

Richard Grogan on employment law: Protection of Employees (Fixed-Term Work) Act 2003

Published 22 August 2018

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Employment law solicitor **Richard Grogan** of **Richard Grogan & Associates** writes on recent cases clarifying the law on fixed-term contracts.

In a case of the Department of Employment Affairs and Social Protection and Anna Concarr FTD184, an issue arose where the employee contended that, having completed more than four years' continuous fixed-term employment on one fixed-term contract, the respondent had contravened section 19(1) of the Protection of Employees (Fixed-Term Work) Act 2003. The employee claimed that by operation of section 9(3) of the Act for fixed-term contracts, it became a contract of indefinite duration by operation of law.



Richard Grogan

The court in this case helpfully reviewed the legislation in some detail and, in particular, the provisions of section 9.

The court looked at EU Directive 99/70/EC and stressed that the language of section 9 needed to be examined carefully. The court pointed out that the wording of section 9 as a whole was directed at regulating circumstances in which a fixed-term contract can be renewed. The court pointed out that this complied fully with the requirements of clause 5 of the framework agreement. The court held that where a fixed-term contract is not renewed, there can be no contravention of section 9.

This is very helpful decision of the Labour Court which confirms that to get the benefit of the 2003 Act, there must a renewal. This means that an employer can issue a fixed-term contract for any number of years and the employee will not obtain a contract of indefinite duration. It is only where the contracts are renewed that the provisions of section 9 come to benefit and protect employees.

This makes perfect sense, as the Directive and the Act are there to protect employees where there are successive renewals of fixed-terms contracts.

The above case has to be compared with case *Donegal County Council and James Sheridan* FTD 185. In this case, the employee had over four years' continuous fixed-term employment on a number of fixed-term Contracts.

In this case the employee, at the time the case came on for hearing, had been provided with a full-time permanent contract. The case however was appealed in relation to the relevant substantial case law and the issue of the compensation. The compensation of €5,000 was affirmed.

The case is extremely important in dealing with the issue of what happens where there is a break or lay-off. The case law in this was reviewed to a significant extent by the court and the court in this case held that even where the break in service

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exceeded 26 weeks, the employee would still have been entitled to a contract of indefinite duration on the wording of the legislation and taking into account the relevant case law. This is a decision which is very worthwhile reading for its importance in setting out the relevant case law in a clear and definitive way.

- **Richard Grogan** is the principal solicitor at **Richard Grogan & Associates Solicitors**. You can subscribe to the firm's monthly newsletter at grogansolicitors.ie.



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