

## § 109 UG 2002 - Term limits and time gaps



### § 109 Universities Act 2002

*(1) Employment contracts may be of unlimited or limited term. The term of limited term employment relationships shall not exceed six years, on pain of invalidity, unless otherwise provided for by this Act.*

*(2) Limited term contracts immediately succeeding each other shall only be permissible for staff employed in connection with third-party funded projects or research projects for which teaching staff are exclusively used, and for staff acting as temporary replacements. The combined duration of such successive employment relationships may not exceed six years, or eight years in the case of part-time employment. An additional one-time renewal not exceeding a total of ten years, or twelve years if employed part-time, shall be permissible, if objectively justified, in particular for the continuation or completion of research projects and publications.*

*(3) Should an employee change function within the scope of § 100, then a one-time renewal, without prejudice to para. 2, shall be permissible for a total period of up to six years, or up to eight years in the case of part-time work, whereby the time limits stipulated in para. 1, 2 and 3 are to be combined. The limits of para. 2 shall not be exceeded. Periods of employment as a student assistant are not to be taken into consideration.*

*(4) Para. 3 particularly applies in cases where the change results in a further career stage (e.g. post-doctoral position), or the switch to or from a different position within the scope of a third-party funding or research project.*

### General remarks concerning § 109 Universities Act 2002

If an employment relationship has a limited term, then this limitation may not exceed six years.

Basically, a limited term employment relationship may not be succeeded by another limited term employment relationship.

However, there are exceptional cases in which the succession of two or more limited-term relationships is permitted. In such exceptional cases, the total duration of fixed-term relationship is limited to a maximum of 6 years for full employment, and 8 years in the case of part-time work (up to 37.5 hours per week).

A succession of employment contracts within the total period is allowed provided the worker:

- is employed under a third-party funded contract, or
- is exclusively involved in teaching (e.g. lecturers, tutors), or
- is hired as a replacement for temporarily absent employees, or
- changes to another function within the scientific personnel category (e.g. Project Officer to Assistant Professor, Assistant Professor to Senior Lecturer, Predoc to Postdoc; see point VI for further details)

### Calculation guidelines

#### I Interruption:

The term 'immediate' basically means without any time lapse. Based on the general laws on successive employment contracts, it is to be assumed that § 109 UG is not to be followed to the letter

on this point, but is rather open to interpretation, so that a certain time gap may also be used to justify an impermissible successive employment relationship where there is a substantive link between the employment relationships. The admissibility of a renewed time limit must therefore be assessed on an individual basis, whereby the duration of the interruptions and the duration of employment phases, as well as the number of successive contracts are all to be considered, so as to ensure the dynamic system runs smoothly. (See Löschnigg, UNILEX 1-2 / 2010)

- If the period of **interruption** following the limited term employment relationship **is at least 12 months**, the subsequent limited contract is to be considered first time employment, as defined by §109; the **upper limit** of 6/8 years **therefore starts anew**.
- If the period of **interruption** following the limited term employment relationship **is half as long as the period of that employment**, then the successive chain of employment is broken. The subsequent limited term employment is regarded as renewed first time employment as defined by §109; the **upper limit** of 6/8 years **therefore starts anew**.

Since a regular teaching position during the winter semester (where in each case there is an interruption in the summer semester) generally does not lead to the aggregation of employment relationships of lecturers, a gap of one semester after an interrupted teaching period of 8 years is not long enough to warrant a renewal of first time employment. In this case, the 8-year period is to be set in relation to the gap; the interruption must therefore at least be 12 months.

## II Total duration:

Even if the interruptions between the individual time limits have such a small effect that one can still consider them to be 'immediate' consecutive employment relationships, these temporary interruptions are nevertheless not to be taken into account for the maximum limits. The term 'total duration' refers to the duration of the actual employment relationships (without the addition of the gaps). Inability to work, maternity leave, leave of absence etc., i.e. times where no work is carried out but the employment relationship continues, must be taken into account for the upper time limits. (See Löschnigg, UNILEX 1-2 / 2010)

- If the period of **interruption** between limited term employment relationships is too short to qualify as renewed first time employment within the meaning of Section I, then the upper limit of 6/8 years from the first employment applies. Periods of non-employment do not break the chain, but are generally **not considered** for the calculation of the maximum duration of employment. Only hours of actual service are considered.

