

FIXED-TERM CONTRACTS AND PRINCIPLE OF EQUAL TREATMENT CONCLUSIONS

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Abstract

The Comparative Labor Law Dossier (CLLD) in this issue 1/2017 of IUSLabor is dedicated to fixed term contracts and the principle of equal treatment. We have had the collaboration of internationally renowned academics and professionals from Belgium, France, Germany, Greece, Italy, Portugal, Spain, Argentina, Brazil, Chile, Costa Rica, Mexico, Dominican Republic, Uruguay, Canada and the USA.

Notwithstanding recommending our readers the reading of the complete articles of the comparative dossier, we have drawn the top 10 conclusions and elaborated a summary table with the most relevant issues regarding fixed-term contracts an principle of equal treatment in the different legal systems analyzed in this issue of IUSLabor.

El Comparative Labor Law Dossier (CLLD) de este número 1/2017 de IUSLabor está dedicado a los contratos temporales y al principio de igualdad de trato. Hemos obtenido la participación de académicos y profesionales de prestigio de Alemania, Bélgica, España, Francia, Grecia, Italia, Portugal, Argentina, Brasil, Chile, Costa Rica, México, República Dominicana, Uruguay, Canadá y Estados Unidos.

Sin perjuicio de recomendar a nuestros lectores la lectura del capítulo correspondiente a cada uno de los países citados, en las páginas que se suceden hemos incluido las 10 conclusiones principales que hemos alcanzado, así como un cuadro-resumen con aquellas cuestiones más relevantes en materia externalización y cadenas de producción en los ordenamientos jurídicos analizados en este número de IUSLabor.

Título: Principio de igualdad de trato y contratos temporales. Conclusiones

Keywords: fixed term contract, temporary contract, equal treatment, right to occupy a vacant, working conditions, compensation, indefinite contracts, “Diego Porras”.

Palabras clave: contrato de duración determinada, contrato temporal, igualdad de trato, derecho a ocupar una vacante, condiciones de trabajo, indemnización, contrato indefinido, “*Diego Porras*”.

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1. «Top ten» conclusions

The Comparative Labor Law Dossier (CLLD) in this issue 1/2017 of IUSLabor is dedicated to fixed term contracts and the principle of equal treatment, elaborated by internationally renowned academics and professionals, regarding this important matter.

Fixed-term contracts are an important way of regulating labour relations, specially in the current global context where flexibility has been set out as a key tool for the best functioning of labour markets. However, the increasing use of these carries different problematic aspects, given the relation with fundamental rights in the work place, the function of it in terms of employability, and some specific legal challenges. Thus, this study tackles the matter from a comparative perspective in order to identify some similarities and dissimilarities between systems and specific patterns in the regions that made it up. In this dossier we analyzed the most relevant 10 issues in the legal systems of Belgium, France, Germany, Greece, Italy, Portugal, Spain, Argentina, Brazil, Chile, Costa Rica, Mexico, Peru, Dominican Republic, Uruguay and Canada and the USA.

The international advisors that have participated in this comparative dossier have answered to the following questions:

1. Is it possible to subscribe a temporary or fixed-term contract? Also to carry out the company's permanent needs or activities?
2. Which fixed-term contract exist?
3. Does the legal regulation establish a maximum duration for hiring fixed-term workers?
4. Does the legal system regulate fixed-term contracts aimed at fostering employment and job creation?
5. Does the legal regulation recognize fixed-term workers a preferential right to occupy a vacant job position in the firm?
6. Does the legal regulation allow differences in working conditions of fixed-term workers (worktime, wage, schedule, etc.) in comparison with indefinite workers?
7. Is there any economic compensation in favor of a worker as a result of the extinction of a fixed-term contract according to the agreed terms?
8. In case of recognizing an economic compensation to the worker, is this economic compensation equivalent or different than the one recognized in case of extinction of the contract due to business-related reasons?
9. What are the consequences derived from the breach the regulation regarding fixed-term contracts? In particular, is the contract declared indefinite? Are workers recognized a higher economic compensation in case of the contract's extinction?

10. For member states of the European Union, what consequences on the legal regulation can arise from the decision of the ECJ of September 14th, 2016, which does not allow differences between fixed-term and indefinite workers regarding compensation for extinction of contracts?

Following, and in the same order of the above questions, are the 10 most important conclusions regarding fixed-term contracts and the principle of equal treatment, drawn from the articles written by our international consultants

1. Is it possible to subscribe a temporary or fixed-term contract? Also to carry out the company's permanent needs or activities?

All countries analyzed it is possible to sign temporary or fixed term contracts.

There is a dominant trend in **Europe, Central and South America** to resort to this form of hiring due to specific circumstances that justify it. Among the causes generally established are temporary needs of the company, temporary absence of workers (e.g., maternity or sickness), production increase, seasonal production, or the need to have specific tasks carried out. Since **North American** systems are based on **contractual freedom**, the parties have the right to determine their relationship by this, or any other sort of contractual agreement.

Considerable variations to this general pattern exist within each region. In **Europe and South America German and Uruguayan** regulations impose an obligation to justify the use of this method of hiring based on "*objective reasons*", while in **Italy and Chile** however its use remains unrestricted. Other particularities are noticeable. That is the case of the **French** system, where there is a customary use of temporary hiring in certain sectors of economic activities.

Now, according to the reports, in **Europe there is not a common pattern regarding the use of temporary contracts to attend temporary needs of the Company**. That possibility is **prohibited** in **Belgium, Spain and Greece**, **conditionally admitted** in **Portugal, France and Germany**, and **absolutely possible** in **Italy**, where the only limitations are set in case of strikebreaking and substitution of workers subject to collective dismissal during the last six months of the relationship.

In **Central and South America** the pattern is more uniform in favor of the prohibition, with the above mentioned exceptions in **Chile and Uruguay**.

Finally, in North America, as a consequence of the wide margin of freedom granted to parties in labour matters, the use of temporary contracts in common or permanent activities of the company **is possible**.

2. Which fixed-term contract exist?

Throughout the present study, a **wide typology** of temporary contracts has been found, determined by the subjects taking part in the specific agreement, by its object or goal, and by its length.

However, there are **two dominant forms** included in the majority of legal systems (**Europe, Central and South America**): **fixed term contracts**, the expiration of which occurs on a determined date (calendar), and **temporary contracts**, the length of which depends on the execution of a task, or a specific purpose.

Within these variations, there are notable cases in the **European Union** such as **Greece and Belgium**, where **temporary contracts** require the intervention of a Temporary Work Agency, and are to be used in specific cases set by law. Other systems, such as the **Spanish** and the **French**, establish **specific types of contracts depending upon the object of it** (substitution of workers, production increase, seasonal work, execution of specific tasks, *inter alia*).

In South and Central America, the subject remains equally uniform tending to define temporary contracts according to its aim. In any case, there is a noteworthy use of temporary contracts as a means to incorporate workers in labour relations in the shape of **apprenticeship contract (Argentina and Brasil)**, **initial training or probationary contract (Mexico)**.

Again, the exception to the global trend is found in North American countries given the prevalence of contractual freedom, to the extent that, in the case of the United States of America, temporary work is not even considered a legal category

3. Does the legal regulation establish a maximum duration for hiring fixed-term workers?

In the majority of countries analyzed there are limits regarding the maximum duration of temporary hiring.

In all the analyzed countries within the **European Union**, there are regulations setting a maximum duration of temporary contracts. However, it is a complex framework where a wide range of differences has been identified.

Thus, in **France, Greece and Italy** a **maximum term** is established to all fixed term contracts. Other countries such as **Belgium and Portugal** consider distinctions what brings about contract's termination, whether exceeding a certain date or the completion of the task specified in the contract. The **german system** draws a distinction between maximum duration of temporary contracts, although it stems again from "*objective reasons*".

