

Labour Law Remark

Severance pay for temporary personnel: Questions posed by the Supreme Court to the CJEU

14th November 2017

In relation to the Supreme Court judgement of 25 October 2017

A final ruling on the case filed by Mrs. De Diego Porras against the Ministry of Defence has not yet been handed down and, as a result, the question remains as to whether temporary personnel will be entitled to receive severance pay upon the legal conclusion of their respective contracts and, if so, if it should be 12 or 20 days' pay for each year of service.

Let us recall that it all started with Madrid SCJ no. 1 of 10 September 2013 (decision 1383/2013), which dismissed the claim filed by the complainant, Mrs. De Diego Porras, against the Ministry of Defence in relation to the valid termination of a temporary contract with no entitlement to severance pay.

During the request phase before the SCJ of Madrid, the court issued the CJEU with a preliminary ruling that resulted in the now-famous judgement of the CJEU dated 14 September 2016, which ruled that the failure to pay any type of severance pay in the event of the termination of a temporary contract was against the legal order of the European Union.

Based on this decision, the Madrid SCJ of 5 October 2016 (RS 246/2014) awarded the temporary member of staff severance pay equivalent to that of a permanent employee dismissed for objective reasons (i.e., 20 days' pay for each year of service). This solution was accepted by subsequent judgements handed down by various territorial courts.

However, the company filed an appeal against this decision with an appeal in cassation for the unification of doctrine before the Supreme Court. Now, the Labour Division of this court considers it appropriate to process this new request before the CJEU, suspending action pending the decision of the European Court.

The decision handed down by the Labour Division on 25 October 2017 states that *"the conclusion drawn from the CJEU judgement of 14 September 2016 has generated multiple disparate interpretations of the Spanish labour courts in the various disputes in which the issue of the termination of temporary contracts is in question"*. Based on the above, it explains the handing down of this preliminary ruling on the competence and responsibility of the Division to offer a uniform legal response on this issue across Spain.



To achieve this objective, request clarification from the CJEU using the following questions (**questions posed to the Court of Justice**):

1. Should clause 4 of the Framework Agreement on temporary employment, which appears in the Appendix to Directive 1999/70, be interpreted to mean that it is opposed to national regulations that do not provide for any severance pay in the event of the termination of a temporary employment contract for a temporary employee appointed to replace an employee entitled to return to their position, when said termination is due to the reinstatement of the employee who had been replaced but which does, on the other hand, contain such provisions for circumstances when the termination of the contract is due to some other cause established in law?

2. If the answer to Question 1 is in the negative, does clause 5 of the Framework Agreement contain a measure such as that established in Spanish legislation to introduce severance pay calculated at 12 days' pay for each year of service to be paid to employees at the end of a temporary contract, even when the temporary appointment has been limited to a single contract?

3. If the answer to Question 2 is in the affirmative, is a legal provision that recognises a right for temporary employees to receive severance pay equal to 12 days' pay for each year of service at the end of the contract, but which does not grant this right to personnel when the contract is for a temporary employee appointed to replace an employee entitled to return to their position, in violation of clause 5 of the Framework Agreement?

In short, the decision as to whether to provide severance pay to temporary employees has been postponed and a degree of legal insecurity in the day-to-day future of the legal terminations of temporary employment contracts remains. Indeed, there are courts and tribunals that do not award any severance pay, as the Workers' Statute contains no provision for such payments, while others consider that 20 days' severance pay should be paid for each year of service.

For your information, refer to the [SC decision of 25 October 2017](#).

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