



PROTECTION OF EMPLOYEES (FIXED-TERM WORK) ACT 2003*

In a recent case of the Department of Social Protection and Fiona McLoughlin, reference FTD1610, the Labour Court had to deal with a situation where there were a number of Fixed-Term Contracts. The Department sought to rely on the objective grounds. The Court in that case stated:

“The objective grounds relied upon in the Complainant’s 2012 contract were vague in equivocal and did not relate to ‘precise and concrete circumstances characterising a given activity which are therefore capable in that particular context to justify the use of successive Fixed-Term Employment Contracts’ ”.

The Court in that case pointed out that the Labour Court has frequently held the test inherent in Section 7 (1) of the Act which relates to objective grounds is derived from the jurisprudence of the ECJ and in particular from the judgement of the Court in the case C170/84. The Court also pointed out that the Labour Court in the case of Inoue -v- MGK Designs [2003] 14ELR98 that the Labour Court has said that the test requires that the employer show that the measures:

- a) Corresponded to a real need on the part of the undertaking;
- b) Are appropriate with a view to achieving the objective pursued; and
- c) Are necessary to that end.

If relying on Section 7 (1) it is necessary for those objective grounds to be set out at the time that the further Fixed-Term Contract is provided. As the Court in this pointed out Section 8 (3) provides that such a statement is admissible in evidence. However, if it appears to an Adjudicator or the Labour Court that the employer has omitted to provide a written statement or that the written statement is evasive or equivocal then an Adjudicator or the Labour Court may draw an inference as is just an equitable in the circumstances.

This decision of the Labour Court is a comprehensive decision which has set out the Law in detail. For everybody looking to review the issues relating to a Fixed-Term contract this is a decision which should be read. It importantly has a considerable amount of authority



referred to therein which will be of assistance to anybody seeking to understand the nuances of this legislation.

It is extremely helpful to practitioners, IR and HR Professionals and employers that the Labour Court does in its decisions give detailed reasons as to the application of the Law. Fixed-Term Contracts are particularly difficult area of legislation for all involved in Employment Law and it is very useful to have detailed decisions which go through the Law, in depth, which this decision does.

***Before acting or refraining from acting on anything in this guide, legal advice should be sought from a solicitor.**

****In contentious cases, a solicitor may not charge fees or expenses as a portion or percentage of any award of settlement.**