

// HIGHER EDUCATION AND RESEARCH //



Fixed-Term Contracts in Higher Education and Research

A Guide

Including the Provisions of the 2007 Act (*Wissenschaftszeitvertragsgesetz*)
as amended in 2016 and 2020

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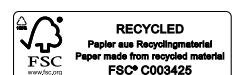
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Preface

Dear colleague,

The new legislation on fixed-term contracts in higher education and research which entered into force on 17 March 2016 was a milestone for our trade union. The GEW had placed the nightmare of fixed-term employment at higher education institutions and research institutes on the political agenda of the German government and parliament, the federal states, and the higher education institutes themselves, with a campaign for a dream job in academia (*Traumjob Wissenschaft*). The campaign began with the Templin Manifesto in 2010 and culminated in autumn 2015 with a nationwide week of action.

In January 2016, the Bundesrat – the upper chamber of the German parliament – gave its approval to the amended *Wissenschaftszeitvertragsgesetz* (*WissZeitVG*) as adopted by the Bundestag, the lower chamber. The GEW would have preferred to see more rigorous and far-reaching reforms to the previous legislation on fixed-term contracts in higher education and research, but the amended Act did at least incorporate many of our suggestions. It creates a stronger framework for us to champion fair employment in the academic world. But we have no reason to rest on our laurels.

This was borne out by the first evaluation of the amended Act of 2016 performed by Dr Freya Gassmann at the University of the Saarland with the support of the Max-Traeger-Stiftung and presented by the GEW in March 2020 to the 10th follow-up congress to the Templin Manifesto. The new law is having an effect ... a minor one. That just about sums up the evaluation's findings. Whereas in 2015, the year before the amendment, fixed-term contracts accounted for 90 per cent of academic staff at universities, in 2018 the figure was still 89 per cent, a drop by one percentage point. As for the duration of these fixed-term contracts (first contracts), Gassmann concludes from her analysis of advertised vacancies that the new law triggered a moderate average increase by four months – from 24 to 28.

And so, as far as our criticisms in 2016 are concerned, the chickens have come home to roost. Although the amended Act did pick up some important input from the draft legislation submitted by our trade union in 2015, it failed to define legal concepts, leaving the provisions vague and, as it now turns out, not very effective. If, for example, fixed-term contracts are not funded by third parties, they must serve the acquisition of a qualification and their duration must be appropriate. Unfortunately, the legislator did not set out what might qualify as a “qualification” or explain what duration would be “appropriate”. The principals and HR directors of higher education and research establishments were quick to adopt a very liberal interpretation of these unspecified terms.

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This makes it all the more important that academics who are affected by the legislation, as well as works councils and staff committees, acquaint themselves thoroughly with the Act and bring their influence to bear on its implementation at their local higher education institution or research institute. We have compiled this Guide to offer practical orientation to employees and their representatives around the application of the new Act. Apart from explanatory notes on the provisions of the law itself, this booklet contains advice and concrete examples. The Act itself has only eight sections, and yet to many it remains a mystery. Sooner or later – and certainly when their contract is about to expire – they will need to confront the implications. Every time a fixed-term contract is renewed, unsettling questions arise about whether there is any long-term future and what the conditions for that might be. For those not appointed as professors, permanent career prospects are still a rarity in the academic world. So by this stage, if not before, a proper grasp of the provisions on fixed-term contracts is essential in order to confront the often one-sided readings put forward from the employer's perspective.

Thanks to the Guide's authors, Matthias Jähne and Dr Rainer Hansel, we were able to publish this Guide more or less as the new Act came into force in 2016 and can now issue a third, revised edition. This version of the Guide includes the additional provisions that were incorporated into the *Wissenschaftszeitvertragsgesetz* with the adoption on 25 May 2020 of a new piece of legislation on support for academics and students, the *Wissenschafts- und Studierendenunterstützungsgesetz*, which took effect retrospectively from 1 March 2020. This latest, Covid-driven amendment to the Act itself, and also to the related ordinance (*WissBdVV*) of September 2020, has made it possible, on grounds of the pandemic, to extend the maximum duration of fixed-term contracts associated with obtaining a qualification beyond the previous 12-year cap (or 15-year cap in medicine).

Good advice is costly – but not for members of the GEW. Apart from reading this Guide, all our members can benefit from the personal legal advice and, if they need it, legal protection provided by the union. Our campaigns pay off, and so does membership.

I hope that this updated Guide will help you to negotiate your way more easily around the fixed-term labyrinth. We welcome suggestions and improvements to the Guide, whether they derive from counselling practice or from your personal experience.

Dr Andreas Keller
Vice-President of the GEW and
Board Member in charge of Higher Education and Research

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The Rules for Fixed-Term Academic Contracts

1. Background and history of the Act (*WissZeitVG*)

Since March 2007, the specific provisions governing fixed-term contracts in higher education and research have been laid out in a separate piece of sectoral legislation called the Fixed-Term Academic Contracts Act – the *Wissenschaftszeitvertragsgesetz*, or *WissZeitVG* for short. These rules had previously been included in the Higher Education Framework Act (*Hochschulrahmengesetz*, or *HRG*). When the grand coalition of Social Democrats and Christian Democrats enacted the new law, they expanded the existing basis for fixed-term contracts in the academic world, in particular by permitting fixed-term employment in the sphere of third-party funding and allowing this to include non-academic staff.

At the same time, the scope of the Fixed-Term Academic Contracts Act was explicitly extended to cover all staff in academic and artistic posts. This created new problems and new insecurities, because higher education institution began using the law to fix terms of employment for teachers and lecturers without having to give substantiate the need on objective grounds.

Fortunately, the Federal Labour Court placed a partial brake on this practice in June 2011 in response to proceedings brought by the GEW (see Chapter 3).

The new Act also introduced a “family policy component”, enabling the maximum duration of successive fixed-term academic contracts to be extended by two years per child. This provision was an optical illusion from the start, as employees had no legal entitlement to the extension. As was only to be expected, higher education institutions and research institutes rarely make use of the option.

The seeds for a paradigm shift in the rules governing fixed-term academic contracts had already been sown in 2002 by a coalition of Social Democrats and Greens. The idea behind that reform had been to link fixed-term contracts to a qualification period rather than providing specific objective grounds for limiting the duration of employment. Without citing any objective reason, fixed-term contracts could now be concluded for a maximum of six years prior to a doctorate and for another maximum of six years after being awarded a doctorate (nine years in medicine). Theoretically, once this period had been exhausted and the qualification period was over, employment would become permanent.

The stated political intention at the time was to rein in the rampant use of fixed-term contracts in higher education and research and to offer more research associates permanent employment in line with the European directives. As we now know, that objective was not met. Placing an overall cap on fixed-term academic contracts did not encourage higher education institutions and research institutes to increase the amount of permanent employment. Quite the reverse: they made frequent use of the option to limit the length of employment without having to provide an objective reason. Moreover, academic organisations exerted considerable pressure on politicians to broaden the scope for fixed-term employment. That pressure resulted in the initial law on fixed-term academic contracts, the *Wissenschaftszeitvertragsgesetz* of 2007, which offered employers an additional risk-free opportunity to issue repeated fixed-term contracts, this time in conjunction with third-party funding.

The amendments to that Act which came into force on 17 March 2016 have now laid the groundwork for correcting some of those errors and forging a more cogent link between fixed-term contracts and the pursuit of a qualification. In the following chapters, we will set out the new provisions and explain them in the overall context of the Act.

2. What is new from 2016? What has been added in 2020?

2.1. Qualification only justifies fixed-term employment if it is actually being pursued (§ 2 paragraph 1 sentences 1 and 2)

The principle remains that there is a six-year cap on fixed-term contracts for academic and artistic staff who do not yet have a doctorate. Once a doctorate has been awarded, there is a second six-year cap (nine years in medicine) on fixed-term contracts, (but with additional options to limit the duration of employment when projects are funded by third parties or else on the basis of general employment legislation on fixed-term contracts [for example, when the employee has been recruited to stand in for someone on leave], see Chapters 7 and 13).

What is **new** here is that this type of fixed-term contract is now only allowed if the employee takes the job in order to facilitate his or her pursuit of an academic or artistic qualification. This applies to fixed-term contracts both before and after completing a doctorate.

Although the law refrains from requiring that the employment contract must stipulate a **qualification goal** and define a specific number of working hours to be set aside for that purpose, the fact that a fixed-term contract must now be associated with facilitating the employee's academic or artistic qualification means that a qualification goal (such as a doctorate) must be identified when concluding the contract. It makes sense to include this qualification goal in the contract as well, or at least to have it recorded in written form and the document given to the employee.

