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

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

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF DIRECTIVE NO. 1999/70/EC OF 28 JUNE 1999, OF THE COUNCIL OF THE EUROPEAN COMMUNITIES CONCERNING THE FRAMEWORK AGREEMENT ON FIXED-TERM WORK CONCLUDED BY ETUC, UNICE AND CEEP, TO AMEND THE EMPLOYMENT AGENCY ACT 1971, THE ORGANISATION OF WORKING TIME ACT 1997 AND THE PROTECTION OF EMPLOYEES (PART-TIME WORK) ACT 2001 AND TO PROVIDE FOR RELATED MATTERS. [14th July, 2003]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

PART 1

PRELIMINARY AND GENERAL

1.—This Act may be cited as the Protection of Employees (Fixed-Term Work) Act 2003. Short title.

2.—(1) In this Act, unless the context otherwise requires— Interpretation.

“Act of 2001” means the Protection of Employees (Part-Time Work) Act 2001;

“associated employer” shall be read in accordance with *subsection (2)*;

“collective agreement” means an agreement by or on behalf of an employer on the one hand, and by or on behalf of a body or bodies representative of the employees to whom the agreement relates on the other hand;

“comparable permanent employee” shall be read in accordance with *section 5*;

“conditions of employment” includes conditions in respect of remuneration and matters relating thereto (and, in relation to any pension scheme or arrangement, includes conditions for membership of the scheme or arrangement and entitlement to rights thereunder and conditions related to the making of contributions to the scheme or arrangement);

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“contract of employment” means a contract of service whether express or implied and, if express, whether oral or in writing but shall not include a contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within the meaning of the Employment Agency Act 1971 and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract);

“employee” means a person of any age, who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee shall be construed as references to an employee employed by that employer and, for the purposes of this Act, a person holding office under, or in the service of, the State (including a civil servant within the meaning of the Civil Service Regulation Act 1956) shall be deemed to be an employee employed by the State or Government, as the case may be, and an officer or servant of a local authority, a harbour authority, the Eastern Regional Health Authority, the Northern Area Health Board, the East Coast Area Health Board or the South-Western Area Health Board, a health board or vocational education committee shall be deemed to be an employee employed by the authority, health board or vocational education committee, as the case may be;

“employer” means, in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment;

“fixed-term employee” means a person having a contract of employment entered into directly with an employer where the end of the contract of employment concerned is determined by an objective condition such as arriving at a specific date, completing a specific task or the occurrence of a specific event but does not include—

- (a) employees in initial vocational training relationships or apprenticeship schemes, or
- (b) employees with a contract of employment which has been concluded within the framework of a specific public or publicly-supported training, integration or vocational retraining programme;

“Framework Agreement” means the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP annexed to Directive No. 1999/70/EC of 28 June 1999 of the Council of the European Communities;¹

“local authority” means a county council, a city council or a town council for the purposes of the Local Government Act 2001;

“Minister” means the Minister for Enterprise, Trade and Employment;

“permanent employee” means an employee who is not a fixed-term employee;

“prescribed” means prescribed by regulations made by the Minister under this Act;

¹ OJ No. L175, 10.7.1999, p.43.

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“relevant fixed-term employee” shall be read in accordance with Pt.1 S.2 section 5;

“remuneration”, in relation to an employee, means—

- (a) any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment, and
- (b) any amounts the employee will be entitled to receive on foot of any pension scheme or arrangement;

“renewal” includes extension and cognate words shall be read accordingly;

“year” means any period of 52 weeks.

(2) Employers are deemed to be associated if—

- (a) one is a body corporate of which the other (whether directly or indirectly) has control, or
- (b) both are bodies corporate of which a third person (whether directly or indirectly) has control.

(3) A word or expression that is used in this Act and is also used in the Framework Agreement has, unless the contrary intention appears, the same meaning in this Act as it has in the Framework Agreement.

(4) In this Act—

- (a) a reference to a Part or section is a reference to a Part or section of this Act unless it is indicated that reference to some other enactment is intended,
- (b) a reference to a subsection, paragraph or subparagraph is a reference to the subsection, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended, and
- (c) a reference to any enactment shall be construed as a reference to that enactment as amended, adapted or extended by or under any subsequent enactment (including this Act).

3.—(1) The Minister may make regulations prescribing any matter or thing which is referred to in this Act as prescribed or to be prescribed or for the purpose of enabling any provision of this Act to have full effect. Regulations and orders.

