

On 14 September 2016 the ECJ held that the provisions of the Spanish Workers' Statute which treat temporary replacement workers (a type of fixed-term worker) less favourably than comparable permanent workers when calculating termination payments are contrary to EU law. This ruling will have significant repercussions in Spain, not only for employers engaging staff on temporary replacement contracts, but also for those using other types of fixed-term worker, e.g. those taken on to complete a specific task or project.

In *Ana de Diego Porras v Ministerio de Defensa*, DP was employed by the Spanish Ministry of Defence as a secretary on a series of temporary replacement contracts between 2003 and 2012. When her final employment contract was terminated (because the worker DP had replaced finally exercised her statutory right to return to her post) she brought proceedings before the Spanish Labour Court challenging both the legality of her employment contract and the terms on which it had been terminated.

The case was referred to the ECJ by the High Court of Madrid for a preliminary ruling concerning DP's right to claim compensation for the termination of her employment contract. The Workers' Statute currently provides that permanent workers are entitled to 20 days' salary per year of service if their contract is terminated on objective grounds, whereas fixed-term workers are entitled to 12 days' salary per year and workers engaged on temporary replacement contracts (such as DP) are not entitled to any compensation at all. As there seemed to be no objective ground to justify such a difference in treatment, the referring court sought clarification from the ECJ as to whether such provisions were contrary to the non-discrimination principle enshrined in the Framework Agreement on Fixed-Term Work.

Perhaps unsurprisingly, the ECJ held that the provisions in dispute did indeed breach the rights of fixed-term workers under European law and that the Workers' Statute should not permit Spanish employers to treat temporary replacement workers less favourably than comparable permanent workers when calculating compensation for loss of employment.

The mere fact that the workers were carrying out their work on a temporary basis did not constitute objective grounds justifying the less favourable treatment.

In light of this decision, Spanish employers should expect the relevant provisions of the Workers' Statute to change. However, the change in law is immediate and does not depend on the statute being amended.

Whilst strictly this decision only affects temporary replacement workers (a specific type of fixed-term contract in Spain) it is difficult to see how the reasoning behind it will not apply equally to other types of fixed-term worker. Spanish employers should therefore seek advice before making lower termination payments to their fixed-term staff.

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