2.2. Duration of contract must reflect qualification pursued (§ 2 paragraph 1 sentence 3)

There is a new requirement that, when fixed-term contracts are taken in pursuit of an academic or artistic qualification (see 2.1), the duration of the contract must appropriately reflect the qualification pursued.

Although the law refrains from establishing a minimum term (the GEW wanted a minimum of three years) and from imposing any specific requirements about duration, the new provisions do require employers to provide a concrete, substantiated assessment when concluding the contract as to what duration they consider necessary or “appropriate” for the qualification pursued. If the qualification goal is a doctorate, for example, this will be the average time taken to achieve a doctorate in that particular field. It can be assumed, as a general rule, that this will not be less than three years. Indeed, the culture or statistics of a particular discipline might indicate that a longer period is appropriate. If the higher education institution or research institute concerned has defined a minimum duration, this will also be relevant. Minimum periods are commonly defined in service agreements and voluntary undertakings, but they may also be found in institutional agreements or in the rules for doctoral candidates. Whatever the circumstances, there must be some cohesion between the qualification goal and the duration of employment.

2.3. Third-party funding: contract duration must reflect project duration (§ 2 paragraph 2)

There is a new requirement that when third-party funding is given as a reason for fixing the term of an employment contract, as provided in § 2 paragraph 2 of the Act, the duration of the contract must reflect the approved duration of the project.

This is a binding requirement. Deviations are only permitted in exceptional circumstances, if a third-party project has been broken down into clearly demarcated subsections. This needs to be substantiated when concluding the contract and it must be unambiguously confirmed by the grant approval notices. Tranche payments of third-party funds for an overall project are not a reason for reducing the length of contracts. There must be cohesion between the duration of the project and the duration of the contract.

Even when funding comes predominantly from a third party, the term of a contract can still be limited under § 2 paragraph 1 (the qualification provision) if it is associated with a qualification goal. The advantage of this is that the provisions of § 2 paragraph 5 on not including specific interruptions (e.g. maternity or parental leave) in the contract period can still be applied.

2.4. Non-academic staff have been removed from the scope (§ 2 paragraph 2)

New: “non-academic” staff (such as technicians and administrators) can no longer be offered fixed-term contracts under this Act. The situation prior to 2007 has been restored, whereby the term of a contract can only be fixed on the basis of general employment law, i.e. the Part-Time and Fixed-Term Employment Act (see Chapter 13). Otherwise non-academic staff must be given permanent contracts, especially when they are engaged in permanent functions at the higher education institution or research institute.

2.5. Not only a family policy component, but also a disability policy component; broader definition of “child” (§ 2 paragraph 1 sentences 5 and 6)

The overall cap (maximum admissible duration) of six plus six years (six plus nine in medicine) for a qualification period can be extended by another two years per child if the employee has been looking after a child under 18. The law now clearly states that this includes non-biological children with whom there is a firm family relationship. This applies in particular to step-children and foster children. This adjustment to the definition of “child” reflects the definition in the Parental Allowance and Parental Leave Act.

The “disability policy component” is a new feature. The overall cap (maximum admissible duration) of six plus six years (six plus nine in medicine) for a qualification period can now be extended by two years in the event of a disability as defined in § 2 paragraph 1 of Social Code IX or a severe chronic disease.

What constitutes a disability is legally defined in § 2 paragraph 1 of Social Code IX. What is understood by a “severe chronic disease” is set out in the guidelines issued by the Federal Joint Committee for implementing the provisions of § 62 of Social Code V for those suffering severe chronic disease.

There is, however, still no legally enforceable obligation for an employer to apply this extension and conclude a further fixed-term contract under § 2 paragraph 1 *WissZeitVG* once the six-plus-six-year maximum has been exhausted. Moreover, these options to extend do not apply to third-party funding contracts explicitly concluded under § 2 paragraph 2 *WissZeitVG*.

2.6. Entitlement to extend the contract due to specific interruptions broadened to include periods of illness after sick pay expires (§ 2 paragraph 5, new no. 6)

Fixed-term contracts concluded in accordance with § 2 paragraph 1 on grounds of qualification (before or after a doctorate) are extended, as provided by § 2 paragraph 5, to compensate for certain clearly stipulated interruptions. These include, for example, maternity and parental leave. This provision is designed to ensure that the originally agreed contractual qualification period remains available in full despite these breaks.

The new bullet point relates to **interruptions due to illness** after the entitlement to sick pay from the employer – whether it is statutory or founded on a collective agreement – has expired (which usually means after being off sick for six weeks). A contract concluded under § 2 paragraph 1 will now be extended by this period too if the employee has consented to the extension. The employee is legally entitled to this.

As previously, the entitlements to extension in accordance with § 2 paragraph 5 do **not** apply to contracts concluded with explicit reference to third-party funding under § 2 paragraph 2 of the Act.

2.7. Interruptions to qualification-based contracts are not included when calculating the cap on duration (§ 2 paragraph 5 last sentence)

The amended Act, unlike earlier versions, now clearly stipulates that in the case of qualification-based contracts the periods of interruption listed in § 2 paragraph 5 must not on any account be included when calculating the maximum duration of six or nine years.

To the extent that § 2 paragraph 5 permits such periods to result in an extension of contract, these periods must not be included when calculating the maximum duration of fixed-term employment. It is no longer a requirement that a contract is or was formally extended by this amount of time. This means, for example, that even when switching employer the employee still benefits from the non-inclusion of earlier interruptions when calculating the maximum period of fixed-term employment.

2.8. New separate rules on student employment (new § 6); employment as assistant during Master cycle no longer counts towards qualification-based contracts (§ 2 paragraph 3 last sentence)

The Act creates a new, separate legal basis for the fixed-term employment of students (in-course employment) in higher education institutions and research institutes. It provides that students enrolled at a higher education institutions in Germany can conclude fixed-term employment contracts to engage in auxiliary academic or artistic activities for up to six years.

These rules only apply to in-course employment for the performance of auxiliary academic and artistic activities. Student employment in other fields may also be subject to fixed-term contracts in line with general employment law. Studying must be the student's priority, and consequently only jobs involving less than half the regular working hours will qualify as "in-course" employment. The definition also includes contracts with "academic auxiliaries" (*wissenschaftliche Hilfskräfte*) if their employment is "in-course" – for example, carried out while participating in a course leading to a Master's degree.

According to this new § 6, periods spent under contract as a student employee while studying (in-course employment) will not be included when calculating the maximum duration of qualification-based fixed-term employment (six plus six or six plus nine years).

The Act clearly stipulates that this also applies to periods spent studying for a Master's degree or on a course leading to a further professional qualification. Comparable in-course employment on fixed-term contracts based not on the new § 6 but on other legal instruments (such as the Part-Time and Fixed-Term Employment Act) will also not count towards calculating this maximum duration.

A person enrolled at a higher education institution for the pursuit of a doctorate will not be covered by this rule. If "doctoral students", apart from pursuing their research, have a fixed-term employment contract to carry out academic activities at a higher education institution or a research institute, the time they spend working under this contract will count towards the first (pre-doctoral) six-year qualification period (as long as working hours are more than one quarter of regular working hours).

2.9. Extension in 2020: addition of a Covid-19 component

The Covid-19 pandemic and the crisis it triggered in 2020 not only imposed broad constraints on public life in many countries, but also led to the closure or severely restricted operation of education institutions and research institutes. This created major obstacles to teaching, research and personal plans for acquiring academic qualifications. Against this background, additional provisions on the options for limiting qualification periods were introduced by an amendment incorporated into the Fixed-Term Academic Contracts Act, which entered into force in May 2020 with retrospective effect from 1 March 2020, and by an Ordinance on a further extension to the permissible duration of fixed-term employment pursuant to the Act (WissBdVV), which entered into force on 1 October 2020. These new provisions extended the cap on fixed-term employment by twelve months for those qualification contracts pursuant to § 2 (1) of the Act that were effective between 1 March 2020 and 30 September 2020 – i.e. to 13 years and 16 years in medicine. It does not matter whether the contract was effective for the entire period from March to September 2020: It is sufficient in both cases for the contract to have been in place at any point during the periods described. The cap on fixed-term employment for any qualification contracts pursuant to § 2 (1) that were concluded between 1 October 2020 and 31 March 2021 was extended across the board by six months – i.e. to 12½ years, in medicine 15½ years. It does not matter when the contract was concluded in the period from October 2020 to March 2021. It is conceivable in both cases that employment during these lockdowns lasted for less than six months, in extreme cases perhaps for only one day, e.g. until 1 March 2020 or from 31 March 2021.