(2) Regulations under this Act may make different provisions in relation to different classes of employees or employers, different areas or otherwise by reference to the different circumstances of the matter.

(3) A regulation or order under this Act may contain such incidental, supplementary and consequential provisions as the Minister considers necessary or expedient.

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(4) The Minister may by order amend or revoke an order under this Act (including an order under this subsection).

(5) A regulation or order under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the next 21 days on which that House has sat after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of any thing previously done under the regulation or order.

Expenses.

4.—Expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of monies provided by the Oireachtas.

PART 2

FIXED-TERM WORK AND RIGHTS OF FIXED-TERM EMPLOYEES

Comparable permanent employee.

5.—(1) For the purposes of this Part, an employee is a comparable permanent employee in relation to a fixed-term employee if—

- (a) the permanent employee and the relevant fixed-term employee are employed by the same employer or associated employers and one of the conditions referred to in *subsection (2)* is satisfied in respect of those employees,
- (b) in case *paragraph (a)* does not apply (including a case where the relevant fixed-term employee is the sole employee of the employer), the permanent employee is specified in a collective agreement, being an agreement that for the time being has effect in relation to the relevant fixed-term employee, to be a type of employee who is to be regarded for the purposes of this Part as a comparable permanent employee in relation to the relevant fixed-term employee, or
- (c) in case neither *paragraph (a)* nor *(b)* applies, the employee is employed in the same industry or sector of employment as the relevant fixed-term employee and one of the conditions referred to in *subsection (2)* is satisfied in respect of those employees,

and references in this Part to a comparable permanent employee in relation to a fixed-term employee shall be read accordingly.

(2) The following are the conditions mentioned in *subsection (1)*—

- (a) both of the employees concerned perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work,
- (b) the work performed by one of the employees concerned is of the same or a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each, either are of small importance in relation to the work as a whole or occur with such irregularity as not to be significant, and
- (c) the work performed by the relevant fixed-term employee is equal or greater in value to the work performed by the

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other employee concerned, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions. Pt.2 S.5

6.—(1) Subject to *subsections (2) and (5)*, a fixed-term employee shall not, in respect of his or her conditions of employment, be treated in a less favourable manner than a comparable permanent employee. Conditions of employment for fixed-term employees.

(2) If treating a fixed-term employee, in respect of a particular condition of employment, in a less favourable manner than a comparable permanent employee can be justified on objective grounds then that employee may, notwithstanding *subsection (1)*, be so treated.

(3) A period of service qualification relating to a particular condition of employment shall be the same for a fixed-term employee as for a comparable permanent employee except where a different length of service qualification is justified on objective grounds.

(4) For the avoidance of doubt, the reference in this section to a comparable permanent employee is a reference to such an employee either of the opposite sex to the fixed-term employee concerned or of the same sex as him or her.

(5) *Subsection (1)* shall, in so far, but only in so far, as it relates to any pension scheme or arrangement, not apply to a fixed-term employee whose normal hours of work constitute less than 20 per cent of the normal hours of work of a comparable permanent employee.

(6) The extent to which any condition of employment referred to in *subsection (7)* is provided to a fixed-term employee for the purpose of complying with *subsection (1)* shall be related to the proportion which the normal hours of work of that employee bears to the normal hours of work of the comparable permanent employee concerned.

(7) The condition of employment mentioned in *subsection (6)* is a condition of employment the amount of benefit of which (in case the condition is of a monetary nature) or the scope of the benefit of which (in any other case) is dependent on the number of hours worked by an employee.

(8) For the avoidance of doubt, neither this section nor any other provision of this Act affects the operation of Part III of the Organisation of Working Time Act 1997.

7.—(1) A ground shall not be regarded as an objective ground for the purposes of any provision of this Part unless it is based on considerations other than the status of the employee concerned as a fixed-term employee and the less favourable treatment which it involves for that employee (which treatment may include the renewal of a fixed-term employee's contract for a further fixed term) is for the purpose of achieving a legitimate objective of the employer and such treatment is appropriate and necessary for that purpose. Objective grounds for less favourable treatment.

(2) Where, as regards any term of his or her contract, a fixed-term employee is treated by his or her employer in a less favourable manner than a comparable permanent employee, the treatment in question shall (for the purposes of *section 6(2)*) be regarded as justified

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Pt.2 S.7 on objective grounds, if the terms of the fixed-term employee's contract of employment, taken as a whole, are at least as favourable as the terms of the comparable permanent employee's contract of employment.

