



European network of legal experts in gender equality and non-discrimination

NEWS REPORT

Country:	Finland
Title:	Fixed-term contracts
Date:	25 September 2018
Expert:	Kevät Nousiainen
<u>Context</u>	
Issue at stake:	Fixed-term contracts for the young unemployed
Ground of discrimination:	Sex, age
Source:	Policy development
Field:	Employment
Applicable law:	Employment Contracts Act (55/2001)

Content

Policy development: The Finnish Employment Contracts Act (55/2001) stipulates that an employment contract may be concluded for a fixed term under the condition that there is a justified reason. A fixed term contract concluded on the employer's initiative, without a justified reason, is to be considered a permanent employment contract. These provisions were introduced to avoid fixed-term contracts to be concluded in order to circumvent employee's protection against dismissals. An amendment adopted in 2011 to the provision introduced a provision on 'chaining' employment contracts. The provision does not give an upper limit to the number of fixed-term contracts following each other, but does require justified reasons for each fixed term contract. When the number of 'chained' contracts increases, the assumption that the employer is in need of permanent employment becomes stronger. The provision on fixed-term work was weakened in 2016, by introducing the possibility of concluding fixed-term contracts without a justified reason for persons who have been long-term unemployed. The preparatory works for the amendment refer to Case C-212/04 *Adelener et al.*, which (supra 70) mentions socio-political aims as a justification for fixed-term contracts.¹ The amendment was based on the Government's Programme aimed at reducing unemployment and consequently justifying the weakening of the protection of employees against dismissals. On 11 of April 2018, the Government announced its intention to amend the Employment Contracts Act in order to include all young people under the age of 30 in the group of people for which no justification would be required to offer fixed term contracts. Public discussion on the proposed amendment concentrated on the discriminatory effects on young persons, and the constitutionality of the proposal was discussed in terms of alleged age discrimination. The employees' central labour organisations in their joint statement to the 2016 amendment already referred even to the risk of gender discrimination, as the preparatory works for the amendment did not note obligations under ILO Conventions Nos 100, 111 and 156, or EU equality directives which prohibit indirect discrimination. There is a risk that the use of fixed-term contracts without justification disproportionately increases for young women.

¹ Government Bill 105/2016 vp.

Fixed-term contracts are common in Finland. According to Statistics Finland, 30 % of all fixed-term workers in 2014 were women aged 25-34. In the health sector, 48 % of all fixed-term workers were women falling in this category. A recurring problem has been pregnancy discrimination in the context of fixed-term contracts. In principle, Finnish legislation protects fixed-term employees. When a fixed-term contract ends, the employment should continue if the employer seeks new personnel, and a fixed-term contract is not to expire at the beginning of an employee's pregnancy or family related leave. Yet, pregnancy discrimination in this context occurs, as the Equality Ombudsman has repeatedly stated, latest in his opinion in March 2018.² The use of fixed-term contracts as contracts for young women is an ingrained practice, which increased rapidly in the 1990s. During the 1990s' economic recession, the requirements for the use of fixed-term work were partly removed by allowing unlimited 'chains' of fixed term work without justification. The introduction of long family-related leaves at that time may have motivated employers to prefer fixed-term contracts for women of child-bearing age. Legislation later required that each fixed-term contract needs to be justified, as required under Directive 1999/170/EC, but all illegal practice has not ceased. The present Government's 2016 amendments to allow new exceptions to the rule on justification of fixed-term contracts may increase these problems.

On 5 of June 2018, the Government announced that it was going to withdraw the proposal to allow fixed-term work of those under 30 without justification. The Minister for Employment announced that there were no compelling legal obstacles against introducing the provision, but that the gains to be expected were not sufficient to make the amendment reasonable.³

Key points of analysis: Pregnancy discrimination in the context of fixed-term contracts is common in Finland, and such contracts are routinely for young women. The Government planned an amendment of the Employment Contracts Act to allow no justification for fixed-term contracts for unemployed persons under 30 but withdrew the proposal. Gender discrimination was not mentioned by Government's motivations.

² TAS 215/2017, given on 26 March 2018 on *Syrjintäepäily: määräaikaista työsuhdetta ei jatkettu raskauden takia* (Suspected discrimination: a fixed-term employment contract was discontinued due to pregnancy).

³ <https://tem.fi/blogi/-/blogs/tyollistaminen-helpommaksi-alle-20-hengen-yrityksissa-hallitus-lopettaa-alle-30-vuotiaiden-maaraaikaisuuksien-muutosten-valmistelun>, accessed 10 July 2018.