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Guide on Fixed-Term Work (Prohibition of Unfavourable Treatment)

The Law

The Fixed-Term Work Employees (Prohibition of Unfavourable Treatment) Principal Law of 2003 was put into force on 25 July 2003. Its purpose is to:

- improve the quality of fixed-term work by ensuring the application of the principle of non-discrimination, and
- prevent the abuse arising from the use of successive fixed-term employment contracts or relationships.

An Amendment Law concerning the powers and duties of the Inspectors was put into force on 16 February, 2007.

Who is covered

The Law applies to fixed-term employees (under an employment contract or relationship) except to:

- initial vocational training relationships and apprenticeship schemes, and
- employment contracts or relationships which have been concluded within the framework of a specific public (governmental) or publicly-supported, training, integration and vocational retraining programme.

Fixed-term employee

Fixed-term employee means a person having an employment contract or relationship entered into directly between an employer and an employee where the end of this contract or relationship is determined by objective conditions such as reaching a specific date, completing a specific task, or the occurrence of a specific event.

Comparable permanent employee means an employee with an employment contract or relationship of indefinite duration, in the same establishment or undertaking, engaged in the same or similar work/occupation, due regard being given to qualifications or skills. Where there is no comparable permanent employee in the same establishment or undertaking, the comparison shall be made by reference to the applicable collective agreement, or where there is no applicable collective agreement, in accordance with the relevant legislation, other collective agreements or practice.

The principle of non-discrimination and the principle of pro rata temporis

In respect of employment terms and conditions, a fixed-term employee shall not be treated less favourably than a comparable permanent employee, solely because he/she is under a fixed-term contract or relationship unless different treatment is justified on objective grounds.

Where appropriate the principle of pro rata temporis shall apply. *The principle of pro rata temporis* means that where a comparable permanent employee is employed with specific terms and conditions of employment, the fixed-term employee shall be employed with the same terms and conditions of employment, proportionately to his/her period of employment, based on a comparison of the period of employment of the comparable permanent employee.

When, in relation to specific terms and conditions of employment, a pre-service period is required, this period shall be the same for the fixed-term employees as well as the comparable permanent employees, except where different length of pre-service period is justified on objective grounds.

Measures to prevent abuse

When an employer employs an employee with a fixed-term employment contract, either following renewal of his contract or otherwise, and this employee had previously been employed for a total period of thirty months or more with a fixed-term employment contract (irrespective of the number of successive renewals of fixed-term contracts), the contract shall be deemed in all circumstances to be an employment contract of indefinite duration.

It is noted that:

- any period of employment, that took place before the 25th of July 2003 (when the Law was put into force), is not considered for calculating the 30-month period; and
- any provision in the fixed-term employment contract that restricts its duration will not apply, unless the employer proves that the employment of the employee with a fixed term contract of employment can be justified on objective grounds.

[According to the Termination of Employment Law, the Labour Disputes Court may determine whether a fixed-term employment contract or successive fixed term contracts, with a duration of less than thirty months, has been transformed into a contract of indefinite period].

Objective grounds exist particularly when:

- the needs of the undertaking for the completion of a specific task are temporary
- the employee temporarily replaces another employee
- the particulars of a specific task justify the fixed-term duration of the contract
- the fixed-term employee is employed on probation
- the employment with a fixed-term contract is the result of the implementation of a judicial decision
- the employment with fixed-term contract refers to the employment in the Armed Forces of the Republic, of the Five Year Service Volunteers Petty Officers.

Information and employer's obligations

The employer informs fixed-term work employees of vacancies available in the establishment or undertaking, so that it is ensured that they have equal opportunities to access permanent positions of employment, as other employees. Furthermore, where possible, the employer must facilitate the access of fixed-term employees to vocational training, to ensure the enhancement of their career development and occupational mobility.

Information and consultation

Fixed-term work employees shall be taken into consideration in calculating the threshold above which workers representative bodies may be constituted in the establishment or undertaking, in accordance with the existing legislation, collective agreements or practice, always with regard to the principle of non-discrimination as provided by the Law.

Competent court and penalties

The Labour Disputes Court is the competent court for the resolution of any dispute (of civil nature), which arises from the application of the provisions of the Law. Any employer, who contravenes any provision of the Law, shall be guilty of an offence and shall be liable to a fine not exceeding the amount of €3.417.

Inspections

The Minister of Labour and Social Insurance may appoint Inspectors and/or other officers for the more effective application of the Law. The Council of Ministers may issue Regulations for the duties and powers of the Inspectors and/or other officers appointed for the application of the Law. The Amendment Law (2007) provides for the powers and duties of the Inspectors. Anyone obstructing an Inspector while exercising his/her duties, is liable to an imprisonment not exceeding three months or to a fine not exceeding €5.125 or to both penalties.

More favourable provisions

The provisions of the Law do not impede the application of more favourable provisions agreed through collective agreements, or other agreements between employer and employees or their representatives.