Written statements of employer. **8.—**(1) Where an employee is employed on a fixed-term contract the fixed-term employee shall be informed in writing as soon as practicable by the employer of the objective condition determining the contract whether it is—

- (a) arriving at a specific date,
- (b) completing a specific task, or
- (c) the occurrence of a specific event.

(2) Where an employer proposes to renew a fixed-term contract, the fixed-term employee shall be informed in writing by the employer of the objective grounds justifying the renewal of the fixed-term contract and the failure to offer a contract of indefinite duration, at the latest by the date of the renewal.

(3) A written statement under *subsection (1)* or *(2)* is admissible as evidence in any proceedings under this Act.

(4) If it appears to a rights commissioner or the Labour Court in any proceedings under this Act—

- (a) that an employer omitted to provide a written statement, or
- (b) that a written statement is evasive or equivocal,

the rights commissioner or the Labour Court may draw any inference he or she or it consider just and equitable in the circumstances.

Successive fixed-term contracts. **9.—**(1) Subject to *subsection (4)*, where on or after the passing of this Act a fixed-term employee completes or has completed his or her third year of continuous employment with his or her employer or associated employer, his or her fixed-term contract may be renewed by that employer on only one occasion and any such renewal shall be for a fixed term of no longer than one year.

(2) Subject to *subsection (4)*, where after the passing of this Act a fixed-term employee is employed by his or her employer or associated employer on two or more continuous fixed-term contracts and the date of the first such contract is subsequent to the date on which this Act is passed, the aggregate duration of such contracts shall not exceed 4 years.

(3) Where any term of a fixed-term contract purports to contravene *subsection (1)* or *(2)* that term shall have no effect and the contract concerned shall be deemed to be a contract of indefinite duration.

(4) *Subsections (1)* to *(3)* shall not apply to the renewal of a contract of employment for a fixed term where there are objective grounds justifying such a renewal.

(5) The First Schedule to the Minimum Notice and Terms of Employment Acts 1973 to 2001 shall apply for the purpose of ascertaining the period of service of an employee and whether that service has been continuous.

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10.—(1) An employer shall inform a fixed-term employee in relation to vacancies which become available to ensure that he or she shall have the same opportunity to secure a permanent position as other employees.

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Information on
employment and
training
opportunities.

(2) The information referred to in *subsection (1)* may be provided by means of a general announcement at a suitable place in the undertaking or establishment.

(3) As far as practicable, an employer shall facilitate access by a fixed-term employee to appropriate training opportunities to enhance his or her skills, career development and occupational mobility.

11.—(1) Fixed-term employees shall be taken into account when calculating the threshold above which employees' representatives bodies may be constituted in an undertaking in accordance with section 4 of the Transnational Information and Consultation of Employees Act 1996.

Information and
consultation.

(2) As far as practicable, employers shall consider providing information to employees' representatives about fixed-term work in the undertaking.

12.—Save as expressly provided otherwise in this Act, a provision in an agreement (whether a contract of employment or not and whether made before or after the commencement of the provision concerned of this Act) shall be void insofar as it purports to exclude or limit the application of, or is inconsistent with, any provision of the Act.

Avoidance of certain
provisions.

13.—(1) An employer shall not penalise an employee—

Prohibition of
penalisation of
employee by
employer.

(a) for invoking any right of the employee to be treated, in respect of the employee's conditions of employment, in the manner provided for by this Part,

(b) for having in good faith opposed by lawful means an act which is unlawful under this Act,

(c) for giving evidence in any proceeding under this Act or for giving notice of his or her intention to do so or to do any other thing referred to in *paragraph (a)* or *(b)*, or

(d) by dismissing the employee from his or her employment if the dismissal is wholly or partly for or connected with the purpose of the avoidance of a fixed-term contract being deemed to be a contract of indefinite duration under *section 9(3)*.

(2) For the purposes of this section, an employee is penalised if he or she—

(a) is dismissed or suffers any unfavourable change in his or her conditions of employment or any unfair treatment (including selection for redundancy), or

(b) is the subject of any other action prejudicial to his or her employment.

PART 3

ENFORCEMENT

Complaints to rights
commissioner.

14.—(1) An employee or any trade union of which the employee is a member, with the consent of the employee, may present a complaint to a rights commissioner that the employee's employer has contravened any provision of this Act in relation to the employee and, if the employee or such a trade union does so, the commissioner shall—

- (a) give the parties an opportunity to be heard by the commissioner and to present to the commissioner any evidence relevant to the complaint,
- (b) give a written decision in relation to the complaint, and
- (c) communicate the decision to the parties concerned.

