



**An Investigation into the challenges faced by Zimbabwean firms as a  
result of the Limiting of Fixed-Term Contracts of Employment by  
Section 12(3a) of the Labour Act (Chapter 28:01)**

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## **DEDICATION**

This study is dedicated to my Parents, Mr and Mrs Machacha, whose dedication to my studies ever since my High School days deserves a special mentioning. Their dream to see me graduate with a Doctorate and become a Doctor is now a stone's throw away.

## DECLARATION

I, Lloyd Machacha, do hereby declare that this dissertation is the result of my own investigation and research, except to the extent indicated in the Acknowledgments, References and by comments included in the body of the report, and that this dissertation is therefore my original work and it has not been submitted in part or in full for any other degree to any other university.

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## ABSTRACT

The use of fixed-term contracts (FTCs) of employment is a common feature of most labour markets around the world. In Zimbabwe over 66% workers are on FTCs. This is mainly attributed to the need for flexibility to revise staff figures and swiftly respond to economic hardships and technological advancements, thereby remaining competitive and profitable. The cases of *Lifestyle Zimbabwe Furnishers v Admire Mawoyo and 215 Others LC/H/02/2012*, *Rachel Kadzinga & 20 others v Eastern Textiles (Pvt) Ltd t/a Devstar Clothing LC/MC/02/2007*, *Zimbabwe Bata Shoe Company v Zimbabwe Bata Workers Committee LC/MD/24/2005* have however proven that in some cases employers have no reason to subject employees to fixed-term contracts as the jobs are of a permanent nature.

In response to the case of *Nyamande & Donga v Zuva Petroleum (Pvt) Ltd SC43/2005*, where permanent employees were dismissed by three months' notice without being paid retrenchment packages, the Government effected Labour Act Amendments. Section 12(3a) limits fixed-term contracts. This study sought to investigate the challenges faced by firms as a result of this regulation. Literature was reviewed by theme, looking at the definition of fixed-term contracts, main theories of fixed-term contracts, Section 12(3a) of the Labour Act, and comparison with regulations in other parts of the world.

The research was descriptive, utilizing the survey strategy to answer research questions. The target population were Human Resources Managers of companies in Zimbabwe, from which 40 were selected using cluster sampling from members of IPMZ based in Harare. Primary data was collected through a questionnaire. Secondary data was gathered from journals, textbooks and the press. Data was presented in diagrams and narratively.

The study found out that limiting fixed-term contracts of employment results in increased training and recruitment costs, unscheduled staff turnover, poor quality output and administrative stress. It was concluded that limiting fixed-term contracts negatively affects company competitiveness, business performance, employee commitment, and does not create more employment. It was recommended that firms pay attention to fixed-term contracts limits, invest in effective HR planning and training, and remunerate fairly. Legislation should identify jobs for which there should not be a limit to fixed-term contract renewals. Further studies are to look at challenges to be faced by employees, and the feasibility of rehiring stopped employees after a considerable period of time.

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## LIST OF ACRONYMS

CWUZ:	Commercial Workers Union of Zimbabwe
ESAP:	Economic and Social Adjustment Programme
FTC:	Fixed Term Contract
GAPWUZ:	General Agricultural and Plantations Workers Union of Zimbabwe
HR:	Human Resource
ILO:	International Labour Organization
IPMZ:	Institute of People Management of Zimbabwe
LCL:	Labour Contract Law of China
LLC:	Labour Law of China
NEC:	National Employment Council
NEWU:	National Engineering Workers Union
NGO:	Non-Governmental Organisation
TNF:	Tripartite Negotiating Forum
ZCHWU:	Zimbabwe Catering and Hotel Workers Union

## CHAPTER ONE

### INTRODUCTION

#### 1.1 INTRODUCTION

This study was proposed to investigate the challenges that Zimbabwean firms face as a result of limiting fixed-term contracts of employment by Section 12(3a) of the Labour Act (Chapter 28:01). These challenges have to be studied against the background of unlimited fixed-term contracts renewals previously practised. While most companies were doing so genuinely to swiftly respond to new technology and economic challenges, some were manipulating workers as the jobs in question were of a permanent nature. This chapter covered the background to the study, statement of the problem, research objectives, research questions, justification, scope and limitations of the study.

The Labour Act (Chapter 28:01) of Zimbabwe acknowledges the existence of a fixed-term contract of employment, which is a contract between employer and employee characteristic of a time limit. The widespread use of fixed-term contracts of employment by Employers in Zimbabwe is mainly attributed to the employers' ability to exercise flexible responses in reducing employees to adopt advanced technology and adjust to changes in economic activities at local and global level. Workers would however prefer to have open-ended contracts of employment to get job security and better benefits. The case of *Rachel Kadzinga & 20 others v Eastern Textiles (Pvt) Ltd t/a Devstar Clothing LC/MC/02/2007* has proven that in some cases employers have no basis for keeping employees on FTCs as the jobs would have proven to be of a permanent nature.

In a swift and unexpected response to the case of *Nyamande and Donga v Zuva Petroleum, SC43/2015*, where full-time employment was terminated at common law through three months notice without the payment of retrenchment packages, the Government gazetted Labour Act Amendments of 2015 that now limit fixed-term contracts of employment before one becomes permanent. This is provided for in Section 12(3a) of the Labour Act as amended in 2015.

The argument for the widespread use of fixed-term contracts of employment is a serious one that the economic players of Zimbabwe can't afford to ignore. It evolves around the building of sustainable and innovative business models that give organisations competitive advantages and brand preferences in the country and beyond. The level of economic activity and business viability determines two important issues about employment contracts. The first one being the decision whether to offer a full-time contract of employment or a fixed-term contract of employment. Secondly, where it is decided that a fixed-term contract of employment will be issued, the next issue to consider would be how many times an Employer will renew that fixed-term contract before completing the task at hand or confirming the employee to full-time employment.

According to most employers it defies logic, in difficult economic times like those prevailing in Zimbabwe, for firms to move from fixed-term contracts of employment to full-time contracts of employment. Mufukare (2015) said what the economy needs now are further liberalizations of the Labour Laws so as to attract more investors. Limiting fixed-term contracts of employment means that a firm can't renew beyond the set limit of time. After that it either has to confirm one to full-time employment or it has to lay off the employee concerned, and replace with another fixed-term contract employee. These scenarios presents a number of challenges to both Employers and Employees. This study sought to find out and address the challenges faced by employers in Zimbabwe.

## **1.2 BACKGROUND TO THE STUDY**

### **1.2.1 Socio-Economic Outlook.**

Being classified as a struggling nation, Zimbabwe is characteristic of a very harsh economic environment for both business and ordinary people. According to Robertson (2015), Zimbabwe's economic situation is deteriorating on a daily basis. He says the ample evidence of the worsening economic conditions is bare for anyone with ordinary to see and get baffled. Some of the signs he mentions as clear cut evidence are the continuing closures of companies, the collapsing of banks, the fall of commodity prices,

the shrinking of retail sales, the total collapse of manufacturing, the falling of tax revenues, the widening budget deficit and the increase in loan repayment default rates. There are plenty of other signs for all to see like total collapse of the agricultural sector and the lack of transparency in the mining sector. The most worrying of them all, that is to both government and the general population, is the almost complete disappearance of the much needed creation of formal employment. This has been worsened by the inconsistency in government policy with regard to investment. Murerwa (2015) says both the indigenisation laws and labour laws are not friendly to Foreign Direct Investment. This difficult economic environment thus calls for companies to seek for flexibility in terms of employees figures, so as to be able to right size in response to company and economy performance. Fixed-term contracts of employment are thus becoming more prevalent.

Most Labour Laws that were enacted in the past were promulgated in a business and economic situation that is different from the current one. The Labour Relations Act 1985, Labour Relations Amendment Act 1992, General Laws Amendment Act 1994, Labour Relations Act 2003, 2005 Amendments, 2011 Amendments were mainly pro-workers. Bimha (2015) says the Government's focus in all these Acts and amendments was redressing historical imbalances resulting from colonialism. The laws guaranteed workers of huge retrenchment packages and protection of employment tenure.

Economic and Social Adjustment Programme (ESAP) brought massive retrenchments and the growth of fixed-term contracts of employment. Globalisation then led to the reorganisation of production and cost management, resulting in the preference for fixed-term contracts of employment against full-time contracts of employment. With the current prevailing economic hardships, business can't operate profitably with a bloated wage bill as there is a need to revise cost structures for companies to be competitive. Today's thrust has thus completely changed. There are genuine issues of companies needing to reduce their workforces and be flexible in right sizing to realign labour set-ups. But they are going to find many challenges in doing so as the Government is still intended to ensure protection of employment tenure, despite economic performance.

### **1.2.2 2015 Labour Law Reforms**

In 2010 a tripartite committee was formed under the Tripartite Negotiating Forum (TNF) to address amendments to the Labour Act and a report was compiled where common ground was highlighted. In addition, where agreement could not be reached, the individual approaches of the three parties (Employers, Unions and Government) were captured and sent to Cabinet. However, nothing further came out of this approach. More recently this issue was resuscitated and it led to what is now referred to as ‘13 Points of Principle’. These are Retrenchment packages, right to collectively bargain, streamlining labour dispute resolution system, right to partake in collective job action, equal work equal pay, paid education leave, government oversight over employer and employee organisations, admission of new members to NECs, right to organise, right to maternity protection, forced labour, child labour, and fixed-term contracts.

These were referred to be addressed by the legal draftsmen at the Solicitor-general’s office for the purposes of coming up with a Parliamentary Bill to amend the Labour Act. The Bill was supposed to be placed before Parliament in June 2015. The June deadline was not met, and immediately after the Supreme Court ruled in the case of *Nyamande and Donga v Zuva Petroleum, SC43/2015* in July 2015 that employers can terminate full-time contracts of employment on three months notice without retrenching, an estimated 25 000 permanent employees lost their jobs.

The Government felt compelled to act to address the situation and it single-handedly drafted a Bill to effect Section 65 of the Constitution by stipulating minimum retrenchment packages and making it difficult to terminate contracts. This angered both business and labour as they were not given time to input their views. This exposed the lameness of the TNF. The result was a Government Gazette of 14<sup>th</sup> August 2015, which brought a Clause that now limits the number a fixed-term contract of employment. This is provided for in Section 12(3a), (4) and (4b) of the Labour Act. The period of continuous service after which a fixed-term contract of employment becomes a full-time contract of employment shall be fixed by the relevant National Employment Council or in its absence by the Minister of Labour.

### 1.2.3 The situation before the 2015 Labour Law Reforms

Prior to the 2015 Labour Law reforms, the Labour Act provided for the employment of workers on a fixed-term basis without limiting the number and duration such contracts could be rolled over before one is given full-time employment. This had an advantage to Employers as they could renew such contracts for periods up to or over 10 years without facing any legal implications. This allowed them to invest in training and development of the employees knowing that they will renew their contracts for years to come. When they didn't want them any longer they would just not renew the current fixed-term contracts of employment at the decided point in time.

Companies would make permanent only those workers whose skills they deemed very important and scarce. Or they would do so to replace a permanent employee who has resigned or been fired or died, so that they would maintain a certain figure of full-time employees. The rest of the fixed-term contracts would remain on fixed-term contracts until they are stopped or a few of them promoted to permanence status. Statistics show that in most sectors there are more employees on FTCs than on full-time employment, as shown in the table below.

**Table 1.1 Percentage of employees on FTCs**

<b>Sector</b>	<b>% of employees on FTCs</b>	<b>% of employees on full-time employment</b>	<b>Source</b>
Commercial	65	35	CWUZ
Engineering	70	30	NEWU
Catering and Hotel	60	40	ZCHWU
Agriculture	69	31	GAPWUZ

**Source: Muchichwa.N & Matombo.T, 2006**

As shown in the table there are more employees on FTCs than those who are on permanent employment (Muchichwa & Matombo, 2006). On average 66% are employees on FTCs compared to 34% on full-time employment. This means that any legislation changes that concern FTCs will have a big impact on the country's labour relations, depending on whether they incline to employers or employees or they take a middle road.

The new labour regulations have now stipulated that fixed-term contracts can't go on forever. At a point to be decided by either the relevant NEC or Minister of Labour, an employee has to be confirmed a permanent employee. This should gradually see the percentages shown in the table above start to move in the opposite direction. The government's thinking is that if a person can be engaged on a fixed-term for a number of years then that job is not a part-time job, it is a full-time job which warrants one to become a permanent employee.

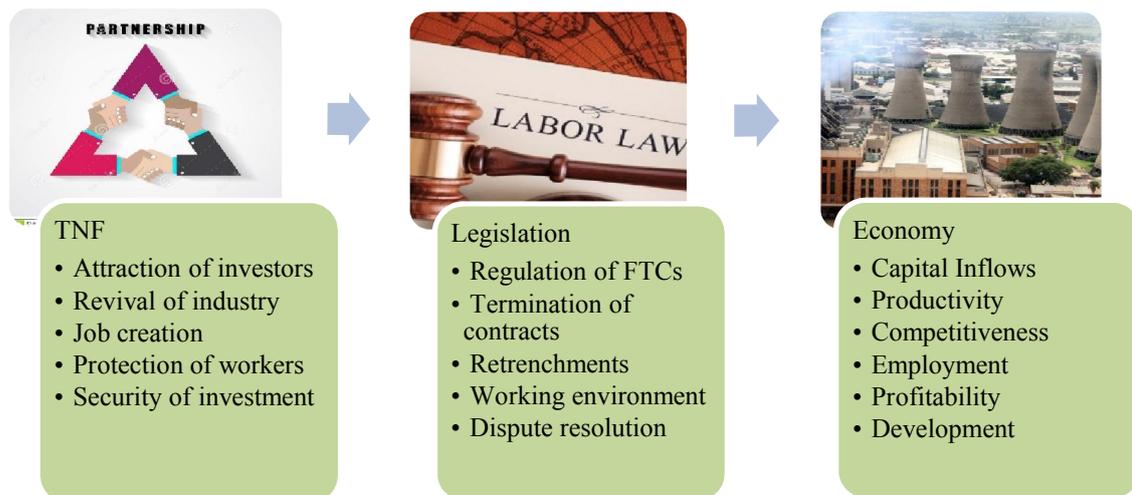
### **1.3 STATEMENT OF THE PROBLEM**

The problem that will be addressed by this study is that despite the Government's intention to both enhance and protect worker welfare through promoting full-time employment, and at the same time liberalise other aspects of the labour laws to attract investment, the limiting of fixed-term contracts of employment presents a number of problems to employers. The sad reality on the ground is that while the Government is happy with the reforms which it says were long overdue, employers feel that the current labour laws as reformed in 2015, are no longer in sync with modern economic trends.

The outcry from employers is twofold. Firstly, according to Mufukare (2015), employers feel that limiting fixed-term contracts of employment has an effect of indirectly forcing employers to convert employees from FTCs to permanent contracts. Most investors are against doing so at the moment as they demand flexibility to right-size workforces in the difficult economy of Zimbabwe. The concern for the economy of Zimbabwe at the moment is not at all about overprotecting the workers currently employed but more importantly to create more jobs for the majority who are jobless or earning very little in informal sectors of the economy. That unfortunately means adopting the widespread use of FTCs, and allowing employers to use FTCs without limit.

Secondly, the Government didn't consider the concerns of employers in the Labour Amendment Bill. The researcher possesses an argument that while the interests of the parties to the TNF vary significantly, as they are influenced by both the socio and macro-economic fundamentals, they can be resolved through inclusivity and honest dialogue on imperative labour law reforms. Kanyenze (2015) said without reaching to each other it will be difficult to move forward as the TNF. The Tripartite Negotiating Forum needs to take a holistic approach in effecting legislative reforms. Once this is done then the resulting legislation will enable an environment of productivity, competitiveness, attraction of investment, security of investment, and the much needed creation of jobs. This is demonstrated in the figure below.

**Figure 1.1 Reforming Labour Laws to attract investment and create employment**



The study thus sought to find out the challenges caused by limiting fixed-term contracts.

#### 1.4 RESEARCH OBJECTIVES

The purpose of this research study is to provide a realistic assessment of the challenges faced by employers as a result of limiting fixed-term contracts of employment by Section 12(3a) of the Labour Act (28:01). This study will contribute significantly to the adoption of effective mechanisms of handling these challenges in organisations in Zimbabwe. The

overall Research Objective is further divided into the following Research Objectives to fully exhaust the topic.

1. To understand the factors influencing the widespread use of fixed-term contracts of employment in Zimbabwe as opposed to full-time contracts of employment.
2. To find out the employers interpretation of Section 12(3a) of the Labour Act (28:01)
3. To find out the challenges faced by firms as a result of limiting fixed-term contracts of employment by Section 12(3a) of the Labour Act (28:01)
4. To recommend how employers should deal with the challenges brought about by the limiting of FTCs by Section 12(3a) of the Labour Act (28:01).

### **1.5 RESEARCH QUESTIONS**

- 1 What are the factors influencing the widespread use of fixed-term contracts of employment in Zimbabwe?
- 2 How do employers interpret the intention of Section 12(3a) of the Labour Act?
- 3 What are the challenges faced by employers as a result of limiting fixed-term contracts of employment by Section 12(3a)?
- 4 How will employers react to the challenges resulting from the limiting of fixed-term contracts of employment by Section 12(3a) of the Labour Act?

### **1.6 RESEARCH HYPOTHESIS**

While the Government amended the Labour Laws to protect workers from abuse by employers, and at the same time align labour laws to the prevailing economic conditions to attract investment and promote productivity, limiting fixed-term contracts of employment presents a number of serious challenges to employers.

