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RECENT LEGISLATIVE DEVELOPMENTS ON FIXED TERM CONTRACTS & PROBATIONARY PERIODS

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The end of 2022 saw the introduction of important amendments to the provisions of the Employment and Industrial Relations Act (EIRA) regulating the duration of fixed term employment contracts as well as employee probationary periods.

These amendments are meant to partially transpose Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union.

Employers and employees alike should be aware of the following legislative developments which may affect their respective rights and obligations:

Fixed Term Employment Contract Duration

- A fixed term contract may not be shorter than 6 months, unless a shorter period is justified by objective reasons based on precise and concrete circumstances characterising a given activity.

- Whenever an employer intends to enter into a contract of service for a fixed term with a prospective employee for a period shorter than 6 months, the employer must list in writing in that contract the objective reasons for which such contract is entered into for less than 6 months.

Probationary Periods – General Rule

- The EIRA sets out the general rule that, when an employment relationship is subject to a probationary period, such period must be of 6 months. This general rule is subject to certain exceptions as outlined below.

Probationary Periods for Fixed Term Employment Relationships

- In the case of fixed term employment relationships, the length of a probationary period must be proportionate to the expected duration of the contract and the nature of the work.

- In the case of the renewal of a fixed term contract for the same function and tasks, the employment relationship may not be subject to a new probationary period.

- In the case of a fixed term contract having a duration of between 6 and 15 months, the probationary period must be calculated on the basis of a 2-month probationary period for each 6-month period of the contract term.

- If the fixed term contract is shorter than 6 months, the probationary period must be one-third of the duration of such fixed term contract.

- In the case of a fixed term contract exceeding a term of 15 months, the probationary period must be of 6 months.

Technical, Executive, Administrative or Managerial Positions

- Workers holding technical, executive, administrative or managerial positions, and whose wages are at least double the prescribed national minimum wage, shall be on probation for a period of 12 months.

Shorter Probationary Periods

- The probationary period may, by agreement between the employer and the employee, be shorter than the respective periods outlined above.

Suspension of Probationary Periods

- The probationary period must be suspended in the case of any 2 weeks or more of approved leave. In such case, the probationary period shall be extended by a period corresponding to the duration of the said approved leave.

- It is unlawful for an employer to dismiss a worker during the period of suspension of probation.

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