(2) A decision of a rights commissioner under *subsection (1)* shall do one or more of the following:

- (a) declare whether the complaint was or was not well founded;
- (b) require the employer to comply with the relevant provision;
- (c) require the employer to re-instate or re-engage the employee (including on a contract of indefinite duration);
- (d) require the employer to pay to the employee compensation of such amount (if any) as is just and equitable having regard to all the circumstances, but not exceeding 2 years remuneration in respect of the employee's employment;

and references in *paragraphs (a) to (d)* to an employer shall be read in a case where ownership of the business of the employer changes after the contravention to which the complaint relates occurred, as references to the person who, by virtue of the change, becomes entitled to such ownership.

(3) A rights commissioner shall not entertain a complaint under this section if it is presented to the commissioner after the expiration of the period of 6 months beginning on the date of the contravention to which the complaint relates or the date of termination of the contract of employment concerned, whichever is the earlier.

(4) Notwithstanding *subsection (3)*, a rights commissioner may entertain a complaint under this section presented to him or her after the expiration of the period referred to in *subsection (3)* (but not later than 12 months after the end of that period) if he or she is satisfied that the failure to present the complaint within that period was due to reasonable cause.

(5) A complaint shall be presented by giving notice of it in writing to a rights commissioner and the notice shall contain such particulars and be in such form as may be specified from time to time by the Minister.

(6) A copy of a notice under *subsection (5)* shall be given to the other party concerned by the rights commissioner.

(7) Proceedings under this section before a rights commissioner shall be conducted otherwise than in public.

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(8) A rights commissioner shall furnish the Labour Court with a copy of each decision given by the commissioner under *subsection (1)*. Pt.3 S.14

(9) The Minister may by regulations provide for any matters relating to proceedings under this section that the Minister considers appropriate.

15.—(1) A party concerned may appeal to the Labour Court from a decision of a rights commissioner under *section 14* and, if the party does so, the Labour Court shall— Appeal from decision of rights commissioner.

- (a) give the parties an opportunity to be heard by it and to present to it any evidence relevant to the appeal,
- (b) make a written determination in relation to the appeal affirming, varying or setting aside the decision, and
- (c) communicate the determination to the parties.

(2) An appeal under this section shall be initiated by the party concerned giving, within 6 weeks of the date on which the decision to which it relates was communicated to the party, a written notice to the Labour Court containing any particulars that are determined by the Labour Court under *subsection (4)* and stating the intention of the party concerned to appeal against the decision.

(3) A copy of a notice under *subsection (2)* shall be given by the Labour Court to the other party concerned as soon as practicable after the receipt of the notice by the Labour Court.

(4) The following matters, or the procedures to be followed in relation to them, shall be determined by the Labour Court, namely—

- (a) the procedure in relation to all matters concerning the initiation and the hearing by the Labour Court of appeals under this section,
- (b) the times and places of hearings of those appeals,
- (c) the representation of the parties to those appeals,
- (d) the publication and notification of determinations of the Labour Court,
- (e) the particulars to be contained in a notice under *subsection (2)*, and
- (f) any matters consequential on, or incidental to, the foregoing matters.

(5) The Minister may, at the request of the Labour Court, refer a question of law arising in proceedings before it under this section to the High Court for determination by the High Court and the determination of that Court shall be final and conclusive.

(6) A party to proceedings before the Labour Court under this section may appeal to the High Court from a determination of the Labour Court on a point of law and the determination of the High Court shall be final and conclusive.

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(7) Section 39(17) of the Redundancy Payments Act 1967 shall apply in relation to proceedings before the Labour Court under this Part as it applies to matters referred to the Employment Appeals Tribunal under that section with—

- (a) the substitution in that provision of references to the Labour Court for references to the Tribunal,
- (b) the deletion in paragraph (d) of that provision of “registered”, and
- (c) the substitution in paragraph (e) of that provision of “a fine not exceeding €2,000” for “a fine not exceeding twenty pounds”.

(8) Where a decision of a rights commissioner in relation to a complaint under this Act has not been carried out by the employer concerned in accordance with its terms, the time for bringing an appeal against the decision has expired and no such appeal has been brought, the employee concerned may bring the complaint before the Labour Court and the Labour Court shall, without hearing the employer concerned or any evidence (other than in relation to the matters aforesaid), make a determination to the like effect as the decision.