Finally, in **Spanish regulation** a distinction is determined by the contract's objective, whether the completion of a specific task or service, or the existence of any other legal cause that justifies recourse to this form of hiring. At any rate, almost all systems establish marginal exceptions for specific situations.

Within this context, some legal systems do not establish a maximum period for temporary contracts. That is the case of the contracts signed to carry out a project or a determined service in **Spain and Belgium**, or the **temporary contract** based on "*objective reasons*" in **Germany**.

The phenomenon is **far less complex** in **Central and South America** because of the existence of an inferior number of categories and specific cases regulated by law.

There, the dominant trend is that temporary contracts (signed to have specific tasks done) exist as long as the object has not yet been completed. Some regulations deserve special mention, such as the **Costa Rican**, where no matter the type of contract, its maximum duration one year, the **Mexican** which imposes a limit on seasonal work (27 months), or in the **Dominican Republic** or **Uruguay** which lack respective restrictions –despite that, in the latter case, legal studies and jurisprudence have developed criteria to establish objective limits.

Finally, one of the most prominent features of the **North American systems** is found in **Canada**, where fixed term contracts longer than 9 years are prohibited. The subject is hardly ever discussed, and is ruled by an old-fashion, but still enforced law ("*Masters and Servant Act*", 1847). On the other hand, services contracted through temporary work agencies have an maximum duration of six months, after which, the User Enterprise is obliged to directly hire the worker.

4. Does the legal system regulate fixed-term contracts aimed at fostering employment and job creation?

In **Europe**, all the countries analyzed, except **Italy**, make use of temporary contracting as a mechanism to encourage the inclusion of individuals in the labour market. In the latter case, Government policy is dedicated to the promotion of indefinite contracts by means of their reduction of direct and indirect costs.

In contrast, **these contracts are not used to promote employment neither in Central nor in South America**, with **particular exceptions** in **Uruguay and Chile**. In the former, the legal system establishes the **apprenticeship contract** with the purpose of

promoting employability of young workers (under 21 years), whereas in the latter there is a wide typology of contracts incentivizing employability of youth in general.

Such contracts do not exist in **North America**, due to the fact that contracts depends heavily on the agreement of the parties, specially by means of collective bargaining.

5. Does the legal regulation recognize fixed-term workers a preferential right to occupy a vacant job position in the firm?

The vast majority of countries analyzed do not prevent preferent treatment of temporary workers occupying vacant positions in the company. That is, there is not a legal obligation for the companies to prefer temporary workers over external candidates in case of open recruitment process. In **Brasil**, for instance, that sort of hiring is banned. However, **many European countries** have regulations obligating companies to **inform temporary workers** when vacancies are available.

Exceptions are found in **Italy** and **Portugal**. In the first, the right to occupy a vacancy for temporary workers certainly exists although restricted to certain temporary employees and to specific positions. In the second a fine is to be imposed when the right to be preferred is not warranted.

6. Does the legal regulation allow differences in working conditions of fixed-term workers (worktime, wage, schedule, etc.) in comparison with indefinite workers?

Most of the systems subject to comparison **do not permit setting different labour conditions** for temporary workers and those attached by indefinite contract. The very grounds of the **prohibition are the non-discrimination and equal treatment principles**.

Although, in many countries is reported the existence of different labour conditions that stem from a factual evolution of labour relations. That is to mean, certain rights just emerge as consequence of work during extended periods. At any rate, **several systems specially in Europe**, call for “**objective reasons**” to justify that differential treatment.

Specific differences are tracked in the wide number of countries under inquiry. Thus, acquired rights obtained by means of collective bargaining (**Brasil**), compensations for extinction of work contract (**France, Dominican Republic and Uruguay**), profit sharing and vacations (**Dominican Republic**), are delivered in those systems to indefinite workers with exclusion of those attached on a temporary basis.

Workers are also protected against discrimination in **North America**, even though differences in treatment are also contingent. Particularly in **Canada**, the existence of these dissimilarities rely on the labour market and the companies taking part of it

7. Is there any economic compensation in favor of a worker as a result of the extinction of a fixed-term contract according to the agreed terms?

Several trends have been found in this concrete matter.

In **Europe**, contract extinction according with agreed terms generates the right to obtain an economic compensation in **France, Portugal and Spain**. However, it is not an absolute right and the recognition of it is reserved to specific forms of hiring.

In **South and Central America** exists a predominant trend to recognize no compensation in the event of regular extinction of this sort of contract. The most remarkable exception is traceable to **Argentina**, where such compensation is ruled and varies according with the type of contract and the cause of extinction. In addition to it, the right under scrutiny emerges **in certain marginal cases**, as in the **contracts to intensify production**, or those signed in order to have accidental work done longer than three months (**Dominican Republic**), or **temporary contracts in mining industry (Mexico)**.

Several legislations rule the right to get compensation in cases of extinction due to unilateral extinction for unilateral decision.

Then, North American systems do not set any economic sanction in this event.

8. In case of recognizing an economic compensation to the worker, is this economic compensation equivalent or different than the one recognized in case of extinction of the contract due to business-related reasons?

In the cases of **Spain, France, and Argentina**, the economic compensation granted to workers for extinction of temporary contract according with the agreed terms is set in a **different amount** than that set for **extinction due to business-related reasons**. In the case of **Portugal** both compensations are set in equivalent amounts.

In this point, the **French** case deserves special mention since compensation may be reduced through collective bargaining in exchange of professional training for the worker.

9. What are the consequences derived from the breach the regulation regarding fixed-term contracts? In particular, is the contract declared indefinite? Are workers recognized a higher economic compensation in case of the contract's extinction?

From this comparative study it is possible to conclude that **failure to follow** the law regarding temporary contracts can be alleged, at least in **three different situations**: i) when temporal limits defined in applicable law are overtaken; ii) in case of failure to fulfill formalities for this kind of contracts; iii) when maximum percentages of workers allowed in each company are exceeded.

In any case, the **predominant consequence** in the event of breaching the rules regarding the subject is the **transformation of the relation into one on an indefinite basis**, and as a consequence there **emerges the effects of the extinction in such case**. Along the comparative analysis, there has been identified noteworthy differences as regards the vocabulary used to deal with the matter (*reclassification, transformation or interpretation of the contract*), even though they point to the above-mentioned effect.

The most remarkable particularities are traceable in Europe, given the differences set by every legal system.

First, the debate in relation with the phenomenon requires the intervention of a judicial authority. To this effect, the **Spanish** case deserves special attention, as non compliance of the company there produces a **"iuris tantum" presumption** with respect to the existence of an indefinite contract.

Now, the concrete effects produced by the failure to follow the applicable rules are the **right to obtain a special economic compensation, and the imposition of an economic fine to the responsible employer**. Instances of the first consequence may be observed in **France**, where there is a right to a **compensation for reclassification**, and **Italy** where **every worker is entitled to ask for an additional payment** (to the remuneration), during the time in which limits of temporary workers are overtaken. Economic sanctions to the employers are imposed in **Spain**.

In **South, Central, and Canada** there are not remarkable consequences rather than the transformation of the contract.

10. For member states of the European Union, what consequences on the legal regulation can arise from the decision of the ECJ of September 14th, 2016, which does not allow differences between fixed-term and indefinite workers regarding compensation for extinction of contracts?

With the exception of **Spain**, **no member state of the European Union reports eventual consequences** due to the doctrine adopted by the TJUE in the case “*De Diego Porras*”.

This statement is explained by different reasons such as the **absence of a right to obtain compensation** for the contract extinction based on business-related reasons in **Belgium and Germany**, **the most favourable treatment** granted to temporary workers in **France and Portugal**, the **impossibility to stablish differences in treatment** to temporary workers in comparison with those attached on an indefinite basis in **Greece**, or the **recognition for same rights** for all workers in **Italy**.

In the specific case of **Spain**, the effect is the extensive application of the right to legal compensation for contract extinction -initially recognized to *trabajadores internos*, to other categories of temporary workers. However, the interpretation of the matter is not even, it produces disparity of criteria in the judicial resolution of related cases.