The labour law amendments may actually achieve a reverse of the intended by reducing competitiveness of firms and reducing employment.

## **1.7 SIGNIFICANCE OF THE STUDY**

The findings of the study will help firms, the policy makers and academic studies. The findings are going to be of practical relevance to managers in Zimbabwe in knowing how to handle fixed-term contracts of employment against a background of competitiveness, economic survival and legislative regulation of fixed-term contracts. The research will identify the challenges involved, how they affect companies in Zimbabwe, and how employers will deal with them in a more rational way.

The findings will present policy makers at legislative level an opportunity to get a picture of the challenges faced by companies as a result of limiting fixed-term contracts by the Labour Act. This will become a basis for further engagement between Government, Business and Labour in as far as it should influence future Labour Law reforms.

The findings from this study will help academically in terms of highlighting areas for further studies on the subject of fixed-term contracts of employment in Zimbabwe. Be it looking at the legal aspects and how that affects business or on effective models of employment contracts.

## **1.8 LIMITATIONS**

The researcher acknowledges time and financial resources constraints. The researcher, as a full-time employee, could not get the extensive time needed to travel across the country to obtain information from all over. Budgetary constraints limited the extent to which the researcher could involve as many respondents across the country as possible. However these limitations were catered for by effective sampling methods that collect valid and reliable data from key informants, making it easy to infer to the whole population.

## **1.9 SCOPE OF THE STUDY**

The study could have covered firms across the country. However, being a study for an academic programme to be completed in a set time, the research was limited to companies operating from Harare. This was done to cater for the limited time and financial resources at the disposal of the researcher. The researcher wants to understand the challenges faced by firms in as far as the Labour Act's limiting of fixed-term

contracts of employment is concerned. The results will be inferred on all companies in Zimbabwe since it researched Human Resources Managers from across the different sectors of the economy. These are Commercial, Finance, Engineering, Mining, Agriculture, Tourism, Construction, and Manufacturing, the result.

## **1.10 STRUCTURE OF THE DISSERTATION**

Chapter 1 is the introduction to the research. It covers background to the study, statement of the problem at hand, the research objectives, the research questions, the research hypothesis, justification of the study, limitations of the study and scope of the study.

Chapter 2 reviews the literature related to fixed-term contracts of employment.

Chapter 3 details the research methodology, population and sampling, research instruments, and data analysis techniques.

Chapter 4 presents the research findings and discussion of the results.

Chapter 5 gives the conclusions and recommendations from the research.

## **1.11 CHAPTER SUMMARY**

This chapter looked at the Introduction to the research. It covered the background to the research, which basically is the amendment of the labour act to promote competitiveness of business against the need to balance the need to attract investment with protecting employees against abuse. Section 12(3a) of the Labour Act is meant to promote the gradual promotion of employees on FTCs to permanent employment, and this will cause serious challenges to companies, given the economic hardships. The chapter further looked at research objectives and questions, research hypothesis and limitations to the study. The next chapter will look at the literature reviewed in this study.

## **CHAPTER TWO**

### **LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK**

#### **2.1 INTRODUCTION**

This chapter reviewed literature from previous studies, labour regulations, newspapers and journals. The sections are arranged by themes, looking at areas researchers agree and where they disagree. It highlighted areas of information gaps not covered by previous studies in this area, which became the basis for this study. The themes covered in the literature review are as follows: Definition and types of fixed-term contract of employment, theories of fixed-term contracts of employment, Labour Act (28:01) Section 12(3a), (4) and (4b) of the Labour Act as amended in 2015), comparative studies on the practise of fixed-term contracts and legal stipulations in selected countries. The literature gap was explained, justifying the need to carry out this research to find out the challenges employers face as a result of limiting fixed-term contracts. This lead to the depicting and explanation of the conceptual framework.

#### **2.2 DEFINITION AND TYPES OF A FIXED-TERM CONTRACT OF EMPLOYMENT**

##### **2.2.1 Definitions of Fixed Term Contract**

According to Aleksynska and Muller (2015), a Fixed-Term Contract of employment (FTC) is an employment arrangement between employer and employee with a fixed period or pre-specified event to end the arrangement between the two parties.

Nardone et al (1997) define a Fixed-Term Contract (FTC) of employment as a job in which the employee is engaged on a short-term basis and the short-term nature of the job is recognised by both employer and employee.

Other authors identify FTC employment under various titles like “contingent” (Belous,1989), “irregular”, “non-standard”, or “atypical” (Bourhis and Wils, 2001) employment.

These definitions and classifications highlight three key aspects of a FTC of employment, as follows.

The first being that it's a contractual arrangement for employment between employer and employee. Section 12 of the Labour Act (28:01) describes an employment relationship as one in which the employee performs duties under the control of the employer for a reward on agreed terms and conditions. In the case of *James Vutol v Africa Gaming, NECCS Byo 8/2015* it was ruled that Vutol was indeed an employee of Africa Gaming and not an independent retailer as he was under the total control and management of Africa Gaming.

Sarantinos (2007) stresses that this contractual arrangement is captured in a psychological contract, described as the implicit agreement between the employer and employee with regards to what each party has to perform to the other party. Sarantinos (2007) says the employer has the following obligations: to provide work, to provide induction and required training, to provide a conducive working environment, and to provide remuneration for work done. Sarantinos (2007) says the employee has to be available for work, to perform given tasks to required standard, to obey lawful instructions given by employer, and to observe safety at the workplace.

The second one being that there is a time limit or lifeline to this arrangement (Nadone et al, 1997, Belous, 1989, Brosnan and Walsh (1996)). The Labour Act does not specify the minimum or maximum duration of a fixed-term contract of employment, as Section 12(3a)(a) and (b) delegate this power to respective National Employment Councils (NECs) or in their absence to the Minister of Labour. The NEC for Commercial Sectors has set the minimum period as 3 months and the maximum duration of a single fixed-term contract as 1 year. It stipulates that a FTC can be renewed not more than 6 times, after which an employee should be given a full-time position. This implies that in the commercial sectors once a job has existed for a maximum of six years it has proved to be of a permanent state. According to Brosnan and Walsh (1996) the FTC will end automatically at the end of the specified duration or performance of a specific task. The Labour Act (28:01) stipulates the need to observe notice periods.

The third being that the terms and conditions of the contract have to be communicated to the employee (Makings, 2015). Section 12(2) of the Labour Act (28:01) stipulates that the employer is required to inform the employee on engagement of the terms of engagement. These include the duration of the contract as provided for in Section 12(2)(b). Court

rulings have indicated that putting it in writing in a contract will guide both parties as to the performance of that contract. One of the cases highlighted that putting it in writing helps to avoid unnecessary disputes where a party may make claims that are outside of what was agreed at the onset. In the case of *Mast Electrical Services v Kendall Cross Holdings Ltd [2007] EWHC 1296 (TCC)*, it was commented that it is very unfortunate that parties to a contract agree on its terms but then fail to put it in writing. This case highlights that writing contracts down is important because there is no substitute for certainty. Court cases indicate that companies should be careful what they put in writing as each part is expected to perform its obligations. In the case of *Blessing Mashizha v First Banking Corporation HH-186-99* it was ruled that First Banking pays Blessing annual bonus as written in the contract.

### 2.2.2 Forms of Fixed Term Contract of Employment

Different authors highlight different forms of FTCs as follows:

- **Temporary employment.** Sarantinos (2007) says temporary employment is done usually to replace employees who are on leave, to do specific short-time tasks, and to meet demand or output targets set so as to deliver orders on time.
- **Project-based employment.** Claydon and Colin (2005) say fixed-term contracts can base on projects, in which case employees are hired for a specific project, after which they are stopped. For example most Non-governmental organisations (NGOs) operate on a project basis and their funding is project based, hence after the project they lay off most workers till another project. Claydon and Collin (2005) say some companies use FTCs to cater for non-core projects that they may do aside their main operations.
- **Casual employment.** According to the Labour Act (28:01) this is work for which an employee is engaged for not more than a total of six weeks in in any four consecutive months. Foote (2004) says this can be for tasks to be carried out for a period ranging from as little as a few hours or days to weeks, usually for general hand work like cleaning, loading, lifting and offloading.

- **Seasonal employment.** According to the Labour Act (28:01) this is work owing to the nature of the industry which is carried out only at certain times of the year. For example the tobacco industry uses seasonal employment of sorters of tobacco (Muchichwa and Matombo, 2006).
- **Fixed duration.** Sarantinos (2007) says these are contracts of fixed duration, once-off like 5 years or renewable. Sarantinos (2007) says they are mostly adopted by employers to avoid putting people on a permanent basis, to avoid costs associated with full-time employment like medical aid, pensions and retrenchment packages. The jobs can be of a permanent nature as the FTCs are renewed at the end of each cycle.

The literature from various authors and the Labour Act (28:01) thus show the general forms of FTCs widely used across the globe, which are temporal work, project-based, seasonal and casual employment.

## **2.3 THEORIES OF FIXED-TERM CONTRACTS OF EMPLOYMENT**

There are a number of theories that explain the development and widespread use of FTCs worldwide, including in Zimbabwe. According to Foote (2004), the past three decades have seen a worldwide upsurge in the use of FTCs by organisations. This is mainly attributed to rapid technological changes, economic uncertainty, global competitiveness, and the increased emphasis on profitability (Greer, 2001). It is important to interrogate these theories as they explain why employers adopt whichever theory they base on in engaging employees on a fixed-term contract basis. This understanding will then help to investigate the challenges to be faced by employers as a result of limiting FTCs by the new Labour Law Amendments of 2015. These theories are explained in the following paragraphs.

### **2.3.1 Wage Differential Theory: Equal Job for Unequal Pay**

According to Aleksynska and Muller (2015), employing workers on a fixed-term basis results in lower wage and non-wage costs than employing on full-time basis. Employers may extend certain benefits to employees on full-time contracts only, and not extend the same benefits to employees on FTCs. For example a company can subsidize medical aid subscription to permanent employees only and not do the same for employees on FTCs.

An employer can assist full-time employees with fees for studies and further development, and not do the same to employees on FTCs.

This is despite the fact that those on FTCs will be doing exactly the same duties with those on full-time employment. Davia and Hernanz (2002) say that international research has proven that workers on FTCs are generally paid lower wages and / or other benefits than permanent employees. Yet according to Picchio (2007) in most cases employees on FTCs exhibit high levels of productivity than those on full-time employment. Thus by paying less benefits to employees on FTCs companies are able to save huge amounts of money which they then utilize as capital. In the case of *House of Lords in Mathews and Others v Kent and Medway Towns Fire Authority and others [2006] UKHL, 8*, the tribunal ruled that someone on FTC should not necessarily be given same benefits with those on full-time employees as long as basic payments are done.

According to Sarantinos (2007) the main weakness with this theory is that by differentiating between full-time and fixed-term contract employees in terms of wages and benefits, elements of being segregated against are introduced in workers. The workers may be demotivated, resulting in poor performance. Court cases have shown that employers have to be careful in the way they differentiate wages and other benefits as they can be sued by employees for such discrimination. In the Chinese case of *Gao v Bidechuangzhan Company* an employee succeeded in proving that the company had discriminated against the employee because the employee was on FTC. The employee was awarded 17 572 Yuan as compensation and 2000 Yuan as damages.

### **2.3.2 Bridge Theory**

According to Greppi et al (2010) this theory asserts that FTCs are a bridge to full-time employment. According to Ichino et al (2005), the employer does this by setting a duration of FTC during which the employee is assessed. The employee has an opportunity to perform well, exhibit commitment and show dedication to duty. Once the employer is satisfied with the employee's performance then a full-time employment contract is issued.

The bridge (FTC) thus allows the employer time to assess an employee before confirming them. Section 12(5) of the Labour Act provides for a non-renewable probationary period of 3 months, after which one can be confirmed or the contract terminated. Where

employers feel that 3 months is not a duration big enough to assess a candidate they can offer FTC with a bigger duration instead.

### **2.3.3 Flexibility Theory**

Sarantinos (2007) argues that companies are moving away from the past where there was stability in terms of markets, mass production, distribution of products and profit margins. They are now threatened by international competition, serious technological changes, radical organisation development and economic difficulties that call for constant change.

Sarantinos (2007) describes this as a shift from the 'Fordist' to a 'Post-Fordist' regime. These new realities are forcing organisations to focus on their costs, new technologies, organisational structures and innovation. Organisations are now shifting to fixed-term contracts of employment. Atkinson (1984) identifies four types of flexibility as follows.

#### **Numerical Flexibility**

According to Sarantinos (2007) this is the ability to revise employee figures downwards or upwards in response to economic performance of the organisation, new technology or changes in consumer tastes. Court cases show that most FTCs are easy to terminate as they expire at the end of the stipulated duration. In the case of *Magodora v Care International SC24/2014* it was ruled that employees are bound by express conditions in contracts of employment. FTCs expire at their end without notice or automatic renewal.

Court rulings warn employers to be careful not to create legitimate expectation. As long as FTCs are handled by the book any false claims of legitimate expectation of renewal by employees won't hold water in the courts of law. In the case of *UZ-UCSF v Shamuyarira SC10/2010* it was ruled that there is no legitimate expectation where contracts do not state that, and where no replacement of the discharged employee is done.

#### **Financial Flexibility**

Sarantino (2007) says this is the reduction of labour cost through revising salary bills or benefits in order to give the company some breathing space. A company may want to be able to reduce labour costs when necessary in order to protect profitability or contain costs. This shows that using FTCs allows the employer to have financial flexibility.

### **Temporal Flexibility**

According to Sarantino (2007) this is the shifting of working hours to meet production demands. This can be in the form of overtimes for full-time employees. Employees can also be engaged on FTCs to help in peak times of production. Employers thus use temporal flexibility to achieve set output in times of peak demand.

### **Functional Flexibility**

Sarantino (2007) defines it as the ability to combine skills and competencies in order to increase the usefulness of employees across the organisation. It relies on extensive training to equip employees with multi skills. When the situation becomes tough the employer may resort to stop most of the workers on FTCs and compensate the gap left by multi-skilling the remaining employees so that they do more.

Critiques of the theory of Flexibility highlight that the flexible firm model presumes that the employer has the liberty to shape employment systems according to the firm's wishes without considering the role employees plays (Elgar, 1991; Claydon, 2004). According to the psychological contract employees give effort in response to the way they are being treated by the employer. Flexibility tends to cause feelings of uncertainty and insecurity to employees (Collin and Claydon, 2005).

It should be emphasised that it is very important to follow the proper channels and not breach any legal provision when it comes to the termination of contracts of employment. In the case of *Albert Peresu v ZUPCO, LC/H/245/15*, ZUPCO was ordered by the Labour Court to pay Peresu seventeen and a half month's salary for being dismissed unlawfully.

### **2.3.4 Performance Management Theory**

According to Greppi et al (2010), management can give an employee a FTC and let the employee know that the FTC is just to assess the employee's performance. This is particularly so where the employer wants to be satisfied with the employee's performance before confirming the employee. Druker and Crocher (2000), argue that some firms use FTCs to screen out the employees who fail to meet performance criteria. By so doing most employees raise their performance standards to get full-time contracts (Foote and Folta, 2002). In the case of *OK Zimbabwe v Gomo, SC36/2009* it was ruled that the employer can terminate a FTC for incompetence. One of the setbacks is that the

employees may go elsewhere without being confirmed full-time, or the employees may start relaxing their performance after being confirmed full-time (Kungang, 2009).

### **2.3.5 Segmentation Theory**

Doeringer and Piore (1971) say there is a segmentation of workers in the internal organisation (labour market segmentation) and segmentation of the economy outside the organisation (economy segmentation). These are as follows:

**Labour market segmentation.** Doeringer and Piore (1971) divide the labour market into two segments. These are the primary segment and the secondary segment. The primary segment is characteristic of secure and stable jobs, favourable working conditions, good career prospects, training and high salaries. Sarantinos (2007) say these are called core workers who are mainly skilled and are involved in decision making. Usually employees in full-time positions are put in this segment. The secondary segment consists of poor working conditions, poor salaries, and unstable employment. Sarantinos (2007) say these are called peripheral workers and are in most cases lowly paid, on FTCs, not very much involved in decisions and enjoy little security in their positions. FTCs are the first to be stopped. They can also be given less privileges than full-time employees. Employers need be careful how they segment. In the case of *Foreman & Moultrie v KLM Airlines, HH24/2001* it was ruled that privileges are not rights.

#### **Economic segmentation**

Doeringer and Piore (1971) say economic segmentation puts the company into two possible environments. There is an environment of stable economy, growing markets and less technological changes. This calls for employing permanent employees. Then there is an environment of instability, global competition, rapid technological changes. Such an environment calls for the use of FTCs. The employment of workers on FTCs thus allows employers to revise staff figures at the very moment they deem necessary.

### **2.3.6 Project Basis Theory**

According to Sarantinos (2007) this theory recognises that some organisations operate on a project basis where they stop the employees after the project. This can be side

operations or main operations. In Zimbabwe this is mainly done in NGOs and other major projects in construction.

When companies continually renew FTCs they give the impression that the jobs are of a permanent nature, hence they are expected to give full-time contracts. This is demonstrated by the case of *Lifestyle Zimbabwe Furnishers v Admire Mawoyo and 215 Others LC/H/02/2012*, *Rachel Kadzinga & 20 others v Eastern Textiles (Pvt) Ltd t/a Devstar Clothing LC/MC/02/2007*, *Zimbabwe Bata Shoe Company v Zimbabwe Bata Workers Committee LC/MD/24/2005*. In one of the case the Judge said renewals of over 6 years are tantamount to slavery practises as they are not fair to employees.

