



# Precarious Contracts

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# The Protection of Employees (Part-Time Work) Act, 2001

Each relevant enactment shall apply to a part-time employee in the same manner, as it applies to an employee to whom that enactment relates

a part-time employee shall not, in respect of his or her conditions of employment, be treated in a less favourable manner than a comparable full-time employee unless it can be justified on objective grounds



# DEFINITIONS

**'part – time employee** – an employee whose hours are less than the normal hours of a comparable full - time employee

**'full – time employee'** – an employee who is not a part – time employee

**'comparable employee'** – is an employee who is:

- (a) Employed by the same or an associated employer or
- (b) Referred in a collective agreement as such or
- (c) Employed in the same industry or sector

AND

- (a) Performs the same / interchangeable work under similar conditions
- (b) Is of the same / similar nature and differences are insignificant
- (c) Is of equal or greater value in terms of skill, physical or mental effort, responsibility and working conditions



# DEFINITIONS

## **'Relevant Enactment':**

- (a) the Carer's Leave Act, 2001
- (b) the Minimum Notice and Terms of Employment Acts, 1973
- (c) the Protection of Employees (Employers' Insolvency) Acts, 1984 (d) the Redundancy Payments Acts, 1967
- (e) the Terms of Employment (Information) Act, 1994
- (f) the Unfair Dismissals Acts, 1977
- (g) the Worker Participation (State Enterprises) Acts, 1977



# DEFINITIONS

**‘Normal Hours of Work’** – the average number of hours worked by the employee each day during a reference period

**‘Reference Period’** – not less than 7 days or more than 12 months, is the same reference period of the comparable full – time employee and is reflective of the hours they normally work in that reference period



# DEFINITIONS

**‘Conditions of Employment’** – terms and conditions of employment including conditions in respect of remuneration and includes pensions

**‘Remuneration’** – includes any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment, and any amounts the employee will be entitled to receive on foot of any pension scheme or arrangement.

**‘Objective Grounds’** - A ground shall not be regarded as an objective ground unless it is based on considerations other than the status of the employee concerned as a part-time employee and the less favourable treatment is for the purpose of achieving a legitimate objective of the employer and such treatment is appropriate and necessary for that purpose.



# PART - TIME PROVISIONS

Act applies to all employees working under a contract of employment including agency workers

Agency workers are compared with agency workers and non agency workers are compared with none agency workers

If normal hours are less than 20% of the comparable full – time employee, the Act will not apply in relation pension issues

The condition of employment only has to be provided proportionally to the hours worked

Casual employees are those with less than 13 weeks' service, who are not in regular or seasonal employment and / or are casual based on the collective agreement – broader objective grounds allowed.



# PENALISATION

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An employee shall not be penalised for invoking a right under this Act, opposing an unlawful action under this Act, refusing to decrease or increase their hours, or giving evidence in proceedings relating to this Act.

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Penalisation includes dismissal, unfair treatment, unfavourable change in terms and conditions or any other act that is prejudicial to the conditions of employment



# Protection of Employees (Temporary Agency Work) Act 2012

an agency worker shall, for the duration of his or her assignment with a hirer, be entitled to the same basic working and employment conditions as the basic working and employment conditions to which he or she would be entitled if he or she were employed by the hirer under a contract of employment to do work that is the same as, or similar to, the work that he or she is required to do during that assignment

A hirer shall, as respects access to collective facilities and amenities at a place of work, treat an agency worker no less favourably than an employee of the hirer unless there exist objective grounds that justify less favourable treatment of the agency worker.



# DEFINITIONS

**‘agency worker’** - means an individual employed by an employment agency under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person other than the employment agency;

**‘basic working and employment conditions’** - means terms and conditions of employment of a hirer, and that relate to pay, working time, rest periods, rest breaks during the working day, night work, overtime, annual leave, or public holidays

**“pay”** – means basic pay and any pay in excess of basic pay in respect of shift work, piece work, overtime, unsocial hours worked, or hours worked on a Sunday, but does not include sick pay, payments under any pension scheme



# DEFINITIONS

**‘collective facilities and amenities’** – includes canteen or other similar facilities, childcare facilities, and transport services

**‘employment agency’** - means a person (including a temporary work agency) engaged in an economic activity who employs an individual under a contract of employment by virtue of which the individual may be assigned to work for, and under the direction and supervision of, a person other than the first-mentioned person

**‘hirer’** - means a person engaged in an economic activity for whom, and under the direction and supervision of whom, an agency worker carries out work pursuant to an agreement (whether in writing or not) between the employment agency by whom the agency worker is employed



# APPLICATION OF ACT – SWEDISH DEROGATION

Applies to agency workers temporarily assigned by an employment agency to work for, and under the direction and supervision of, a hirer.

However, the Act, in relation to 'pay' will not apply to an agency worker employed by an employment agency under a permanent contract of employment, provided that:

1. They are notified of this exclusion in writing before they commence work with the employment agency
2. And the agency worker is paid by the employment agency between assignments an amount equal to not less than half of the pay they were paid in the last assignment



# SERIES OF ASSIGNMENTS

Assignments forming part of the same series of assignments shall be treated as a single assignment.

