

European (& the GCC) Employment Law Update

Jurisdiction: Finland
Date: November 2017

| Impact date | Development | Impact |
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| 11 August 2017 | <p>Judgement KKO:2017:55 issued by the Finnish Supreme Court concerning an employer's obligation to under certain circumstances offer other work also to fixed-term employees after the fixed-term.</p> | <p>According to the Finnish Employment Contracts Act, fixed term employments require a justified reason and fixed term contracts without a justified reason are considered to be valid indefinitely. Employer's may not use consecutive fixed-term contracts when the amount or total duration of fixed-term contracts or the totality of such contracts indicates a permanent need of labour. Further, before terminating an employment contract, an employer has an obligation to offer work and provide training to an employee who has an indefinitely valid employment contract.</p> <p>In the case at hand, the employee had worked as a social worker for the federation of municipalities for eight years under 16 different fixed term employment contracts, with no single contract being for a period of more than a year. The reason for the fixed term contracts was that the employee did not fulfil the all the statutory qualification requirements and the employer was constantly seeking a competent social worker to fulfil a permanent need of labour.</p> <p>The Supreme Court stated that due to the employee's lack of qualification, there was a justified reason for the fixed term employment contracts. The Supreme Court underlined that if the employee would have fulfilled the requirements set out in the law, the employment contracts should have been held as in force indefinitely.</p> <p>Notably however, when determining the question of the employer's obligation to offer other work and provide training to the employee, the Supreme Court held that the employee's employment was comparable to an employment valid indefinitely, as the employer's need for labour was deemed permanent. Therefore, the Supreme Court ruled that since the employer had failed to offer other work to the employee at the end of the last fixed-term, the employment was unlawfully terminated. The court based this reasoning on the principle of equal treatment of employees.</p> <p>The judgement is noteworthy because it imposes a new obligation to em-</p> |

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| | | <p>ployers and extends the duty to offer work after termination— should there be a permanent need of labour, the employer would be obligated to offer other work also to a fixed-term employee at the end of the last of many consecutive fixed term contracts.</p> |
| <p>19 May 2017</p> | <p>Judgement KKO:2017:27 issued by the Finnish Supreme Court concerning an employer's right to terminate an employment contract without prior warning and obligation to find out whether it is possible to place the employee in other work.</p> | <p>According to the Finnish Employment Contracts Act, termination of an employment contract always requires a proper and weighty reason. Essential changes in the conditions necessary for working due to the employee's person may be such a proper and weighty reason for termination. However, prior to the termination of the employment contract, the employer must find out whether it is possible to place the employee in other work, unless it is unreasonable to expect the employer to continue the employment.</p> <p>In the case at hand, the employee worked as an export manager responsible for the eastern market. The employer terminated the employee's employment contract without a prior warning after the majority of the retail dealers had informed the employer that they would end the cooperation with the company if the export manager continued as their contact person.</p> <p>The Supreme Court stated that the employee had not violated any of the obligations set out in the law or in the employment contract. The employer still in principle had a valid reason to terminate the employment contract on the basis that the employee's conditions to continue working had ended when the retail dealers declined to work with the employer. The Supreme Court did not consider the lack of warning as meaningful for the case.</p> <p>However, the Supreme Court underlined that prior to the termination of the employment contract, the employer should have considered whether it would have been possible to place the employee in other work and pointed out that the employer had other retail areas and markets with different clients. As the employer failed to show that it had fulfilled this obligation, the termination was ruled as unlawful.</p> <p>The case shows that proper and weighty grounds are always required, also</p> |

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| | | <p>when the employee may no longer perform his duties due to essential changes in the conditions for working. Notably however, the Supreme Court ruled that the employer under these circumstances still had a duty to find out whether it is possible to place the employee in other work assignments. This duty is a part of the legal termination cause and the determination of whether the reason is proper and weighty.</p> |
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