There is no objective reason for the Federal Ministry to establish a shorter extension to the maximum limit on fixed-term employment in the case of contracts established after 30 September 2020 than for contracts falling within the period between March and September 2020. The GEW criticised this unequal treatment, for which no substantiation was provided, in its statement responding to the new Ordinance.

These options to extend as a result of Covid-19 have the same status as the family and disability policy components: there is no legal entitlement to ensure that the employer really does apply the extended limit and prolong the fixed-term contract. The GEW emphatically criticised this lack of enforceability in its statements in response to both the draft legislation and the Extension Ordinance.¹ The GEW is urging higher education and research institutes to conclude agreements with their works and staff councils on a simple, unbureaucratic extension of contracts for everyone affected in compensation for the disadvantages caused by the pandemic. The GEW has produced a model agreement to support local efforts in these establishments (in German): www.gew.de/mustervereinbarung.

The six-year maximum for fixed-term student employment contracts as set out in § 6 of the Act was not extended, despite a recommendation submitted by the GEW.

3. Who falls within the scope of *WissZeitVG*?

According to § 1 paragraph 1 *WissZeitVG*, its specific provisions on fixed-term employment in the academic sphere apply to all academic and artistic staff with the exception of professors at higher education institutions (§ 1 paragraph 1 sentence 1) and research institutes (§ 5). Who exactly constitutes the academic and artistic staff is, therefore, a decisive question. Initially, the legal view (also reflected in commentaries on the Act by legal scholars) was that this should be considered in the light of the legislation in force in the federal state concerned. In Berlin, for example, this would mean that, according to § 112 of Berlin's Higher Education Act, teachers recruited on the basis of their specialist expertise would rank as academic staff. In a case taken by the GEW involving a language lecturer from Baden-Württemberg, the Federal Labour Court (BAG) put an end to this interpretation with its ruling of 1 June 2011 (7 AZR 827/09)². The Court reasoned that the Act on Fixed-Term Academic Contracts was independent in defining its personal scope of application, and that this definition could not be subject to legislation in the federal states. Accordingly, "academic staff" in the meaning of the Act only referred to such persons as also performed an academic service and were predominantly engaged in academic functions.

Extract from the Federal Labour Court ruling of 1 June 2011 (7 AZR 827/09):

"Academic activity is anything which can be regarded in content and form as a serious, planned attempt to convey knowledge (BAG 19 March 2008 – 7 AZR 1100/06 – pt 33 MWN, BAGE 126, 211).

1 For the German text of these statements see www.gew.de/stellungnahmeWissStudUG and www.gew.de/stellungnahmewissbdv.

2 <http://www.bundesarbeitsgericht.de/> (convenience translation provided by GEW)

It is designed, in terms of the tasks defined and the methods applied, to gain and process new insights, to secure or expand the state of knowledge about the academic discipline concerned (cf. BAG 27 May 2004 – 6 AZR 129/03 – on B II 4 of grounds, BAGE 111, 8).

Academic service can essentially include imparting specialist knowledge and practical skills to students and instructing them in the use of academic methods. However, academic activity only constitutes a teaching role insofar as the person teaching retains the opportunity for independent research and reflection (...)."

Teachers and lecturers who primarily perform instructive functions (for example, in teaching a foreign language) do not, in the Court's opinion, meet this criterion. The duration of their contracts cannot, therefore, be limited on the basis of the Act on Fixed-Term Academic Contracts. Things might be different if the teachers concerned had fewer teaching duties, were also engaged in academic scholarship and research, or were pursuing a qualification (such as a doctorate), as long as this formed part of their employment contract. Any qualification or research in which they are engaged outside the employment contract will not be taken into account – and this also applies to part-time employment.

The same essentially applies to new staff categories introduced in recent years under the higher education legislation of several federal states (such as "*Hochschuldozent*in*", "*Lecturer*", "*wissenschaftliche*r Mitarbeiter*in mit Schwerpunkt Lehre*" and similar job designations). If research and/or the pursuit of academic qualifications are not explicit components of the contractual arrangement, with a concomitant reduction in the time devoted to teaching duties, a fixed term cannot be applied to these employment contracts on the basis of *WissZeitVG*. As a rule, these teachers should have permanent contracts, although every case should be considered on its individual merits.

The amendments enacted in 2016 did not implement the GEW's demand that teaching staff, lecturers and other employees fulfilling predominantly teaching functions should be explicitly excluded from the scope of the Act. However, as fixed-term contracts can only be concluded without objective grounds for a maximum of six plus six or six plus nine years if they facilitate the employee's pursuit of an academic or artistic qualification, the leeway for employing teaching staff and those in similar functions under fixed-term contracts under *WissZeitVG* is extremely limited.

The academic and artistic staff who fall within the scope of the Act include:

- all academic and artistic employees,
- auxiliary academic staff.

However, if the latter have taken in-course employment (i.e. they are enrolled as students), the only provision which applies to them, as for all student employees, is the new § 6.

WissZeitVG does not apply to teachers and lecturers with the following designations:

- *Hochschullehrer*innen* (professors, including junior professors),
- *Lehrkräfte, Lektor*innen, Hochschuldozent*innen and wissenschaftliche Mitarbeiter*innen mit Schwerpunkt Lehre* (teachers and lecturers), if pursuing an academic or artistic qualification or engaging in research is not an explicit component of their contractual agreement, and if their teaching obligations are not reduced as a consequence.

4. Where does WissZeitVG apply?

§ 1 paragraph 1 and § 3, 4 and 5 of the Act stipulate that these special rules on fixed-term employment apply in the following establishments:

- public higher education institutions,
- private higher education institutions which have obtained official approval under the law of a federal state,
- public research institutes (such as research institutes operated by a federal or state organisation),
- research institutes which
 - are maintained primarily by public funds (e.g. foundations),
 - receive their institutional funding (i.e. basic funding) predominantly from public revenues,
 - are funded in accordance with Article 91 b of the Constitution (facilities forming part of the Leibniz-Gemeinschaft, Helmholtz-Gemeinschaft, Fraunhofer-Gesellschaft or Max-Planck- Gesellschaft)³
- and when “private service contracts” are concluded with members of a higher education institutions (usually professors).

5. Fixed-term contracts linked to pursuing a qualification

Fixed-term contracts can be concluded for a maximum of six years before and again after obtaining a doctorate (*Promotion*). In the medical field, the maximum period after a doctorate is nine years. Chapter 8 explains what is included when calculating this period. The effective date is the date the doctorate is awarded. There is, however, no legal entitlement to the full application of the maximum periods.

An exception to this maximum was introduced for fixed-term qualification contracts concluded during the Covid-19 pandemic period from 1 March 2020 to 30 September 2020, extending the cap across the board by 12 months. For fixed-term qualification contracts concluded between 1 October 2020 and 31 March 2021, the limit has been extended across the board by six months. It does not matter whether the contract was effective for the

³ Source: Ulrich Preis, Kommentar zum WissZeitVG, Luchterhand, 2008

entire period from March to September 2020 or from October 2020 to March 2021. It is sufficient for the contract to have been in place at any point during the periods described.

There is a **new** provision that fixed-term employment is only permitted if it is taken to facilitate the employee's own academic or artistic qualification. (In addition to this, fixed-term employment is allowed in conjunction with third-party funding and in accordance with general legislation on fixed-term employment – for example, when standing in for an employee on leave, see Chapters 7 and 13.) These fixed-term contracts can be taken before or after a doctorate.

The specific calculation rules for fixed-term employment linked to a qualification are as follows:

a. Without a doctorate (§ 2 paragraph 1 sentence 1 *WissZeitVG*):

Academic and artistic staff who do not have a doctorate can conclude fixed-term contracts for a maximum of six years if the employment is taken to facilitate their own academic or artistic qualification. In this case, the qualification goal will usually be the doctorate.

b. With a doctorate (§ 2 paragraph 1 sentence 2 *WissZeitVG*):

After the doctorate has been awarded, fixed-term employment contracts are permitted for another maximum of six years (nine years in medicine), if the employment is taken to facilitate one's own academic or artistic qualification. It makes no difference whether the employee already had a contract before obtaining the doctorate.

c. "Bonus rule" if the doctorate took less than six years (§ 2 paragraph 1 sentence 2 *WissZeitVG*):

If periods of employment prior to completing the doctorate and periods spent researching for the doctorate without being employed amount **together** to less than six years, the maximum period of fixed-term employment after completing the doctorate will be extended by this "unused" time. This makes it possible to conclude fixed-term employment contracts for longer than six years (or nine years in medicine) under these rules during the second phase of qualification (see 5b).

