

Equality Act Review Policy Briefings

To inform Government and Parliamentary Debate

“Two-Year Service” rule exacerbated through precarious contracts, breaches Equality Laws

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Dr Suriyah Bi

Background

The government introduced the two-year service rule in 2012, which required employees to work for a period of two years before they can qualify for full employment rights (Morse: 2019).

Many employers are using temporary and fixed term contracts which expire before employees complete their two-year service period. In 2022, almost **1.5 million people were in temporary employment** (Gov: 2022), which usually do not have an end date but can be terminated by employers at a moments notice. While the government does not provide a breakdown of figures for the number of people on fixed-term contracts, the TUC stated **3.7million were in insecure work** which included agency, casual, seasonal, and zero-hours contracts (Sharp: 2019). Sector specific data is available for industries such as academia, where fixed term contracts and causal employment is extremely high. The UCU found **33% (77, 445)** of all academic staff were **in fixed-term contracts** (UCU: 2023). A further **4,410** were **on zero hour contracts** and **31,630** were **on hourly paid contracts**.

Black, Asian, and Ethnic staff are significantly more likely to be on fixed-term contracts than white staff (UCU: 2021, 15). The TUC found that **Black, Asian, and Ethnic women are three times more likely to be on short term contracts**, including zero hour contracts than white men (Klair: 2023). This means that Black, Asian, and Ethnic employees are more likely to be **unable to qualify for full employment rights** due to constantly being on fixed term-contracts that

expire before the two year service period is complete. Within the university sector, staff on fixed term contracts are “...frequently treated as **marginal second class citizens...**” (Ackers and Oliver: 2007, 71).

Breach of Equality Policy

(1) Fail to qualify for priority candidate status

Workplace equality policies such as those published by Oxford University (Oxford University: 2020) state that employees will not face barriers to progression or discrimination based on any number of protected characteristics, and be offered opportunities for development. However, employees in temporary, fixed-term or zero hour contract employment will more than likely fall below the two-year service threshold and therefore, **fail to qualify for ‘priority candidate status’** when applying for vacancies within the organisation. Fixed-term and casual employees are therefore **locked out of more secure job opportunities** often, despite their qualifications, experience, and talent, leading to **high rates of disposability**. Many employers will cite the ‘two-year service’ rule to justify their lack of extending priority candidate status, thereby **cancelling out any ‘equal opportunity employer’ claims**.

In this way then, both **organisational equality policies and the Equality Act 2010 are breached**, particularly for Black, Asian, Ethnic persons, women, and persons with disabilities who are already overrepresented in such precarious employment, and underrepresented in permanent employment. Within academic settings, **Black, Asian, Ethnic persons and women are severely underrepresented at the lectureships and professorship levels**. Denial of priority candidate status on the basis of a lack of fulfillment for two-year service, **perpetuates a**

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vicious cycle that sustains a lack of diversity in academia, and work places more broadly.

The two-year service policy is therefore, not only allowing the continued casualisation of the work force, but also **enables a loophole for organisations to avoid adhering to equality laws**. Already marginalised groups of employees are prevented from accessing opportunities and being considered for secure employment as they are **denied priority candidate status, otherwise available to longer-serving or permanent staff** who are more than **likely to be white**.

The two-year service policy is **creating a two tiered employment system**, which further marginalises already marginalised staff, particularly women from Black, Asian, and Ethnic backgrounds. This can lead to **detrimental impact on the diversity in the workplace** (Charles: 2022), the **loss of talent, and mental health impacts** for employees (Wilson and McDaid: 2022). In particular, it has been found that insecure employment is as **detrimental on mental health** of employees, as unemployment itself (Hannerz: et.al. 2022).

(2) Limited Maternity pay

The current legislation allows women to **claim maternity pay after 26 weeks of service** (Barclay: 2022). However, for employees on fixed term contracts, **maternity pay will expire when the contract expires** (Working Families: 2023). Where employees are on 1 year fixed-term contracts and fall pregnant, they will only receive maternity pay up until the expiry date of their contract. This means that women, particularly those who are from Black, Asian and Ethnic backgrounds are likely to delay pregnancy and family planning as a result of the extremely limited maternity pay available to them on fixed-term contracts.

As a result, we conceptualise fixed-term contracts as inherently discriminatory due to widespread **prevention of women, particularly Black, Asian and Ethnic women from falling pregnant** and therefore, exercising their rights to a family life (Article 8 of the Human Rights Act).

Recommendations

1. The government should abolish the two-year service period.
2. All BAME, women, disabled, candidates should be considered for priority candidate status irrespective of length of service when applying for advertised positions at the same organisations they are insecurely employed.
3. All women on fixed-term contracts should be offered maternity pay irrespective of length of service.
4. The government should ask all industries, to prioritise Equality laws over employment service periods.

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