project-based" does not turn them into an independent contractor.

A project-based arrangement can be a form of fixed-term employment, particularly where the employment ends when a defined project or task is completed.
The important question is:

Can you clearly identify what the project is and when/how it will objectively end?



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⚠️ INDEPENDENT CONTRACTOR? LOOK BEYOND THE SLA

An independent contractor should generally be engaged through an **SLA / Independent Contractor Services Agreement**, rather than an employment contract.

But there is an important warning:

An SLA does not automatically make someone an independent contractor.

The actual relationship must support genuine independence.

Consider:

⚖️ THE DOMINANT IMPRESSION TEST

When determining whether a person is genuinely an independent contractor or actually an employee, the **overall relationship** matters.

The question is not simply:

"What does the contract call this person?

The better question is:

"What does this relationship actually look like in practice?"

Section 200A of the LRA provides for a statutory presumption of employment where the prescribed requirements and factors are present, subject to the applicable earnings threshold.

Employee: A person who works for an employer under a contract of employment and performs work within an employment relationship.
Independent contractor: A person who provides services to a client under a contract for services, generally operating independently rather than as an employee.
That approach can create significant legal and tax risks.

💰 KNOW YOUR THRESHOLD

The earnings threshold is important because it determines whether certain statutory protections and mechanisms apply.

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WHAT DOES THE LAW SAY?



Rule / Threshold	What Does It Mean?	Why Does It Matter?
Earnings Threshold: R269,900.90 per annum	From **1 May 2026**, the applicable BCEA earnings threshold is R269,900.90 per annum.	Certain BCEA, LRA and EEA provisions operate differently depending on whether the employee earns above or below the threshold.
Below / At the Threshold	Employees earning at or below the threshold may fall within provisions such as **LRA s198B** and the statutory employee-presumption framework, subject to the relevant requirements and exclusions.	Employers must pay particular attention to fixed-term contracts and employee-status issues.
Above the Threshold	Employees earning above the threshold fall outside certain specific statutory provisions.	This does **not** mean the employee has no labour-law protection. It means certain statutory mechanisms do not apply in the same way.
3-Month Fixed-Term Rule	Where **s198B applies**, a fixed-term contract exceeding 3 months requires the appropriate limited/definite-duration basis or another justifiable reason.	Failure to comply can create a risk that the employment is treated as being of indefinite duration.
12-Month Temporary Work Rule	A temporary increase in work that is not expected to last beyond 12 months is one recognised justification for a fixed-term arrangement where applicable.	Useful where there is a genuine, temporary increase in workload.
Section 200A – Employee Presumption	Where the statutory requirements are met, certain factors can create a **rebuttable presumption that a person is an employee**, regardless of the label used in the contract.	Particularly important when determining whether an alleged independent contractor is actually an employee.
40-Hour Factor	One of the s200A factors concerns whether the person works an average of at least **40 hours per month over the preceding 3 months**.	This is one factor in determining employment status — it is not, by itself, an automatic declaration that the person is an employee.

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REMEMBER

ABOVE THE THRESHOLD DOES NOT MEAN "NO LABOUR LAW".

It means that **certain specific statutory provisions may not apply.**
The employee's overall rights and the true nature of the relationship must still be considered.

DID YOU KNOW?

The contract's name is not always the deciding factor.

You can call a document:
"Independent Contractor Agreement"
"SLA"
"Consultancy Agreement" or even
"Project Agreement"

...but if the actual relationship operates like an employment relationship, the label alone will not necessarily protect the business.
The substance of the relationship matters.



THE BIGGEST CONTRACT MISTAKE?

Using the wrong contract for the right person.

A business may save time today by using a generic template.
But if the arrangement does not reflect the reality of the relationship, the business could face:

Labour disputes / CCMA proceedings / Claims of unfair dismissal / Employee-status disputes / Compliance exposure / Tax consequences / Unexpected financial liability

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Our Strategic Partnership

"Temporary contracts deserve permanent clarity."
Ensure your contracts reflect reality — because legal risks aren't seasonal.

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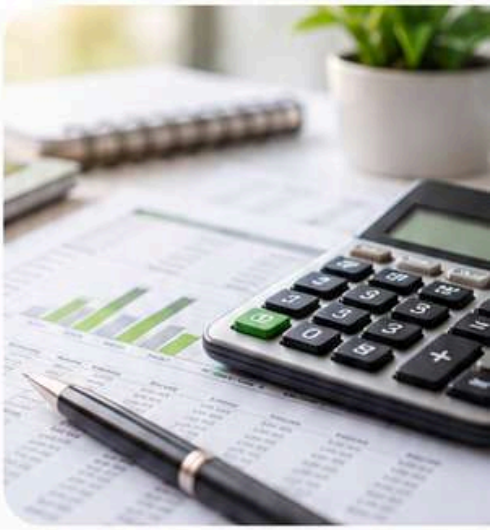
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