Note: When calculating how long it took to obtain the doctorate, periods without employment are also included – in other words, the pursuit of a doctorate with or without a grant, or while still on a graduate course, including abroad. The rationale for this is that the law is simply seeking to "reward" rapid qualification (see Chapter 12, examples 1 to 3).

New: These fixed-term contracts are predicated on a qualification

Fixed-term employment pursuant to § 2 paragraph 1 *WissZeitVG* (before and after the award of a doctorate) is now only permitted if it facilitates the employee's pursuit of an academic or artistic qualification.

Although the law refrains from requiring that the employment contract must stipulate a qualification goal, the fact that a fixed-term contract must now be associated with facilitating the employee's academic or artistic qualification means that **a qualification goal must be agreed and designated when concluding the contract**. Otherwise fixing the term of the employment might not be legally effective.

Since the amendment to the Act – and unlike the previous legal position, when no grounds at all had to be given for concluding a fixed-term contract – establishing the qualification goal forms part of the recruitment and renewal procedure for contracts pursuant to § 2 paragraph 1 *WissZeitVG*. It makes sense to include the qualification goal in the employment contract. At the very least, it should be recorded in written form and the document should be issued to the employee (like a PhD agreement). The employment contract must state that the term has been fixed pursuant to the *Wissenschaftszeitvertragsgesetz*.

What exactly counts or does not count as a qualification in the meaning of the Act will presumably be a matter for debate in coming years and even exercise the labour courts. In the light of case law to date, we can assume that employment only facilitates qualification if

- there is a defined qualification goal,
- there is a structured approach towards achieving that goal, and
- the achievement of the qualification goal is in some way certified or demonstrated. This does not require a formal examination.

The mere fact of working academically or in an academic environment does not constitute sufficient grounds for fixed-term employment. The qualification concerned must actually exert an influence on the nature of the employment.

In some federal states, jobs associated with acquiring a qualification must also meet certain standards. In many *Länder*, academic staff in qualification-based posts must be able to spend at least a third of their agreed working hours engaged in independent academic work (cf. § 31 Higher Education Act of Lower Saxony, § 71 Higher Education Act of Schleswig-Holstein, § 110 Higher Education Act of Berlin, § 28 Higher Education Act of Hamburg, § 37 Higher Education Act of Saxony-Anhalt, § 84 Higher Education Act of Thuringia, § 65 Higher Education Act of Hesse).

What are eligible qualification goals?

In the phase before a doctorate has been concluded (the first six-year phase), the qualification goal should be and typically will be a doctorate (*Promotion*). Whether employment in a programme to prepare for a doctorate constitutes a qualification goal is a matter for consideration. Other qualification goals may need to be assessed on a case-by-case basis in the light of the criteria described above.

In the phase following the award of a doctorate, qualification goals can be defined more broadly. Possibilities include establishing eligibility for a professorship, the pursuit of a

post-doctoral thesis (*Habilitation*) or the acquisition of an equivalent to *Habilitation*, but even the acquisition of specific knowledge and skills of scholarship. Here again, advanced qualification goals may have to be assessed on a case-by-case basis in the light of the criteria described above. Mere reference to acquiring broader subject knowledge should not, however, constitute sufficient grounds for a fixed-term qualification-based contract.

The question as to whether a particular contract is designed to facilitate the employee's academic or artistic qualification or whether this is simply a pretext can be tested in full before a court. Ultimately this will determine whether the fixed term is legally effective. Court rulings in the next few years will indicate how narrowly or broadly these new rules are to be interpreted. GEW members can draw on the advice and legal support of the trade union to have their fixed-term status reviewed.

New: The duration of the contract must be appropriate to the qualification sought (§ 2 paragraph 1 sentence 3)

In fixed-term contracts to facilitate the employee's academic or artistic qualification (before and after a doctorate), **the duration of the contract must from now on be an appropriate reflection of the qualification sought.**

Although the law refrains from establishing a minimum term (the GEW wanted a minimum of three years) and from imposing any specific requirements about duration, the new provisions do require employers to provide a concrete, substantiated assessment when concluding the contract as to what duration they consider necessary or "appropriate" for the qualification pursued. This means that when a qualification goal is designated the employer must always examine and determine the appropriate duration of the contract. If the qualification goal is a doctorate, for example, this will be the average time taken to achieve a doctorate in that particular field. It can be assumed, as a general rule, that this will not be less than three years. It is more likely that the culture or statistics of a particular discipline might indicate that a longer period is appropriate. If the higher education institution or research institute concerned has defined a minimum duration, this will also be relevant. Minimum periods are commonly defined in service agreements and voluntary undertakings, but they may also be found in institutional agreements or in the rules for doctoral candidates. Other possible sources are guidelines, codes of conduct and other voluntary undertakings by higher education institutions or research institutes.

There must be some cohesion between the qualification goal and the duration of the contract. "If no formal qualification goal is to be pursued, the specific fixed duration should be functional, i.e. primarily geared to the periods of time which are reasonable for the academic or artistic qualification" (preamble to the Bill for the initially proposed amendment to the Act, *Bundestag Document 18/6489*). As the term "appropriate" is fuzzy and has no legal definition, we shall have to await the case law for interpretations of this rule in relation to the various qualifications pursued. GEW members can draw on the advice and legal support of the trade union to have their fixed-term status reviewed.

6. When are doctoral studies deemed to start and end?

Sometimes there is no easy answer. Higher education institutions and research institutes usually ask this question before concluding a contract. The dates need to be backed up by documentation. The information provided must be truthful. The start of doctoral studies is usually the date of enrolment as a doctoral candidate. For those who pursue their doctorate as part of an employment agreement, and in some other cases, the crucial date will usually be the date when admission to the procedure was granted. If there is no clear documentation, the date given by the candidate in the questionnaire will apply.

There is no definition in the Act or anywhere else in federal law of when a doctoral procedure ends. The case law (BAG, ruling of 20 January 2010, 7 AZR 753/08) and the literature agree that the provisions of the Higher Education Act in the state concerned and the applicable rules for the PhD procedure should be taken as a basis. According to § 35 paragraph 5 sentence 1 of Berlin's Higher Education Act, a doctorate is awarded on the basis of a PhD examination. If an examination committee decides pursuant to the rules of procedure that the candidate has passed the PhD, then the doctoral education must end at the latest when the examination result is published as set out in § 2 paragraph 1 sentence 2 *WissZeitVG* (LAG Berlin-Brandenburg, ruling of 5 August 2014, AZ 16 Sa 589/14). The fact that the certificate may have been issued on a later date is of no consequence.

7. Fixed-term contracts linked to third-party funding

The situation whereby employment is financed primarily from third-party funding was recognised by the 2007 version of the Act as an independent ground for imposing a fixed term on contracts. Fixed-term contracts based on third-party funding can be concluded **whether or not** the maximum duration for fixed-term employment linked to a qualification as provided by § 2 paragraph 1 (six plus six years) has been exhausted.

The amendments to the Act which came into force in 2016 **removed non-academic staff from the scope of § 2 paragraph 2**. Fixed-term contracts with non-academic staff working on third-party projects can now only be concluded on the basis of the Part-Time and Fixed-Term Employment Act (see Chapter 13) – which had been the position before 2007. The reason most likely to be given for a fixed term will be the one set out in § 14 paragraph 1 no. 1 of the Part-Time and Fixed-Term Employment Act, i.e. the argument that “the function is only required temporarily by the institution”. It must be adequately foreseeable when concluding the contract that the requirement for this function really will end when the contract expires. Otherwise the staff predominantly engaged in non-academic tasks (e.g. in the technical field, administration, knowledge management and libraries) should be employed on permanent contracts, especially when they are performing functions for which there is a permanent need in the institution. See Chapter 3 for the differentiation between academic and non-academic functions.

The criteria for concluding a fixed-term employment contract on the basis of third-party funding are, according to § 2 paragraph 2 *WissZeitVG*:

- the employment is predominantly (more than 50 per cent) financed from third-party funding,
- the funding has been approved for a specific purpose and period,
- the employees will be predominantly engaged in tasks relating to the purpose for which the third-party funding has been granted.