(9) The bringing of a complaint before the Labour Court under subsection (8) shall be effected by giving to the Labour Court a notice in writing containing such particulars (if any) as may be determined by the Labour Court.

(10) The Labour Court shall publish, in the manner it thinks fit, particulars of any determination made by it under paragraphs (a), (b), (c), (e) and (f) of subsection (4) (not being a determination as respects a particular appeal under this section) and subsection (9).

Enforcement of determinations of Labour Court.

16.—(1) If an employer fails to carry out in accordance with its terms a determination of the Labour Court in relation to a complaint under section 14 within 6 weeks from the date on which the determination is communicated to the parties, the Circuit Court shall, on application to it in that behalf by—

- (a) the employee concerned,
- (b) with the consent of the employee, any trade union of which the employee is a member, or
- (c) the Minister, if the Minister considers it appropriate to make the application having regard to all the circumstances,

without hearing the employer or any evidence (other than in relation to the matters aforesaid) make an order directing the employer to carry out the determination in accordance with its terms.

(2) The reference in subsection (1) to a determination of the Labour Court is a reference to such a determination in relation to which, at the expiration of the time for bringing an appeal against it, no such appeal has been brought, or if such an appeal has been brought it has been abandoned and the references to the date on which the determination is communicated to the parties shall, in a case where such an appeal is abandoned, be read as a reference to the date of that abandonment.

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(3) The Circuit Court may, in an order under this section, if in all the circumstances it considers it appropriate to do so, where the order relates to the payment of compensation, direct the employer concerned to pay to the employee concerned interest on the compensation at the rate referred to in section 22 of the Courts Act 1981 in respect of the whole or any part of the period beginning 6 weeks after the date on which the determination of the Labour Court is communicated to the parties and ending on the date of the order. Pt.3 S.16

(4) An application under this section to the Circuit Court shall be made to the judge of the Circuit Court for the circuit in which the employer concerned ordinarily resides or carries on any profession, business or occupation.

PART 4

EXCLUSIONS AND OTHER PROVISIONS

17.—This Act shall not apply to a contract where the employee is— Exclusion of certain types of contracts.

- (a) a member of the Defence Forces,
- (b) a trainee within the meaning of the Garda Síochána (Admissions and Appointments) Regulations 1988 (S.I. No. 164 of 1988), or
- (c) a nurse in training within the meaning of Parts III and IV of the Nurses Act 1985.

18.—(1) If penalisation of an employee, in contravention of section 13(1), constitutes a dismissal of the employee within the meaning of the Unfair Dismissals Acts 1977 to 2001, relief may not be granted to the employee in respect of that penalisation both under Part 3 and under those Acts. Limitation on relief.

(2) An individual who is a fixed-term employee under this Act and a part-time employee under the Act of 2001 may obtain relief arising from the same circumstances under either, but not both, this Act or under Part 2 of the Act of 2001.

19.—(1) Section 10(1) of the Employment Agency Act 1971 is amended by substituting— Amendment of Employment Agency Act 1971, Organisation of Working Time Act 1997 and Protection of Employees (Part-Time Work) Act 2001.

- (a) “€2,000” for “£50”, and
- (b) “€1,000” for “£10”.

(2) The Organisation of Working Time Act 1997 is amended—

- (a) in section 28(8) by substituting “the employee concerned may bring the complaint” for “the employee concerned may, not later than 6 weeks after the expiry of that time, bring the complaint”,

(b) in section 39(2) by—

- (i) inserting “or statutory instrument” after “under this Act or an enactment”, and

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- (ii) substituting the following for “Worker Protection (Regular Part-Time Employees) Act, 1991”:

“Parental Leave Act 1998

Protection of Persons Reporting Child Abuse Act 1998

European Communities (Protection of Employment) Regulations 2000 (S.I. No. 488 of 2000)

Carer’s Leave Act 2001

Protection of Employees (Part-Time Work) Act 2001

European Communities (Protection of Employees on the Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003)

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- (c) in section 39(4) by—

- (i) inserting “or statutory instrument” after “under an enactment”,
- (ii) inserting “or statutory instrument” after “under that enactment”,
- (iii) inserting “or statutory instrument” after “concerned under the said enactment”, and
- (iv) inserting “or statutory instrument” after “specified under the said enactment”,

and

- (d) in section 39(5) by inserting “or statutory instrument” after “under an enactment”.

(3) Section 17(8) of the Act of 2001 is amended by substituting “the employee concerned may bring the complaint” for “the employee concerned may, not later than 6 weeks after the expiry of that time, bring the complaint”.