### 2.3.7 Reasons why Employers use FTCs

The theories reviewed in the paragraphs above show the reasons why most employers use FTCs across the globe instead of full-time contracts. These are summarised below.

**Table 2.1 Summary of main reasons why employers use FTCs**

Theory	Reason For Employing on FTCs
Wage Differential	To pay less benefits and pay to FTCs as to reduce wage costs
Bridge	To give employer time to assess employees or company performance before giving full-time employment.
Flexibility	To be able to decrease or increase workers at any time, in response to economic activities and technological changes.
Performance Management	To first of all manage the performance level of an employee before giving full-time contract of employment.
Segmentation	To segment workers into core workers who are handled more carefully and non-core who can be sacrificed when economic conditions become harsh.
Project-Based	To be able to do projects with set times, so that after the project there won't be need for the employees.

**Source:** *Aleksynska and Muller (2015), Greppi et al (2010), Sarantinos (2007), Druker and Crocher (2000), Doeringer and Piore (1971).*

## 2.4. PROVISIONS OF THE LABOUR ACT SECTION 12 (3a), 4

### **2.4.1 The Labour Amendment Bill 7 of 2015**

According to Makings (2015), the 2015 Labour Amendment Bill gazetted 14<sup>th</sup> August 2015, was enacted as a reaction to the Supreme Court case of *Nyamande and Donga v Zuva Petroleum, SC43/2015*. On 17<sup>th</sup> July 2015 the court ruled that just as employees on full-time contracts had a legal right to terminate their services by giving three months notice, employers also had the same recourse according to common law. Employers could thus terminate employment contracts on three months notice without retrenching.

According to Ncube (2015) this triggered a wave of job losses as employers who were unable to pay retrenchment packages took the opportunity to shade off unwanted labour. An estimated 25 000 permanent employees were dismissed on three months notice (Ncube: 2015, Makings: 2015). Cases in point are: ZBC laid off 282 employees (MISA, 2015), Alpha Media laid off 24 (VOA, 2015) and Bata laid off 150 (Nehanda Radio, 2015). Thomas Meikles stopped quite a number of employees during the same period.

There had been talks, for years, about imperative Labour Law reforms which the Government, Business and Labour were supposed to have agreed on by June 2015. This deadline was missed and there was no urgency from the Government despite the repeated calls by both Business and Labour to speed up the process to address issues of competitiveness and social protection of workers. Yet the Zuva case prompted the government to act immediately and speed up a Labour Amendment Bill, without consulting the other parties to the Tripartite Negotiating Forum (TNF).

The government wanted to urgently halt the job losses by setting minimum retrenchment packages, backdating the retrenchment packages and making it difficult for employers to terminate employment contracts. Mupfumira (2015) said the main objectives in recalling the parliament from recess to fast-track the amendments through the parliament were to safeguard workers against abuse and to carry out overdue labour law reforms as per section 65 of the Constitution. The Labour Amendment Act of 2015 (Act No. 5 of 2015) came into effect on 26<sup>th</sup> August 2015, with a Transitional Provision backdating the entitlement to retrenchment packages of one month's salary for two years of service to 17<sup>th</sup> July 2015. Mudavanhu (2015) said both Business and Labour felt short-changed as their concerns were not factored into the Bill.

While some people felt that it was not fair to backdate legislation (Makings: 2015), Professor Madhuku (2015) said there is no clause in the Constitution of the country that forbids backdating of legislation. In the case of *Walls vs Walls 1996 (2) ZLR 117*, it was held that the Parliament has the power to legislate retrospectively. It was highlighted however that it should try as much as possible not to do so as it takes away accrued rights of any of the parties involved. Nyahuma (2015) however feels that by backdating legislation it takes away rights accrued before the law was enacted, which contradicts section 17(1) c of the Interpretation Act. To prove Madhuku (2015) correct, so far there has been no a legal challenge that has succeeded against the backdating clause in the Labour Act (Chapter 28:01).

#### **2.4.2 Section 12(3a),(4a),(4b) of the Labour Act**

Among the major highlights from the 17 Clauses of the Bill is the limiting of Fixed-Term Contracts (FTCs) of employment as provided for in Section 12(3a), (4a) and (4b). These are explained as follows:

##### **Section 12(3a) of the Labour Act**

After a certain period on fixed-term contract of employment one becomes a full-time employee by either being left going beyond the expiry of current FTC or by exceeding the set limit. The government's intention is to avoid situations where an employee's job is a key component of the company's operations but the employee is being kept on FTC for unnecessarily longer periods. This clause should see a gradual movement from FTC to permanent employment for the employees who would have served the company for quite a number of years, as shall be stipulate by relevant NECs or the minister of Labour.

##### **Section 12(3a)(a)&(b)**

It is the relevant National Employment Council (NEC) in a sector that will set the period of continuous service beyond which one becomes a permanent employee. In the absence of a NEC in that sector or where such NEC does not set the period of continuous service, the Minister of Labour shall do so. This means that each sector will decide the duration basing on its peculiar features that differ from other sectors. This is good in that it leaves room for a fair consideration of the reality on the ground in terms of the need for FTCs in a given sector of the economy. One of the weaknesses of this clause is that there was no a

timeline set for the respective NECs or Minister to set the maximum period of continuous service. The second weakness is that it is going to be difficult for NECs or the Minister of Labour to come up with a minimum and maximum period of service for a FTC where the basis of a FTC is task-driven instead of fixed-time. For example the construction industry is characteristic of task-driven jobs.

#### **Section 4(a)(a to d)**

Termination of employment contracts shall not be done at will. It has to be through terms of a Code of Conduct, mutual agreement, and expiration of a FTC and pursuant to retrenchment. Section 12(4)(a to e) however provide for notice periods that have to be observed when terminating FTCs and full-time contracts in the case of three months notice. This means that employers have to be very careful the way they terminate FTCs otherwise the employees may claim unfair dismissal or legitimate expectation of renewal of their current or previous FTCs. In the case of *Chimutimbira v ZIMRA LC/H/156/2013* ZIMRA was ordered to reinstate Chimutimbira after he managed to prove legitimate expectation. After his FTC was not renewed, despite his expectation as indicated by employer, someone else was hired instead. The Labour Court ordered his reinstatement. Section 12(7) state that even if parties agree to waive notice, if the employer initiated the termination the employer still has to pay the employee for the period corresponding to these notice periods. Employers cannot run away from financial obligations in terms of notice pay.

#### **Section 4(b)**

It provides for the compensation of employees whose contracts are terminated as per the provisions of section 12(4a). This means that employers have to pay retrenchment whether it is an employee on FTC or a permanent employee. The provision of compensation for loss of employment for both employees on FTCs and permanent employees, will solve a number of problems. Employers will see no logic to keep all employees on FTCs as they still have to compensate them if they stop them. Some will thus be confirmed permanent employees. Makings (2015) however says even though both

FTCs and permanent employees now get retrenchments, there will still be a need to keep some of the employees on FTCs.

**Table 2.2 Provisions of Section 12 of the Labour Act**

<b>Section of Labour Act</b>	<b>Regulations</b>
12(1)	A person working for another, getting paid is an employee
12(2)(a-j)	Employer must give contract details to employee in writing
12(3)	An employee working with no contract is considered full-time worker
12(3a)	A fixed-term contract of employment is deemed full-time employment upon expiry of period of continuous service. NECs or Minister of Labour will set the limit for each sector.
12(4)	Notice periods for terminating contracts must be observed
12(4a)	Termination of contract shall be through NEC Code of conduct, mutual agreement, retrenchment, or expiring of fixed-term contract
12(4b)	An employee stopped for whatever reason is entitled to compensation of one month pay for two years served.

The table shows that Section 12 calls for companies to reduce contracts in writing, observe the durations stated in the contracts, do renewals on time, observe limits of FTCs set by NECs or Minister of Labour, convert employees on FTCs to full-time employment after expiry of set limits, be fair in terminating such contracts, and be prepared to pay gratuities or retrenchment packages in each case. This presents a number of serious challenges to companies in terms of the administration of FTCs and the costs involved.

### **2.4.3 National Employment Council for the Commercial Sectors of Zimbabwe CBA: Regulation of FTCs**

Most of the NECs in Zimbabwe still haven't stipulated the limits of FTCs in their sectors. The NEC for Commercial Sectors has gazetted its regulations. These provide for the following:

- a. Each fixed-term contract will have a minimum duration of three months
- b. Each fixed-term contract will have a maximum duration of one year
- c. A fixed-term contract will only be renewed for a maximum of 6 times before one is confirmed to permanent employment or stopped
- d. A casual work contract is one in which an employee performs casual work for not more than a total of 6 weeks in 4 consecutive months
- e. After a period of two years away from work an employee's service is considered to have expired, hence that employee can be employed again on a fresh fixed-term contract of employment

These provisions mean that at the end of the six renewals an employer can either confirm the employee to full-time position, or stop the employee then hire someone else. The choice will depend on the employer as per the economic and labour market conditions. The same employee stopped after having six renewals of FTCs can be rehired on a fresh FTC basis after being away from the company for two continuous years.

### **2.4.4 2015 Labour Law Reforms seen as against Increasing Competitiveness and Productivity**

Mufukare (2015) says for the past four years business has been engaging government and labour in the Tripartite Negotiating Forum, in the Labour Law reform exercise with a view to improve the country's economic activity. This was a build up from the Kadoma Declaration which identified policy and law inconsistency as one of the largest contributors to Zimbabwe's Country Risk Factor. On the side of Business, he said this was primarily to make the labour regime more attractive to investors who see the rigidity in our labour laws as detrimental to business operations. Murerwa (2015) said the proposed reforms would liberalise the labour laws in line with what is available in the rest of the region so as to level the economic playing field. He said employers expected a

relaxation on the amount of retrenchment packages to be paid to laid off employees and the flexibility to terminate both fixed-term and full-time contracts of employment so to be able to right-size workforces in response to economic conditions.

Instead, the gazetted Bill was the opposite of what employers expected. Murerwa (2015) said the provisions of the Labour Amendment Act to pay more in retrenchments and to gradually convert FTCs into full-time contracts is not only retrogressive but also counterproductive as it stops business entities from making appropriate business decisions. Norupiri (2015) said the Bill has done nothing much to attract investment and create employment, other than to shorten the retrenchment process at a big cost to business. By legislating for hefty retrenchment packages and for the conversion of FTCs into permanent employment the Government actually scared away investment. Ironically Mphoko (2015) said the government is concerned about the declining investment in the distressed food processing companies, hence expects more investors to pour in resources to revive this important sector.

The views from business are not surprising at all. In all past labour law reforms the government has tried to balance between business expectations and the need to promote the rights of workers. After the Labour Relations Amendment Act of 1985 the amendments were seen as deterrent to investment and business because they were alleged to over protect workers (Madhuku, 1995). This has been the trend up to 2015.

On the side of Labour, Moyo (2015) said while workers felt that getting two weeks gratuity for each year served was not enough at all, they appreciated the effort as they expected the labour laws to secure employment for workers, and get reasonable retrenchment packages for workers.

Makings (2015) feels that once retrenchment packages are put right the problems that arise over rolled-over contracts would fall away as employers would not need to keep employees on contract.

## **2.5 COMPARATIVE STUDIES ABOUT LEGISLATIVE CONTROL OF FIXED-TERM CONTRACTS OF EMPLOYMENT IN SELECTED COUNTRIES**

According to Inagami (2010), the issue of FTCs is an important aspect in terms of balancing between social protection of workers and flexibility of the labour market. Nakakubo (2010) says FTCs are a hot issue in labour law and labour market policy worldwide. This is particularly true in the Zimbabwean situation where the recent amendment of the Labour Act in 2015 limited FTCs in a bid to promote full-time employment, in a nation grappling with low direct investment into the economy.

FTCs are so important to the extent that a Comparative Labour Law seminar was held on FTCs in Western and Asian nations in Japan in 2010 to allow labour law scholars and researchers from different countries to discuss and learn from across borders. This allows for an exploration of current labour law regulations with the aim of improving further on the current regulations on FTCs. The following paragraphs will look at the current legislative control of FTCs in selected Western, Asian and African countries.

### **2.5.1 ILO REGULATION OF FTCs**

The International Labour Organisation (ILO) provides legal frameworks which guide member states to regulate labour relations. One of the areas that it regulates is the area of FTCs. Of particular attention are the following Convention and Recommendation which regulate FTCs.

#### **The Termination of Employment Convention, 1982 (No. 158)**

Article 2(2) and (3) of the Convention calls for member states to provide against recourse to FTCs where full-time employment should be given to employees.

#### **The Termination of Employment Recommendation, 1982 (No. 166)**

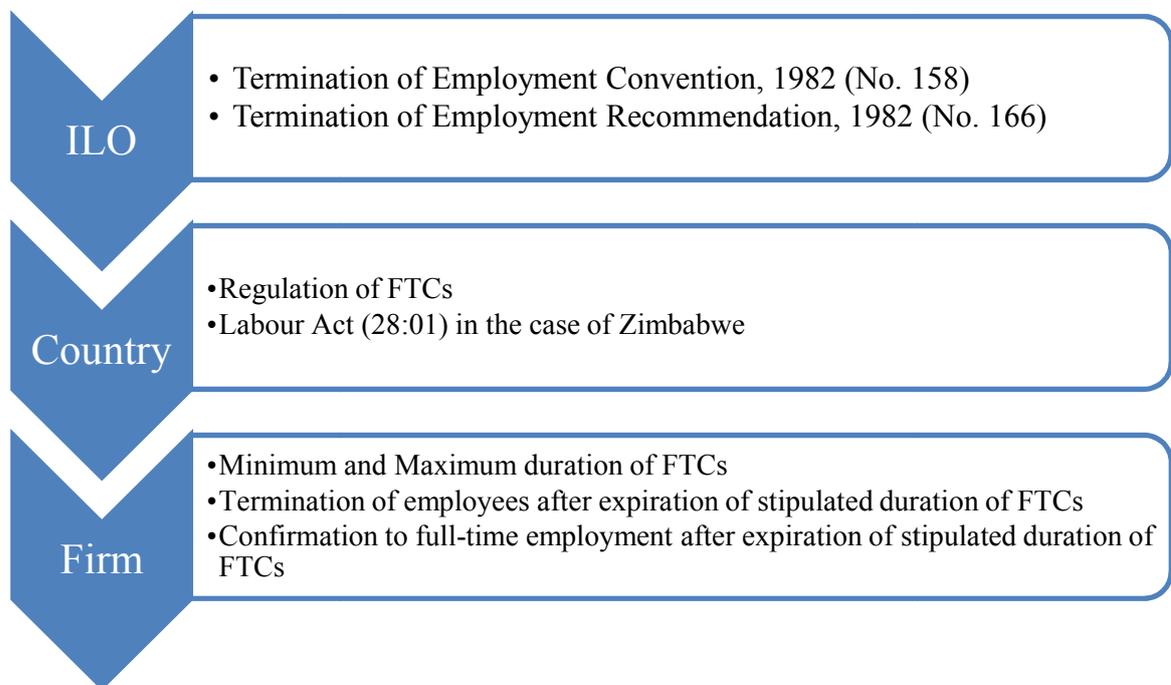
Recommendation No. 166 (Article 3(2) give details of legal rules that should be enacted to prevent abusive recourse to FTCs by employers. This is done by doing the following:

- a. Where the nature of work to be done is of permanent state, an employee should be given full-time employment and not FTC.
- b. Deeming FTCs to be full-time contracts after a certain duration

- c. Deeming FTCs to be full-time contracts after being renewed for a specified duration

The Convention and Recommendation are meant to prevent abusive recourse to FTCs by employers. They however recognise that there is a need for FTCS, although in certain conditions. Below is a figure which shows how the ILO conventions and recommendations on FTCs are reflected in member states regulation of FTCs. Some countries are not members of the ILO but still regulate FTCs in their countries, and some members of the ILO do not regulate FTCs in their countries.

**Figure 2.1 Regulation of FTCs by member states of ILO**



**Source: Aleksynska, M. and Muller, A (2015)**

## **2.5.2 REGULATION OF FTCs IN CHINA**

It is important that we look at the situation in China for two main reasons. The first being that China was once in a difficult economic situation like Zimbabwe and then later on started improving. Secondly because as a nation at the moment we are looking onto China as a model country whose policies and practices we are emulating.

According to Kungang (2009), China was under the Planned Economy Period from 1953 to 1979. This economy was characteristic of mass production, a ready local market, conditions of employment and wages were set by the State, and there were no FTCs in state-owned enterprises. Only a few FTCs were allowed in private enterprises to cater for emergency cases. After the Planned Economy Period, China started to adopt a policy of reform and opening up business to the outside world. From 1986 there was a remarkable shift from open-ended employment contracts to FTCs. On 1 January 1995 the Labour Law of China (LLC) was effected to suit the development of market economy. According to LLC only a few employees had an opportunity to enter into open-ended employment contracts. On average 70% of employment contracts in China were thus FTCs. FTCs thus dominated the employment market for about 12 years (1995 to 2007).

### **The Legal Provisions on limiting FTCs**

Kungang (2009) says China saw that the LLC was creating lots of problems in labour relations, including the abuse of workers by employers. Employees were not well protected under FTCs. They could be paid less than those on full-time employment and it was difficult to move the economy from being agricultural based to industrial based. . Hence in 2008 the Labour Contract Law of China (LCL) was enacted to stabilize the labour relations in China and reverse the widespread use of FTCs. Most FTCs ranged from 1 year to 3 years. Below are the highlights from the current LCL:

Article 14 of LCL provides that an employee should be given full-time employment after serving 10 consecutive years on FTCs. This is meant to ensure that for all those jobs which are of permanent nature the employees are given full-time employment. This dovetails with Section 12(3a) and 4 of Zimbabwe Labour Act (28:01) which limit FTCs. It however leaves the decision to come up with the maximum allowable duration to respective NECs or in their absence to the Minister of Labour.