Contract duration must reflect project duration

The amended Act of 2016 includes a new provision that “the fixed term determined by the parties should reflect the approved project duration”. This is a binding requirement.

Deviations are only permitted in exceptional circumstances, such as when a third-party project has been broken down into clearly demarcated subsections. This needs to be substantiated when concluding the contract and it must be unambiguously confirmed by the grant approval notices. Tranche payments of third-party funds for an overall project are not a reason for reducing the length of contracts. There must be cohesion between the duration of the project and the duration of the contract.

The employment contract must state that the term has been fixed pursuant to the *Wissenschaftszeitvertragsgesetz*.

Note: The rules on extending fixed-term contracts (for example, after maternity or parental leave) in accordance with § 2 paragraph 5 of the Act do not apply to contracts based on the third-party funding provision (see Chapter 12, Example 7). The employer does have the option, however, of concluding contracts for third-party projects on the basis of the qualification provision in § 2 paragraph 1. In that case, the rules on extending fixed-term contracts apply. This does, of course, require a qualification to be stipulated.

8. Periods included within contracts linked to pursuing a qualification

The cap on the duration of fixed-term contracts linked to a qualification (six plus six / nine years as stated in § 2 paragraph 1) does include the following periods, as set out in § 2 paragraph 3:

- any employment under a fixed-term contract taken by members of the academic and artistic staff at a German higher education institution or at a public research institute or a research institute predominantly funded by public money, regardless of the legal basis chosen to fix the term (exception: auxiliary academic or artistic tasks while studying),
- any employment taken under a private service contract (for example, with a professor) pursuant to § 3,
- any period of employment entailing temporary civil servant (*Beamte*r*) status (for example, *wissenschaftliche Assistent*innen, Oberassistent*innen, Hochschuldozent*innen, Juniorprofessor*innen*),

- any employment under contract as an academic auxiliary, as long as this employment was not taken while studying,
- any employment under a third-party funding contract as defined in § 2 paragraph 2.

In all these cases, the period will count towards the maximum duration if the employment accounted for **more than a quarter of the regular working hours** considered to be standard in the area concerned.

It is safe to assume that non-academic employment is not counted when calculating the maximum duration of fixed-term contracts linked to a qualification. Although the law does not specifically say so, all the commentaries describe the situation in these terms.⁴ However, there have not yet been any court rulings on the matter.

Student employment:

The amended Act of 2016 established a new legal basis for not including in-course student employment when calculating the maximum duration (§ 2 paragraph 3 last sentence): periods under contract as a student employee while pursuing studies (in-course employment) pursuant to the new § 6 (see Chapter 11) do not count towards calculating the maximum duration of qualification-based fixed-term contracts (six plus six or six plus nine years). The new provision explicitly states that this also applies to the Master cycle or periods of study leading to a further professional qualification. Comparable in-course employment for which the term is not fixed pursuant to the new Section 6 but on the basis of other legislation (e.g. the Part-Time and Fixed-Term Employment Act) is also not included in the calculation.

These rules do not apply to students who have enrolled at a higher education institute in order to pursue a doctorate. When “doctoral students” take fixed-term academic employment, alongside researching for their doctorate, at a higher education institute or research institute, the period under this contract will count towards the first six-year qualification period (if the working hours account for more than a quarter of the standard working hours).

9. Periods not included within contracts linked to pursuing a qualification

If the employee’s current contract has a fixed term on qualification grounds, as set out in § 2 paragraph 1 *WissZeitVG*, its **duration will be extended under § 2 paragraph 5 to compensate for the periods listed below**, as long as the employee consents. This consent must be lodged in written form at the workplace in good time. The purpose of this rule is to ensure that the originally agreed contractual qualification period remains available in full despite the following breaks:

⁴ Cf. for example Ulrich Preis, Kommentar zum WissZeitVG, Luchterhand, 2008, marginal 94 on § 2

- Leave of absence or a shorter working week (hours reduced by at least one fifth) to look after or nurse a child under 18 years of age or a relative in need of care – up to a maximum of two years.
The amended Act of 2016 now clearly states that this includes non-biological children with whom there is a firm family relationship. This applies in particular to step-children and foster children. This adjustment to the definition of “child” reflects the definition in the Parental Allowance and Parental Leave Act.
- Periods of leave granted for an academic or artistic activity or a course of initial, further or continuous academic, artistic or professional training outside higher education or abroad, up to a maximum of two years.
- Periods on maternity leave, or when not permitted to work during pregnancy, and periods on parental leave pursuant to the Parental Allowance and Parental Leave Act – but only to the extent that no gainful employment was being pursued.
- Periods of basic military service or alternative civilian service.
- Periods of exemption from employment duties (for at least one fifth of standard working hours) in order to carry out activities on the staff or works council, for a body representing employees with disabilities, as a women’s or equality officer, or to exercise an elected office (e.g. in a parliament) – up to a maximum of two years.

A new item was added in 2016:

- Periods of sickness after the expiry of sick pay as provided by law or a collective agreement.

Unlike the previous version, the amended Act of 2016 clearly provides that the interruptions to a qualification-based fixed-term contract listed in § 2 paragraph 5 **do not count towards the cap of six or nine years**. The precise periods which are not included when calculating the cap are those which are eligible to be offset by an extension of contract in accordance with § 2 paragraph 5. If, for example, academic leave was granted to spend three years abroad, only two years will be excluded when calculating maximum duration. **The contract no longer needs to be formally renewed by the relevant period**. This means, for example, that even when switching employer the employee still benefits from the non-inclusion of earlier interruptions when calculating the maximum period of fixed-term employment.

Example:

Following a doctorate, commencement of a two-year qualification-based contract under § 2 paragraph 1 *WissZeitVG*,

after one year on this contract, leave to spend six months researching abroad, after return, resumption of post for the remaining six months, followed by a new post at a different university (with a different employer):

- The next fixed-term qualification-based contract can last four years and six months (prior to the amendment it would only have been four years, as the option to extend the contract was not taken up).

In contrast to the “family policy component” and “disability policy component” described in § 2 paragraph 1 (see Chapter 10), **there is a legal entitlement to have the above-mentioned periods excluded from calculations of maximum duration and to have the contract extended!**

Note: These rules **still do not apply to employees who have fixed-term contracts on the grounds of third-party funding pursuant to § 2 paragraph 2.** They have no legal entitlement to extend their contract – for example, following parental leave.

10. Family policy and disability policy components

The **total permissible maximum duration** of qualification-based fixed term contracts is **extended** from the usual maximum of twelve (in medicine fifteen) years

- by two years per child if the employee has cared for one or more children under 18 years of age (§ 2 paragraph 1 sentence 4)
- and/or (new) by two years if the employee has a disability as described in § 2 paragraph 1 Social Code IX or a severe chronic disease (§ 2 paragraph 1 sentence 6).

The amended Act of 2016 now clearly states that the “family policy component” includes non-biological children with whom there is a firm family relationship (§ 2 paragraph 1 sentence 5). This applies in particular to step-children and foster children.

This adjustment to the definition of “child” reflects the definition in the Parental Allowance and Parental Leave Act. If both parents are academically employed and both look after the child, the total permissible maximum duration is extended by two years for both parents. The option to extend applies for every child, and so with two children both parents can extend by four years. To obtain the extension, it is sufficient for the child or children to be living in the shared household and for the parent to exercise the care function. Taking parental leave is not a requirement. It is of no consequence at what stage of the qualification the care is exercised. In other words, the care factor is also taken into account if the parent was engaged in doctoral education at the time but not in employment. The law makes no stipulations with regard to the duration of care.

What constitutes a disability is legally defined in § 2 paragraph 1 of Social Code IX.

§ 2 paragraph 1 Social Code IX:

“A person is disabled if his or her physical function, mental capacity or psychological health is highly likely to deviate for more than six months from the condition which is typical for the respective age and whose participation in the life of society is therefore impaired (...).”

The severity of the disability is of no consequence.

What is understood by a “severe chronic disease” is set out in the guidelines issued by the Federal Joint Committee which implements the provisions of § 62 of Social Code V for those suffering severe chronic disease. The decision is taken by the health insurance funds. The insured person must submit a medical certificate. The Guidelines (in German) can be found here: www.g-ba.de/informationen/richtlinien/8

This extension relates to the “maximum permissible duration of fixed-term contracts”, and not specifically to either stage of qualification.