2. «Top ten» conclusiones.

El *Comparative Labor Law Dossier* (CLLD) de este número 1/2017 de IUSLabor está dedicado a los contratos temporales y al principio de igualdad de trato, e incorpora artículos, elaborados por académicos de prestigio a nivel internacional, sobre la regulación de esta importante materia.

La flexibilidad ha sido planteada como una característica prominente de las relaciones laborales dentro del contexto global actual, debido, entre otros, a los beneficios que de ella se derivan, acorde con sus promotores, para los mercados laborales. En ese contexto, los contratos temporales deben ser considerados una herramienta importante para la regulación de relaciones laborales de duración determinada, en tanto contribuyen a ese propósito. Sin embargo, el creciente uso de aquellos conlleva el surgimiento de problemas importantes relacionados con el ejercicio de derechos fundamentales en el trabajo, el uso de éstos como una forma de promover la empleabilidad, además de desafíos legales específicos. Así, el presente estudio aborda la materia desde una perspectiva comparada con el fin de identificar semejanzas y diferencias entre sistemas, además de aquellas tendencias y patrones en las regiones incluidas. Para el efecto, en el dossier abordamos las 10 cuestiones más relevantes en la materia en los ordenamientos jurídicos de **Alemania, Bélgica, España, Francia, Grecia, Italia, Portugal, Argentina, Brasil, Chile, Costa Rica, México, República Dominicana, Uruguay, Canadá y Estados Unidos.**

El CLLD ha partido del siguiente **test de preguntas** a las que han dado respuesta los colaboradores internacionales de la revista:

1. ¿Es posible suscribir un contrato temporal o de duración determinada? ¿Y para atender necesidades permanentes de la empresa?
2. ¿Qué modalidades de contratos temporales existen?
3. ¿Existe en la regulación legal una duración máxima de la contratación temporal?
4. ¿Existen en el ordenamiento jurídico contratos temporales de fomento de la contratación?
5. ¿Existe un derecho preferente de los trabajadores temporales a ocupar un puesto de trabajo vacante en la empresa?
6. ¿El ordenamiento jurídico permite diferencias en las condiciones laborales de los trabajadores temporales (jornada, salario, horario, etc.) en comparación con los indefinidos?
7. ¿Se reconoce alguna compensación económica al trabajador por la extinción del contrato temporal según los términos pactados?

8. En caso de reconocerse una compensación económica al trabajador, ¿es ésta de cuantía igual o diferente a la reconocida por la extinción de un contrato por causas económicas, técnicas, organizativas o de producción?
9. ¿Qué consecuencias se derivan del incumplimiento por parte de la empresa de la regulación en materia de contratación temporal? En concreto, ¿se declara indefinido el contrato? ¿Se reconoce al trabajador una compensación económica superior en caso de extinción del contrato?
10. Para los estados miembros de la Unión Europea, ¿qué consecuencias puede tener en el ordenamiento jurídico la doctrina instaurada en la STJUE 14.9.2016 que no admite diferencias de trato entre trabajadores temporales e indefinidos en cuanto a la indemnización por extinción del contrato?

A continuación se exponen, siguiendo el mismo orden de las preguntas, las 10 conclusiones principales en materia de contratación temporal y principio de igualdad de trato alcanzadas en base a los artículos elaborados por nuestros académicos internacionales.

1. ¿Es posible suscribir un contrato temporal o de duración determinada? ¿Y para atender necesidades permanentes de la empresa?

En la **totalidad de países analizados** es posible suscribir contratos temporales o de duración determinada.

En **Europa, Centro y Sudamérica** predomina la tendencia a recurrir excepcionalmente a esta forma de contratación debido a la existencia de **circunstancias específicas** que así lo justifiquen. Dentro de las causas que mayoritariamente contemplan dichos sistemas jurídicos se encuentra la existencia de necesidades transitorias en la empresa, la ausencia temporal de trabajadores (por maternidad o enfermedad), los incrementos en la producción, la producción estacional, o la necesidad de ejecución de tareas específicas. Por su parte, los sistemas **Norteamericanos**, basados en la **libertad contractual**, difieren a las partes la decisión de regular sus vínculos a través de esta modalidad o cualquier otra modalidad.

En cada región existen variaciones destacables respecto a la tendencia mayoritaria. En **Europa** la regulación **alemana**, y en **Sudamérica** la **Uruguaya**, exigen justificar esta forma de forma de contratación en “*razones objetivas*”, mientras que en **Italia** y **Chile** se puede recurrir a la misma en cualquier evento. Por su parte en **Francia**, existe el uso consuetudinario de la contratación temporal en ciertos sectores de la actividad económica.

De otra parte, y de acuerdo con los reportes recopilados, en **Europa** no hay un patrón común respecto al uso de contratos temporales para atender las necesidades permanentes de la empresa. Dicha posibilidad se encuentra proscrita en los ordenamientos de **Bélgica, España, y Grecia**; es excepcionalmente admisible en **Portugal, Francia y Alemania**, y absolutamente admisible en **Italia**, donde las únicas excepciones apuntan al esquirolaje y a la sustitución de trabajadores sujetos a despido colectivo dentro de los seis meses anteriores.

En el caso de **Sur y Centroamérica** el patrón es mucho más uniforme, con una inclinación hacia la prohibición con las anotadas excepciones de **Chile y Uruguay**. Por su parte, en **Norteamérica**, dado el amplio margen de libertad concedido a las partes en materia de contratación laboral, es admisible el uso de contratos temporales en las actividades comunes o permanentes de la empresa.

2. ¿Qué modalidades de contratos temporales existen?

A lo largo del presente análisis se encuentra una amplia tipología de contratos temporales, definida a partir de los sujetos que intervienen en la celebración del acuerdo, del objeto o finalidad, y del tiempo de duración.

Sin embargo, se pueden ubicar dos formas predominantes que se incluyen en la mayoría de los ordenamientos (**Europa, Centro y Sudamérica**): los **contratos a término fijo o cierto**, cuya expiración ocurre en una fecha determinada en el calendario, y otros de carácter **temporal**, cuya duración depende de la ejecución de una tarea, o de un propósito determinado.

Dentro de esas variaciones resaltan, en la **Unión Europea**, los casos de **Bélgica y Grecia**, en donde los contratos **temporales** exigen la intervención de Empresas de servicios temporales, y su uso se encuentra reservado a ciertos supuestos definidos por cada ordenamiento jurídico. Otros sistemas como el **Español** y el **Francés** adoptan tipos específicos de contratos a partir del objeto (sustitución de trabajadores, incremento de la producción, trabajo estacional, ejecución de tareas específicas, *inter alia*).

En **Sur y Centro América** la cuestión es igualmente uniforme, con tendencia a definir ciertos tipos de contratos temporales de acuerdo a su finalidad. En todo caso, vale la pena resaltar la existencia de contratos temporales como medio de incorporación de los trabajadores en la relación laboral bajo la forma del *contrato de aprendizaje* (**Argentina y Brasil**), o *entrenamiento inicial o contrato de trabajo a prueba* (**México**).

De nuevo, la excepción a la tendencia global se encuentra en los países de **Norteamérica**, imputable a la libertad contractual. Cabe destacar que, en el caso de los **Estados Unidos**, el trabajo temporal ni siquiera constituye una categoría legal.

3. ¿Existe en la regulación legal una duración máxima de la contratación temporal?

En la gran mayoría de los países analizados existen límites respecto a la duración máxima de la contratación temporal.

En todos los países de la **Unión Europea** existen regulaciones que establecen un término máximo de duración de los contratos temporales. Sin embargo, se trata de una estructura compleja en la que pueden existir diferencias a partir de diversas variables.

