

SUMMARY

ECJ 24 October 2024, case C-441/23 (Omnitel Comunicaciones and Others), Temporary agency work

***LM – v –Omnitel Comunicaciones SL, Microsoft Ibérica SRL, Fondo de Garantía Salarial (Fogasa), Indi Marketers SL and Leadmarket SL,
Spanish case***

Summary

The ECJ clarifies the interpretation of the definitions of “temporary-work agency”, “temporary agency worker”, “user undertaking” and “under the supervision and direction” as mentioned in Article 3(1)(a) to (d) of Directive 2008/104 on temporary agency work.

Questions

Must Article 3(1)(b) of Directive 2008/104 be interpreted as meaning that that directive applies to an undertaking which assigns a worker to another undertaking even though the first undertaking is not recognised by domestic legislation as a temporary-work agency because it does not have the relevant administrative authorization?

Must Article 3(1)(b) to (d) of Directive 2008/104 be interpreted as meaning that the concept of ‘temporary agency work’ for the purposes of that provision covers (i) an undertaking not recognised under national law as a temporary-work agency, but which assigns (ii) one of its employees, in respect of whom it receives a monthly activity report and retains responsibility for managing working hours and leave, to (iii) another undertaking, in order to have that employee work on a daily basis under the supervision and direction of that other undertaking?

Must Article 5(1) of Directive 2008/104 be interpreted as meaning that a temporary agency worker assigned to a user undertaking must, for the duration of his or her assignment at that

undertaking, receive a salary that is at least equal to that which he or she would have received if he or she had been recruited directly by that undertaking?

Must Article 15 of Directive 2006/54 be interpreted as meaning that a pregnant worker or a worker who is breastfeeding, whose dismissal has been declared invalid by a national court, is entitled at the end of her maternity leave to return to her job or to an equivalent post at her employer or, where the contract for the provision of services between the user undertaking and the employer has ended and her employer has no equivalent post, at the user undertaking?

Ruling

Article 3(1)(b) of Directive 2008/104 must be interpreted as meaning that that directive applies to any natural or legal person who enters into a contract of employment or an employment relationship with a worker in order to assign him or her to a user undertaking to work there temporarily under that undertaking's supervision and direction, and who assigns that worker to that undertaking, even though that person is not recognised by domestic legislation as a temporary-work agency because the person does not have the relevant administrative authorisation.

Article 3(1)(b) to (d) of Directive 2008/104 must be interpreted as meaning that the concept of 'temporary agency work' for the purposes of that provision covers the situation in which a worker is assigned to a user undertaking by an undertaking whose activity is to conclude contracts of employment or employment relationships with workers with a view to assigning them to a user undertaking for a given period of time, provided that that worker is under the supervision and direction of the user undertaking and provided that that undertaking, first, imposes on the worker the services to be performed, the manner of their performance and the requirement to comply with its instructions and internal rules, and, secondly, monitors and supervises the way in which the worker performs his or her duties.

Article 5(1) of Directive 2008/104 must be interpreted as meaning that a temporary agency worker assigned to a user undertaking within the meaning of that directive must, for the duration of his or her assignment at that undertaking, receive a salary that is at least equal to that which he or she would have received if he or she had been recruited directly by that undertaking.

The fourth and fifth questions referred by the Tribunal Superior de Justicia de Madrid (High Court of Justice, Madrid, Spain) are inadmissible.

Creator: European Court of Justice (ECJ)

Verdict at: 2024-10-24

Case number: C-441/23