

Protection of Employees (Fixed-Term Work) Act 2003 Twenty Years On.

Introduction

The last two decades have witnessed many social events that have reshaped our society and transformed how we live and work. A global pandemic, economic recession, shifting societal values, and, latterly, the advent of artificial intelligence have all left their mark on Ireland's employment landscape. The Protection of Employees (Fixed-Term Work) Act 2003 has been operational throughout the forgoing tumultuous period. While laws are enacted to stand the test of time, societal shifts and evolving circumstances often reveal their limitations.

Legislative Framework

The prevalence of temporary work witnessed substantial growth in the European Union (EU) and North America throughout the 1980s and 1990s. Moreover, it continued to be a notable aspect of employment in these regions beyond the year 2000, with a particular emphasis on its impact among women. (Vosko, 2007) The European Commission's proposal for a directive on fixed-term employment led to discussions and a framework agreement by the European Social Partners in 1996, focusing on flexible employment. Despite challenges, the Council finalised a [directive in 1999](#) which attempted to balance the rise of fixed-term contracts and prevent their misuse. On July 4, 2003, the Irish Government introduced the [Protection of Employees \(Fixed-Term Work\) Act 2003](#), which was implemented after a considerable delay of four years from the original deadline stipulated in the Fixed-Term Work Directive 1999/70/EC. (Smith & Maier, 2023) According to its long title, this is an Act to provide for the implementation of Directive No. 1999/70/EC Protection of Employees (Fixed-Term Work) Act 2003)

The Protection of Employees (Fixed-Term Work) Act 2003 sought to regulate fixed-term employment by introducing non-discrimination principles, ensuring equal conditions for fixed-term staff compared to their permanent counterparts unless justified by 'objective grounds'. The Act introduced a framework to prevent misuse of consecutive fixed-term contracts and mandates that an employee who has worked on two or more fixed-term contracts gains entitlement to an indefinite contract after the aggregate duration of the fixed-term contracts reaches four years, barring any objective grounds for further fixed-term renewal. Furthermore, the Act provides fixed-term workers with equal access to training and job opportunities.

Referrals to 3rd Party

Since the enactment of the Protection of Employees (Fixed-Term Work) Act in July 2003, there has been a notable trend in the number of cases related to this legislation. On average, just under 200 cases per year have been brought to the Workplace Relations Commission (WRC), with approximately 25 of these cases per year being escalated to the Labour Court on appeal. Notably, the year following the legislation's introduction saw a significant spike in activity, with 443 referrals made to the WRC, then known as the Labour Relations Commission (LRC). This

initial surge highlights the immediate impact and adjustment period of implementing the new legal framework.

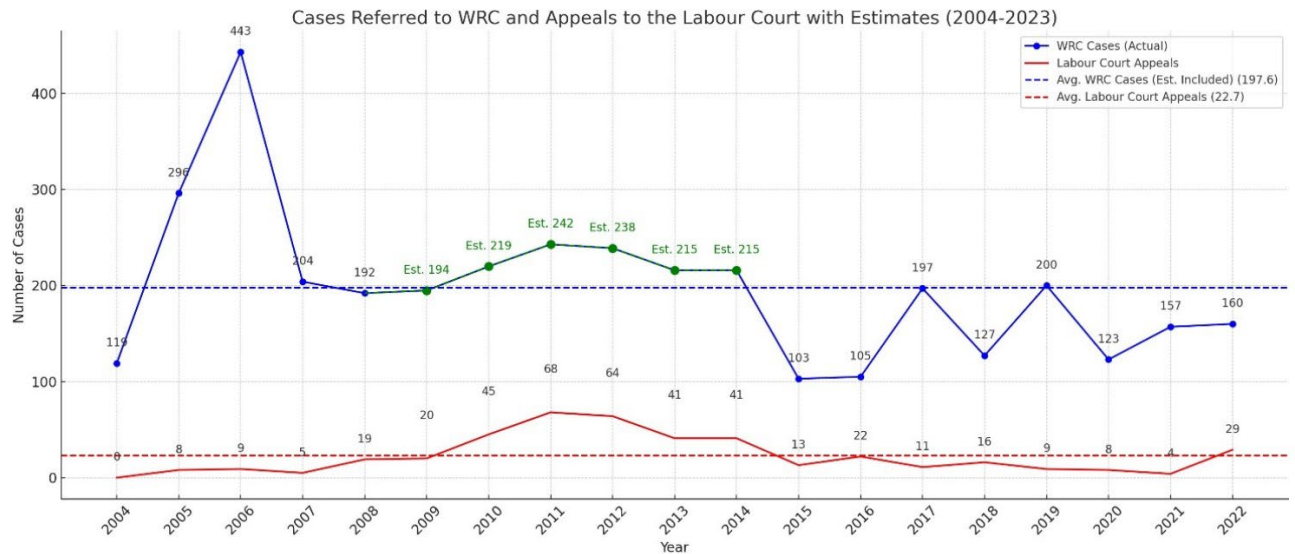


Figure 1

In an article late last year, Cathy Smith SC and Paul D Maier BL assert that the vast majority of cases taken in Ireland relate to centres on individuals in public sector employment seeking permanent positions.

The relatively low number of referrals to the WRC and Labour Court does not necessarily point to the efficacy of the Act, most especially when the referral numbers are juxtaposed with the [OECD statistics](#) on the incidence of temporary employment in Ireland, which more than doubled in the period since the introduction of the Act and in 2022 the instance of temporary employment stood at 8%.



Figure 2

Circumvention by Employers

Much evidence suggests that employers are trying to sidestep the requirements set forth by the legislation. This concern was highlighted in a motion proposed by IFUT at the 2013 Biennial Delegate Conference of ICTU, marking the 10th anniversary of the Act. The motion condemned University Sector employers' efforts to weaken the rights established under the Protection of Employees (Fixed-Term Work) Act 2003, particularly criticising the refusal to grant workers entitled to a Contract of Indefinite Duration the same rights and status as permanent staff.

As referenced in the recently published IFUT report on [Precarious Employment in Higher Education](#), a HEA expert working group report on gender inequality stated, "HEIs carefully word contracts to avoid CID entitlements and contest them in the courts." The IFUT report also revealed the staggering statistic that only 15% of Researchers who responded to their survey were employed on permanent employment contracts.

The most insidious and pervasive tactic utilised to circumvent the Protection of Employees (Fixed-Term Work) Act 2003 in Higher Education is the issuance of a single specific purpose contract, often for excessively long periods. Such an approach seeks to disapply the provisions of the Act on the technicality that the employee has not received two or more Fixed-Term Contracts.

Conclusion

Whilst IFUT has effectively helped members secure Contracts of Indefinite Duration (CIDs), it is clear that the Protection of Employees (Fixed-Term Work) Act 2003 requires a timely review and strengthening. This is necessary to address the evolving nature of the workforce, including digitalisation and the gig economy. The Act should be updated to close loopholes, particularly in sectors with high levels of fixed-term employment like higher education, to prevent employers from circumventing its provisions. In addition, IFUT believes that strong collective and sectoral bargaining is vital to ensuring the equitable treatment and security of all workers, particularly those in precarious or fixed-term positions. Strengthening these bargaining mechanisms can complement legislative reforms by providing a platform for negotiating fair employment terms directly with employers. This approach can help address specific sectoral challenges and adapt to the unique needs of different sectors, ensuring that workers' rights and protections keep pace with the changing nature of work.