That means that it can only apply once, either in the phase prior to completing the doctorate or in the phase afterwards. In the reasons given by the parliamentary CDU/CSU and SPD for their (successful) application to amend the draft for the revised Act which had been submitted to the Bundestag (Document 18(18)171 of the Parliamentary Committee for Education, Research and Technology Assessment), it says: “(...) otherwise it (*the rule - Authors*) could be interpreted to mean that the duration of fixed-term employment in both the first and second part of the qualification phase should be extended by two years. This would not reflect the motive for this provision.”

There is no legal entitlement for the “family policy” or “disability policy component” to be applied! If the conditions are met, it is entirely up to the employer to decide whether a further fixed-term contract pursuant to § 2 paragraph 1 *WissZeitVG* will be concluded on the basis of § 2 paragraph 1 sentence 4 or sentence 6 once the usual maximum duration of fixed-term employment has been exhausted. Practice since 2007 (since the “family policy component” was first enacted) indicates that employers hardly ever make use of this provision. The evaluation of the Fixed-Term Academic Contracts Act carried out by HIS GmbH in 2011 showed that in higher education only one per cent of the fixed-term contracts founded on the Act are based on an application of the “family policy component”, while in research institutes the figure is one to two per cent.⁵

That is why it is so important, in the spirit of decent academic work, for higher education institutions and research institutes to pledge that they will apply these provisions in practice. That can take the form, for example, of voluntary commitments, Good Work Codes based on the Herrsching Code of Conduct proposed by the GEW (www.herrschinger-kodex.de), service agreements or even agreements undertaken at federal state level. There are already many positive examples around the country.

The “family policy” and “disability policy component” still cannot be applied to contracts where the term has been fixed due to third-party funding pursuant to § 2 paragraph 2 of the Act. These contracts cannot be extended on grounds of child care or a disability or severe chronic disease.

5 Source: Georg Jongmanns, Evaluation des Wissenschaftszeitvertragsgesetz, HIS 2011

However, the maximum permissible framework for qualification-based fixed-term employment is extended by these provisions. So if a “third-party contract” (based on § 2 paragraph 2 *WissZeitVG*) is followed by “qualification contracts” (based on § 2 paragraph 1), the “family policy component” and “disability policy component” can be applied.

11. New fixed-term rules for student employment

A new, independent legal basis has been established in the Fixed-Term Academic Contracts Act for fixed-term contracts concluded with students (in-course employment) at higher education institutions and research institutes. It provides that students enrolled to study at a German higher education institution or research institute may conclude fixed-term contracts to perform auxiliary academic or artistic functions for a total period of up to six years. A contract may also be renewed within this maximum framework of six years.

The rules only apply to in-course employment to perform auxiliary academic or artistic functions. Student employment in other fields may also be eligible for fixed-term contracts based on general employment law, if the right conditions are fulfilled.

Priority must be given to studying, which is why a job will only be treated as “in-course” employment if it accounts for less than half the standard number of working hours. This includes contracts with “academic auxiliaries” if these are performed alongside studies – for example, a course leading to an Master’s degree.

The rules apply to

- fixed-term contracts with students
- who are enrolled for a course “leading to an initial or further professional qualification” – which includes the Master cycle (but not “doctoral students”!)
- and who perform auxiliary academic or artistic functions.

The total permissible maximum duration of these contracts is six years. All the student’s contracts are added together (for example, from employment with different higher education institutions or research institutes).

The contractual periods based on these provisions do not count towards the maximum duration of qualification-based fixed-term contracts pursuant to § 2 paragraph 1 of the Act. That includes periods worked during the Master cycle (cf. Chapter 8 for more details).

On the other hand, student contracts are not covered by § 2 paragraph 5, which provides for contracts to be extended to compensate for certain interruptions.

12. Examples: How long can fixed-term contracts be applied?

Example 1:

Two years on a grant researching for a doctorate, then three years on a contract as an academic employee, completion of doctorate:

- Following award of the doctorate, fixed-term contracts linked to a qualification, as described in § 2 paragraph 1 *WissZeitVG*, can be taken for six years plus one “bonus” year.
- Notwithstanding this, an unlimited number of fixed-term contracts can be taken related to third-party funding, as described in § 2 paragraph 2 *WissZeitVG*.

Example 2:

Three years researching for a doctorate, with a contract to work 50 per cent of regular hours as an academic employee, completion of doctorate, then two years researching abroad (with a job), return to Germany:

- After this, fixed-term contracts linked to a qualification, as described in § 2 paragraph 1 *WissZeitVG*, can be taken for up to nine years (the contract abroad does not count; six years can be taken after award of the doctorate, plus three “bonus” years because the doctorate was completed in only three years).
- Notwithstanding this, an unlimited number of fixed-term contracts can be taken related to third-party funding, as described in § 2 paragraph 2 *WissZeitVG*.

Example 3:

Three years researching for a doctorate, with a contract to work 50 per cent of regular hours as an academic employee, completion of doctorate, then six years as a temporary civil servant (*Beamter*) with a junior professorship:

- After this, fixed-term contracts linked to a qualification, as described in § 2 paragraph 1 *WissZeitVG*, can be taken for zero years (because the six years as a temporary civil servant count towards the maximum) plus three years (“bonus” because the doctorate was completed in only three years).
- Notwithstanding this, an unlimited number of fixed-term contracts can be taken on the basis of third-party funding, as described in § 2 paragraph 2 *WissZeitVG*.

Example 4:

Master's degree, two years of auxiliary academic employment (not in-course!) doing 25 per cent of standard working hours, ten months at a different higher education institution on a third-party funding contract, as described in § 2 paragraph 2 *WissZeitVG*, doing 50 per cent of standard working hours, begins doctoral studies, three years on a grant:

- Without obtaining the doctorate, fixed-term contracts linked to a qualification can be taken for five years and two months (the auxiliary employment is not counted as only a quarter of regular hours were worked; the ten months on a third-party funding contract do count).
- Notwithstanding this, an unlimited number of fixed-term contracts can be taken on the basis of third-party funding, as described in § 2 paragraph 2 *WissZeitVG*.

Example 5:

Four years researching for a doctorate without employment, birth of a child while working for the doctorate, award of doctorate:

- After award of doctorate, fixed-term contracts linked to a qualification, as described in § 2 paragraph 1 *WissZeitVG*, can be taken for six plus two years ("bonus", as only four years were needed to obtain the doctorate). After this total permissible maximum duration of fixed-term contracts is over, another two years can be added (due to caring for a child).
- Notwithstanding this, an unlimited number of fixed-term contracts can be taken related to third-party funding, as described in § 2 paragraph 2 *WissZeitVG*.

Example 6:

Three years of employment as a student auxiliary (tutor) while studying, Master's degree completed, 18-month contract to stand in for an employee on parental leave, three years on a contract for a doctoral student (50 per cent of standard working hours), award of doctorate:

- After this, fixed-term contracts linked to a qualification, as described in § 2 paragraph 1 *WissZeitVG*, can be taken for up to six years plus a bonus of 18 months (because the time spent working on the doctorate combined with the employment prior to the doctorate only amounted to four years and six months).
- Notwithstanding this, an unlimited number of fixed-term contracts can be taken if they are linked to third-party funding, as described in § 2 paragraph 2 *WissZeitVG*.

Example 7:

After graduating, two years in fixed-term academic employment for a project with third-party funding, as described in § 2 paragraph 2 *WissZeitVG*, during this period birth of a child and one year on parental leave, end of third-party funding contract.

- Without obtaining a doctorate, fixed-term contracts linked to a qualification, as described in § 2 paragraph 1 *WissZeitVG*, can be taken for four years (fixed-term contracts based on third-party funding count towards the maximum duration of six years).
- In addition, the family policy component can be applied. The maximum duration of qualification-based contracts pursuant to § 2 paragraph 1 is extended by two years because of the child. As a result, without completing the doctorate, fixed-term contracts can be taken for a maximum of six years.
- Notwithstanding this, an unlimited number of fixed-term contracts can be taken on the basis of third-party funding, as described in § 2 paragraph 2 *WissZeitVG*.

13. Fixed-term contracts governed by standard employment law

Fixed-term contracts can also be concluded in the academic sector by applying standard employment law. The legal basis for this is **Section 14 of the Part-Time and Fixed-Term Employment Act (TzBfG)**. This permits fixed-term employment contracts in the following cases (among others):

- a. **For up to two years without objective grounds** (but: only when recruited by a new employer for the first time). The contract can be renewed no more than three times and the overall period must not be more than two years.
- b. Fixed-term contracts under this law can also be concluded when there are **objective grounds, in particular:**
 - A temporary need (for example, to cover for a vacancy which has not yet been filled, or during projects).
When concluding the contract, it must be adequately clear that the need for this activity will actually cease when the contract ends.
 - Employment financed by budgetary resources allocated in accordance with budgetary rules for a purpose of limited duration (for example, special programmes).
 - Standing in for another employee (for example, due to parental leave or sickness).

