

Fixed Term Agreements: Projects & Events

A recent decision of the Employment Court reviewed the genuineness of fixed term agreements. It specifically attempted to define what is meant in section 66 of the Employment Relations Act 2000 by the terms 'specified event' and 'specified project'.

In passing the Court also considered the effect on the genuineness or otherwise of a fixed term agreement of repeat or multiple contracts and the effect of extended terms. The case was **Carter Holt Harvey v. McAuley** and was on appeal from the Employment Relations Authority which had found the fixed term agreements to be invalid.

Mr McAuley was employed as a fixed term, full time fire-fighter, at the CHH Mill at Kinleith on a total of four fixed term agreements spanning the period from November 2002 to December 2007. The first two agreements from November 2002 to May 2003 were not challenged.

From March 2002 CHH began a series of reviews at the mill which included a review of the fire service. In essence these reviews considered options such as the contracting out of the service and the move from a designated service to the use of production workers trained to work as fire fighters in emergencies.

On 18 June 2003 Mr McAuley was offered a third fixed term agreement which provided for termination 'on completion of the Kinleith Restructure' which was expected to be completed by '31 August 2003'. The restructure was not completed on this date and on 29 August 2003 he was offered the fourth agreement which provided for 'a fixed term agreement commencing on 5 September 2003 and terminating on the event of the completion of the restructure'.

Progress with this particular part of the restructure was slow and it was not until February 2007 that a formal proposal was developed and consultation was begun with the union. The consultation process was completed during the year and Mr McAuley was finally given notice on 14 December 2007. He initiated a grievance claiming to have been disadvantaged by the loss of benefits that permanent employment would have awarded him in a redundancy situation, including redundancy compensation.



Section 66(1) of the Employment Relations Act 2000 states:

- "(1) An employee and an employer may agree that the employment of the employee will end –
- (a) at the close of a specified date or period; or
 - (b) on the occurrence of a specified event; or
 - (c) at the conclusion of a specified project."

The Employment Relations Authority determined that Mr McAuley was a permanent employee in that at the time that the third and fourth agreements were entered into CHH did not have "... a sufficiently specific proposed event upon which to base a fixed term agreement" and that "[t]here was no particularised proposal in place at that time". The Authority held that a general, albeit genuine, desire to effect change (to the arrangement for the company's emergency services) was not sufficient to invoke the provisions of s.66 ...".

The Employment Relations Authority determined that the words 'specified project' and 'specified event' (underlining added) implied a degree of particularisation that was absent in the CHH plans at the time that the fixed term agreements were entered into.



The decision was challenged by CHH and reviewed by the Employment Court. The Court acknowledged that the effect of s.66 was to limit the circumstances in which fixed term agreements might lawfully be entered into. It looked at the conduct of CHH to determine whether or not there was in fact a genuine event or project which would legitimise the fixed term agreements. They decided that although the restructuring plans occupied an 'extraordinary long period of about 7 years', CHH had never abandoned its intention to restructure the fire service.

The Court determined that the Authority was wrong when it determined that the proposal had lapsed and that to be a valid fixed term agreement it was necessary for a particularised proposal of changes to exist, and that the Authority had incorrectly concluded that "a genuine but general desire to effect change is not sufficient to bring the provisions of s.66 into effect".

Ultimately the Court concluded that the desire to restructure was at all times a 'project' as required by s.66 and that in addition the completion of the proposal was the 'effect' referred to in s.66(1)(b).

In addition the Court considered, although not as a formal part of the decision, the often contentious questions of the effect of multiple agreements and of prolonged or extended terms. The Court seemed to accept the general proposition that:

"... the greater the numbers of consecutive fixed term agreements under which an employee may work, and/or the greater the length of any or all of these agreements, the more carefully the Court or the Authority should scrutinise them to ensure their compliance with s 66. But if, following that scrutiny, either or both of repeated consecutive agreements and a lengthy fixed term agreement or agreements are shown to have complied with s 66, then agreement multiplicity and/or long terms do not lead to invalidity of such agreements."

In conclusion the decision serves to emphasise that while events and/or projects must be genuine and reasonable, they do not need to be closely defined or particularised to be valid. The case is also significant for stressing that while the number of contracts (and the length of time involved) will not of itself determine the genuineness of a fixed term agreement, these are issues that will attract the scrutiny of the Courts. There are no defining numbers of fixed term agreement, or length of term that will automatically change a genuine fixed term agreement into a permanent agreement. S.66 limits the conditions for fixed term agreements but in doing so does not limit the number of agreements or their length.

Employees using fixed term agreements must carefully follow the requirements of s.66 of the Employment Relations Act 2000 and ensure that fixed term agreements are drafted to meet these requirements. If you are in any doubt please contact us for assistance.

Upcoming Training:

• **Holiday Pay Refresher 24 May 2012**

Attendance at this half day course will ensure that attendees attain a good knowledge of the provisions of the Holidays Act 2003, including the amendments introduced in 2011, which will enable attendees to review workplace practices to ensure compliance with this legislation and to ensure a complete understanding of the respective employer/employee responsibilities and entitlements specified in this Act.

This course is aimed at assisting people who are responsible for the calculation of annual leave and public holidays. This course is also suitable for HR Practitioners, Managers and owners of businesses.

• **Employment Relations Practice Course 3 & 4 July 2012**

This 2 day course examines employment issues from engagement to termination and relevant employment legislation. Topics covered include:

- Pre Employment
- Long Term Absences (Medical/Accident)
- Discipline and Termination
- Performance Management
- Holidays Act
- Parental Leave
- Negotiations and Good Faith
- Redundancy and Restructuring
- Policies
- Legislative Updates
- Exits Interviews

The February staging of this course was booked out so if you are interested in attending get your registration in to us today !

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