

Questions and answers on the topic UG §109 Duration of employment relationships (Fixed-term/temporary employment contracts)

BRwiss online question time

08.09.2021; 16 o'clock



Section 109 Duration of employment relationships (ALT)

(1) Employment relationships may be concluded for an indefinite or definite period. Employment relationships for a definite period shall be limited to a maximum of six years, otherwise the employment contract shall be legally invalid, unless otherwise provided for in this Federal Act.

(2) Multiple, directly successive fixed-term employment contracts shall only be permissible in the case of employees who are employed within the framework of third-party funded projects or research projects, in the case of personnel used exclusively for teaching purposes, and in the case of substitute staff. The total duration of such directly successive employment relationships of an employee may not exceed six years, or eight years in the case of part-time employment. A one-time extension beyond this up to a total of ten years, in the case of part-time employment up to a total of twelve years, is permissible if objectively justified, in particular for the continuation or completion of research projects and publications.

Section 109 Duration of employment relationships (old)



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(3) If an employee within the meaning of Section 100 changes to another assignment, a **single new fixed-term** shall be permissible up to a total **period of** six years, in the case of part-time employment up to eight years, notwithstanding subsection (2), whereby the fixed-term periods pursuant to subsections (1), (2) and (3) shall be added together accordingly. The maximum limits of para. 2 may not be exceeded. Periods of employment as a student employee shall not be taken into account.

(4) **Another assignment within the** meaning of para. 3 shall be deemed to exist in particular if a further career stage (e.g. postdoc position) is reached as a result of the transfer or if the **transfer is** from or to a position within the framework of a third-party funded or research project.

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§ 109 Duration of employment relationships (NEW as of 1.10.21).



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(1) Employment relationships may be concluded for an indefinite or definite period.

Employment relationships for a definite period of time shall be **limited once up to a maximum of six years**, unless otherwise provided for in this Federal Act, in the event that the employment contract is otherwise legally ineffective.

(2) **Two extensions** or two renewals of fixed-term employment contracts of persons belonging to the academic and artistic university staff pursuant to section 94(2) shall be permissible up to a **total period of eight years**, taking into account subsection 1.

(3) Notwithstanding the permissible total duration pursuant to subsections (1) and (2), employment relationships which are concluded **predominantly for the** purpose of carrying out **third-party funded projects or research projects** shall **not be taken into account** when determining the maximum permissible **number of** fixed-term employment relationships.

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Section 109 Duration of employment relationships (New)



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(4) If an employee changes to a **position pursuant to Section 94(2)(1)**, a single new fixed term shall be permissible for a period of up to six years.

(5) In the case of substitute employees, **multiple extensions or renewals of** employment contracts shall be permitted up to a total period of six years.

(6) In the case of personnel used **exclusively in teaching**, multiple extensions or renewals of employment are permitted within **eight academic years**.

(7) Employment relationships which also involve the completion of doctoral studies shall not be **taken into account for the maximum permissible total duration and the maximum permissible number of employment relationships up to a period of four years (if the doctorate has been included in the working contract)**.

Employment as student employees shall also be disregarded.

Section 109 Duration of employment relationships (New)



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(8) Periods pursuant to section 20(3)(1) of the Collective Agreement for University Employees (Kollektivvertrag) concluded pursuant to section 108(3) in the version in force on May 1, 2021 shall not be taken into account.

(9) In **determining the maximum permissible total length of employment under subsections (1), (2), (5), and (6), all employment with the university shall be considered, regardless of whether the employment is immediately consecutive.**

§ 143 Transitional provisions (§109)



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(83) Section 109, as amended by Federal Law Gazette I No. xxx/2021, shall enter into force on October 1, 2021, and shall apply to employment relationships entered into on or after October 1, 2021. In determining the maximum permissible total duration pursuant to section 109(9), **periods of employment with the university prior to October 1, 2021 shall also be taken into account; periods pursuant to section 109(7) shall not be taken into account.** Periods prior to October 1, 2021, which were spent during a **doctoral program** at the same university in an employment relationship that was inseparably related to the doctoral program shall **also be disregarded** up to a maximum of four years.

