

デンマークの有期労働契約法制

◆ 2003 年有期契約法制定（差別禁止と契約更新の濫用の防止が目的）

1 適用範囲

3.2.2. Denmark

The new Act of 2003 applies to workers who do not already benefit from rights in collective agreements that correspond with the minimum requirements laid down in the Directive. The concept of worker is defined in Section 3 of the new Act according to the generally applied concept in Danish labour law.

The types of work referred to in Clause 2.2 of the Framework Agreement are explicitly excluded from the scope of the Act. It is also possible for the Minister of Defence, after consultation with the social partners, to exclude military personnel in active duty.

2 定義

3.3.2. Denmark

The new Act of 2003 defines the objective conditions determining the end of a fixed-term contract in similar terms as in the Directive, but with the exclusion of contracts that end at retirement age.

The Act also contains a definition of a 'comparable permanent worker', similar to the one contained in Clause 3 of the Framework Agreement. If there is no comparable worker in the same establishment and no applicable collective agreement the comparison shall be made with the most relevant collective agreement.

3 非差別の原則

3.4.2. Denmark

Section 4 of new Act of 2003 contains the relevant parts of Clause 4. The principle of nondiscrimination applies to pay.

The principle of *pro rata temporis* applies as well as the equality of the seniority criteria.

有期契約労働者の労働条件は、雇用関係の終了のみを理由として、又は期間が客観的要因によって正当化されない限り、比較可能な無期契約労働者へ適用されるものよりも不利であってはならない。（有期契約法第 4 条第 1 項）

4 更新の濫用防止

3.5.2. Denmark

Rules on fixed-term contracts are mainly found in collective agreements and breach of these rules give rise to claim for damages. There is also case law on abuse of successive contracts (circumvention of rules on notice etc.) that can entail the conversion of the contract into an open-ended contract.

According to the new Act of 2003 fixed-term contracts can be renewed only if there are objective reasons, for example unpredictable circumstances relating to another employee such as illness, pregnancy, parental leave or leave-of-duty for other reasons, expiry of a piece-rate contract as well as needs to complete the originally agreed fixed-term task. As regards contracts for teachers and researchers at universities and other state-funded institutions for higher education the Act provides that fixed-term contracts can be renewed only twice.

The concept of 'successive' fixed-term contracts is not defined in the Act. The preparatory works show that an assessment shall be made case by case: as regards seasonal employment, for example, a repetition of the fixed-term contracts during several seasons is in theory not regarded as successive fixed-term contracts within the meaning of the law.

Violations of the Act of 2003 give rise to claim for damages.

Similar rules but other sanctions are provided for in the 1938 Act on White-Collar Workers.

有期契約に関するルールは主として労働協約の中に規定しており、このルールの違反は損害賠償請求の対象となる。

有期契約の更新は、原則として、客観的な理由によって正当化される場合のみ可能である。

5 情報と雇用機会

3.6.2. Denmark

Clause 6.1 and 2 of the Framework Agreement are transposed more or less literally in Section 6 of the Act of 2003. In the absence of a specification in the collective agreement, the employer can choose the means of informing the employees on vacant posts. The preparatory works mention a note on a dashboard, on the Web, in a periodic newsletter, etc.

6 情報提供と協議

3.7.2. Denmark

Clauses 7.1 and 7.3 of the Framework Agreement are copied more or less literally in Section 7 of the Act of 2003. It is specified that fixed-term workers are taken into consideration in the calculation of the threshold as long as they are employed.

(出典)欧州委員会「COMMISSION STAFF WORKING DOCUMENT」(SEC(2006)1074)

(参考)

デンマークの雇用保護法制

1 個々の通知と解雇手続き

White collar: legal requirement of written notice. Employees can request negotiation with the union once notice is received. Letter sent by mail or handed out directly.

Blue-collar: requirements in collective agreements. *E.g.* the main agreement between the Danish Confederation of Trade Unions and the Danish Employers' Confederation contains a provision about the workers' right to written information on the reason for a dismissal and provisions on negotiations between the union and the employer if the union considers the dismissal unfair (see Cazes, Boeri, Bertola, 1999).

2 不公正解雇の条件

Fair: Lack of competence and economic redundancy are legitimate reasons.

Unfair: Dismissals founded on arbitrary circumstances" (blue collar workers) or "not reasonably based on the employee's or the company's circumstances". Dismissals based on race, religion, national origin, etc. and as a result of a corporate take-over are also unfair.

3 有期労働契約規制

Fixed-term contracts allowed for specified periods of time and/or for specific tasks.

Widely used, particularly in professional services and construction. Renewal must be based on objective reasons. The Danish Confederation of Trade Unions states that court rulings suggest that 2-3 years temporary employment entail notification procedures.

(出典) BACKGROUND MATERIAL FOR THE 2004 EDITION OF THE OECD EMPLOYMENT OUTLOOK