Article 10 of LCL stipulates that an employer shall enter into a written FTC with an employee within one month from the date of its start, otherwise failure to do so the employer should pay the employee 200% of the agreed salary.

Article 14 of LCL stipulates that if one goes beyond one year without a written contract they are deemed full-time employees. Section 12(3) of the Labour Act of Zimbabwe

stipulates that allowing an employee on FTC to work beyond the expiry of their FTC without a contract makes the employee permanent by default.

Article 39 and 40 of LCL provides for lawful termination of FTC due to poor performance, misconduct, conflict of interest, criminal liability, ill health, expiration of FTC and mutual agreement. This is meant to safeguard employees from wanton dismissals by employers. Lauffs (2013) says in China there is no concept of 'at will' employment and 'at will' termination of employment. This dovetails with Section 12(4a) which stipulates the reasons for termination of a contract as by employment code, mutual agreement, expiration of FTC and retrenchment.

Kungang (2009) says LCL has some loopholes. Some employers still find ways of going round the issue of converting FTCs to full-time employment. For example at the end of October 2007 Huawei Company in Shenzhen asked its employees with 8 years service to resign and be given packages then re-join on fresh FTCs. This nullified their previous service, hence Huawei evaded making them full-time employees. Kungang (2009) said employers now use labour dispatching, which is an arrangement where employment agencies contract part-time workers who offer service to companies under the management of employment agencies. There are over 25 million workers in this arrangement. Here in Zimbabwe there are Cleaning companies that render service to firms, and the workers are under the management of the Cleaning companies.

While the government of China aims to protect employees by promoting full-time employment, some scholars believe that this will be a heavy burden on employers (Kungang: 2009, Kai: 2009). They argue that it increases labour costs and makes employers less flexible in response to economic hardships.

### **2.5.3 REGULATION OF FTCs IN BRITAIN**

According to Koukiadaki (2010), workers on FTC have always formed a big part of the total number of employees in Britain. The European Union Council Directive 1999/70/EC (Fixed Term Work Directive) regulates FTCs in Britain. It seeks to improve quality of fixed-term work while on the other hand it seeks to provide a framework to avoid abuse of employees on FTCs. It limits the number of renewals of FTCs, the total duration of FTCs to 10 years, and that they should be renewed if there is genuine reason to do so. The

regulations however do not define what a genuine reason for renewal is. In the case of *Ball v University of Aberdeen 101486/08*, the tribunal ruled that it should consider the objective and transparent criteria for assessing the genuineness of the renewal. What Britain is doing is the same with what Zimbabwe is doing. The only difference is that in Britain the 10 years limit is set for all sectors while in Zimbabwe individual NECs have to decide. Allowing NECs to decide is good because it recognises sector-specific issues.

#### **2.5.4 REGULATION OF FTCs IN KENYA**

It is important that we look at a country in Africa so as to be able to find out the relevant trends that relate to Zimbabwe. According to Foote (2004) the past three decades has seen the growth of FTCs as a response to global competition and uncertainty. In the 1990s short-term employment accounted for 10%. In 2006 the figure had rose to 60%. According to Kimani (2010), millions of young persons in Kenya joined employment on a fixed-term basis by 2011. He said official statistics show that FTCs grew by 13% in 2011 as compared to 5% in 2007. This obviously shows a preference for FTCs against full-time employment. A study was done in Kenya's wood-based industries as Kenya largely depend on wood resource for raw materials viable economic enterprise (Wandera, 2011). It focused on Kenya Forest Service. According to Wandera (2011) employers in Kenya use FTCs to have staff flexibility, to reduce labour costs, and for ease of dismissal.

Wandera (2011) said Kenya's labour law allow the use of FTCs to afford employers the competitive edge they require in the face of global competition and changing technology. The only weakness it has is that it does not stipulate the maximum duration of FTC before one becomes a permanent employee. Kenya's Employment Act (2007) however provides for different forms of notice of termination of contracts. It provides for employers to terminate contracts in a fair manner by terminating as a result of a valid reason. If an employee has been employed for a period not less than 13 months before the date of termination the employee may claim unfair termination if the reasons for such termination are not clear. This dovetails with Section 12 of the Labour Act (28:01) that provides for notices, fair ways of terminating contracts and issues of legitimate expectation.

## **2.5.5 REGULATION OF FTCs IN OTHER COUNTRIES**

### **Maximum legal duration of FTCs**

According to Muller (2015), most Labour laws regulate the maximum duration of FTCs. The country with the smallest period is 1 year and less for Chile, Guinea-Bissau, Pakistan, Panama, Serbia, Sierra Leone, Venezuela and Zimbabwe. At the middle of the range at 5 years are Argentina, Armenia, Bahrain, Finland, Hungary, Japan, Jordan, Kuwait, Macedonia, Moldova, Paraguay, Peru, Romania, Russian Federation, Senegal, Syria, and Uzbekistan. Those with 10 years limit are Estonia, Switzerland, Czech Republic and China. Muller (2015) says countries limit FTCs to promote gradual graduation into full-time employment. The assumption is that by the time an employee exceeds the stipulated maximum legal duration a job should have become a permanent part of the organisation. The only problem with the umbrella regulations is that they do not cater for sector or organisation specific characteristics. The Labour Act of Zimbabwe seems to be better in this regard as it delegates this aspect to respective NECs.

Muller (2015) highlighted that there are however countries with no legal limits for the maximum duration of FTCs. Some of these are Afghanistan, Australia, Bangladesh, Botswana, Burundi, Canada, Cyprus, Denmark, Egypt, Ethiopia, Ghana, Guyana, India, Iran, Iraq, Jamaica, Mexico, Namibia, Nepal, Nigeria, Seychelles, South Africa, Swaziland, Tanzania, Thailand, Trinidad and Tobago, Uganda, United States, Yemen and Zambia. These countries recognise that by not limiting FTCs the companies have the flexibility to decide the rate of FTCs and full-time contracts in accordance with economic trends and changing technology (Muller, 2015).

### **Maximum number of successive FTCs authorized by law**

According to Muller (2015) the labour laws in most European countries regulate the number of successive FTCs before one becomes a full-time employee. In Bulgaria only 1 FTC renewal is allowed. In Brazil, Cameroon, Chile, Comoros, DRC, Spain, Senegal, Venezuela, and Vietnam only 2 successive FTCs are allowed at law. In Greece, Netherlands and Romania only 3 FTCs are allowed. In Germany, Belgium, Portugal and Slovakia 4 FTCs are allowed. In Zimbabwe it will be sector specific. The NEC for Commercial allows a maximum of 6 renewals before one becomes full-time employee.

## **2.6 RESEARCH GAPS IDENTIFIED**

The following gaps were identified from the Literature Review.

### **Lack of information on challenges faced by firms as a result of limiting FTCs**

Almost all studies that have been carried out so far, worldwide, look at why firms use FTCs, the theories of FTCs, percentage of employees on FTCs against permanent employees, effects of FTCs on motivation and productivity and the level of state and regional regulation of FTCs. Little is covered in these studies about the challenges faced by firms as a result of limiting of FTCs. In Zimbabwe's situation there is no readily available documented information on the effects of limiting FTCs by the Labour Act as this is a new development. Yet this is a very important area in both economic revival efforts and industrial relations. The gap in Zimbabwe is mainly because the regulations are new and no meaningful research had yet been done accordingly. This study seeks to fill that gap by finding out about the challenges to be encountered by employers as a result of limiting of FTCs by the Labour Amendments of 2015.

### **Lack of definition of FTCs in legal provisions**

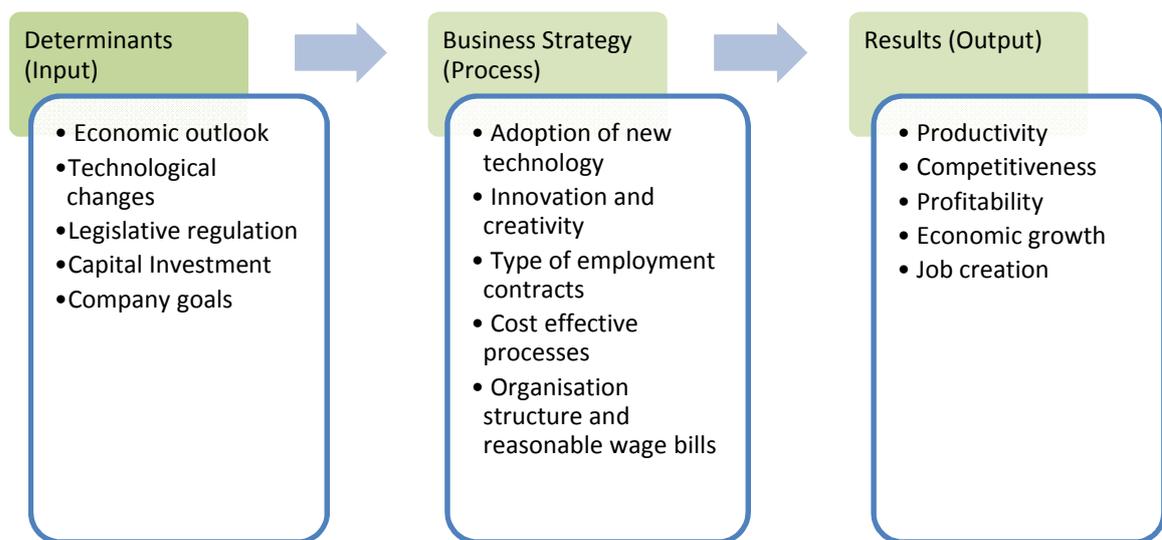
The Labour Act (28:01) does not define what a fixed-term contract of employment is. All it does is to describe the conditions that characterise an employment contract in section 12(1). It goes further to define some types of a fixed-term contract of employment, namely casual and seasonal employment. Not all types of fixed-term contracts are mentioned in the Labour Act. This study will seek the definitions given to FTCs by management, which will guide future improvements of definitions in Labour laws.

## **2.7 CONCEPTUAL FRAMEWORK**

The research adopted a business model that shows the effect of the 2015 Labour Law reforms on Business. According to the conceptual model to be used in this study there are a number of factors that contribute to the productivity, competitiveness and profitability of a firm. These will in turn contribute to economic growth and job creation. These factors, among others, include the economic outlook, technological advances, capital

injected, company goals and legislative regulation of business and employment. These will be reflected in the business strategy. This covers organisation structure, use of FTCs, use of latest technology and processes, innovativeness and cost cutting modes of operation. Employers feel that legislation has to give them the flexibility to revise staff figures in response to changes in the economy and technological advancements. The reality however is that the Labour Act now limits FTCs. There are therefore going to be challenges faced by companies in trying to balance the provisions of Section 12(3a) of the Labour Act with the need for flexibility and profitability. This study will compare the reasons for the widespread use of FTCs against the effects of legal regulation of FTCs on business operations. The conceptual model is shown below.

**Figure 2.2 Conceptual Framework**



## 2.8 CHAPTER SUMMARY

This chapter looked at the literature reviewed in this study. The literature covered the definition of FTC, which is an agreement of employment between employer and employee characteristic of a limited duration and identified task to be performed. It further looked at the types of FTCs, theories of FTCSs, legal regulation of FTCs in

Zimbabwe, Comparative studies on legal regulation of FTCs world wide, research gaps identified and the conceptual framework. The theories reviewed showed that there is a widespread use of FTCs across the globe, mainly to give employers flexibility and to save on costs. There is a trend across the world where most countries are now legislating against the casualization of labour by employers. Doing so however is presenting a number of challenges, which most employers are grappling to deal with. The next chapter will address the research methodology employed in this study.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 INTRODUCTION**

Chapter 3 details the research techniques used to gather data, process it, organise it, present it, and analyse it. The areas covered are research design, research philosophy, research strategy, study population, sampling, data sources, procedures and instruments of data collection, data presentation and analysis, limitations to the study, ethics and data credibility. From the results to be presented there are going to be observations from the interpretations derived.

#### **3.2 RECAPITULATION**

The purpose of this section is to recapitulate the statement of the problem that has necessitated this research. It will also recapitulate the research hypothesis. This is meant to emphasise purpose of the study, hence to guide the research methodology accordingly.

##### **3.2.1 RECAPITULATION OF STATEMENT OF THE PROBLEM**

The problem that will be addressed by this study is that despite the Government's intention to both enhance and protect worker welfare through promoting full-time employment, and at the same time liberalise other aspects of the labour laws to attract investment, the limiting of fixed-term contracts of employment presents serious challenges to companies in Zimbabwe. The concern for the economy of Zimbabwe at the

moment is not at all about overprotecting those currently employed but more importantly job creation. That unfortunately may mean adopting the widespread use of fixed-term contracts of employment.

The sad reality however on the ground is that Employers feel that the current labour laws are no longer in sync with modern economic trends. The government aims to safeguard employees from abusive employers. Business expects a consistent Government Policy framework that does not make it difficult for investors to right-size workforces. Workers feel short-changed by employers, they want job security and more say in company affairs and decisions.

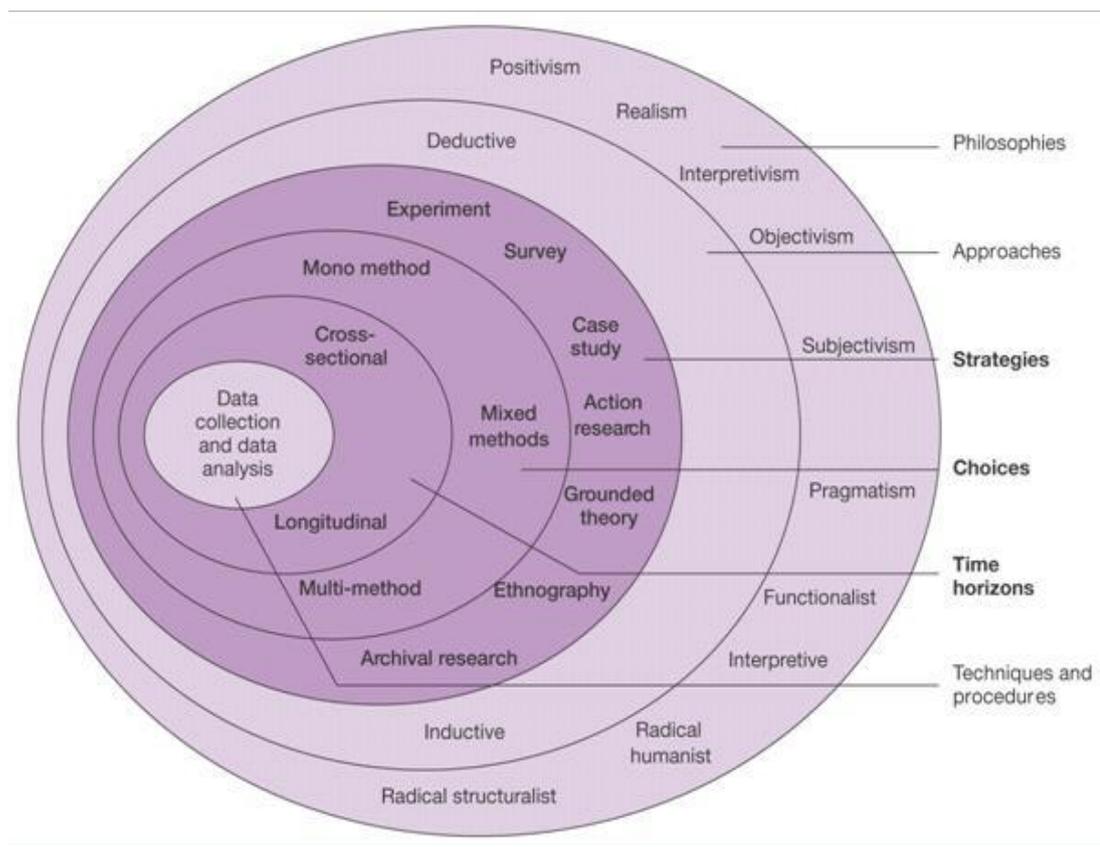
The researcher possesses an argument that while the varying views of government, employers and employees are influenced by differing interests against prevailing macro-economic fundamentals, they can be resolved through inclusivity and honest dialogue on imperative labour law reforms. The problem identified is that the limiting of fixed-term contracts of employment presents serious challenges to both employers and employees. Limiting fixed-term contracts of employment makes the country less competitive to do business. Jobs are not created by forcing companies to make their fixed-term workers full-time employees. Jobs are created by creating an environment that is competitive and conducive for doing business. There is a need to find out the challenges caused by limiting fixed-term contracts of employment.

### **3.2.2 RECAPITULATION OF THE RESEARCH HYPOTHESIS**

While the Government amended the Labour Laws to protect workers from abuse and at the same time align labour laws to the prevailing economic conditions to attract investment and promote productivity, limiting fixed-term contracts of employment presents a number of challenges to companies in Zimbabwe. These may actually achieve a reverse of the intended effect by reducing competitiveness of firms and reducing employment.