Así, en **Francia, Grecia e Italia** se establece una duración máxima general, aplicable a todos los contratos con duración fija o determinada. Otros países como **Bélgica**, y

Portugal contemplan distinciones en función del hecho que define la extinción, bien sea la llegada de una fecha, o la ejecución de la actividad contratada. Por su parte, el ordenamiento **alemán** plantea una distinción entre la duración máxima de los contratos temporales, aunque ésta se deriva, nuevamente, de la existencia de “*razones objetivas*”. Finalmente, en **España** la diferencia está determinada por el objeto del contrato, sea la ejecución de una obra o servicio determinado, o la existencia de cualquier causa legal que justifica el recurso a esta forma de contratación. En todo caso, casi todos los sistemas analizados establece excepciones marginales para situaciones específicas.

Dentro de este panorama, algunos ordenamientos no establecen un plazo máximo de duración para determinados contratos temporales. Es el caso del contrato que se suscribe para llevar a cabo una **obra o servicio determinado** en **Bélgica**, o el **contrato temporal** justificado en la existencia de razones objetivas en **Alemania**.

El fenómeno en **Centro y Sudamérica** es **ostensiblemente menos complejo**, debido a la existencia de un número inferior de categorías y casos específicos regulados por los ordenamientos jurídicos.

Allí, la tendencia dominante es que la duración del contrato de trabajo que se suscribe con el fin de que se ejecute una tarea o labor determinada existe mientras la labor no haya sido finalizada. Merece una mención particular el caso de **Costa Rica**, en el que, sin importar el tipo de contrato, la duración máxima es de un año, el de **México** que impone un plazo máximo de duración en materia de trabajo estacional (27 meses), o los de **República Dominicana**, y **Uruguay** que carecen de restricciones al respecto, aunque en este último la doctrina y la jurisprudencia han desarrollado criterios que permiten establecer límites objetivos.

Finalmente, una de las características más prominentes de los **sistemas norteamericanos** se encuentra en **Canadá**, en donde se encuentran prohibidos los contratos con una duración determinada mayor a 9 años. Se trata de un asunto pocas veces discutido, regulado mediante una disposición que aun cuando antigua, permanece vigente (“*Masters and Servant Act*” de 1847.) Por otra parte, los servicios contratados a través de agencias temporales tienen una duración máxima de 6 meses luego de lo cual se impone, a la empresa usuaria, la obligación de contratar directamente.

4. ¿Existen en el ordenamiento jurídico contratos temporales de fomento de la contratación?

En **Europa** todos los países analizados, con excepción de **Italia**, contemplan la contratación temporal como un mecanismo de inclusión de los individuos en el mercado

del trabajo. Allí, la política pública orienta la acción gubernamental hacia la promoción de la contratación indefinida mediante la reducción de los costos directos e indirectos de la misma.

En contraste, estos contratos no son utilizados para incentivar la contratación en **Centro ni Suramérica**, salvo particulares excepciones en **Chile** y **Uruguay**. En el primer caso, el ordenamiento establece el **contrato de aprendizaje** cuya finalidad es promover la empleabilidad de los menores de 21 años, mientras que en el segundo existe una amplia tipología de contratos que incentivan la empleabilidad de los jóvenes en general.

En **Norteamérica** no existen dichos contratos, por lo que su regulación depende del acuerdo entre las partes por vía de negociación colectiva.

5. ¿Existe un derecho preferente de los trabajadores temporales a ocupar un puesto de trabajo vacante en la empresa?

La gran mayoría de los países analizados no prevén un derecho preferente de los trabajadores temporales a ocupar un puesto de trabajo vacante en la empresa. Esto es, no existe la obligación legal de la empresa de contratar a los trabajadores temporales, con preferencia a los candidatos externos que concurren en un proceso de selección abierto. En **Brasil**, por ejemplo, dicha contratación se encuentra proscrita. Lo que si contemplan la mayoría de los países europeos es la **obligación de informar** a dichos trabajadores con respecto a la existencia de esas vacantes

Las excepciones concurren en **Italia** y **Portugal**. En el primer caso se trata de un derecho cuyo ámbito de aplicación se encuentra restringido a ciertos trabajadores temporales y a determinadas vacantes. En el caso **portugués**, es peculiar la imposición de sanción pecuniaria en el supuesto de desconocimiento del **derecho de preferencia**.

6. ¿El ordenamiento jurídico permite diferencias en las condiciones laborales de los trabajadores temporales (jornada, salario, horario, etc.) en comparación con los indefinidos?

En la **gran mayoría** de los sistemas sometidos a comparación **no está permitido establecer condiciones laborales diferentes** entre trabajadores temporales y aquellos vinculados mediante contrato a término indefinido. El fundamento último de esta prohibición se encuentra en los **principios de no discriminación e igualdad de trato**.

Aunque en diferentes países se acusa la existencia de diferencias en las condiciones laborales, ello resulta imputable a las condiciones fácticas en que se desenvuelve cada

relación, dado que ciertos derechos únicamente surgen como consecuencia de la prestación de servicios durante períodos extendidos. En todo caso, varios sistemas, en especial en **Europa**, exigen la existencia de “razones objetivas” que justifiquen ese trato diferenciado.

Diferencias puntuales surgen en ciertos países. Así, derechos adquiridos por vía de negociación colectiva (**Brasil**), indemnizaciones derivadas de la extinción del contrato de trabajo (**Francia, República Dominicana y Uruguay**), y reparto de utilidades y vacaciones (**República Dominicana**), son reconocidos, en dichos sistemas, a aquellos trabajadores contratados bajo la modalidad indefinida y no a quienes lo están bajo la forma temporal.

Aunque en **Norteamérica** también se protege a los trabajadores frente a los actos de discriminación, las diferencias de trato son contingentes. Particularmente en **Canadá** la existencia de diferencias se encuentra determinada por el mercado de trabajo y por las empresas que intervienen en éste.

7. ¿Se reconoce alguna compensación económica al trabajador por la extinción del contrato temporal según los términos pactados?

Diversas tendencias han sido halladas en esta materia.

En **Europa**, la terminación de este contrato acorde con los términos pactados genera el derecho a recibir compensación económica en **Francia, Portugal y España**. No se trata de un derecho absoluto, y su reconocimiento se encuentra reservado a modalidades de contratación específica.

Por su parte, en **Sur y Centroamérica**, existe una tendencia predominante respecto a la inexistencia del derecho al reconocimiento de indemnización en los supuestos de terminación regular. La excepción más notable se encuentra en el sistema **argentino**, en donde la compensación existe y varía de acuerdo al tipo de contrato y a la causa de terminación. En ciertos casos, marginales, surge el derecho en cuestión, como en **los contratos a término fijo para intensificar la producción**, o aquellos cuyo objeto es la ejecución de una **tarea accidental** en la empresa superiores a tres meses en **República Dominicana**, o las actividades reguladas por contratos temporales en la industria minera en **México**.

Ahora, diversas legislaciones contemplan el derecho al reconocimiento de la indemnización en los supuestos de terminación por decisión unilateral de cualquiera de las partes.

Por su parte, las legislaciones norteamericanas no contemplan compensaciones económicas en el supuesto que se estudia.

8. En caso de reconocerse una compensación económica al trabajador, ¿es ésta de cuantía igual o diferente a la reconocida por la extinción de un contrato por causas económicas, técnicas, organizativas o de producción?

En los casos de **España, Francia y Argentina**, el valor de la compensación económica reconocida al trabajador por la extinción del contrato temporal según los términos pactados se encuentra fijado en **cuantía distinta** de aquella establecida en los casos de **extinción por causas económicas, técnicas, organizativas o de producción**. En el caso de **Portugal** ambas compensaciones se encuentran fijadas en sumas **equivalentes**. En este punto vale la pena resaltar que en **Francia**, el valor de esta indemnización puede ser objeto de reducción a través de negociación colectiva, a cambio de la provisión de una formación profesional/ocupacional a favor del trabajador.

