

Protection of Employees (Fixed-Term Work) Act, 2003 – Limited Use of Successive Fixed Term Contracts

The issue of a number of successive fixed-term contracts can arise where the employer contends that there is an economic reason for continuing same and that therefore the right to a contract of indefinite duration does not arise. In the case of *McNamara –v- Teagasc* FTD138 is a case where the Labour Court said

“If it were to be held that the use of successive fixed-term contracts could be used indefinitely in such employment so as to protect the employer against the possibility of an insufficient supply of work at some point in the future, the effectiveness of the directive...would be seriously subverted. If, due to economic circumstances or fall of demand, there is no longer a sufficient working order to maintain a worker in employment, the employers remedy lies in making surplus staff redundant. It follows that while the requirement to balance staff levels with available funding is a legitimate objective that continuing use of fixed-term contracts is not always a proportionate and necessary means of achieving that objective”.

In the case of *Edener and Others –v- Ellinikos Organismos Galaktos* C-212/04 is a case where the CJEU held that

“The concept of objective reams within the meaning of Clause 5 (1) (a) of the framework agreement must be understood as referring to precise and concrete circumstances characterising a given activity, which is therefore capable in that particular context of justice and to find the use of successive fixed-term employment contracts”

This approach was taken by the Labour Court in the case of *Irish Museum of Modern Art and Stanley* FTD146 where the court stated

“The defining characteristics of fixed-term contracts or fixed-term employment is that it is determined by an objective condition which is identifiable without reference to the views of perceptions or intervention of either party to the contract”

This view was also taken by the CJEU in *Del De Cerro Alonso –v- Osakidetza Serbificio Vasco De Salud* C-307/05 where it was stated

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“The justification relied on must be based on objective transparent criteria which in fact responds to a genuine need, our appropriate for achieving the objective pursued and are necessary for that purpose”
There is a view that it is possible to have effectively indefinite fixed-term contracts. This is not a view that this office agrees with. There are limited circumstances where this may arise but they will be in the minority of cases.