### **3.3 RESEARCH DESIGN**

According to Dooley (2003), research design is the framework within which a research study is carried out. He says it covers research philosophy, research approach, research strategy, time and research techniques. Kothari (2004) postulates that it is the framework that guides the information to be collected, sources of data, how to collect it, and how it shall be analysed. The description by both Dooley (2003) and Kothari (2004), dovetail with the Saunders research onion framework, which was adopted by the researcher. It has the following six layers: philosophy, approach, strategy, choice, time horizons and procedures and techniques. These are shown in Figure 3.1 below, and explained in the following paragraphs.



**Figure 3.1 Research Onion Framework**

**Source: Saunders et al (2009).**

### **3.4 RESEARCH PHILOSOPHY**

### **Positivism philosophy**

Positivism Research Philosophy was adopted in this study as it is the model of knowing, when the researcher attempts to disconfirm or apply tentative laws (theories) through testing hypotheses generated from theory and available literature (Dooley, 2003). Positivism Philosophy was used because it enhances objectivity, in the sense that the generated data is independent of the researcher's perceptions, as hypotheses are either confirmed or refuted (Dooley, 2003). Positivist philosophy was appropriate for this study because it allowed the use of known theories in other countries to find out the reality on the ground in Zimbabwe.

## **3.5 RESEARCH APPROACH**

### **Deductive approach**

Saunders et al (2009) say there are two approaches to research which are deductive and inductive. Inductive approach moves from the specific observation to broad theories and generalizations. Deductive works from wide ranging issues to the specific issues at hand. The Research Approach that was used in this study is Deductive, which is scientific in nature because it moves from theory to data or from secondary data to primary data (Dooley, 2003). The justification being that Deductive Approach seeks to solve social problems by looking at causes and effects, basing on documented human behavioural knowledge, through testing generated hypotheses (Dooley, 2003). The goal shall be to describe quantitatively the challenges faced by firms in Zimbabwe, in Labour Relations, as a result of the 2015 Labour Law regulations that now limit fixed-term contracts.

## **3.6 RESEARCH STRATEGY**

### **Survey Design**

Research Strategy is the Design that one uses to carry out a study. According to Spector (2000) it is the basic structure of a scientific study which details sources of data and how it will be collected. The major strategies are survey, experiment, case study, grounded theory, ethnography and action research. The researcher adopted the Survey Design. Dooley (2003) says a Survey Design uses a series of questions to study phenomena in its natural environment. It was suitable in this study because of the following justifications.

**(a) Research breadth and depth**

A survey design achieves broad representation in a short space of time, thereby providing quick solutions and responses to social problems (Judd, et al, 1991). Dooley (2003) says it achieves this through collecting data from a sample via a questionnaire.

**(b) Research setting**

A setting is an environment in which a study is carried out. A survey suits field settings, in which the phenomena of interest naturally occurs (Spector, 2000). Hence Rigsby (1991), in Judd et al, is quoted as saying survey research looks at phenomena that influence the interactions of people as they pursue their everyday lives.

**(c) Source and type of data**

Survey design uses secondary data as a basis for research question construction and research hypotheses generation (Dooley, 2003). This study collected primary data to confirm or refute published theory and available literature.

### **3.7 TIME HORIZON**

**Cross-sectional survey research**

Survey research has two designs, longitudinal in which a study is done at more than one point in time; and cross-sectional in which data is collected at a single point in time (Spector, 2000). Cross-sectional survey was used in this study because:

- (a) It is quick and less expensive as only a single study is carried out.
- (b) It is conducted on respondents who are asked about phenomena in their natural settings.
- (c) It saves time and resources, as a single study is carried out.

- (d) The problems at hand can be solved quickly.
- (e) It affords a student to complete research in time to finish studies

### **3.8 POPULATION AND SAMPLING TECHNIQUES**

#### **3.8.1 Research population**

Population is the total of all elements to which survey results are to be generalised (Dooley, 2003). Every member of the set represents the group. In this study the study population consisted of all the firms in Zimbabwe. They have to face the challenges brought by the limiting of fixed-term contracts of employment. The population target was then narrowed down to firms in Harare, for purposes of managing time and financial constraints. The table below shows the research population and sample frame.

The population thus comprised registered Human Resources practitioners who are actively listed on the Institute of People Management of Zimbabwe (IPMZ). The researcher considered Human Resources Managers of the firms because they are the ones who handle the engagement and productivity of employees at the workplace, hence are better placed to deal with issues of employment contracts. The researcher considered IPMZ because it is the main institution that brings all Human Resources Practitioners together for purposes of regulating the Human Resources practice. It is a forum where such topical issues like Labour Law reforms and Workplace challenges are discussed through various forums.

#### **3.8.2 Sampling**

A sample is a small subset of a study population which is chosen using a selected method. According to Saunders et al (2009) it is advantageous over census in serving costs and time. A census thus looks at the whole population. The sampling design details how the sample will be drawn from the population, and how issues of bias will be avoided.

The sample size has to be significant so as to allow results from the sample to be inferred on the whole population. A big sample reduces margins of errors involved with inferring

results from sample to the whole population. Dooley (2003) says the bigger is the sample the lesser is the chance of happening of sampling errors. Singh (2006) says the minimum acceptable sample for a research is 30 respondents. The sample in this study was made up of 40 respondents.

According to Saunders et al (2000), there are two sampling techniques, non-probabilistic and probabilistic. Probabilistic techniques are stratified random sampling, systematic sampling, and simple random sampling. Non-probabilistic techniques are experiment, case study, cluster and snowball. The researcher adopted the non-probabilistic technique of cluster in which simple random sampling was used to pick the participants.

The breakdown of the sample was as follows: HR directors (5), senior HR managers (10), middle HR managers(10), junior HR managers (15). The total was 40 HR practitioners. This allowed all levels of HR practitioners to be represented in the study. Questionnaires were thus distributed to these 40 HR practitioners who are in various sectors of the economy. The Human Resources Practitioners are all members of the Institute of People Management of Zimbabwe, Mashonaland Province, who are based in Harare.

### **3.9 DATA SOURCES AND COLLECTION PROCEDURES**

The researcher used both primary data and secondary data in order to meet the research objectives.

#### **3.9.1 Secondary Sources of Data**

Jacobsen (2011) says secondary data is data collected already for use by others but now being used for other purposes. Secondary data, in the form of literature review and statistical guidance, helps to define concepts, identify gaps and build on what has already been done. The researcher used newspaper articles, journals, textbooks, statistics, and various Acts of the Government including the Labour Act as amended in 2015.

#### **3.9.2 Primary Source of Data**

Primary data was used as the major source of data from which this research would draw conclusions and come up with recommendations. This was collected through questionnaires. It is directly relevant to the problem or situation at hand as it was generated for that purpose, (Babbie 2001).

### **3.9.3 Research Instruments**

Dooley (2003) identifies three types of research instruments as Mail (Postal or self-administered), Face-to-face, and Telephone. This study used Mail Questionnaire.

#### **Mail (Postal Questionnaire)**

Mail, chosen in this study, is when Questionnaires were distributed to respondents, and returned after completion. The major limitation is that return rates can be low, typically in the 20-30 % for the initial mailing, (Nederhof, 1985). Repeated mails may reach 60-70 % return rate. It has been seen that to increase the rate of response, the subject of research should be of interest to the studied population and the researcher should make a personal follow up (Dillman, 1978). This is what enhanced the return rate in this study.

#### **Advantages of a Survey Questionnaire utilised in this study**

According to Dooley (2003), the following were the advantages noted in this study:

- There was no interviewer bias. The respondents' responses were not influenced by the interviewer's presence or way of asking questions.
- Respondents were guaranteed anonymity.
- The study was conducted in a short space of time.
- Less pressure was put on respondents as they responded at their free time.
- It was less expensive to administer in terms of time and wages for interviewers
- It required no specially-trained interviewer.

#### **Disadvantages of a Survey Questionnaire**

According to Dooley (2003), the following were the disadvantages noted in this study:

- The questionnaire didn't explore the feelings of the respondents, or prod respondents to give more data in sensitive areas. To cater for this, a section for contributions and suggestions was put at the end of closed-ended questions.
- The wording and language can be interpreted to give a different meaning because there won't be an Interviewer to explain them. To cater for this, simple English was used in the Questionnaire which was pretested before the actual study.

### **Types of Questions used in the Questionnaire**

The Questionnaire used in this research had open-ended questions.

The justification of open-ended questions, according to Deacon, et al (1999), is that:

- Respondents were not limited in terms of the information they gave
- Respondents were free to express the required information in their own words
- Respondents were given space to freely express themselves
- Questions solicited for further information and explanations

The questionnaire had two parts. The first one is an introductory letter which introduced the researcher and the purpose of the study. See Appendix 1. The second part comprised of demographic information and the subject matter of the research.

### **3.9.4 Pilot study**

A pilot study was carried out using three people who were randomly selected and investigated from the population. Their concerns and worries were taken note of to ensure a clear, simple and straightforward survey. The time they took to respond was also

considered so that respondents in the actual research would be given a realistic period of time in which to answer the questions.

### **3.9.5 Data Collection Procedures**

The researcher distributed the research questionnaires to 40 participants who are members of the IPMZ. The questionnaires were accompanied by introductory letters explaining the nature of the study and the confidentiality of the research. The respondents were given between 14<sup>th</sup> December 2015 and 8<sup>th</sup> January 2016, which is 25 days in which to answer the questions. The Questionnaires were submitted back to the researcher for presentation and analysis of the data.

### **3.10 DATA ANALYSIS TECHNIQUES**

After collection of responses, there was presentation and analysis of data for easy of data interpretation. This was done by using tables, pie charts, bar graphs, percentages, frequencies, and listing responses to depict response rates, responses given and frequencies of measured phenomena. This allowed the researcher to summarise completed observations in a way that permitted tabulation and summarising so that the broader meaning of data was linked to the available knowledge as per literature reviewed (Judd, et al, 1991).

Descriptive analysis was thus used to present the main features of the information given by data in a comprehensible and summarising way as postulated by Owen & Jones (1994). Analysis of responses helped the researcher to answer the Research Questions.

### **3.11 VALIDITY AND RELIABILITY**

For research to be credible, it has to generate reliable and valid results. Reliability is the consistency of measurement across repeated observations on the same subject, while validity is the reality of results obtained (Spector, 2000). Reliability and Validity are affected by sampling and data collection errors as summarised in the following table by Dooley (2003).

**Table 3.1 Types of Survey errors and the problems they present**

Source of Error	TYPE OF ERROR	
	Random	Bias
Sampling	Lack of precision of survey estimates	Directionally wrong estimates
Data Collection	Lack of reliability of measurement	Lack of validity of measurement

**Source: Dooley (2003).**

**To increase Reliability and Validity the following steps were taken:**

- The wording was clear and simple to avoid variations in answers as respondents give self interpretations to badly worded items (Dooley, 2003)
- Questions were worded and written in the same item order because normally preceding questions influence the way the next ones are answered.
- The Questionnaire was pretested to correct ambiguous questions before the full-scale research was conducted.
- Questions were constructed basing on hypothesis so that the primary data collected would directly answer the Research Questions of the study.
- Closed-ended questions were used to collect the required responses only.

- At the end of the closed-ended questions was a question for respondents to give suggestions and contributions, giving them room to express their feelings.

### **3.12 RESEARCH ETHICS AND DATA CREDIBILITY**

There is a need for social research to contribute to knowledge, and at the same time to protect the respondents from unfair treatment or harm. There is also a strong need to protect the work of other researchers and writers so that researchers do not claim other peoples work as theirs (Dooley, 2003). If this situation is ensured in a research then the research is said to be ethical, or fair.

#### **To be ethical in this study, the following steps were taken.**

- The intention of the study was explained to the respondents before the study.
- The participants were not forced to co-operate. They participated willingly.
- The respondents were guaranteed anonymity.
- The participants were thanked, and their contributions were appreciated.
- The research data was kept confidential. The Recommendations were however availed to the Tripartite for implementation purposes only.
- Appropriate approval was obtained from the relevant departments and authorities before the research was conducted.
- All the reviewed literature and quoted work was acknowledged in the report, and referenced in the bibliography at the end of the report.

### **3.13 CHAPTER SUMMARY**

This chapter covered the research methodology used in this study. The research used the positivism philosophy, deductive approach and survey design. The study was cross-sectional in which a survey questionnaires was used. The questionnaire collected

qualitative responses to allow participants to fully and freely express themselves. The questionnaire was distributed to 40 participants who are Human Resources Managers in companies in different sectors of the economy. Issues of data credibility and ethics were addressed in the study. This paved way for the next chapter which looked at the research findings and analysis. Conclusions were drawn from results and appropriate recommendations were made for improvement of the Labour Laws in Zimbabwe.

## **CHAPTER FOUR FINDINGS AND ANALYSIS**

### **4.1 INTRODUCTION**

This chapter presented the data obtained from respondents, and the associated discussion and explanation of the findings. The data was presented then analysed to allow for comparing and contrasting the data collected against the information readily available in existing literature on the subject matter. The data was presented in tables, charts, graphs and content analysis. The findings were used to test the research hypothesis. Insight gained from conceptual framework helped the researcher to interpret results of the sorted data. The chapter covered the response rate, responses by education, responses by position, responses by economic sector, the rate of FTCs in organisations, the reasons why firms use FTCs, the challenges faced by firms as a result of limiting FTCs and what the firms should do to deal with the problems caused by the limiting of FTCs by Section 12(3a) of the Labour Act (28:01). The research objectives were addressed by responses from the respondents.

### **4.2 RECAPITULATION OF THE RESEARCH OBJECTIVES**

The purpose of this research study was to provide a realistic assessment of the challenges faced by firms as a result of limiting of FTCs by Section 12(3a) of the Labour Act (28:01). This study should contribute significantly to the adoption of effective mechanisms of handling this important aspect of the Labour Relations in Zimbabwe. The

overall research objective was further broken down into the following Research Objectives in order to fully cover the different variables to be considered in this study.

1. To understand factors influencing the widespread use of fixed-term contracts of employment as opposed to full-time contracts of employment.
2. To find out how employers interpret Section 12(3a) of the Labour Act (28:01)
3. To investigate the challenges faced by firms as a result of limiting fixed-term contracts of employment by Section 12(3a) of the Labour Act (28:01).
4. To recommend how companies should deal with challenges resulting from limiting of fixed-term contracts by Section 12(3a) of the Labour Act.

### 4.3 RESPONSE RATE

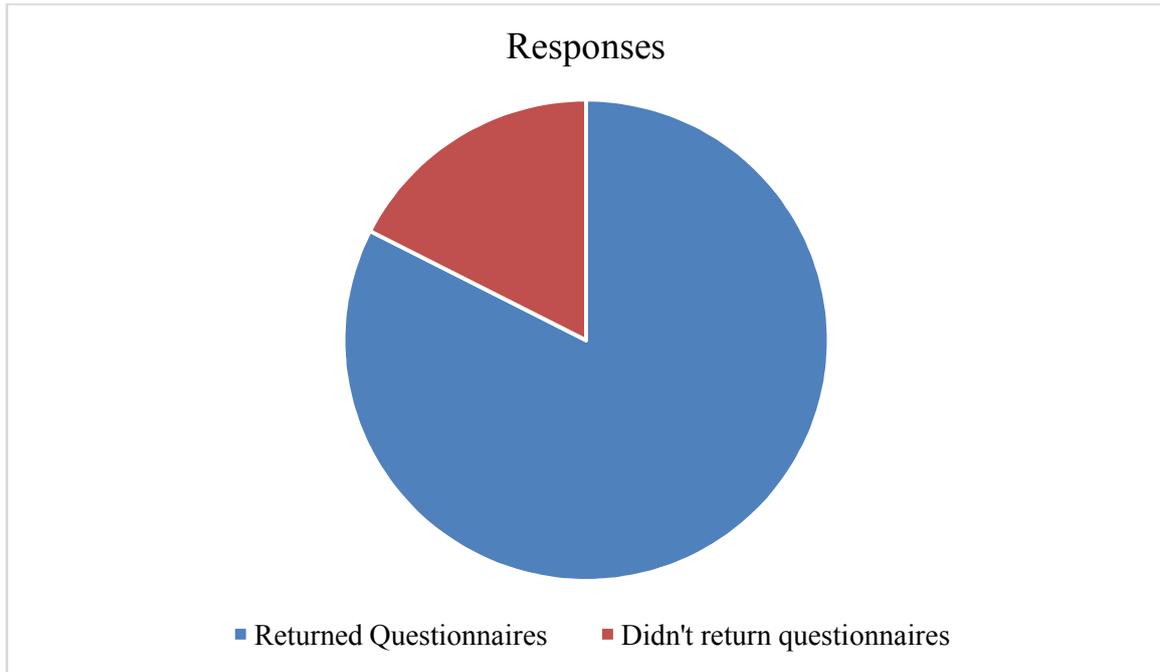
**Table 4.1. The Overall Response rate**

<b>Research Sample</b>	<b>Responses</b>	<b>Response Rate</b>
40	33	82.50%

**Source: Primary data**

As shown in Table 4.1, the questionnaires were distributed to 40 respondents. From these 40 questionnaires, 33 questionnaires were returned to the researcher by the set deadline. The pie chart below shows the percentage responses.