9. ¿Qué consecuencias se derivan del incumplimiento por parte de la empresa de la regulación en materia de contratación temporal? En concreto, ¿se declara indefinido el contrato? ¿Se reconoce al trabajador una compensación económica superior en caso de extinción del contrato?

El presente estudio comparativo ha sido útil para determinar que el **incumplimiento** de la regulación en materia de contratación temporal puede predicarse, cuando menos en **tres situaciones diferentes**: i) en la superación de los límites temporales trazados por cada regulación; ii) en la inobservancia de las formalidades que establece la Ley para la celebración de este tipo de contratos, y iii) en la superación del porcentaje máximo de trabajadores permitidos en cada empresa.

En todo caso, la **consecuencia predominante** en caso de infracción a las disposiciones en materia de contratación temporal es la **transformación del vínculo a la modalidad de duración indefinida**, y en consecuencia, **la imposición de los efectos que se derivan de la ruptura en tal supuesto**. A lo largo del estudio también se han identificado diferencias notables en el vocabulario con respecto al fenómeno (*reclasificación, transformación, o interpretación del contrato*), aun cuando las mismas apuntan al precitado efecto.

Las particularidades más sobresalientes respecto al fenómeno se encuentran en **Europa** debido a las diferencias planteadas por cada orden nacional.

En primer lugar se debe señalar que la discusión relativa a la ocurrencia de este fenómeno exige la intervención de la autoridad judicial. Sobre el particular se destaca el caso **español**, en donde el incumplimiento genera una **presunción *iuris tantum*** respecto a la existencia de un contrato de duración indefinida.

Ahora, los efectos concretos que el incumplimiento de la regulación produce se circunscriben principalmente **al reconocimiento del derecho a la compensación económica especial, y a la imposición de multas al empleador responsable**. Ejemplos de la primera consecuencia se encuentran en **Francia**, en donde se reconoce una **“indemnización por reclasificación”**, e **Italia**, en donde cada trabajador tiene derecho a recibir un **pago adicional a la remuneración** durante el tiempo en que se sobrepasen los límites máximo de trabajadores temporales permitidos. La sanción económica al empleador se impone en **España**.

En **Sur, Centroamérica y Canadá** no existen consecuencias sobresalientes distintas de la transformación del contrato.

10. Para los estados miembros de la Unión Europea, ¿qué consecuencias puede tener en el ordenamiento jurídico la doctrina instaurada en la STJUE 14.9.2016 que no admite diferencias de trato entre trabajadores temporales e indefinidos en cuanto a la indemnización por extinción del contrato?

A excepción de **España**, **ningún Estado miembro de la Unión Europea reporta consecuencias eventuales** por los efectos de la doctrina adoptada por el Tribunal de Justicia en el asunto *“De Diego Porras”*

La razón está determinada por diversos factores como la inexistencia de derecho a compensación por la terminación del contrato basado en razones técnicas, organizacionales o de producción en **Alemania y Bélgica**, el tratamiento legal más favorable a los trabajadores temporales en el caso de **Francia y Portugal**, la imposibilidad de establecer diferencias de trato en trabajadores vinculados mediante contrato de duración indefinida y aquellos contratados bajo la modalidad fija en **Grecia**, o el reconocimiento de los mismos derechos para unos y otros en **Italia**.

En el caso específico de **España** los efectos se concretan en la aplicación extensiva del derecho legal a la indemnización legal por terminación del contrato, inicialmente reconocido a los trabajadores *interinos*, a otras categorías de trabajadores temporales. Sin embargo, la interpretación de la cuestión no es uniforme, lo cual produce disparidad en la resolución judicial de los litigios relacionados.

3. Summary table

3.1. Europe

	Belgium	France	Germany	Greece	Italy	Portugal	Spain
<p>1. Is it possible to subscribe a temporary or fixed-term contract? Also to carry out the company's permanent needs or activities?</p>	<p>Yes</p> <p>To fill a vacancy in the user company, and to consider the hiring in a regular basis after that end.</p> <p>Factually it is used as a trial period of the worker, or to asses the</p>	<p>Yes</p> <p>- To replace: absent employee, workers provisionally working part time (parental leave, etc.), or those who has not yet taken up his/her position.</p> <p>-Temporary increase in the activity of the</p>	<p>Yes.</p> <p>Under objective reasons</p> <p>Exceptional nature. Not allowed with the same employer.</p>	<p>Yes</p> <p>Not to deal with company's permanent needs</p>	<p>Yes</p> <p>Allow to carry out permanent needs.</p> <p>No motivation is required</p>	<p>Yes</p> <p>Only for temporary needs</p> <p>It is allowed to be used for dealing with permanent needs, in case of:</p> <p>i)Starting out a new activity of uncertain duration</p>	<p>Yes</p> <p>Determined by features of the job or the worker'</p> <p>Not to deal with company's permanent needs</p>

	<p>creation of a permanent position.</p> <p>Used in case of: i) Replacement of permanent employees; ii) Responding to a temporary increase of the workload; iii) Performing of exceptional work; iv) Recruitment of the temporary worker.</p> <p>Flexijobs</p>	<p>company and seasonal work</p> <p>-State-assisted employment within the framework of employment support measures</p>				<p>ii) first job, long-term unemployment or other special situations.</p>		
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	Not to deal with company's permanent needs	Prohibited in specific cases. Not to fill a post related to employer's normal and permanent business activity					
2. Which fixed-term contract exist?	<ul style="list-style-type: none"> - Direct relation between employer and employee (<i>fixed duration</i>) - Triangular relation: Temporary Work Agency, worker and user (<i>temporary work</i>) 	<p>Depending on the contract's aim:</p> <ul style="list-style-type: none"> -Replacement of workers. -Temporary increase. -Seasonal employment. <p><i>Customary use in certain sectors.</i></p>	<p>Calendar term, or determined by a specific purpose.</p> <p>Other forms exist in specific areas</p>	<ul style="list-style-type: none"> i) Normal. Limited by time. ii) Temporary. Intervention of a temporary work agency 	<p>Direct relation between employer and employee (<i>fixed duration</i>)</p> <ul style="list-style-type: none"> - Triangular relation: Temporary Work Agency, worker and user (<i>permanent or fixed term</i>) 	<ul style="list-style-type: none"> i) Fixed term. Temporary needs (replacement of workers, seasonal activities, production increase, occasional task <i>inter alia</i>) ii) unfixed term. Determined by a specific purpose. 	<ul style="list-style-type: none"> i) <i>Contrato de obra y servicio determinado.</i> (determined tasks or services) ii) eventual contract (market circumstances) iii) <i>interinidad</i> (substitution of workers). iv) internship (training of professionals)

							recently graduated) v) training and learning (<i>formación y aprendizaje</i> , enables workers to combine job with professional training to get higher professional qualification
3. Does the legal regulation establish a maximum duration for hiring fixed-term workers?	Yes Fixed duration: maximum 4 contracts, for 2 years. Each contract must cover a minimum period of 3 months. The term can be broadened on labour	Yes General term:18 months including renewal. Extension to 24 months are permissible in the cases of the contract implementation overseas,	Yes/No No objective reasons: 2 years Objective reasons: unrestricted. Grey area in the case of repeated fix-term contracts	Yes Three years, or three renewals during the same time. Twenty four months in the public sector Thirty six months, in the case of	Yes 36 months (max. 5 contract extensions) Exceptions: -Seasonal employment: up to 12 months more	Yes 3 years and not renewed more than 3 times. Long term unemployed, or new activities in the company: 2 years First job: 18 months	No/Yes As far as legal requisites be fulfilled. Limits are set in the case of eventual, internship, and training and learning contracts. There is no restriction