Two or more assignments constitute a series of assignments if—

- (a) the hirer is the same person
- (b) the agency worker is the same person
- (c) the work is in the same place
- (d) the agency worker is directed by the same supervisor
- (e) the work is the same or similar
- (f) the gap is not longer than three months

Important for s.13 of the Unfair Dismissals Act 1993



# AGENCY WORKER PROVISIONS

A Collective Agreement can provide for conditions that are different to the conditions set out in the Act but it must be registered / approved by the Labour Court

A standard Collective Agreement can provide for more favourable terms in relation to the conditions provided for in the Act

Agency workers are entitled to a 5 day statement and one month stated under the Terms of Employment (Information) Act 1994

An Employment Agency cannot charge an agency worker for any placements

Employers are obliged to inform agency workers currently assigned of any vacant directly employed positions



# PENALISATION

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An employer shall not penalise an agency worker for invoking a right under this Act, opposing an unlawful action under the Act, making a complaint to a member of the Garda Síochána or the Minister or giving evidence in any proceedings under this Act

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Penalisation includes dismissal, suspension, lay – off, demotion, loss of opportunity, transfer of duties, change of place of work, reduction in wages, change in working hours, discipline, coercion or intimidation



# The Protection of Employees (Fixed-Term Work) Act, 2003

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 unless it can be objectively justified

An employer shall inform a fixed term employee in relation to relevant vacancies which occur in the undertaking.

Where a fixed-term employee is employed by his or her employer or associated employer on two or more continuous fixed-term contracts, the aggregate duration of such contracts shall not exceed 4 years unless the penultimate fixed term contract has been objectively justified



# DEFINITIONS

**‘Fixed Term Employee’** - means a person having a contract of employment 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 training contract (includes specified purpose)

**‘Comparable Permanent Employee’** - employed by the same employer or associated employer and in the same industry or sector of employment and perform the same work under the same or similar conditions, or the work is of the same or a similar nature or the work of the FTW is equal or greater in value

**‘Conditions of Employment’** - includes conditions in respect of remuneration and matters relating to any pension scheme

**‘Remuneration’** - includes any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment, and any amounts the employee will be entitled to receive on foot of any pension scheme or arrangement.



# OBJECTIVE GROUNDS

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The less favourable treatment can only be objectively justified if it is a proportionate and appropriate means of achieving a legitimate aim. The burden of proof is on the Respondent to demonstrate this.

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The consideration must be something other than the fixed term status of the employee.

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It is generally accepted that cost is not a reason that is permitted, however the existence of a pay grade scheme and different experience levels has been accepted.



# OBJECTIVE GROUNDS FOR FTC's

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The contracts can only be objectively justified if they are a proportionate and appropriate means of achieving a legitimate aim. The burden of proof is on the Respondent to demonstrate this – *HSE v Khan*.

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When considering 'proportionality', the Court will look at whether the role is a 'transient or temporary need of the employer' or a 'fixed and permanent need of the employer'. Could the position just be made redundant. The burden of proof is on the employer to clearly demonstrate the temporary nature of the work – *UCD v O'Mahony*.

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The employer can only rely on the grounds they have set out previously and cannot introduce new grounds at the time of dispute – *University College Cork v Thomas O'Riordan / Waterford County Council v Kennedy and Iarnrod Eireann v Higgins*.



# FIXED TERM PROVISIONS

In relation to pensions, the Act will not apply to a fixed-term employee whose normal hours of work constitute less than 20% of the normal hours of work of a comparable permanent employee

In relation to any benefit that is dependent on the number of hours worked by the employee, it shall be related to the proportion which the normal hours of work of that employee compared to the normal hours of work of the comparable permanent employee

Where any term of a fixed-term contract purports to contravene the entitlement to a CID, that term shall have no effect and the contract concerned shall be deemed to be a contract of indefinite duration.

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



# CID'S - ACTING UP

**Original Labour Court position** - That the Act does not apply to employees who have a permanent substantive post and are 'acting up' on fixed term contracts.

**Power v Health Service Executive IESC 17** - SC Held that even though Mr. Power was a permanent employee of the HSE, he could still avail of the protection of section 9 of the Act in the context of his acting-up arrangements.

**New Labour Court position** - Referred to the Labour Court but no decision was issued as HSE settled. No decision in relation to this issue has been issued in another case yet either. Therefore, Supreme Court decision still stands.



# PENALISATION

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An employer shall not penalise a fixed term employee for invoking a right under this Act, opposing an unlawful action under the Act or giving evidence in any proceedings under this Act

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Penalisation includes dismissal, unfair treatment, unfavourable changes to conditions of employment or any action that is prejudicial to the employees employment



# Section 9A of the Act – NEW

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Notwithstanding that probationary periods cannot be longer than 6 months, where a fixed term contract contains a probationary period, the length of the probationary period should be proportionate to the length of the fixed-term contract

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Where a fixed term contract is renewed and the renewal is for the same functions and tasks, the contract shall not be subject to a new probationary period



# REDRESS

- ✓ Claim to the Workplace Relations Commission within 6 months of date of contravention
  
- ✓ Appeal to the Labour Court within 42 days
  
- ✓ WRC / LC will:
  - Declare the complaint is or is not well founded
  - Require the employer to comply with the relevant provision
  - Award compensation (if any) up to two years remuneration
  
- ✓ For CID's – can reinstate or re-engage and / or award a CID



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