**Figure 4.1 Overall Response Rate**

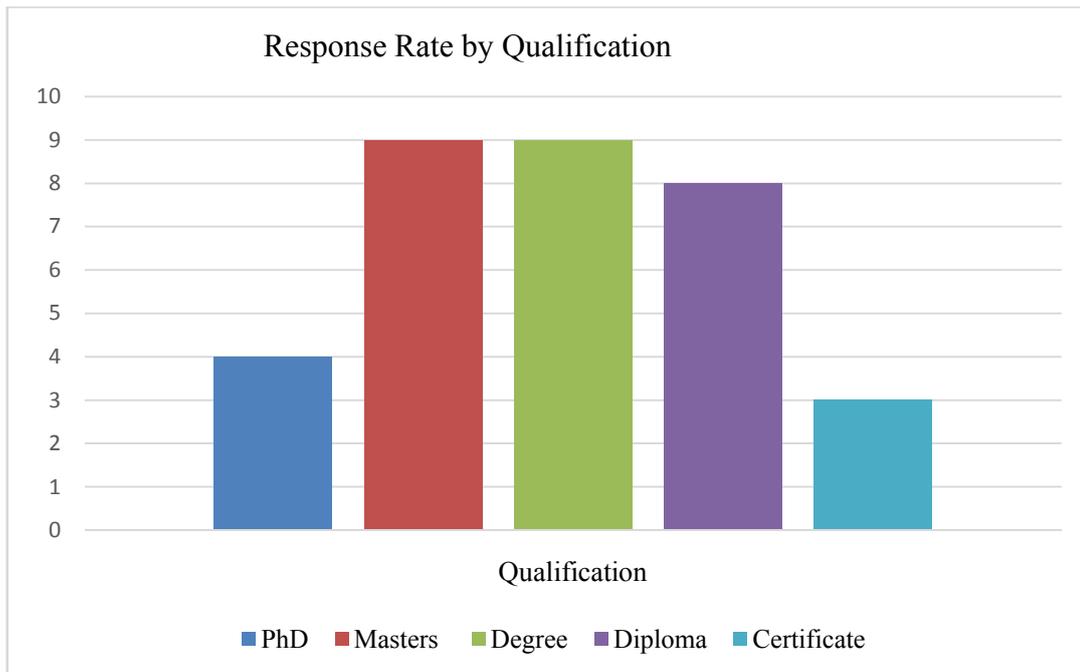


**Source: Primary Data**

The response rate was 82.5%, which is high enough to warrant validity and reliability of the research findings according to Owen & Jones (1994). This allowed the research findings about the challenges faced by firms as a result of limiting FTCs by the Labour Act to be generalised to the firms in Zimbabwe.

**4.3.1 Response rate by Qualification**

**Figure 4.2 Responses by Qualification**



**Source: Primary Data**

The graph shows that from the 5 participants with PhDs 4 returned the filled questionnaires, from 10 participants with Masters Degrees 9 returned the filled questionnaire, from 10 with Degree 9 returned the filled questionnaire, from 10 with Diplomas 9 returned filled questionnaires, and from 5 participants with Certificates and Other qualifications 3 returned the filled in questionnaires. The percentage contribution of each category is shown in the table below.

**Table 4.2 Responses by qualification**

Category	Sample	Responses	Response Rate
PhD	5	4	10%
Masters Degree	10	9	22.5%
Degree	10	9	22.5%
Diploma	10	8	20%
Certificate/Other	5	3	7.5%
Total	40	33	82.5%

**Source: Primary data**

The response rate shows that 7.5% of the respondents had Certificates, 20% had Diplomas, 22.5% had Degrees, 22.5% had Masters Degrees, 10% had PhDs. The total responses of respondents with Diploma or higher was 75%. Only 7.5% had Certificate level qualifications. These responses show that the respondents had high qualifications, ranging from Certificate level to PhD level. From this response rate it can be seen that the

respondents were educated enough to understand the issue being researched and appreciate its importance to their organisations. This indicates that responses given were given from an informed point of view.

#### 4.3.2 Response rate by Job Title

**Table 4.3 Response rate by level of position in organisation**

Category	Sample	Response	Response Rate
Director	10	8	20%
Senior Manager	15	14	35%
Middle Manager	10	8	20%
Junior Manager	5	3	7.5%
Total	40	33	82.5%

**Source: Primary Data**

The responses show that a small percentage of the respondents who returned the questionnaires were junior managers in the Human Resource Management department. These constitute 7.5% of responses. The rest of the responses came from respondents in higher managerial positions in the Human Resource Management department. 20% of responses came from middle managers, 35% of responses came from senior managers and 20% of responses came from directors. In total 75% response is attributable to respondents above the junior management level. This shows that most responses came from senior people in the Human Resource Management department, who deal with policy issues and problem solving in industrial relations in organisations. These are the people who either craft or recommend Human Resources policies in organisations, hence their contributions reflect the positions of their organisations in terms of the subject matter being investigated.

#### 4.3.3 Response rate by Economic Sector

**Table 4.4 Response rate by economic sector**

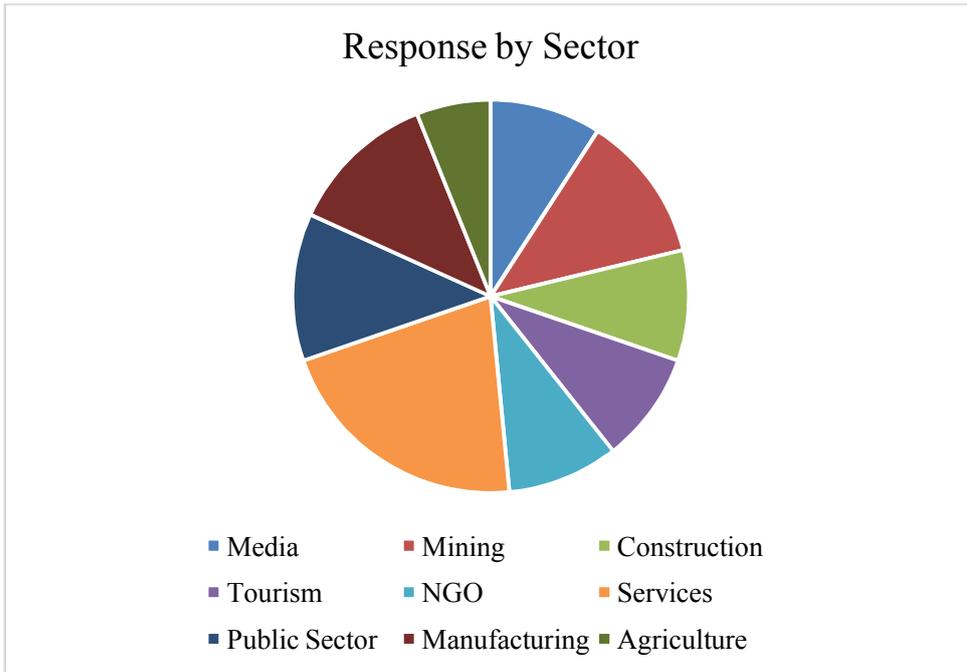
<b>Sector</b>	<b>Sample</b>	<b>Responses</b>	<b>Response Rate</b>
Media	3	3	7.5%
Mining	5	4	10%
Construction	4	3	7.5%
Tourism	3	3	7.5%
NGO	3	3	7.5%
Services	8	7	17.5%
Public sector	4	4	10%
Manufacturing	6	4	10%
Agriculture	4	2	5%
<b>Total</b>	<b>40</b>	<b>33</b>	<b>82.5%</b>

**Source: Primary Data**

The respondents were from various sectors of the economy. Table 4.4 shows that there is an even distribution of respondents across the different sectors of the economy. The lowest was 5% from Agricultural sector. This could be because on average there is now reduced employment in the sector after the controversial land reform. The highest response was 17.5% which came from the Services sector. At 7.5% response rate were respondents from other sectors like Media, Construction, Tourism and Non Governmental Organisations. At 10% were responses from Mining, Public Sector and Manufacturing. The responses show that there as a fair spread of responses from various sectors.

This means that the results can therefore be taken to be representative of the general economy of Zimbabwe. Results can therefore be generalised to all the sectors of the economy as shown on the following diagram.

**Figure 4.3 Responses by Economic Sector**



**Source: Primary Data**

## 4.4 APPRECIATION OF FIXED TERM CONTRACTS AND THE USE OF FIXED TERM CONTRACTS OF EMPLOYMENT IN ZIMBABWE

### 4.4.1 The definition of a Fixed-Term Contract of employment

The respondents gave their different definitions of the Fixed-term contracts which demonstrated that they know what FTCs are. These are shown in the following table.

**Table 4.5 Definitions of Fixed-term Contract of employment**

Frequency	Responses
11	Eleven participants indicated that a fixed-term contract of employment is an agreement between employer and employee with a limited duration of time.
8	Eight participants defined a fixed-term contract of employment as an agreement that is meant for a specific task in a given space of time.
9	Nine participants said a fixed-term contract of employment is a contract for non-permanent jobs hence it expires after performance of the task.
5	Five participants said a fixed-term contract of employment is an arrangement, whether reduced into writing or not, for doing a specific job in a specified time after which it expires.
<b>Total 33</b>	

**Source: Primary Data**

The way participants defined FTCs bring out the following key elements. 33% of participants indicated that it is an agreement between employer and employee in terms of the employment relationship. Parties have to agree that they are establishing an employment relationship. This means that they agree on the terms and conditions of the agreement. 24% said there has to be a job or task to be done. The parties know the work that is to be done and how it should be done. This task should be of the nature that calls for short-term. Once it is proven that a job is of a permanent nature the employer is expected to make the employee in that job a full-time employee.

27% of the participants indicated that the agreement expires after the performance of the task. This however has to be within the stipulated time frame. There is a time limit to the agreement. A fixed-term contract of employment has a time limit as it is not forever. 15% mentioned the issue of either reducing the agreement into writing or not. While Section 12(1) of the labour act says an employment relationship can be written or not, it will be tricky to leave it unwritten as it causes a lot of problems in industrial relations. Section 12(2) goes on to mention that the employer has a duty to inform the employee in writing about the particulars and conditions of the employment contract. It is therefore safe to have it reduced in writing. Overallly the participants demonstrated knowledge of FTCs. Their varying way of defining the FTC does not surprise given that the Labour Act does not directly define what an employment contract is.

#### 4.4.2 The percentage of employees on FTCs compared to those on permanent contracts

**Table 4.6 Percentages of employees on FTCs**

<b>Sector</b>	<b>Average Percentage of Employees on FTCs</b>	<b>Average Percentage of Employees on Full-time Positions</b>	<b>Total Percentage</b>
Media	79	21	100
Mining	50	50	100
Construction	84	16	100
Tourism	52	48	100
NGO	96	4	100
Services	89	11	100
Public Sector	7	93	100
Manufacturing	73	27	100
Agriculture	85	15	100
<b>Average</b>	<b>68.33%</b>	<b>31.67%</b>	<b>100%</b>

**Source: Primary Data**

The results show that in the private sectors there are more employees on FTCs than those in full-time positions. In the private sectors Mining which has the lowest FTCs with 50% of its employees on FTCs and the other 50% on full-time positions. This may be explained by the fact that most mining operations in the country were lucrative and in

order to attract the best brains the employers were offering full-time employment for most jobs. As the economic conditions worsened and prices of commodities tumbled on the world market the companies began to experience operational problems, hence they started to cut down of permanent employment (Robertson, 2015). NGOs have the highest number of employees on FTCs, being at 96%. This is best explained by the fact that most of them operate on a project basis in terms of the funding they receive from donors. Hence they stop the bulk of their employees on FTCs until they get another funding for another project, after which they then hire again on new terms. The average percentage of employees on FTCs in the private sectors is 76%, which means that those on full-time positions are as low as 24%. This means that Section 12(3a) which limits FTCs is going to strongly affect most firms in the private sectors as it has an effect of gradually converting FTCs into full-time positions.

While in the public sector there are less employees on FTCs than those in full-time positions. Those who are on FTCs are 7% and those on full-time positions are 93%. This is best explained by the fact that the public sector falls directly under the Government of Zimbabwe. The government as a part to the TNF, which wants to safeguard the rights of employees and provide them with job security, would want to lead by example. Hence it confirms the permanent employment of the bulk of its employees, especially those directly in the various ministries. A few who are on FTCs are mainly in parastatals that fall under the Government that have a small degree of autonomy in terms of their management.

The other reason that explain the variance between the big percentage of employees on FTCs in the private sectors and the very small percentage of employees on FTCs in the public sector is due to issues of competitiveness and cost management. The government gets most of its funding from the budget of the nation, which draws from coffers. There is therefore no pressure in terms of getting a return on investment, hence less emphasis is put on the need to control payroll costs. The government sometimes give full-time employment for political mileage. Whereas in the private sectors there is a need to be flexible in terms of managing staff costs, adopting technological advancements and

getting value from every employee recruited. This calls for the employment of more employees on FTCs than in full-time positions.

#### 4.4.3 The reasons why companies use FTCs

**Table 4.7 Reasons why Zimbabwe companies use FTCs**

<b>Response</b>	<b>Reasons why companies use FTCs</b>	<b>Frequency</b>
1	To cater for times when demand is high	9
2	To carry out seasonal work	16
3	To do periodical manual work	4
4	To work in a specific project	8
5	To temporarily replace employees on leave (sick, maternity or vacation)	14
6	To test viability of business	5
7	To have more time to evaluate new employees	11
8	To effectively manage performance before confirming employment	13
9	To be able to have the flexibility to revise numbers in hard times	23
10	To save money by differentiating between benefits given to employees on FTCs and those on permanent positions	19
11	To be able to effectively respond to technological changes	7
12	To avoid paying the costly retrenchment packages	29
13	To avoid the burden of having to go through difficult legislation when the need to downsize the workforce arises	22
14	To offer opportunities of training and development to students on learnership programmes.	19

**Source: Primary Data**

While a few participants gave one reason only, most of them gave more reasons each, hence the frequencies indicated in the table above will not add up to the cumulative number of participants. The frequencies are for each reason given, and will be treated as

such in the discussion of results. The reasons given by participants vary from each other, which is an indication of the various realities participants face in various sectors of the economy. A participant said they want to be able to downsize any time they want to.

The first five reasons in the table indicate the nature of the work to be done. The reasons in this regard are to carry out work which is not permanent but seasonal, casual, project-based and necessitated by emergency situations. This means that such jobs are not of a permanent nature hence employers who employ for these reasons won't have problems with Section 12(3a) of the Labour Act.

The following three reasons from response six to response eight are related in that they address the issue of transition. Companies may need to assess how the economy goes when they enter new markets or introduce new products. The performance of the company will determine whether employees in FTCs are then confirmed full-time employees. In some cases companies may want to assess how an employee performs before giving full-time employment. This is especially so in cases where the three months probation provided for in the Labour Act is deemed as not enough to have fully assessed the performance of an employee. In some cases companies may use FTCs to push employees to raise performance levels to a certain level before confirming the employment of high performers.

The following three reasons from response nine to eleven are related to the issue of flexibility. The reasons given are to have the flexibility to respond to revise staff figures in response to the economic environment. Companies want to be able to respond to adoption of new technologies and systems, hence the need to put employees on FTCs. In some cases companies employ FTCs to reduce wage-related costs by not giving some benefits to the employees on FTCs. For example some companies do not subscribe medical aid for employees on FTCs. This allows them financial flexibility. This dovetails with the wage differential theory of FTCs. This however causes employees on FTCs to feel segregated, in which case their morale and motivation may be affected significantly, resulting in low productivity and poor quality/

The reasons under response twelve and thirteen look at the issue of separation between the employer and the employee. Employers prefer a situation where separation with employees is not difficult. The reasons given by participants for using FTCs are to avoid the rigorous process of retrenchment and to avoid paying huge amounts of retrenchment

when the situation demands that the workforce be reduced. Makings (2015) however says there is now no difference between full-time employees and employees on FTCs as both are now entitled to gratuity. The minimum compensation according to Section 12(c)(2) of the Labour Act is one month's salary for each two years served.

The last reason, number fourteen speaks of offering service to learning institutions. Some companies offer places for attachment and graduate trainee programmes. These are covered under FTCs. While this is a service to the nation, companies who do so benefit in a number of ways. They pay lesser to the students than they would have to full-time employees. The students can bring in new ideas and ways of doing business.

An analysis of the reasons given show that companies have genuine justifications to why they use FTCs. The limiting of FTCs will thus affect the companies to a greater extent, hence the findings of this study are of much relevance to firms at this point in time.

#### **4.4.4 The disadvantages of using FTCs**

The table below show the disadvantages of using FTCs as stated by participants.

**Table 4.8 Disadvantages of using FTCs**

<b>Disadvantages of Using FTCs</b>
1. There is high unscheduled turnover as most employees on FTCs seek opportunities for full-time positions elsewhere.
2. Employees on FTCs may generally feel segregated, hence their morale and motivation may be negatively affected.
3. It is involving administrative wise.
4. There are a number of labour cases that arise as a result of the use of FTCs.
5. Increased need for training and development of both new and old employees. .

**Source: Primary Data**

Table 4.8 shows that there are disadvantages that companies have to face as a result of the use of FTCs. One participant said there is unscheduled turnover of employees. Another said low staff morale. Another said increased labour disputes and training costs. All these disadvantages show that staff morale and individual motivation are important. Where employees are segregated they feel alienated, hence their commitment dwindles.

#### 4.4.5 The minimum and maximum duration of FTCs in organisations

**Table 4.9 Durations of FTCs**

<b>Minimum duration</b>	<b>Frequency</b>	<b>Maximum duration</b>	<b>Frequency</b>
0-3 months	12	3 months	2
3.1 – 6 months	8	3.1 – 6 months	8
6.1 months – 1 year	7	6.1 months – 1 year	14
1.1 – 2 years	4	1.1 – 2 years	6
+2 years	2	+ 2 years	3

**Source: Primary Data**

The results show the minimum and maximum durations of each FTC in organisations. Two participants which is 6% of the participants indicated that their minimum duration is 2 years for FTCs and these are from the NGOs sector. This can best be explained by the fact that most NGOs operate on project basis, and most projects run for this period. Twelve participants which is 36% of the participants indicated that the minimum duration of FTCs in their organisations is between below 3 months up to 3 months. This shows that most FTCs are either to cater for piece-jobs, temporal replacements or casual employment. In the commercials sector it is however now difficult to issue contracts below 3 months of duration unless they are casual workers.