	<p>inspection permission</p> <p>Temporary work: Only concluded when the work is carried out. No limitation</p> <p>Hiring trough Temporary Work Agencies is allowed max. for 6 months. After this period the worker must be contracted by the User</p> <p>Terms can vary widely depending on the cause which justify temporary contract</p>	<p>redundancy, and order related to export.</p> <p>Reduction to 9 months waiting for the permanent worker, urgent work.</p> <p>18-36 months: Defined assignements for engineers and executives.</p> <p>Restriction in rehiring once the contract expires</p>		<p>Temporary work agencies</p>	<p>-Collective agreement</p>	<p>Unfixed term: 6 years</p> <p>Limits in successive contracts: When a “<i>term employment contract</i>” is finished due a to reasons no attributable to the employee he/she cannot be hired again for the same position for a period shorter than 1/3 of previous length.</p>	<p>regarding number of contracts</p>
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	(filling a position, production increase, exceptional tasks, trial period, flexi jobs)						
4. Does the legal system regulate fixed-term contracts aimed at fostering employment and job creation?	Yes	Yes Fixed term contracts can be concluded to promote recruitment of young workers, those in need of inclusion in labour market, and senior workers. Contracts are often accompanied by financial assistance and exoneration of social	Yes Permission of subscribing contract with temporal limits during the first four years after the formation of a company 52 years old employees, unemployed during the previous four months	Yes All temporary contracts are allowed on grounds of improving employability. Internship, and continuing training programs are linked to fixed-term contracts	No Policy encourages permanent hiring	Yes Long term – unemployed: more than 1 year First job: It is the one granted on a regular basis (term contracts are not considered as such)	No Other measures foster employability, maintenance of employment, and autonomous work

		<p>contribution. Lower Compensations for fixed term contract extinction can be collectively bargained in exchange of other entitlements, such as professional training.</p>					
<p>5. Does the legal regulation recognize fixed-term workers a preferential right to occupy a vacant job position in the firm?</p>	<p>No regulation Vacancies are to be informed to temporary agency workers</p>	<p>No regulation Vacancies are to be informed to fixed-term workers. Information is compulsory when available for indefinite workers. No sanction arises from</p>	<p>No regulation. It occurs as a matter of fact for economic reasons</p>	<p>No Vacancies are to be informed to fixed-term workers</p>	<p>Yes For temporary workers performing duties for 6 months or more. This right emerges in relation to positions created during</p>	<p>Yes Right to get compensation in case of employer' unfulfillment. Up to 3 months of wage</p>	<p>No Vacancies are to be informed to temporary workers, even those attached by <i>contrato para la formación y el aprendizaje</i></p>

		<p>unfulfilment of this duty.</p> <p>Employer's freedom of selecting workers afforded by Constitution.</p>			<p>the following 12 months regarding the same duties.</p> <p>Ruled by agreement and on condition that worker's consent be expressed during the 6 months after the contract extinction.</p> <p>It lasts for one year from extinction of fixed term contract.</p>		
<p>6. Does the legal regulation allow differences in working</p>	<p>No</p> <p>No discrimination principle</p>	<p>No</p> <p>Equal treatment principle.</p>	<p>No</p> <p>No discrimination principle</p>	<p>No</p> <p>No discrimination principle</p>	<p>No</p> <p>No discrimination principle</p>	<p>No</p> <p>No discrimination principle</p>	<p>No</p> <p>Equality principle. Afforded by case-law.</p>

<p>conditions of fixed-term workers (worktime, wage, schedule, etc.) in comparison with indefinite workers?</p>	<p>As a matter of fact fixed term workers do not reach the same benefits as a result of a short-term attachment.</p>	<p>Specially, same conditions are afforded regarding remuneration, holidays, health and safety.</p> <p>Exception regarding breach of the contract.</p>	<p>Differences must be justified on objective reasons</p>	<p>Differences must be justified on objective reasons</p>	<p>Exception in the case of objective incompatibility .</p> <p>Hight rate of effectiveness</p>	<p>Different treatment is allowed when justified on objective reasons.</p> <p>Other differences are ruled regarding training, economic compensation in case of contract extinction.</p>	<p>Exceptions: (i)Extinction, (ii) Retribution in the case of <i>contrato para la formación y el aprendizaje</i></p> <p>As a matter of fact, there are conspicuous differences between workers attached by fixed-term contract and those by indefinite contracts</p>
<p>7. Are workers entitled an economic compensation for the extinction of the fixed-</p>	<p>No</p> <p>Exception: fixed term contract signed to fill a position. When it finishes before agreed terms there</p>	<p>Yes, to compensate precariousness.</p> <p>No economic compensation is due in the cases of: - Seasonal or temporal work. -Contract</p>	<p>No mandatory.</p> <p>Collective agreement or social compensation plan</p>	<p>No.</p> <p>The right rises in case of extinction due to: i) just cause attributable to the employer, ii) Change of entrepreneuria</p>	<p>No</p> <p>For any extinction, a worker is entitled to obtain an allowance (<i>TFR</i>)</p>	<p>Yes</p>	<p>Yes/No</p> <p>Excepción in the case of <i>interinidad</i>, and <i>contratos formativos</i>, where no right to compensation arises.</p>

<p>term contract according to the agreed terms?</p>	<p>emerge the right to compensation (3 monthly wages).</p>	<p>extinction for an employment policy or to provide participation in complementary training. - Students working during school or university holidays. - Refusal to accept the conclusion of an indefinite contract to carry out same, or similar duties for equivalent remuneration.</p>		<p>l activities, or iii) abuse of fixed term contract.</p> <p>During the first 12 months there is no right to compensation.</p>			
<p>8. What is the amount of the economic compensation recognized</p>	<p>N/A</p>	<p>10% gross remuneration paid to the employee during the contract execution</p>	<p>N/A</p>	<p>N/A</p> <p>Difference is arguably against non-discrimination principle.</p>	<p>N/A</p> <p>TFR is equal to a yearly wage divided for 13.5 (for every year of</p>	<p>Fixed-term: 18 daily wages plus seniority allowance per year of seniority.</p>	<p>12 daily wage per year of service (proportional).</p> <p>Workers attached by contracts signed up to 2011</p>

<p>in favor of workers for the valid termination of the fixed-term contract? Is it of an equivalent or different amount than the one recognized in cases of extinction of the contract due to business-related reasons?</p>		<p>(including other benefits).</p> <p>The amount might be reduced by collective agreement up to a 6%, in exchange of professional training.</p> <p>Compensation is different than that set in case of extinction for business-related reasons.</p>			<p>service), plus revaluation.</p>	<p>“<i>Unfixed</i>” term: 18 daily wages plus seniority allowance for the first three years. When contracts’ length is longer, 12 additional days plus seniority allowance are to be paid for the following years</p> <p>Common guidelines are ruled for either case: i) compensation plus seniority allowance cannot exceed 20 monthly wages, ii) severance pay cannot exceed 12 monthly</p>	<p>are entitled to 8 daily wage per year</p> <p>In case of extinction due to business-related reasons compensation are higher.</p> <p>In the cases of collective, due to objective reasons, improper or void lay-off, or with violation of fundamental rights, consequences are equivalent.</p>
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						<p>wages plus seniority allowance; iii) daily wages are obtained by dividing wage and seniority allowance into 30; iv) for periods lower than one year, compensations are worked out proportionally.</p> <p>Compensations are equal for <i>fixed</i> and <i>unfixed</i> contracts when they end for business-related reasons.</p>	
<p>9. What are the consequences derived from breach the regulation regarding</p>	<p>The contract is <i>reclassified</i> as an indefinite.</p> <p>Cases of this nature are</p>	<p>The contract is <i>reclassified</i> as an indefinite, and a there emerges a right to reclassification</p>	<p>The contract is deemed to be indefinite.</p> <p>Cases have to be brought before Labour</p>	<p>The contract is deemed to be indefinite.</p> <p>Cases have to be brought before Labour</p>	<p>It depends on the infraction.</p> <p>The contract is deemed to be indefinite in case of not</p>	<p>The contract is deemed to be indefinite.</p> <p>Compensation equal to the remuneration</p>	<p>-Economic sanction against the employer</p> <p>-<i>Iuris tantum</i> presumption: an illegal temporary</p>

