

Fixed-term employment contracts under scrutiny

The judgment of the European Court of Justice of 13 March 2014 in case C-38/13 heralds major amendments to the current law on fixed-term employment contracts. In its judgment, the ECJ held that Polish provisions under which the notice period for a fixed-term worker carrying out similar work to a permanent worker and with a comparable length of service with the same employer is significantly shorter are contrary to EU law. In the extreme case to which the judgment related, it was six times shorter. The ECJ therefore confirmed the standpoint of the European Commission on the necessity of narrowing the differences in Polish law between fixed-term employment contracts and indefinite-term employment contracts, which is certain to accelerate legislative work on the matter.

Key issues

- Conflict of Polish provisions on notice periods under fixed-term contracts with an EU directive
- Groundbreaking ECJ judgment of 13 March 2014 for fixed-term workers
- Announcement of major amendments to the Labour Code with regard to fixed-term contracts

Current situation

As the law currently stands, the notice period in the case of an indefinite-term employment contract depends on the length of service with the relevant employer and is:

- two weeks in the case of service shorter than six months;
- one month in the case of service of at least six months, and
- three months in the case of service longer than three years.

Additionally, the employer is required to state the reasons for giving notice, which is subject to review by a court. An unusual feature of Polish law is, conversely, that so called fixed term contracts for periods of more than six months could, in fact, be terminated during that term by the employer on as little as two weeks' notice. Furthermore, the employer is not required to substantiate the termination of a fixed-term contract. As a result, fixed term contracts are widely used in Poland and now account for almost 30% of all those employed in the Polish labour market.

Groundbreaking ECJ judgment

The judgment of the European Court of Justice of 13 March 2014 was issued as a result of a request for a preliminary ruling from the District Court in Białystok. This arose out of proceedings to find a five-year fixed-term employment contract providing for two weeks' notice as an indefinite-term contract to which the three-month notice period should apply, in the light of the claimant's length of service with her employer.

The District Court in Białystok noted a conflict between Polish provisions on notice periods under fixed-term contracts and Council Directive No. 99/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work, pursuant to which it is prohibited to treat fixed-term workers in a less favourable manner than comparable permanent workers, merely because the former are employed for a fixed term.

The European Court of Justice held the prohibition on discrimination "as precluding a national rule which provides that, for the termination of fixed-term contracts of more than six months, a fixed notice period of two weeks may be applied regardless of the length of service of the worker concerned, whereas the length of the notice period for contracts of indefinite duration is fixed in accordance with the length of service of the worker concerned and may vary from two weeks to three months, where those two categories of workers are in comparable situations".

Although the judgement of the ECJ does not have any direct consequence in Polish law (in particular, it does not require private undertakings (employers) to change the notice periods in the fixed-term contracts they use), it does require the legislative authorities to adjust the disputed regulations to EU law.

Announcement of amendments

The judgment is an additional incentive to make major changes to the Labour Code with regard to fixed-term contracts, which the European Commission has been demanding for some time. The signals coming from the Ministry of Labour and Social Policy show that the following proposals, among other things, are under consideration:

- limiting the duration of fixed-term contracts to 36 months and allowing contracts for longer periods to be concluded only in specifically listed circumstances; and
- having the length of the notice period depend on the duration of the contract, as in the case of indefinite-term contracts, whilst leaving the differences between the two types of contracts with regard to the obligation to state the reasons for giving notice or consult with trade unions.

The European Commission has recommended introducing even more far-reaching solutions and replacing the existing fixed-term and indefinite-term contracts with a single type of employment contract called an "open-ended contract", in which a longer period of service would allow the employee to acquire employee rights, for example a longer notice period (up to three months after 36 months) and require the employer to state the reasons for giving notice, which would also apply after the employee has worked for a specific period (e.g. 36 months).

The latter proposal is radical because, as a result, permanent workers with a shorter period of service would be in a worse situation than today as their contracts could be terminated for no reason in the initial period of employment. The comments of representatives of the Ministry of Labour and Social Policy that have appeared in the press show that the Ministry is also considering this idea. However, the proposal seems unlikely to succeed because of trade union protests and strong social opposition.

Irrespective of the solution adopted, the amendments will be aimed at limiting the possibility of using fixed-term contracts. This will affect, in particular, shared services centres where fixed-term contracts are especially common. As a result, employers might be inclined to look at other ways of contracting with their labour force which would avoid these burdens. For example, this could result in the increased use of "civil law contracts", which aim to keep the relationship with workers outside the sphere of an employment relationship. The resulting effect would be, in fact, the opposite to what was intended.

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