When looking at the maximum durations of FTCs 2 participants indicated that the maximum for their FTCs is 3 months. This may indicate that the contracts are mainly of casual work and emergency work. Fourteen participants, which is 42% of participants

indicated that the maximum of FTCs in their organisations is between 6 months and 1 year. This shows jobs which are mainly seasonal and predictable in nature. Only 3 participants, which is 9% of the participants offer FTCs that are above 2 years. FTCs of longer periods may indicate that the jobs in question are of a permanent nature to the organisation's operations.

## **4.5 CHALLENGES OF LIMITING FIXED TERM CONTRACTS OF EMPLOYMENT**

### **4.5.1 Employer's interpretation of the intention of Section 12(3a) of the Labour Act**

**Table 4.10 Employer's Interpretation of Section 12(3a) of the Labour Act (28:01).**

<b>Intention of Section 12(3a) of the Labour Act (28:01)</b>
<ul style="list-style-type: none"> <li>➤ To protect employees from abuse by employers</li> <li>➤ To avoid casualization of labour of a permanent nature</li> <li>➤ To indirectly promote transitions from FTCs to full-time employment</li> <li>➤ To appease the workers</li> <li>➤ To fix employers as they had stopped over 25000 employees on 3 months notice without paying retrenchment packages</li> </ul>

**Source: Primary data**

The participants had varying interpretation of the intention of Section 12(3a) of the Labour Act. One participant said the government felt compelled to protect employees from abuse by employers. Another said it is to appease employees who are the electorate. When employees are on FTCs they have less say as they are treated at the periphery of the organisation. According to the Wage differential theory there are benefits that they do not get in some organisations. Most FTCs do not join Trade Unions to defend themselves as they fear victimisation. By being confirmed on full-time employment they can then benefit the same with other employees, and be able to express their views and concerns.

The other reason given was to avoid casualization of labour. The Termination of Employment Convention, 1982 (No. 158) and the Termination of Employment Recommendation, 1982 (No. 166), are both meant to promote the gradual convention of employees from FTCs to full-time employment as they discourage the practise of keeping employees on FTCs in jobs that are of a permanent nature. This convention and recommendation are reflected in labour laws of member states. Zimbabwe being a member ratified these ILO provisions, hence section 12(3a) now promote gradual movement of employees from FTCs to full time employment. While this is good in jobs that are surely of a permanent nature, the only problem is that not all jobs should have full-time contracts.

Some participants felt that the government should not have enacted such a clause given the economic hardships the nation is experiencing. This dovetails with the views of Robertson (2015). One of the participants said attraction of investment should be prioritised. The participant said Mufukare (2015) felt that doing so was only meant to fix employers because of the Zuva case after which over 25 000 employees were laid off on notice without going the retrenchment route. While business is justified in feeling short-changed, the situation called for the government to balance the needs of business and employees. In all such cases the government is accused of trying to appease workers.

**4.5.2 Whether Employers agree to the provisions of Section 12(3a) of the Labour Act which says that an employee on FTC automatically becomes a full-time employee upon expiry of a period of continuous service as fixed by the appropriate National Employment Council or prescribed by the Minister of Labour, and the employee shall be accorded benefits accruing to full-time employees.**

**Table 4.11 Whether Employers agree with the provisions of Section 12(3a) of Labour Act**

<b>Those who Agree</b>	<b>Reasons</b>	<b>Those who Disagree</b>	<b>Reasons</b>
5	<ul style="list-style-type: none"> <li>➤ To avoid casualization of labour</li> <li>➤ To avoid abuse of workers by employers</li> </ul>	28	<ul style="list-style-type: none"> <li>➤ It makes doing business in Zimbabwe costly</li> <li>➤ It goes against the economic outlook</li> <li>➤ It removes flexibility from employers</li> <li>➤ It forces employers to create full-time employment when the economy demands relaxation of labour laws</li> <li>➤ It does not in itself create more employment</li> </ul>

**Source: Primary data**

Only 5 out of the 33 participants who responded said they agree with the contents of Section 12(3a) of the Labour Act. This is 15% of the participants. Their reasons are that there is a genuine need to avoid casualization of labour. They feel that there is a need to

protect employees from abuse by employers. Their reasons agree to the intention of government as explained by Mupfumira (2015).

28 out of the 33 participants said they disagree with the contents of Section 12(3a) of the Labour Act (28:01). This constitutes 85% of the participants. Their reasons are that the clause deprives employers the flexibility to right-size workforces in response to economic outlooks and technological improvements. They say it makes doing business in Zimbabwe difficult as employment costs are increased unnecessarily. This agrees with the view by Murerwa (2015) who said the current economic outlook does not call for reforms that weigh down companies by making it difficult for them to right-size staff figures.

An overall analysis of the responses shows that the bulky of companies, that is 85% are not happy with this clause as it goes against the spirit of liberalizing labour laws to promote flexibility and competitiveness of businesses.

#### **4.5.3 How Employers will treat employees on FTCs with regard to Section 12(3a)**

**The participants gave the following responses**

##### **Making some of the employees permanent**

A few participants said they would gradually make a few of the employees permanent employees. A participant said we will confirm good ones only. Thereasoning is that some employees are good performers and if their jobs are essential to the organisation they would rather offer them permanent jobs. This will apply to key employees and positions. This agrees with Makings (2015) who said it would make sense to confirm employees whose jobs are of a permanent nature. The problem they will face with Section 12(3a) is that it does not identify jobs for which this criteria can be used, but it puts all FTCs in one basket.

### **Stopping them and reengage them later after the expiry of the duration of continuous service**

Most participants said they will stop the employees once their set limit has been reached. One said they will recall them later when the duration of break of continuous service stated in their sector regulations has been reached. Another said they will thus come back as new employees on new contracts. This is what most companies are currently doing with regards to casual workers and seasonal workers. What this means is that instead of enjoying successive renewals of FTCs employees will now have to be laid off for lengthy periods. For example in the commercial sectors they have to be stopped for about two years before being considered again afresh. This is obviously disadvantageous to employees as they go through patches of unemployment.

### **Stopping them forever and employ others in their place**

Some participants said they will stop the employees on FTCs at the end of the stipulated durations of the FTCs. They will then employ other employees on FTCs in their stead. By so doing they avoid making employees full-time employees. What this basically means is that they want to run away from issues attached to full-time employment. These are difficulties in stopping permanent employees in times of economic difficulties, paying more benefits to permanent workers like pensions and medical aid, and large wage bills.

While the companies can stop those on FTCs and employ others in their stead, they have to be very careful how they do it because they can run the risk of having those stopped claiming for legitimate expectation of continued employment because others were then employed to fill the vacancies they were stopped from doing. Makings (2015) advocates for stating in a FTC that there shall not be legitimate expectation of renewal beyond the stipulated duration. This then helps in stopping the employees as in most such cases it will have been agreed between employer and employee.

#### **4.5.4 Challenges to be faced by firms as a result of limiting FTCs**

The participants gave a number of challenges companies will face as a result of Section 12(3a). These are analysed and explained in the following sections.

#### **4.5.4.1 Difficult administration of FTCs**

Most participants said making a mistake with FTCs may cost the company to make all of them permanent. One of the participants said renewals have to be done timely. According to Section 12 (1) to (3) a contract of employment should be communicated to an employee in writing, stating the particulars of that contract. Section 12(3a) then sets a limit to the FTC that an employer can give an employee. What this means is that of an employee is allowed to work without a contract, either at the beginning of an employment relationship or after the delay in a renewal of the current FTC, such employee is deemed to be on a contract without limit of time. This calls for proper management of FTCs. Makings (2015) says any slight delay may cost the company dearly as vast workers can be made full-time employees by default. It is therefore important to make sure every employee has signed their contract. It is equally important to ensure timely renewals of FTCs.

#### **4.5.4.2 Losing good performers**

Participants said there is a danger of losing good performers. One of the participants said at the end of the stipulated duration of FTCs they will confirm some and release others. Another said a big number of them will be stopped, even those who are good performers may be sacrificed as companies can't afford to have most of their employees on permanent positions, given the uncertain and difficult economic outlook. In the place of the good performers who are sacrificed the company can then employ someone else who may not be good enough or as good as the one who has been stopped.

#### **4.5.4.3 Unnecessarily confirming employees permanent**

Some participants said the Section 12(3a) of the Labour Act aims at gradually converting FTCs to permanent positions. They view this as unfair as it unnecessarily increases the number of full-time employees. Full-time employees are entitled to more benefits than employees on FTCs. These can be pension contributions, medical aid contributions, assistance with housing or transport. By having more employees on permanent contracts

the employers will now have to pay more in terms of benefits. When the economy gets tough or when the need to adopt better technology that requires less employees, it is difficult to revise staff figures when most employees are on permanent positions. Employers would therefore prefer to have most of their employees on FTCs.

#### **4.5.4.4 Incurring more recruitment costs**

A participant said by stopping employees on FTCs at the end of their contracts and engaging others in their stead they will now incur more recruitment costs. Another said it was cheaper in the old set-up where FTCs could be rolled over and over again without limit.

#### **4.5.4.5 Unscheduled staff turnover**

Most participants said there will be increased staff turnover. Some said where employees know that the renewals of their contracts will have limit they also become unstable. They will thus begin to look for employment elsewhere in order to jump ship before the end of their FTCs. This will result in a high level of unscheduled staff turnover. This greatly results in staff shortage and new employees with less knowledge of company culture.

#### **4.5.4.6 Incurring more training and development costs**

A number of the participants indicated that by constantly engaging new employees to replace those stopped at the end of their FTCs and those who resign on their own to look for better conditions elsewhere, the company will incur increased costs of training and development of new employees and the existing ones. One participant said they now need more to train new employees as they can't roll over FTCs for longer periods. Another said new employees need training in terms of induction, product knowledge, and company culture and skill development. This costs the company in time and financial resources.

#### **4.5.4.7 Increased number of labour disputes**

One of the participants said the stopping of employees at the end of stipulated durations will cause claims of legitimate expectations. Another said the confirming of others leaving out others will result in feelings of segregation. This indicates that according to participants there is bound to be an increase in the number of labour disputes. These will mainly centre on legitimate expectation of confirmation to permanent status. Other claims of unfair labour practices may arise in the area of payments of terminal dues to the employees stopped.

#### **4.5.4.8 Demoralised employees**

Some participants said the way companies will respond to Section 12(3a) may cause demoralised workers. One of them said when employees on FTCs know that at the end of the stipulated duration of their contracts they will be stopped they become insecure and unstable. Another said stopping employees dampens their morale and reduces their motivation to work hard. Demoralised employees cost the company in terms of performing poorly and producing low quality work (Sarantinos, 2007). This agrees with the Flexibility theory of FTCS which states that employees who are on FTCs in some cases display poor performance due to the fact that they do not feel at home (Collin and Calydon, 2005).

#### 4.5.5 The way Employers should deal with the challenges caused by limiting of FTCs

**Table 4.12 How employers should deal with the identified challenges**

<b>Challenge</b>	<b>How to deal with it</b>
<b>Difficult administration of FTCs</b>	Appoint a senior person to handle contracts issuing, renewals and terminations.  Such person to diarise all dates in relation to contracts.
<b>Losing good performers</b>	Gradually confirm a few good ones into full-time employment.
<b>Unnecessarily increasing number of full-time employees</b>	Stopping those whose FTCs have expired and either engaging them after breaking the continuous service duration or engaging others in their stead.
<b>Increased Recruitment Costs</b>	Having ready databases of possible candidates in place.
<b>Unscheduled turnover</b>	Trying to make the workplace better by improving on benefits and creating an environment of friendliness.  Having a ready supply of standby candidates in place.
<b>Increased Training and Development Costs</b>	Reducing unnecessary trainings and focus on key issues.  Using internal resources to reduce costs of training.
<b>Increased number of labour disputes</b>	Making sure all employees have clearly written contracts that cover all relevant particulars.  Following legal regulations in dealing with terminations and disciplinary issues.  Creating a fair environment where those on fixed-time contracts are treated the same with those on full-time contracts.

<b>Demoralised Employees</b>	Offering training, better benefits, and being fair in treating FTCs the same as permanent employees.
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**Source: Primary data**

The table shows that the companies are aware of the challenges they are going to face as a result of Section 12(3a) of the Labour Act (28:01). Hence they have suggested very useful and practical ways of dealing with the identified challenges. A participant said they will appoint a senior person to administer FTCs. This agrees with the view by Makings (2015). Another said they will confirm good employees to permanent status. One of the participants said they will stop them and reengage them after expiring of length of service. Another said they will invest in cost-effective training and recruitment. This shows that for each problem identified participants have solutions to be cushioned.

#### **4.6 TESTING OF THE RESEARCH HYPOTHESIS**

**In this section the hypothesis of the research will be tested.**

**The hypothesis states that:**

While the Government amended the Labour Laws to protect workers from abuse by employers, and at the same time align labour laws to the prevailing economic conditions to attract investment and promote productivity, limiting fixed-term contracts of employment presents a serious challenges to companies in Zimbabwe.

This will be validated by the data on research objectives as follows.

**Objective 1: To understand the factors influencing the widespread use of fixed-term contracts of employment in Zimbabwe**

The research findings show that employers prefer to use FTCs to get the flexibility to be able to revise staff figures in times of economic hardship and where there is a need to adopt modern and better technology that improves productivity and reduces costs. It also helps in saving costs where there are wage differentials between full-time employees and

those on FTCs. In some cases it is to avoid paying more and going through rigorous exercises in situations where some employees have to be retrenched. These reasons show that employers have genuine reasons for the widespread use of FTCs.

**Objective 2: To get the companies interpretation of the limiting of fixed-term contracts of employment by Section 12(3a) of the Labour Act (28:01)**

The participants gave varying interpretations of the intention of Section 12(3a) of the Labour Act (28:01). A few of them interpret the clause as the government's intention to discourage casualization of labour and protect employees against abuse by the employers. Most participants however felt that this clause is not business friendly as it fixes employers to confirm employees and pay hefty retrenchment packages in an economy that is struggling to attract investment.

**Objective 3: To investigate the challenges faced by firms as a result of the limiting of fixed-term contracts of employment by Section 12(3a) of the Labour Act (28:01)**

The research findings show that there are a number of serious problems that employers face as a result of Section 12(3a) of the Labour Act. Participants said these are the administration of FTCs, losing good employees, unnecessarily confirming employees on permanent employment, unscheduled staff turnover, increased recruitment and training costs, demoralised employees, and increased labour disputes. This objective was thus satisfied as it found information that is very relevant right now and going forward.

**Objective 4: To recommend how companies should respond to the limiting of fixed-term contracts of employment by Section 12(3a) of the Labour Act (28:01)**

Some participants said they will appoint senior people to deal with administration of FTCs. Some said good employees will be moved from FTCs to full-time employment.

Some said employees will be stopped and rehired later. Some will be stopped for good and replaced by other employees on FTCs. Participants will try to create environments of fairness and motivation to increase the productivity of all employees.

### **Validation**

The results obtained from the study show that the coming into effect of Section 12(3a) of the Labour Act (28:01) poses serious challenges to companies. The study showed that 68% of employees in Zimbabwe are on FTCs. Participants said they employ FTCs due to the need for flexibility and competitiveness in a global environment where technological changes and economic shake ups call for companies to be swift and innovative.

The main challenges are administration of FTCs, increased recruitment and training costs, demoralised employees, unnecessarily increasing the number of permanent employees and losing good employees at end of each cycle of FTCs.

Employers should respond in a number of ways. They will stop employees whose FTCs have reached limits, reemploy some of them after expiration of period of continuous service, confirm a few good ones to full-time positions, appoint senior people to administrate FTCs, and adopt cost-effective recruitment and training of employees.

The challenges and how the companies will deal with them affect the competitiveness of businesses in Zimbabwe hence negatively affect the attraction of investment into the country. Once there is no improvement in terms of investment flows into the economy then there won't be the much-needed creation of employment. If at all the economy will actually deteriorate further as the manufacturing sector remains dead.

The findings of the research therefore validate the research hypothesis.

### **4.7 CHAPTER SUMMARY**

This chapter presented the research findings, an analysis of the findings and a discussion of the results. The topic identified the serious challenges that companies face as a result of

Section 12(3a) of the Labour Act, and how they will deal with them. The analysis of the findings looked at the response rate and findings as per each research objective the study sought to achieve. The Chapter presented the findings in a way that allows for conclusions and recommendations to be made. These conclusions and recommendations will be addressed in the next chapter.

## **CHAPTER FIVE CONCLUSIONS AND RECOMMENDATIONS**

### **5.1 INTRODUCTION**

This chapter gave the conclusions based on the findings from the data gathered as a response to the research questions. It provided a validation of the research hypothesis. The conclusions from the research data collected and the validation of the research hypothesis led to the formulation of research recommendations. This will help companies to deal with challenges brought by the limiting of fixed-term contracts of employment by Section 12(3a) by the Labour Act (28:01). Policy makers were urged to give a further look into the current Labour laws with a view to further liberalise them so as to attract investment and create more employment. Recommendations were given for further studies.