In the former West, fixed-term contracts outside the scope of *WissZeitVG* are also subject to **§ 30 of the collective public service agreements (TV-L and TVöD)** at federal, state and local authority level. These rules also apply throughout Berlin due to collective agreements to adopt TV-L at all higher education institutes.

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Tips and advice

// This guide can only summarise the key provisions on fixed-term contracts. It cannot take all possible constellations into account. Always bear in mind the following advice. //

- Check your employment contract before you sign it, or have someone else look through it.
- GEW members are entitled to free legal advice and representation provided by the GEW in matters relating to employment legislation. Make an appointment in good time. You will find the right contact data on the website of your GEW state association (*Landesverband*).
- Make use of the advice service provided by the staff or works council at your higher education institutions or research institute.
- Be clear about the legal basis for fixing the length of your contract.
- When concluding a contract based on § 2 paragraph 1 *WissZeitVG*, ensure that your qualification goal (e.g. doctorate) has been stated in the contract and that the length of the contract reflects the qualification goal agreed (i.e. is “appropriate”).
- Bear in mind that contracts linked to third-party funding (taken, for example, at the beginning of an academic career) will count towards the six-year maximum before a doctorate is awarded. If possible, try to have your contract based on § 2 paragraph 1 (fixed term based on pursuit of a qualification; also applicable when there is third-party funding involved). You will then, for example, be entitled to extend the contract if you take maternity or parental leave and after certain other interruptions (see Chapter 9).

30 Tips and advice

- You have several conceivable options when your fixed-term contract runs out:
 - If the six-year maximum (before or after a doctorate) has not yet been used up, apply in good time to have your fixed-term contract renewed. Check whether any other periods must be taken into account (see Chapter 9).
 - If the six-year period was used up when you obtained your doctorate, check whether you can extend it for any of these reasons:
 - it took less than six years to obtain the doctorate (“bonus”, see Chapter 5) and/or
 - certain periods should not have been included (see Chapter 9) and/or
 - you have looked after children or you yourself have a disability or a severe chronic disease (“family policy component” or “disability policy component”, see Chapter 10).
 - Once the maximum (qualification) period has been used up, you might be able to conclude another fixed-term contract based on the Part-Time and Fixed-Term Employment Act (see Chapter 13).
 - Regardless of whether you have used up the maximum period, you might be able to conclude a fixed-term contract linked to third-party funding (see Chapter 7).
 - Of course, you are also completely free under the law to conclude a permanent contract.
- Contact your departmental superiors and the administrative department in good time to discuss possibilities for renewing your contract and the legal options available.

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The full wording of the Act: an English translation

The Fixed-Term Academic Contracts Act (Wissenschaftszeitvertragsgesetz)

of 12 April 2007 (Federal Gazette I p. 506), last amended by Section 1 of the Act of 25 May 2020 (Federal Gazette I p. 1073)

This is a convenience translation provided by the GEW.

§ 1 Fixed-term employment contracts

(1) The conclusion of employment contracts for a limited period of time (fixed-term contracts) with academic and artistic staff, with the exception of professors, at education institutes defined as public higher education institutes by the law of a federal state, is governed by §§ 2, 3 and 6. These rules may not be overridden by agreement. In certain disciplines and research fields, collective agreements may diverge from the maximum limits set out in § 2 paragraph 1 and stipulate how often fixed-term contracts may be renewed. Within the scope of a collective agreement, contractual parties who are not parties to the collective agreement may agree to apply the provisions of the collective agreement. The rules and principles of employment law on fixed-term contracts and their termination shall apply insofar as they are not precluded by the provisions of §§ 2 to 6.

(2) These provisions shall be without prejudice to the right of higher education institutes to employ the staff described in § 1 sentence 1 under permanent contracts or in accordance with the Part-Time and Fixed-Term Employment Act.

§ 2 Maximum duration; fixed term due to third-party funding

(1) The duration of employment contracts with the members of staff described in § 1 paragraph 1 sentence 1 without a doctorate may be limited for a maximum of six years if the fixed-term employment is taken to facilitate the employee's acquisition of an academic or artistic qualification. After the award of a doctorate the duration of employment contracts may be limited for a maximum of six years, in medicine nine years, if the fixed-term employment is taken to facilitate the employee's acquisition of an academic or artistic qualification; the permissible duration is extended by the difference between six years and the combined amount of time spent in fixed-term employment pursuant to

sentence 1 and research for a doctorate without employment pursuant to sentence 1. The limitation on the period of employment agreed by the parties must in all cases be appropriate to the qualification pursued. If the employee cares for one or more children under the age of 18 years, the combined duration permitted under sentences 1 and 2 is extended by two years for each child. Sentence 4 shall also apply when a child meets the conditions of § 15 paragraph 1 sentence 1 of the Parental Allowance and Parental Leave Act. The combined duration permitted under sentences 1 and 2 is extended by two years in the event of a disability as defined in § 2 paragraph 1 of Book Nine of the Social Code or of a severe chronic disease. A fixed-term contract may also be renewed for as long as the relevant permissible duration has not been exhausted.

(2) Employment contracts with the staff described in § 1 paragraph 1 sentence 1 may also be subject to a fixed term if the employment is predominantly financed by third-party funding, the funding has been approved for a specific task and duration, and the employee is predominantly employed in pursuing the purpose of this funding; the duration of fixed-term employment determined by the parties should reflect the approved project duration.

(3) The permissible duration of the fixed-term employment provided for in § 1 includes all fixed-term employment contracts concluded with a German higher education institution or a research institute in the meaning of § 5 to work for more than a quarter of the regular working hours, as well as relevant temporary civil service employment and private service contracts as described in § 3. Also included are fixed-term contracts concluded on the basis of other statutory rules. §§ 1 and 2 do not apply to contracts under § 6 or to comparable in-course employment based on other statutory rules.

(4) The employment contract shall indicate whether the term has been fixed on the basis of the provisions in this Act. If this is not stated, the provisions of this Act cannot constitute the basis for fixing the term. In contracts pursuant to paragraph 1, the duration of the fixed term must be expressed or capable of expression in calendar dates.

(5) The duration of a fixed-term contract pursuant to paragraph 1 will be extended, with the employee's agreement, by

1. periods of leave or of a reduction in working hours by at least one fifth of regular working hours granted to look after or nurse one or more children under the age of 18 years, including when the child meets the criteria of § 15 paragraph 1 sentence 1 of the Parental Allowance and Parental Leave Act, or other relatives in need of care,
2. periods of leave granted for an academic or artistic activity or a course of initial, further or continuous academic, artistic or professional training outside higher education or abroad,
3. periods spent taking up parental leave pursuant to the Parental Allowance and Parental Leave Act and periods for which employment is prohibited pursuant to §§ 3, 4, 6 and 8 of the Protection of Maternity Act to the extent that no employment was pursued,

4. periods of basic military service or alternative civilian service,
5. periods of exemption from employment duties for at least one fifth of regular working hours in order to carry out activities on a staff or works council or a body representing employees with disabilities, or as a women's or equality officer, or to exercise an elected office compatible with the employment, and
6. periods of sickness-related incapacity for work during which no claim to continued remuneration is provided by law or collective agreement.

Where § 1 nos. 1, 2 or 5 apply, the extension of duration may not exceed two years in each instance. Periods as defined in § 1 numbers 1 to 6 are not included in the permissible duration provided for in paragraph 1 to the extent that they are permitted to result in the extension of an existing employment contract.

§ 3 Private service contracts

Where a member of a higher education institutions who independently performs functions on behalf of his or her institution concludes, in order to support the fulfilment of such functions, a fixed-term employment contract in the meaning of § 1 paragraph 1 sentence 1 with staff predominantly remunerated from third-party funding, the provisions of §§ 1, 2 and 6 shall apply *mutatis mutandis*.

§ 4 Academic staff at state-approved higher education institutes

When concluding fixed-term employment contracts with academic and artistic staff at higher education institutions which have obtained official approval under the law of a federal state, the provisions of §§ 1 to 3 and 6 shall apply *mutatis mutandis*.

§ 5 Academic staff at research establishments

When concluding fixed-term employment contracts with academic staff at public research establishments and at research institutes funded predominantly from public revenues, institutionally funded predominantly from public revenues or funded on the basis of Article 91b of the Constitution, the provisions of §§ 1 to 3 and 6 shall apply *mutatis mutandis*.

