

**Chapter 13: Part-time and fixed-term discrimination**

**Page 511**

1. Do you believe that the PTWD and FTWD were essentially designed to further the European employment policy of labour market flexibility at the expense of statutory protection for part-time and fixed-term workers?

**Author's answer:** One viewpoint posits that these European Directives were passed simply to legitimize the broader aim of flexible cross-border labour markets throughout the EU and to integrate such markets. This suspicion is fuelled by the many hurdles confronting part-time or fixed-term workers who wish to mount a challenge. One of these impediments is imposed by the parity of treatment model underpinning the part-time and fixed-term worker protections. For example, it is possible for the employer to objectively justify the less favourable treatment of a part-time or fixed-term worker vis-à-vis a comparator full-time or permanent worker, i.e. direct discrimination, by invoking the proportionality defence. As such, if the employer can establish that it has a genuine need or legitimate aim to pursue in adopting differential treatment between its part-time and full-time workers (or fixed-term and permanent workers) and that it was appropriate and necessary for it to treat the part-timer (or fixed-term worker) less favourably than the full-timer in order to achieve that need or legitimate objective, then it will not be liable. This is in stark contrast to the standard direct discrimination model analysed in chapter 10, where it would ordinarily be impossible for an employer to objectively justify direct sex, race, disability, etc. discrimination (with the exception of direct age discrimination, which may be objectively justified).