### **5.2 CONCLUSIONS**

The researcher sought to find out the challenges faced by Zimbabwean firms as a result of the limiting of fixed-term contracts of employment by the 2015 Labour Law Reforms. To the researcher's knowledge it is the first study in Zimbabwe that shows the challenges faced by employers as a result of limiting fixed-term contracts of employment by the 2015 Labour Act Amendments that were done in a rushed reaction to the Zuva case. Previous studies had looked at why companies use fixed-term contracts and the effects on productivity.

The overall research objective was broken down into five research objectives covering challenges of limiting fixed-term contracts, factors influencing the widespread use of fixed-term contracts, how companies will respond to the limiting of fixed-term contracts, the companies interpretation of the limiting of fixed-term contracts of employment, and recommendations on what employers should do. The researcher will give conclusions on each research objective in the following paragraphs.

### **5.2.1 The factors influencing the widespread use of fixed-term contracts of employment.**

It can be concluded from the research that the widespread use of FTCs of employment is mainly attributed to the need for flexibility amidst economic turbulence and constant change in terms of technology and business trends.

Employers want to be able to right-size at any given time in response to changes in the economy or quickadoption of new technology that enhances productivity and improves quality output. FTCs allows savings through differentiating salaries between key employees and those needed as per demand. There is need for caution when venturing into new businesses, or markets, or projects. One may thus need to start by using FTCs then confirm employees after being satisfied with the progress.

FTCs allow organisations like charitable organisations who operate on a project basis to easily fold operations without costs at the end of each project. A new project will have its new terms of operation and objectives, hence separate requirements in terms of Human Resources. These institutions should thus employ on a fixed-term contract basis as their continuous existence will depend on the continued need for their existence and funding for their projects. Even companies now operate on a project basis where each project has separate staff requirements. For example a project to construct a university will require much more human resources than a project to construct a few shops.

### **5.2.2 The interpretation of the limiting of fixed-term contracts of employment by Section 12(3a) of the Labour Act (28:01)**

The intention of the government by limiting fixed-term contracts of employment is manifold. Firstly, it wants to promote full-time employment and save the jobs of the few still employed. Secondly, it is under pressure to please the electorate against the political impact of the ruling in the Zuva case where over 25 000 employees were dismissed on 3 months notice without being paid retrenchment packages. Thirdly, it wants to protect employees from abuse by employers. Its reasoning in this regard is that beyond a certain period a position or job no longer becomes temporary but it becomes a core component to a company's operations. Hence the person occupying that position should be given a full-time contract of employment.

### **5.2.3 The challenges faced by firms as a result of the limiting of fixed-term contracts of employment by the 2015 Amendments of the Labour Act.**

While the intention of limiting fixed-term contracts of employment is noble as it is to protect employees from the casualization of labour, it actually results in a number of significant challenges to companies in Zimbabwe. Firstly there is the administrative challenge that comes with the new provisions. Exceeding the period stipulated by the relevant NEC or Minister will result in an employee automatically becoming a full-time employee. Also, any delay in renewing a fixed-term contract of employment is going to result in an employee becoming full-time by default. In the case of *American Friends Service Committee v Irene Chauke SC99/11*, it was ruled that by allowing Chauke to continue working beyond a fixed-term contract of employment, she remained an employee of the organisation. The cases of *Lifestyle Zimbabwe Furnishers v Admire Mawoyo and 215 Others LC/H/02/2012*, *Rachel Kadzinga & 20 others v Eastern Textiles (Pvt) Ltd t/a Devstar Clothing LC/MC/02/2007*, *Zimbabwe Bata Shoe Company v Zimbabwe Bata Workers Committee LC/MD/24/2005* proved that beyond a certain time period the jobs are considered to be of a permanent nature. The employees in those jobs should be put on permanent employment.

Secondly, stopping employees at the end of the maximum period set by NEC or Minister of Labour means the company loses employees who knew how to do their jobs and who were part of the company's culture.

Thirdly, engaging new employees on fixed-term contract of employment means the company has to incur more in terms of recruitment costs.

Fourthly, the company will need to invest into the training and development of the new employees in terms of induction, product knowledge, company culture and expected level of performance.

Fifthly, while companies will have Human Resource Plans to guide them schedule the fixed-term contracts renewals and confirmations of employment after regulated durations of fixed-term contracts, there will be a high rate of unscheduled staff turnover.

Sixthly, when employees know that their fixed-term contracts of employment are for a limited period of time beyond which they will be stopped, their commitment to the organisation gets diminished. This affects their performance in the organisation. Less engaged employees costs the company in terms of poor quality output and low productivity.

Lastly, giving employees open-ended contracts at the end of the regulated period of fixed-term contracts is costly to the company. It bloats its permanent employees numbers and increases its liabilities in terms of benefits accruing to permanent employees only. This makes it difficult to downsize in times of economic hardships or adoption of new technologies that may require less than current employees.

#### **5.2.4 How the companies should respond to the challenges brought by the limiting of fixed-term contracts of employment by Section 12(3a) of the Labour Act**

Companies should definitely take some measures to cushion themselves against the challenges presented by the limiting of fixed-term contracts of employment. There is a need to be more careful with the administration of fixed-term contracts of employment to avoid exceeding stipulated periods and delays in renewals, as these fatal mistakes will result in employees concerned becoming full-time employees by default. They should reconsider their operations against the jobs in the organisation, and come up with key jobs for which they will gradually confirm employees to full-time positions. This controls the number of employees on full-time contracts of employment. For the rest of the positions they can lay off workers at the end of the stipulated duration of fixed-term contracts of

employment and engage new ones in their stead. This maintains manageable levels of employees on fixed-term contracts of employment.

Companies will have to come up with cost-effective ways of recruitment to replace those stopped at the end of the stipulated duration. The new ones engaged on a fixed-term basis will need to be trained and developed in a cost-effective manner that ensures their productivity and effectiveness.

### **5.3 VALIDATION OF THE RESEARCH HYPOTHESIS**

The conclusions from the study indicate that limiting fixed-term contracts of employment may actually achieve a reverse of the intended effect by:

- Reducing flexibility of revising employee figures and competitiveness of firms
- Increasing operational costs in terms of training and recruitment
- Increasing operational costs in terms of poor quality output from new employees and demoralised employees
- Resulting in massive lay-offs at end of stipulated durations of fixed-term contracts.
- For those stopped to be recalled there will be significant periods of interrupted employment as companies will definitely not put all their workers on full-time employment.

The conclusions from all the four research objectives thus support the research hypothesis which states that:

**While the Government amended the Labour Laws to protect workers from abuse by employers, and at the same time align labour laws to the prevailing economic conditions to attract investment and promote productivity, limiting fixed-term contracts of employment presents a number of serious challenges to employers.**

The research hypothesis was therefore proved to be correct.

## **5.4 RECOMMENDATIONS**

From the research findings and conclusions, the researcher gives the following recommendations:

### **5.4.1 To Employers (Managerial Related)**

#### **5.4.1.1 Administration of fixed-term contracts of employment**

There is a need to appoint a senior person to be responsible for the administration of fixed-term contracts of employment. This ensures that the following errors are avoided:

- Delays in the renewal of fixed-term contracts. Any delay will result in an employee becoming a full-time employee by default.
- Exceeding stipulated duration of fixed-term contract of employment. This result in the employee becoming a full-time employee by default.
- Poor storage of fixed-term contracts of employment. This will result in some contracts being misplaced or pulled by employees for sabotage purposes. In case of

a labour dispute the employee concerned will be deemed an employee on full-time employment. Hence the need to secure copies of contracts of employment.

#### **5.4.1.2 Absorption of good employees into full-time employment**

The operations of an organisation should be assessed and key jobs identified. For the key jobs there should be a plan of gradually confirming employees into full-time employment. This can be done to fill posts of those resigning or retiring. This gradual absorption will save two purposes. One, it will maintain the number of full-time employees at desired levels. Two: it will help show the employees on fixed-term contracts that they have opportunities of becoming full-time employees, hence their morals and motivation will be maintained.

#### **5.4.1.3 Cost effective recruitment and training**

There will definitely be positions for which employees can't be given open-ended contracts of employment. These will be stopped at the end of the stipulated duration by each NEC or Minister of Labour. This means that there will be both planned and unscheduled staff turnover. This calls for management to invest in cost-effective recruitment and training of employees in fixed-term contracts of employment. This helps to equip them with requisite skills, attitudes and knowledge to contribute effectively to the organisation. Where the NEC regulations provide for a period of a break of one's service, ex-employees can be rehired after that prescribed period. These will require less training compared to completely fresh employees who are joining the company for the first time.

#### **5.4.1.4 Human Resource Planning**

There is a need to have a robust Human Resource Plan that balances the company's short and long term goals against the NEC or Ministry of Labour's regulations in terms of the

maximum duration of fixed-term contracts of employment. This will look at those to be confirmed full-time employees, those to be stopped, those to be rehired, the sources of new employees and training programmes for the new and existing fixed-term employees. The Human Resource Plan should take into consideration unscheduled turnover.

#### **5.4.1.5 Creating an environment of fairness**

There is a need for employers to create an environment that is conducive for employee motivation and optimal productivity. This can be done by being fair in the way employees are remunerated. Where possible employees on FTCs should be remunerated the same with employees on full-time. This removes feelings of being segregated. Ways of remunerating employees should recognize both performance and motivate employees to put more effort and commitment towards the set goals.

### **5.4.2 To the Tripartite Negotiating Forum (Policy Related)**

#### **5.4.2.1 Legislation**

The TNF needs to relook at Section 12(3a) of the Labour Act and consider whether there is benefit in limiting the fixed-term contracts of employment for all jobs in all sectors. It may be worthwhile to state in the legislation that only jobs agreed to by employers and employees at NEC level will be limited. This identification of the jobs for which fixed-term contracts of employment should be limited, can be done by employers and employees at NEC level, and where NECs do not exist by Works Councils at company level. This method will provide an effective approach as it considers sector-specific realities and company-specific needs. For the rest of the jobs not classified under this category the fixed-term contracts of employment should not be limited at all.

## **5.5 CONTRIBUTION TO KNOWLEDGE**

This study has contributed to the body of knowledge in bringing out the realisation that while the intention of limiting fixed-term contracts of employment is noble in protecting workers against abuse by employers, it presents serious challenges to employers in Zimbabwe. The study has unravelled these challenges and recommended action to be taken to address them, which makes it very relevant to both companies and the government in Zimbabwe.

Making more employees full-time without improving the economic outlook results in companies losing flexibility to right-size workforces, hence increases costs of doing business. This makes companies uncompetitive. Avoiding making employees full-time at end of set duration results in high levels of both scheduled and unscheduled staff turnovers which costs the companies in terms of increased recruitment and training costs. Cyclical laying off of fixed-term contracts at the end of stipulated durations dampen employees motivation, resulting in poor quality work and reduced productivity. The results on the ground thus do not support the intended effect of making Zimbabwe more investor-friendly and to create more full-time employment.

## **5.6 LIMITATIONS OF THE STUDY**

The research was limited to the challenges faced by employers as a result of limiting fixed-term contracts of employment by Section 12(3a) of the Labour Act. This does not exhaust all the challenges faced in the world of work. There is a need to look on the other side of the employment relationship and find out the challenges faced by employees as well.

The sampling technique should have adopted simple random sampling of all Human Resources Managers of all registered companies in the country but due to time and financial constraints, the researcher used cluster sampling to target those in Harare, after which simple random was used to pick participants to be given the research questionnaire. This was done to get information in a cheaper and quicker way and complete the study within the stipulated time. The respondents were from various sectors of the economy which enabled the generalization of results to companies in other parts of the country.

## **5.7 AREAS OF FURTHER STUDY**

This study looked at the challenges faced by employers as a result of limiting fixed-term contracts of employment by the new Labour Act amendments of 2015. It would be ideal to look at the workers side as well. The researcher thus recommends the following three areas for further study.

### **5.7.1 Challenges that employees will face as a result of limiting fixed-term contracts of employment.**

It will be worthwhile to look at the challenges faced by employees as a result of limiting fixed-term contracts of employment by the Labour Act amendments of 2015. This will give a full spectrum of all the problems that both employers and employees will face as a result of Section 12(3a) of the Labour Act as amended 2015. Doing so will help to come up with recommendations and solutions that address and balance both the concerns and aspirations of employers and employees.

### **5.7.2 Feasibility and effects of rehiring previously stopped fixed-term contract workers.**

The findings of the research have shown that some employees intend to stop most of their fixed-term contract employees and rehire them after the expiration of the stipulated period of the break of service in their sectors. The researcher feels that there is a need to look at the feasibility of doing so in terms of legal possibility, relevance of skills and knowledge of such employees against changing times and technology, the motivation and commitment of such employees against expected quality output and employee productivity. This should seriously impact on the recruitment methods and options available to employees as a result of Section 12(3a) of the Labour Act as amended 2015.

### **5.7.3 Duration of fixed-term contracts of employment stipulated by NECs or Minister of Labour**

Section 12(3a)(a)and(b) delegate the powers to determine the expiry date or period of a fixed-term contract of employment in a sector to a respective NEC, or in its absence to the Minister of Labour. This will result in various durations being stipulated in each sector depending on each sector's prevailing economic performance and collective bargaining dynamics. The researcher therefore recommends that a study be carried out to find out the various durations regulated in each sector, how they vary from sector to sector, the reasons for such durations and variations. This will guide policy makers at Government level to identify sector-specific needs and how the legislation can be reformed to enhance competitiveness and productivity in each sector.

## **5.8 CHAPTER SUMMARY**

This chapter covered the research conclusions and recommendations. It concluded that employers have valid reasons for using FTCs, hence the limiting of FTCs will present serious challenges to companies in Zimbabwe. These challenges will affect the competitiveness of companies in business and deter further investment into the economy. Employers will devise ways of dealing with the challenges including appointing senior people to handle FTCs, making selected employees permanent and making work interesting. The parties to the TNF are urged to look holistically at the effects of Section 12(3a) and balance between protecting employees and creating a conducive environment for doing business in Zimbabwe. Further studies are recommended to look at challenges faced by employees as a result of Section 12(3a), the feasibility of rehiring employees stopped to evade making them full-time employees and the durations of FTCs to be stipulated by various NECs and the Minister of Labour with regards to limiting of FTCs as provided for under Section 12(3a) of the Labour Act (28:01).

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## **APPENDICES**

1. Introductory letter to respondent
2. Survey Questionnaire
3. Labour Cases cited in the Dissertation

**Appendix 1**

**INTRODUCTION LETTER TO RESPONDENTS**

**14<sup>th</sup> December 2015**

**Dear Sir / Madam**

**RE: Master in Business Administration Research Questionnaire**

I am doing Master of Business Administration Degree with the Graduate School of Management of the University Of Zimbabwe. As part of the requirements for me to finish my studies, I am conducting a research which seeks to investigate the challenges faced by companies as a result of the limiting of Fixed-term contracts of employment by the Labour Law Amendments of 2015. The area of study is an important area to companies yet little discussion is currently being done about it.

I hereby write to kindly seek your permission to give your views and input on this topical issue.

If you may please complete and return to the researcher the questionnaire attached by the end of day on the 8<sup>th</sup> of January 2016.

The findings of the research will be used for academic purposes only, hence all information gathered will be treated with strict confidentiality. There is therefore no need for you to fill in your name, address or any form of identification on the questionnaire.

If you have any questions or any clarification you need please do not hesitate to contact me on the following contact numbers: 0712 236 828 / 04-775289 / 04-748647

Your maximum cooperation will be greatly appreciated.

Yours Faithfully

.....

Lloyd Machacha  
**MBA Research Student**

## **Appendix 2**

### **SURVEY QUESTIONNAIRE**

#### **SECTION A: DEMOGRAPHIC INFORMATION**

1.1. Highest level of Education: .....

1.2. Job Title: .....

1.3. Gender? .....

1.4. Age: .....

1.5. Indicate below (by a tick) the economic sector in which your company falls under:

Agriculture	
Mining	
Construction	
Tourism	
Manufacturing	
Financial and Services	
Public Sector	
Others (Indicate)	

**SECTION B: APPRECIATION AND USE OF FIXED-TERM CONTRACTS OF EMPLOYMENT**

2.1. What do you understand by a Fixed-term contract of employment?

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.....

2.2. What percentage of your workforce are on fixed-term contracts of employment?

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2.3. Why do companies use fixed-term contracts of employment instead of full-time contracts?

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2.4. What are the disadvantages of using fixed-term contracts of employment instead of full-time contracts of employment?

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2.5. What is the minimum and maximum duration of your company's fixed-term contracts of employment?

Minimum duration of one contract: .....

Maximum duration of one contract: .....

2.6. Other remarks or comments on the use of fixed-term contracts of employment.....

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.....  
.....

**SECTION C: CHALLENGES OF LIMITING FIXED-TERM CONTRACTS OF EMPLOYMENT**

3.1. Section 12(3a) of the Labour Act now limits the duration of fixed-term contract of employment before one becomes a full-time employee. What do you think was the Government’s intention in coming up with such a law?

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.....  
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3.2. Do you agree with limiting the number and duration of fixed-term contracts before one is confirmed a permanent employee? Give your reasons.

.....  
.....  
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.....  
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3.3. What are you going to do with your employees when the renewals of their fixed-term contracts of employment reach the maximum prescribed time?

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3.4. What specific challenges are companies going to face as a result of Section 12(3a)?

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3.5. What do you suggest companies should do to deal with challenges associated with limiting duration of fixed-term contracts of employment?

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3.6. Other remarks or comments on the challenges associated with limiting fixed-term contracts of employment:

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.....  
.....

THANK YOU

### **Appendix 3**

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