EXPERIENCE COUNTS
Ophthalmologists hired permanently should receive credit for service performed under previous fixed-term contracts
by Paul McGinn

The salary scale for ophthalmologists newly hired as permanent public servants should reflect at least some of the length of service they have already accrued under any fixed-term state contracts, under a new ruling from the European Union’s highest court.

In its decision, handed down in late October, the Court of Justice found that the same EU laws that prohibit discrimination against fixed-term workers continue to protect those same workers from discrimination once they are hired permanently.

Under EU law adopted in 1999, “fixed-term workers shall not be treated in a less favourable manner than comparable permanent workers solely because they have a fixed-term contract or relation unless different treatment is justified on objective grounds.”

The case arose after the Italian National Competition Authority hired, on a permanent basis, five employees previously employed by the authority under fixed-term contracts. In determining the pay scale for those employees, the authority refused to take into account any of the periods of service previously completed by those employees under the fixed-term contracts.

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In its decision, the Court of Justice stated that national courts should take account of the nature of the duties performed by those employees under fixed-term employment contracts and the quality of the experience which they thereby acquired in determining whether they were, in fact, working in a situation comparable to that of career civil servants.

On that basis, if the national court found that the nature and experience of the fixed-term work were the same as the nature and experience of the permanent work, a public authority could not discriminate against the fixed term worker by failing, in setting the appropriate civil servant pay scale, to acknowledge the duties already performed and experience already gained.

The Court of Justice also found, that as a general principle, just because fixed-term workers had not passed the general competition for obtaining a post in the public sector did not, of itself constitute objective grounds for discriminating against them.

The Court of Justice ruled that to be objective, such a ground for discriminating against the fixed-term workers can only be “justified by the existence of precise and specific factors, characterising the employment condition to which it relates, in the particular context in which it occurs and on the basis of objective and transparent criteria in order to ensure that unequal treatment in fact meets a genuine need, is appropriate for achieving the objective pursued and is necessary for that purpose.”

The Court of Justice noted that even were there to be an objective ground for discrimination against fixed-term workers, the discrimination must be proportionate to the objective. In this case, the refusal to take account of any of the length of service accrued under the fixed-term contracts in determining the civil servant pay scale was not proportionate to the objective and so was illegal. The court held that Italy “cannot, in any event, justify disproportionate national legislation such as that issue in the main proceedings which completely and in all circumstances prohibits all periods of service completed by workers under fixed-term employment contracts being taken into account in order to determine the length of service of those workers upon their recruitment on a permanent basis and, thus, their level of remuneration.”

To allow the temporary nature of an employment relationship to justify a difference in treatment as between fixed-term workers and permanent workers would render the objectives of EU law “meaningless” and would be tantamount to perpetuating a situation that is disadvantageous to fixed-term workers, the court held.

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From the Archive
Wavefront rated in ‘top five’ innovations in last five years

Wavefront analysis will lead to an improved understanding of the optics of the human eye and provide the foundation for developing therapeutic devices and procedures in the future, according to a US ophthalmologist.

Daniel S Durrie MD said wavefront sensing is one of the top five advances in ophthalmology during the last 25 years in his Barraquer lecture during the annual meeting of the American Academy of Ophthalmology.

“Through its application in guiding customised ablation, it has brought us into an era focusing on quality of vision, but advanced vision testing with wavefront analysis is relevant to many other technologies.

“It has been my privilege to be part of the start of this new wave and I look forward to where it will take us in the future,” Dr Durrie said.


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