§ 6 Auxiliary academic and artistic functions

Fixed-term employment contracts for the performance of auxiliary academic or artistic functions concluded with students who are enrolled at a German higher education institute in a course of study leading to an initial or advanced professional diploma are

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permitted up to a total duration of six years. A fixed-term contract may also be renewed for as long as the permissible duration has not been exhausted.

§ 7 Legal basis for existing contracts; transition rules

(1) For employment contracts concluded between 23 February 2002 and 17 April 2007 at public and state-approved higher education institutions and at research institutes in the meaning of § 5, §§ 57a to 57f of the Framework Higher Education Act in its version applicable from 31 December 2004 continue to apply. For employment contracts concluded prior to 23 February 2002 at public and state-approved higher education institutes and at research establishments in the meaning of § 5, §§ 57a to 57e of the Framework Higher Education Act in its version applicable before 23 February 2002 continue to apply. § 2 applies *mutatis mutandis* to employment contracts concluded between 27 July 2004 and 31 December 2004.

(2) The conclusion of fixed-term employment contracts pursuant to § 2 paragraph 1 sentences 1 and 2 with persons already employed prior to 23 February 2002 on a fixed-term contract with a higher education institute, a member of a higher education institute in the meaning of § 3 or a research establishment in the meaning of § 5 remains permitted beyond the respective permissible durations provided for in § 2 paragraph 1 sentences 1 and 2 but any such contracts will expire on 29 February 2008. § 1 applies *mutatis mutandis* to persons employed prior to 23 February 2002 on a service contract as an academic or artistic assistant. § 2 paragraph 5 applies *mutatis mutandis*.

(3) The total permissible duration of fixed-term employment as set out in § 2 paragraph 1 sentences 1 and 2 is extended by six months if an employment contract pursuant to § 2 paragraph 1 is effective between 1 March 2020 and 30 September 2020. The Federal Ministry of Education and Research is authorised to extend the permissible duration by a maximum of a further six months by means of a statutory order if this seems necessary due to the continuing impact of the COVID-19 pandemic in the Federal Republic of Germany; the extension shall also apply to employment contracts concluded after 30 September 2020 and before the extension period defined in the statutory order has expired.

§ 8 Evaluation

The effects of this Act will be evaluated in 2020.

This Act will enter into force on the day after its publication.

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The Ordinance issued by the Federal Ministry of Education and Research

Ordinance on a further extension to the permissible duration of fixed-term employment pursuant to § 2 (1) of the Fixed-Term Academic Contracts Act in response to the Covid-19 pandemic

(WissZeitVG-Befristungsdauer-Verlängerungs-Verordnung – WissBdVV)

of 23 September 2020 (BGBl. I p. 2039)

This is a convenience translation provided by the GEW.

Based on § 7 (3) of the Fixed-Term Academic Contracts Act as incorporated by Article 1 no. 2 of the Act of 25 May 2020 (BGBl. I p. 1073), the Federal Ministry of Education and Research orders the following:

§ 1 Extension of the permissible duration of fixed-term employment pursuant to § 2 (1) of the Fixed-Term Academic Contracts Act due to the Covid-19 pandemic

The overall permissible duration of fixed-term employment defined in § 2 paragraph 1 sentences 1 and 2 of the Fixed-Term Academic Contracts Act of 12 April 2007 (BGBl. I p. 506), last amended by Article 1 of the Act of 25 May 2020 (BGBl. I p.1073), is extended beyond the extension set out in § 7 paragraph 3 sentence 1 of the Fixed-Term Academic Contracts Act by a further six months. For employment contracts pursuant to § 2 paragraph 1 of the Fixed-Term Academic Contracts Act concluded between 1 October 2020 and 31 March 2021, the overall permissible duration of fixed-term employment defined in § 2 paragraph 1 sentences 1 and 2 of the Fixed-Term Academic Contracts Act is extended by six months.

§ 2 Entry into force

This Ordinance enters into force on 1 October 2020.

The Bundesrat has granted consent.

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The GEW – a strong union for higher education and research

// The GEW is the education trade union within the German Trade Union Confederation. It organises employees in all spheres of education from early-childhood education to further training – including higher education and research. //

Our members include doctoral candidates, postdocs, lecturers, teachers and lecturers, academic employees, research managers and service employees. Students can join the GEW too.

The GEW works in the political arena and through collective negotiations to defend the interests of people working in higher education and research and to achieve reforms.

The GEW helps members to understand and assert their rights – with personal advisers and legal protection provided by the trade union.

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- you will receive the monthly magazine “*Erziehung & Wissenschaft*” and a newspaper from the GEW branch in your own federal state,
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More details online at: www.gew.de

For higher education and research, see: www.gew.de/wissenschaft

You can subscribe online to the free GEW newsletter *Hochschule und Forschung*.

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Rechtlicher Rahmen und Hintergrundinformationen
Erarbeitet von Cord Würmann, Rechtsanwalt

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Membership Application

Please complete in block letters

Personal Details

Surname (title), first name(s)

Address

Postal Code, City

Telephone / e-mail

Date of birth

Citizenship

Desired entry date

Previous union membership: where, from

through (month/year)

Provider of the institution / agency / school

female

male

divers

Address of the institution / agency / school

Postal code, place of the institution / agency / school

Employment relationship:

Salaried employee

On unpaid leave until _____

Civil Servant

Retired / pensioned

Part-time employed: _____ hours/week

Student

Part-time employed: _____ %

Partial retirement

Freelance

In parental leave until _____

In fixed-term position until _____

Trainee teacher / Vocational internship

Unemployed

Other _____

Each member of the GEW is required to pay the statutory fee. By signing this application I acknowledge the GEW's statutes

Place, date

Signature

SEPA Direct Debit Mandate:

Gewerkschaft Erziehung und Wissenschaft, Reifenberger Str. 21, 60489 Frankfurt a. M.

Creditor identifier: DE31ZZZ0000013864

By signing this mandate I authorize the GEW to send instructions to my bank to debit my account and I authorize my bank to debit my account in accordance with the instructions from GEW.

Note: I am entitled to claim a refund of the debited amount within eight weeks, starting from the debit date. The terms agreed with my bank shall apply in each case.

Surname, first name (owner of account)

Bank (name and BIC)

IBAN

City, date

Signature

The personal data provided will be recorded on media exclusively in the performance of our statutory tasks and will be protected according to the regulations of the European General Data Protection Regulation (GDPR).

Please send the completed form to the respective GEW branch resp. to the office of the National Executive. Please find the addresses overleaf.

Thank you!

Professional title

Please indicate your professional title or occupation, also whether you are unemployed or retired.

Professional group

According to § 11 of the GEW-statutes there are the following professional groups:

- Further education
- Comprehensive schools
- Vocational schools (*industrial*)
- Primary schools
- Secondary schools (*Gymnasien*)
- Secondary schools (*Hauptschulen*)
- Higher education and research
- Vocational schools (*commercial*)
- Secondary schools (*Realschulen*)
- School supervising and administration
- Special needs education
- Socio-pedagogical education

Please tick as appropriate.

Pay scale group/Salary class

The indication of your pay scale group or salary class allows the correct calculation of the statutory membership fee. In case your remuneration is not subject to TVöD/TV-L (Public Service Wage Agreement) or TV-H (Agreement for Hesse) we kindly ask you to state your gross income.

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45141 Essen

Telefon: 0201/29403-01

Telefax: 0201/29403-51

info@gew-nrw.de

www.gew-nrw.de

Institution/Agency

This refers to the member's actual workplace. In higher education please state the name of the university/research institute and the name of the faculty/department.

Membership fee

- In 2020/2021 civil servants pay 0.83% and in 2022 0.85% of the salary class and level according to which they receive remuneration.
- In 2020/2021 employees holding a wage agreement pay 0.76% and in 2022 0.77% of the respective pay scale group and level; employees without wage agreement pay 0.7% of their gross income.
- The minimum fee is always 0.6% of the lowest level of pay scale group 1 TVöD.
- Unemployed persons pay one third of the minimum fee.
- Persons working free-lance pay 0.55% of their remuneration.
- Students pay a fixed amount of 2.50 €.
- Members in teacher training or completing an internship pay a fixed amount of 4 €.
- Recipients of a civil service pension pay 0.68% of the gross retirement pension, other retired members pay 0.66% of their gross pension.

For further information please refer to our membership fee regulations.

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