

Consolidation Act on Fixed-Term Employment

1)

This Act consolidates the Act on Fixed-Term Employment, see Act no. 370 of 28 May 2003, as amended by section 3 of Act no. 1155 of 19 December 2003.

1.-(1) The purpose of the Act is to improve the quality of fixed-term employment by applying the principle of non-discrimination and to lay down a framework to prevent abuse resulting from successive fixed-term employment contracts.

2. The Act applies to employees whose collective agreement does not secure them rights at least corresponding as a minimum to the provisions in Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP.

(2) The Act does not apply to

1) employees placed by a temporary work agency at the disposition of a user enterprise;

2) students covered by the Danish Act on Basic Vocational Education and Training etc. (*Lov om erhvervsgrunduddannelse m.v.*), the Danish Act on Basic Social and Healthcare Training Programmes (*Lov om grundlæggende social- og sundhedsuddannelser*), the Danish Act on Agricultural Training Programmes (*Lov om landbrugsuddannelser*) and the Danish Act on Vocational Education and Training (*Lov om erhvervsuddannelser*); and

3) employees who are employed under special public or publicly funded programmes for the purpose of education, integration and retraining.

(3) After having consulted the relevant trade unions, the Minister of Defence may exclude armed forces staff in active service from this Act.

(4) Subsections (3)-(7) do not apply to employees who are not covered by a collective agreement securing them the rights mentioned in subsection (1), if it is agreed in writing for the individual employment relationship that the employee is guaranteed these rights in accordance with a specified collective agreement applicable in the establishment in which the employee is employed. Section 8(1)-(3) only applies in the instances mentioned in section 8(4).

3.-(1) For the purpose of this Act, the term 'employee' means a person receiving remuneration for personal work in an employment relationship.

(2) For the purpose of this Act, the term 'fixed-term worker' means an employee in an employment relationship established directly between the employee and an employer, when the end of the employment relationship is determined by objective conditions such as reaching a specific date, completing a specific task or the occurrence of a specific event.

(3) For the purpose of this Act, an employee is not regarded as a fixed-term worker if it has been stipulated that the employment relationship will end when the employee reaches the age of retirement in the profession or establishment in question, or when the employee becomes entitled to state pension or retirement pension from the employer.

(4) For the purpose of this Act, the term 'comparable permanent worker' means a worker with an employment relationship of indefinite duration in the same establishment, engaged in the same or similar work, due regard being had to qualifications and skills.

(5) Where there is no comparable permanent worker in the same establishment, and there is no collective agreement which applies or which otherwise regulates the issue, the collective agreements normally applicable in this or a similar field must be used for comparison.

4.-(1) In respect of employment terms, fixed-term workers must not be treated less favourably than comparable permanent workers solely because they have a fixed-term contract, unless different treatment is justified on objective grounds.

(2) The principle of proportional remuneration and proportional rights applies where rights are earned or acquired in relation to the length of the employment period.

(3) If the right to special employment terms requires a certain seniority, this requirement must be the same for fixed-term workers as for permanent workers, unless the requirement for different seniority is justified on objective grounds.

5.-(1) Renewal of successive fixed-term employment contracts can only take place if the renewal is justified on objective grounds, see, however, the exception in subsection (2) and the provisions on limited tenure in the Danish Act on Public Servants (*Lov om tjenestemænd*). This applies to, among other things, renewal:

1) due to unforeseeable absence such as illness, pregnancy, maternity/paternity leave, leave, civic duties;

2) following expiry of contract work limited in time or based on a specific task; or

3) which is necessary for the completion, including restoration, of an original specific task of a temporary nature.

(2) For employees who are engaged in teaching and research activities at state institutions as well as self-governing institutions mainly financed by government subsidies, and where the state determines or agrees pay and employment terms, successive fixed-term employment contracts may only be renewed twice. However, this provision does not apply to employees who are engaged in teaching activities at independent

primary and lower secondary schools, continuation schools, home economics and handicraft schools or private upper secondary schools.

6. The employer must inform fixed-term workers of vacant positions in the establishment to ensure that they have the same access to a permanent position as other employees.

(2) The employer must, as far as possible, facilitate access to appropriate education and training opportunities for its fixed-term workers in order for them to improve their skills and career opportunities and achieve greater occupational mobility.

7. For the duration of the employment period, fixed-term workers must be included when counting the number of employees to determine whether liaison committees must be set up pursuant to legislation, collective agreements or practice.

(2) The employer should, as far as possible, consider providing appropriate information on fixed-term employment in the establishment to the existing liaison committees.

8.-(1) An employee whose rights under this Act have been infringed may be awarded compensation.

(2) An employee whose pay, in contravention of the law, is lower than a comparable permanent worker's pay has a claim for the difference.

(3) If an employee is dismissed for having raised a claim under this Act, the employer must pay compensation.

(4) For employees who are covered by a collective agreement as mentioned in section 2(1), see in this regard also section 2(2), cases concerning infringement of rights under such collective agreement, read with subsections (1)-(3), which are not considered in the labour law dispute system, must be heard by the civil courts.

9.-(1) The Act enters into force on 1 June 2003.

10. The Act does not extend to the Faroe Islands and Greenland.

Danish Act no. 1155 of 19 December 2003 amending the Danish Act on Public Servants, the Danish Act on Public Servant Pension and the Danish Act on Fixed-term Employment and on repealing the Danish Act on Limited Tenure for Public Servants and Employees with Public Servant Status and the Danish Act on Appointment under the Royal Seal and Limited Tenure (pay on demotion, leave, appointment under the Royal Seal and limited tenure) (*Lov om ændring af lov om tjenestemænd, lov om tjenestemandspension og lov om tidsbegrænset ansættelse og om ophævelse af lov om åremålsansættelse af tjenestemænd og ansatte på tjenestemandslignende vilkår og lov om kongelig udnævnelse og åremålsansættelse af visse tjenestemænd (Løn ved nedrykning, tjenestefrihed, kongelig udnævnelse og åremålsansættelse)*), which amends section 5 of the Act, contains the following provision on entry into force:

4.

(1) ---The Act enters into force on 1 January 2004, ---.

(2)---

(3)---

(4)---

(5)---

(6)---

Ministry of Employment, 11 September 2008

Claus Hjort Frederiksen

/ Lise Fangel

Official notes

1) The Act contains provisions implementing Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999, p. 43).