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FIXED TERM EMPLOYMENT AGREEMENTS

An Employer and an Employee may only agree to enter into a fixed term employment agreement when two threshold requirements are met.

The first is, there must be genuine reasons based on reasonable grounds for specifying that the employment will end because of the fixed term.

The second is that the Employer must advise the Employee of when or how his or her employment will end and the reasons for the employment ending in that way.

If the Agreement does not comply with the two threshold requirements referred to above, then the Employee may elect to treat the expiry of the Agreement as being ineffective. In other words, the employment will simply continue. The Act specifies three reasons which are not considered genuine. They are:

- a) An attempt to exclude or limit the rights of the Employee;
- b) To assess the suitability of the Employee for permanent employment;
- c) To exclude and limit the rights an Employee has under the Holidays Act 2003.

Whilst that simply excludes three possibilities, the Act does not define what are genuine reasons based on reasonable grounds.

One of the most recent cases which looked at fixed term contracts and genuine reasons for them involved Transit Coachlines Wairarapa Limited. They employed bus drivers during the school term. The Employer had a contract with the Ministry of Education which was only an annual contract.

They therefore employed their drivers on fixed term contracts and simply rolled them over each year when the Ministry of Education confirmed its funding for another year.

The Employment Contract stated the reason for the fixed term was because the school bus driving contract with the Ministry of Education expired at the end of each year.

Transit argued that due to the financial uncertainty of funding only being renewed on an annual basis, they believed that they had a genuine reason based on reasonable grounds for the fixed term agreements.

Whilst the Court agreed that there was a risk that the funding wouldn't be renewed and if it did, it would impact on the company's financial circumstances, however the Court did not agree that that was a genuine reason based on reasonable grounds. The reason for this is because the first step was speculative (the contract had been renewed for 18 consecutive years) and there was no evidence offered of the financial circumstances that might arise if the contract was not renewed.

The Court stated that financial uncertainty is something all businesses face to a greater or lesser degree and the mere fact of financial uncertainty cannot of itself suffice in terms of the threshold required by the Act for genuine reasons on reasonable grounds. Otherwise every employment agreement could lawfully proceed on a fixed term basis.

Transit would have been better off having permanent contracts and simply relied on the redundancy provisions instead of the fixed term.

If you are considering fixed term contracts for employees, take advice first.