A different procedure applies to tutors and USI course instructors whose semester contracts always have a five-month term and therefore always have a 'break' of one month when several consecutive semester contracts are concluded.

In such cases the periods of non-employment are regulated through the contract arrangement of the University (upon which employees have no influence); the one-month break is not considered as an interruption and is included in the calculation of the maximum total duration. Tutors may be employed for a maximum of 9 semesters, while USI course instructors may have up to 16 semesters.

With respect to the maximum permissible length of service, § 109 UG only differs between full-time and part-time employment. The actual level of part-time work (number of hours per week) is not relevant in calculating the maximum permissible length. An employment relationship that comprises

30 hours per week is therefore to be assessed as part-time work in the same manner as a marginal employment that comprises 8 hours per week.

- Extents of employment relationship of up to 37.5 hours per week may be combined for up to 8 years, whereas contracts beyond this extent of employment may only be combined for up to 6 years. ,

### III Relevant conditions of employment:

If the period of employment as a student employee (**tutor** or **student assistant**) or **as a lecturer** teaching **maximum 4 semester hours per week** at the beginning of employment at the University of Vienna, then this will not be taken into consideration for **further subsequent employment**.

- Regardless of the length of employment as a tutor, student assistant or lecturer with a of max 4 semester hours per week, a subsequent limited term employment relationship is permissible for up to 6/8 years; the **upper limit** of 6/8 years **starts anew**.

The special provisions of § 109 UG relate to employment in a university. They are based on the existence of a (real) employment contract. Activities that are carried out as part of a freelance or works contract do not have restrictions.

- Freelance and works contracts are not included in the **upper limit** of 6/8 years.

### IV Permissibility of a further extension

Contracts of 6/8 years are only eligible for a **one-time extension to 10 and 12 years, respectively**, provided there is factual justification for this. Factual justification includes the continuation or completion of research projects and publications from so-called independent applicants. In addition, employment of project workers max only be extended to a maximum 10 or 12 years, provided they did not apply for the project themselves, their names are listed in the project application, and that the project management confirms the crucial project relevant qualifications of the project worker.

- Provided there is factual justification (independent applicants, specifically named project worker), the working relationship may be extended to go beyond 6/8 years. The decision on the extension is to be made by the Rector.

With regard to projects arising from excellence programmes of certain grantors (FWF, ERC, AAS and WWTF), a permanent employment relationship can be agreed in individual cases upon authorization by the Rector.

### V Permissible successions

Total maximum period: 6/8 years

University Assistant PraeDoc University Assistant Postdoc General University Staff	Project worker Replacement worker Teaching only
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Project worker Replacement worker Teaching only	University Assistant PraeDoc University Assistant Assistant Postdoc General University Staff
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Project worker Replacement worker Teaching only	University Assistant PraeDoc University Assistant Postdoc General University Staff	Project worker Replacement worker Teaching only
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Total maximum period: 6/8 years

Teaching assistant . Lecturer (max 4 hours per week)	University Assistant PraeDoc University Assistant Postdoc General University Staff	Project worker Replacement worker Teaching only
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Teaching assistant Lecturer (max 4 hours per week)	Project worker Replacement worker Teaching only	University Assistant PraeDoc University Assistant Postdoc General University Staff
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VI Permissible combinations of University Assistant PraeDoc and University Assistant Postdoc

Total maximum period: 6/8 years

University Assistant (PraeDoc) (4 years; 30 hours)	12-month interruption	University Assistant (Postdoc) (4 to 6 years; 20 or 40 hours)
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Total maximum period: (4 + 3) 7 years

University Assistant (PraeDoc) (4 years; 30 hours)	University Assistant (Postdoc) (3 years; 40 hours)
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