



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 82/22**

Luxembourg, 12 May 2022

Judgment in Case C-426/20  
Luso Temp

**Compensation in respect of days of paid annual leave not taken and the corresponding holiday bonus pay granted to temporary agency workers must be at least equal to that which would be granted to them if they had been recruited directly by the user undertaking to occupy the same job for the same period of time**

In October 2017, two workers entered into temporary agency employment contracts with Luso Temp, under which they were made available for an assignment at a user undertaking. Their assignment ended approximately two years later. The workers brought an action against Luso Temp seeking recovery of sums allegedly unpaid in respect of days of paid leave and the corresponding holiday bonus pay owed for the period during which they were employed by that company. The workers take the view that the number of days and the amount of the sums in question should be determined in accordance with the general provisions on paid leave. Luso Temp contends, by contrast, that the calculation method to be applied is the one laid down in the special provisions on paid leave applicable to temporary agency workers. The consequence of applying the latter method is that the workers would be entitled to fewer days of paid leave and a lesser amount of the corresponding holiday bonus pay than they would be entitled to had they been recruited directly by the user undertaking for the same period of time and for the same job.

The Braga District Court, Barcelos Labour Court (Portugal) had doubts as to the compatibility of that specific rule with the Directive on temporary agency work.<sup>1</sup> In its view, that rule introduces a difference in treatment between, on the one hand, temporary agency workers assigned to a user undertaking for a period greater than or equal to twelve months or for a period beginning during one calendar year and ending only two calendar years or more after that date, and on the other, workers recruited directly by that user undertaking, since the entitlement of temporary agency workers to days of paid leave and to the corresponding holiday bonus pay would always be calculated pro rata to the duration of their contract, whereas workers directly recruited by that user undertaking and occupying the same job could, under the same circumstances, benefit from the more favourable general provisions. The Portuguese court explained that that difference in treatment is not, however, established where the duration of the temporary agency employment relationship is less than twelve months or where it begins during one calendar year and ends during the following calendar year.

The Portuguese Government submits that, since the special provisions do not define the method or specific rules for calculating the number of days of leave for temporary agency workers or even the effects that the termination of their employment would have on their entitlement to days of leave, it is necessary to fall back on the general provisions, which apply irrespective of the nature of the contractual relationship, including to temporary agency workers, and which provide for specific cases regarding the calculation of the number of days of paid leave and the effects that the termination of those workers' employment contracts would have on their entitlement to days of leave.

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<sup>1</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work (OJ 2008 L 327, p. 9).

In today's judgment, the Court holds that **the directive precludes national legislation under which the compensation to which temporary agency workers are entitled, in the event of the termination of their employment relationship with a user undertaking, in respect of days of paid annual leave not taken and the corresponding holiday bonus pay, is lower than the compensation to which those workers would be entitled, in the same situation and on the same basis, if they had been recruited directly by that user undertaking to occupy the same job for the same period of time.**

According to the Court, the compensation which an employer is obliged to pay a worker on account of the termination of the latter's temporary agency employment, in respect of days of paid annual leave not taken and the corresponding holiday bonus pay, is included in the concept of 'basic working and employment conditions' within the meaning of the directive.

As regards the scope of the principle of equal treatment, the Court notes that, **in accordance with the directive, temporary agency workers must, for the duration of their assignment at a user undertaking, enjoy basic working and employment conditions that are at least equal to those that would be applicable to them if they had been recruited directly by that undertaking to occupy the same job.**

It will be for the national court to ensure compliance with that principle and, to that end, it will be required in particular to ascertain whether, as the Portuguese Government has argued, the general provisions on leave are applicable in this case, inasmuch as the phrase 'pro rata to the duration of their contract' must be read in conjunction with the other parts of those general provisions in order to determine the amount of the compensation to which the workers in question may be entitled. In such a situation, it could not be concluded that there has been an infringement of that principle.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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