

640.10 EMPLOYMENT RELATIONSHIP - EMPLOYMENT FOR DEFINITE TERM.

*NOTE WELL: Give this instruction only where there is an issue as to whether the plaintiff was employed for a definite period of time.*

This issue reads:

"Did the plaintiff and the defendant agree that the plaintiff would be employed by the defendant for a definite period of time?"<sup>1</sup>

On this issue the burden of proof is on the plaintiff.<sup>2</sup> This means that the plaintiff must prove, by the greater weight of the evidence, that the plaintiff and the defendant agreed that the plaintiff would be employed by the defendant for a definite period of time.

A definite period of time is one which is specific as to length. An employment agreement is not for a definite period of time if the employer and the employee [have not mutually agreed that the employment is for a specific length of time]<sup>3</sup> [have merely referred to the employment as being permanent]<sup>4</sup> [have merely agreed to salary or wages as a fixed amount per week, month or year].<sup>5</sup>

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that the plaintiff and the defendant agreed that the plaintiff would be employed by the defendant for a definite period of time, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.

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EMPLOYMENT RELATIONSHIP - EMPLOYMENT FOR DEFINITE TERM.  
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1. *Rosby v. General Baptist State Convention*, 91 N.C. App. 77, 370 S.E.2d 605 (1988); *Freeman v. Hardee's Food Systems, Inc.*, 3 N.C. App. 435, 165 S.E.2d 39 (1968), *aff'd* 267 N.C. 56, 147 S.E.2d 590 (1969).

2. *Rosby, supra*, 91 N.C. App. at 80, 370 S.E.2d at 608; *Freeman, supra*, at 3 N.C. App. at 438, 165 S.E.2d at 41-42.

3. *Still v. Lance*, 279 N.C. 254, 259, 182 S.E.2d 403, 406 (1971); *Tuttle v. Lumber Co.*, 263 N.C. 216, 219, 139 S.E.2d 249, 251 (1964); *Coman v. Thomas Manufacturing Co.*, 91 N.C. App. 327, 331, 371 S.E.2d 731, 733 (1988), *reversed on other grounds*, 325 N.C. 172, 381 S.E.2d 445 (1990); *Walker v. Westinghouse*, 77 N.C. App. 253, 260, 335 S.E.2d 79, 84 (1985).

4. *Still, supra*, 279 N.C. at 259, 182 S.E.2d at 406; *Howell v. Credit Co.*, 238 N.C. 442, 444, 335 S.E.2d 79, 84 (1953). However, a contract for life, supported by consideration other than rendering of services (such as settlement of a lawsuit) is a contract for a definite period of time. *Tuttle, supra*, 263 N.C. at 219, 139 S.E.2d at 251; *Jones v. Light Co.*, 206 N.C. 862, 863-64, 175 S.E. 167, 167 (1934); *Humphrey v. Hill*, 55 N.C. App. 359, 362, 285 S.E.2d 293, 295 (1982).

5. *Beal v. Supply Co.*, 36 N.C. App. 505, 509, 244 S.E.2d 463, 466; *Freeman, supra*, 3 N.C. App. at 437-438, 165 S.E.2d at 41.