<p>fixed-term contracts? In particular, is the contract declared indefinite? Are workers recognized a higher economic compensation in case of the contract's extinction?</p>	<p>hardly ever discussed in Court.</p>	<p>indemnity. Payment for unfair termination. When temporal limits are overtaken, there emerges a right to get indemnity equivalent to that caused for extinction of indefinite contracts. Criminal consequences: fines and imprisonment (hardly ever imposed)</p>	<p>Court.</p>	<p>Court.</p>	<p>written agreement, or when surpassed temporal limits. When limits regarding rate of temporary workers are overtaken, every employee is entitled to economic compensation equal to 50% of the remuneration for every month in which the breach takes place. Breach of temporary limits also causes an overpayment in favor of</p>	<p>not earned (from dismissal to the expiry or until judicial decision is made). Reincorporation to the workplace when the expiry is later than the judicial decision.</p>	<p>contract is an indefinite one.</p>
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					workers		
10. What consequences on the legal regulation can arise from the decision of the ECJ of September 14th, 2016, which does not allow differences between fixed-term and indefinite workers regarding compensation for extinction of contracts?	N/A No right to compensation for extinction of contract based on economic, technic, organizational or production grounds is ruled. Temporary and permanent workers are entitled to wages for the time remaining up to the contract extinction.	N/A French legislation affords a more favourable treatment for fixed term employees regarding compensation for extinction of the contract.	N/A No right to compensation for extinction of contract is ruled Temporary workers are entitled to compensation just in case of extinction before the agreed terms.	N/A Not possibility to establish differences between indefinite and fixed-term contracts regarding compensation upon termination	N/A Indefinite and fixed term workers are entitled to the same compensation.	None Portuguese legislation affords a more favourable treatment for fixed term employees regarding compensation for extinction of the contract.	A legal compensation for contract extinction is applied to different temporary workers (<i>contrato de obra</i> , eventual contract) despite no rule affords it. Divergent application by different Tribunals.
11. Other relevant aspects of the regulation		Special rules for specific jobs, such as:		Controversial issue in the public sector due to the high	Different rules in public sector. Penalties of	Strong role of collective agreement in relation with	

<p>regarding fixed-term contracts [optional]</p>		<p>-Professional video game players.</p> <p>-<i>Portage salarial</i></p> <p>-Sportspeople</p>		<p>rate of workers attached through this way.</p> <p>When a judicial decision is made in order to turn successive fixed-term contract into an indefinite one, local authorities are allowed to not appeal first instance decisions</p>	<p>compensatory nature in case of breach of rules regarding fix term contracts.</p> <p>Considerable rate of public workforce attached by this sort of agreement.</p>	<p>fixed term contracts</p> <p>A transitory legal regime allows extinction of fixed term contracts, as a measure to tackle economic crisis.</p>	
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3.2. South and Central America

	Argentina	Brasil	Costa Rica	Dominican Republic	Chile	México	Uruguay
<p>1. Is it possible to</p>	Yes.	Yes	Yes	Yes	Yes	Yes	Yes

<p>subscribe a temporary or fixed-term contract? Also to carry out the company's permanent needs or activities?</p>	<p>Indefinite contract is the general rule</p> <p>Fixed term contracts have to be written and justified on:</p> <ul style="list-style-type: none"> i) Absence of permanent workers ii) Licenses or legal suspensions (not on strike) iii) Production increase iv) Special events (congresses, conferences, 	<p>Exceptional nature, in case of: increase of services in the user company, and to temporary replace permanent workforce</p>	<p>Depending on the nature of the service. Have to be used in cases of: temporary incapacity, vacations, licenses, maternity leave, <i>inter alia</i>.</p>	<p>Not to be used for permanent activities.</p> <p>Have to be written, and used in cases of :</p> <ul style="list-style-type: none"> i) temporal services. ii) temporal substitution of workers iii) In benefit of workers. 	<p>Object not defined by law. Allowed in temporary, exceptional and permanent activities.</p>	<p>Depending on/ in cases of:</p> <ul style="list-style-type: none"> i) nature of the service. ii) temporal substitution of workers iii) Other cases ruled by law (mining, shipping, rural sector, sportspeople, actors and musicians, doctors in training). 	<p>Rules defined by doctrine, and jurisprudence</p> <p>Under objective reasons (e.g. seasonal work, to replace workers, <i>inter alia</i>)</p>
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	<p><i>inter alia</i>)</p> <p>v) Urgent tasks to prevent accidents, safety measures, and repair of equipment or premises.</p> <p>vi) Extraordinary or transitory needs.</p> <p>Not to be used to deal with permanent activities.</p>		<p>Not to deal with permanent activities, and not to fill positions within the regular company's framework.</p>				
<p>2. Which fixed-term contract exist?</p>	<p>Fixed term contract.</p> <p>Eventual contract.</p> <p>Apprenticeship</p>	<p>Fixed term contract</p> <p>Temporary work</p> <p>Apprenticeship</p>	<p>Fixed term contract</p> <p>Determined by a specific purpose.</p>	<p>Fixed term contract.</p> <p>Determined by a specific purpose</p>	<p>Fixed term contract.</p> <p>Determined by a specific purpose including:</p>	<p>Determined by a specific purpose</p> <p>To carry on specific tasks</p>	<p>Depending on the circumstances: rural sector, seasonal, for a specific work, to replace</p>

	contract Difference steems from certainty on the date of extinction	contract.	Contract for services which require special technical knowledge.		- Seasonal agricultural work. - Port workers. - Professional sportspeople. - Transitory services	“Initial training” “probation contract” (contrato de trabajo a prueba)	workers, fixed term contracts. Probationary period No restrictions to resort to this hiring but probing an objective reason to justify it
3. Does the legal regulation establish a maximum duration for hiring fixed-term workers?	Yes Fixed term contract: 5 years Eventual contract: 6 months per year, and up to 1 year in a period of 3 years Training contract: 1 year	Yes Three months. Extensions in case of temporary replace of workers up to 9 months are allowed with permission. Apprenticeship: 2 years	Yes 1 year either case. Never extensible, even in benefit of the employee (established by courts) 5 years for contracts which require	No No restriction in terms of extension neither in number of contracts.	Yes 1 year Exceptions: Up to 2 years when the employee holds a professional, or technical degree. The contract determined by	Yes/No Rural workers (27 weeks each employer) <i>Probation contract</i> : 30 days (to be extended up to 180 days in case of management positions, or when specific	Probationary period up to 3 months.

			<p>special technical knowledge.</p> <p>Extensions are allowed within above-mentioned limits.</p>		<p>a specific purpose is not subject to temporary limits.</p>	<p>knowledge is required)</p> <p><i>“Initial training”</i>: 3 months (to be extended up to 6 months in case of management positions, or when specific knowledge is required).</p>	
<p>4. Does the legal system regulate fixed-term contracts aimed at fostering employment and job creation?</p>	No	No	No	No	Yes	No	Yes.
		<p>Legal duty of hiring a rate of young and handicapped workers.</p>			<p>Apprenticeship contract.</p>		<p>A broad array of fixed term contracts to encourage employment of young people.</p>
<p>5. Does the legal regulation recognize fixed-term</p>	No	No	No	No	No	No	No. Collective bargaining helps to implement this sort of
		<p>Temporary workers must not be hired</p>				<p>As a matter of fact, vacant positions are</p>	

workers a preferential right to occupy a vacant job position in the firm?		after ending the temporary contract				occupied by candidates suggested by unions (where collective agreement)	policies.
6. Does the legal regulation allow differences in working conditions of fixed-term workers (worktime, wage, schedule, etc.) in comparison with indefinite workers?	Equal treatment principle afforded by law in the case of eventual contract	Equal treatment principle. Temporary workers are not granted the benefits obtained through collective bargaining. Modest advances by case law.	No No discrimination principle.	Yes Profit sharing, vacations (specific case), and compensation in case of (justified) dismissal.	No Exception: contracts whose object is determined by a specific purpose admit differences in specific cases.	No No discrimination, and equal pay for equal work principles. Differential treatment is allowed when grounded on qualifications.	Equal Treatment principle The only difference is in the case of severance
7. Are workers entitled an economic	Yes Compensation vary on grounds	No	No Exceptions:	No Exceptions:	No When extinction is	No Exceptions:	No