(84) If an existing employment relationship is extended as of October 1, 2021, **without a change of use**, section 109 as amended by Federal Law Gazette I No. 20/2021 shall **continue to apply.**

§ 143 Transitional provisions (§109)



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(85) If a new employment relationship is concluded in accordance with section 109(6) as from October 1, 2021, periods spent before October 1, 2021 shall not be taken into account. If an employment relationship is concluded as of October 1, 2021, **predominantly for the purpose of carrying out third-party funded projects or research projects, periods spent in such employment prior to October 1, 2021, shall be disregarded to the extent of up to four years.**

Basic

- UG §109 permits, in amendment of the general prohibition of chain contracts, the stringing together of fixed-term contracts with factual justification.
 - NEVER intended by the ministry as a rule case !
- **UG §109 NEW:**
 - Maximum 8-year fixed-term employment contracts (lifetime total).
 - Maximum 3 time limits (however, exceptions)
 - No distinction between full-time and part-time (ECJ ruling)
- **UG§109 is not a prohibition on open-ended contracts !!!!C**

Exceptions

- UG §109
 - Substitutes maximum 6 years
- UG §109 "bonus" of up to 4 non-creditable years.
 - Postdocs (if employment requirement)
- UG§109
 - Project staff

Transitional provisions



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- UG § 143 (84) old legal situation continues to have effect
 - no change in use
- UG § 143 (85) "Bonus" of up to 4 non-creditable years.
 - Project employees Periods before 1.10.2021
- UG § 143 (83)
 - "Bonus" of 4 (2x4) years for doctoral studies / postdoctoral employment.

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Summary of the most important Changes to §109 (effective 10/1-21).



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- Fixed-term **employment** is possible up to a **maximum of 8 years**, whereby **all employment relationships at an Austrian university** are added together ("for the duration of the professional life"), thus no chain interruption is possible to circumvent the rule. Universities of Applied Sciences or non-university research institutions are not affected.
- For **Scientific Employees** with ECTS assignment may be concluded only max. 3 temporary employment contracts (i.e. 2x extendable).
- For **Project-Employees** (without ECTS assignment) there is no max. number of time limits within 6-year rule (thereafter extendable up to max. 8 years 1x).
- **Substitutes** can be extended more than 2x
- For **Lektor*innen** 8-year rule begins from 1.10.21, everything before that is disregarded
- Time as **PhD student** or **student employee** can be disregarded up to 4 years (e.g. 4 years as PhD + 8 years as PostDoc = max. 12 years possible)
- Transitional provisions from old to new contracts (effective 10/1-21) are:
 - Doctorate time is not taken into account if the doctorate was part of the employment contract.
 - For project employees, up to 4 years can be calculated backwards.

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Conclusion and outlook



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- New calculation of 8-year rule on total "working life" is very hard, but "stepped-up" (open-ended) contracts are still possible under §109
- Transitional provisions are partly very vaguely worded and therefore "declaratory actions" are likely to follow
- New §13 nevertheless provides certain hope for developing longer-term career models based on transparent de-termination criteria:



"The university shall also indicate what measures it is taking to ensure the continuity of employment for adjunct faculty and to make career paths attractive to young scholars and artists,...]"

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Questions of the participants



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All statements are subject to interpretation by the courts of law.

Contact

- HUMAN RESOURCES MANAGEMENT
- CHAMBER OF LABOR (Arbeiterkammer Wien)
- WORKERS UNION Gewerkschaft Öffentlicher Dienst GÖD

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Ceterum censeo UG2002 §109 esse delendam !!!

(loosely based on Cato the Elder)

**For an initial assessment of the labor law situation, you can
contact our works council office:**

E-mail: brwiss@boku.ac.at