<p>compensation for the extinction of the fixed-term contract according to the agreed terms?</p>	<p>of the kind of contract, and the cause of the extinction.</p> <p>No compensation is caused for extinction of eventual contracts, nor for those ending due to execution of assigned tasks.</p>		<p>Seafarers. In case of ship's change of nationality or wreck</p>	<p>A. Fixed-term contracts for intensifying temporary production, or those made to deal accidental circumstances- After three months, employers have to pay compensation in case of extinction.</p> <p>B. Temporal contracts agreed to last a part of a year, and ended after 4 months.</p>	<p>justified on company's needs there rises a right to obtain compensation.</p>	<p>A. Mining industry.</p> <p>B. Implementaion machinery or new procedures</p>	
<p>8. What is the amount of the economic compensation</p>	<p>Fixed term contract:</p> <p>Extinction before agreed</p>	<p>N/A</p>	<p>Ship's change of nationality: 3 monthly wages</p>	<p>A. Fixed term contracts:</p> <p>i) 6 daily wages (from 3</p>	<p>If no notice is delivered (at least 30 days in advance), compensation</p>	<p>N/A</p> <p>Exceptions:</p> <p>Minning: 3</p>	<p>N/A</p>

<p>recognized in favour of workers for the valid termination of the fixed term contract? Is it of an equivalent or different amount than the one recognized in case of extinction of the contract due to business-related reasons?</p>	<p>term: 1 additional wage per year of service, or fractions higher than three months + damages pursuant civil and commercial law</p> <p>Extinction due to expiry: half a wage per year of service or three months</p> <p>Apprenticeship contract: half a wage. If notice is not delivered 30 days before</p> <p>Compensation are equal than those set in case of extinction due to business-related reasons</p>		<p>Wreck: 2 monthly wages.</p>	<p>to 6 months of work).</p> <p>ii) 13 daily wages (from 6 to 12 months of work).</p> <p>iii) 21 daily wages (from 1 to 5 years of work).</p> <p>iv) 23 daily wages per each year (5 years of work, or more).</p> <p>B. Temporal contracts inferior to 1 year:</p> <p>i) 5 daily wages (from 3 to 6 months of work).</p> <p>ii) 10 daily</p>	<p>is equal to 30 daily wages per year of service (or fractions higher than 6 months).</p>	<p>monthly wages as compensation in case of contract extinction + bonus.</p> <p>Implementation of new machinery or procedures: 4 monthly wages + compensation (20 daily wages per each year of service) + seniority bonus.</p>	
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				<p>wages (from 6 months to 1 year of work).</p> <p>iii) 15 daily wages (from 6 months to 1 year of work).</p> <p>These amounts are similar to those obtained in case of extinction due to business-related reasons.</p>			
<p>9. What are the consequences derived from breach the regulation regarding fixed-term contracts? In</p>	<p>The contract is turned into an indefinite.</p>	<p>There emerges a contract with the user enterprise, leading to recognition of rights set in collective agreements.</p>	<p>The contract is turned into an indefinite.</p> <p>Contract extinction before expiry causes the right to have</p>	<p>The contract is deemed to be an indefinite.</p>	<p>The contract is turned into an indefinite.</p> <p>Problems of interpretation regarding what a specific work or task</p>	<p>If the activity exits the work relation has to be kept as long as it does.</p>	<p>Severance</p>

<p>particular, is the contract declared indefinite? Are workers recognized a higher economic compensation in case of the contract's extinction?</p>			<p>the damages paid by the opposite party + a fix compensation (exclusively for the employee)</p>		<p>("obra") is.</p>		
<p>10. Other relevant aspects of the regulation regarding fixed-term contracts.</p>	<p>Debate regarding convenience of fixed term contracts: precariousness versus competitiveness.</p>		<p>Fixed term contract has to be written.</p> <p>Employers must keep a certification to employees (every 30 days) regarding worked days, and paid retribution.</p> <p>No duty of calling for</p>	<p>Expectations about a reform of the system.</p> <p>Last pieces of legislation have not referred to temporary hiring.</p>	<p>Recent reforms in relation with fixed term workers (when hired for a specific work)</p>	<p>Different forms of hiring from 2012 on ("<i>tesis aisladas</i>")</p>	<p>Rules regarding the matter stem mostly from legal studies inspired in constitutional principles.</p> <p>Collective bargaining performs an important role in filling gaps left by law.</p>

			<p>permission to remove special worker protection (when applicable) in case of extinction.</p>				
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3.3. North America

	Canada	The U.S.A
<p>1. Is it possible to subscribe a temporary or fixed-term contract? Also to carry out the company’s permanent needs or activities?</p>	<p>Yes Contractual freedom.</p> <p>Fixed term and temporary employment</p> <p>Can be used to carry out company’s permanent activities</p> <p>When controversies arise, courts value reality over legal forms.</p>	<p>Yes Contractual freedom.</p> <p>Temporary work is not a formal category.</p>

<p>2. Which fixed-term contract exist?</p>	<p>Temporary employment: Seasonal work, contract jobs, casual jobs, and other.</p> <p>Law does not restrict freedom of the parties, but establishes protective laws when created.</p>	<p>At the parties will</p>
<p>3. Does the legal regulation establish a maximum duration for hiring fixed-term workers?</p>	<p>Yes</p> <p>9 years (rarely litigated)</p> <p>Oral contracts longer than 1 year are unenforceable</p>	<p>No</p>
<p>4. Does the legal system regulate fixed-term contracts aimed at fostering employment and job creation?</p>	<p>No</p> <p>Freedom of the parties. Possibility by Collective bargaining. No evidence support the existence of such agreements.</p>	<p>No</p>
<p>5. Does the legal regulation recognize fixed-term workers a preferential right to occupy a vacant job position in the firm?</p>	<p>No</p> <p>Freedom of the parties. Possibility by Collective bargaining. No evidence support the existence of such agreements</p>	<p>No</p>

<p>6. Does the legal regulation allow differences in working conditions of fixed-term workers (worktime, wage, schedule, etc.) in comparison with indefinite workers?</p>	<p>No law rules equal treatment for temporary and permanent works.</p> <p>Contingent circumstances depending on labour market and firms.</p>	<p>Yes.</p> <p>Differences on discriminatory bases are forbidden.</p>
<p>7. Are workers entitled an economic compensation for the extinction of the fixed-term contract according to the agreed terms?</p>	<p>No</p> <p>Compensation is due in the case of unjust dismissal</p>	<p>No</p>
<p>8. What is the amount of the economic compensation recognized in favour of workers for the valid termination of the fixed term contract? Is it of an equivalent or different amount than the one recognized in case of extinction of the contract due to business-related reasons?</p>	<p>N/A</p> <p>Terminating fixed-term contracts on account of business efficacy or organizational restructuring is not a defense against claim of compensation.</p>	<p>N/A</p>
<p>9. What are the consequences derived from breach the regulation regarding fixed-term contracts? In particular, is the contract declared indefinite? Are workers recognized a higher economic compensation in case of</p>	<p>The contract is deemed to be an indefinite</p>	<p>N/A</p>

<p>the contract's extinction?</p>		
<p>10. Other relevant aspects of the regulation regarding fixed-term contracts.</p>	<p>More common among women than men, and younger workers (under 25)</p>	