

Decent Work Agenda in Portugal: Main changes to labor legislation come into force on May 1, 2023

April 2023

Law no. 13/2023 of 3 April has been published in the Official Gazette, introducing amendments to the Labor Code, Law no. 105/2009 of 14 September (Labor Code Regulation), Decree-Law no. 66/2011 of 1 June and the Social Security Contributions Code.

Regarding the amendments to the Labor Code, which are not exhausted in this newsletter, we believe that the following are of particular importance:

Parentality protection regime

Initial parental leave

- In the event of initial parental leave over 120 days, after enjoying those first 120 days, both parents can now choose to cumulate the remaining period of leave daily with part-time work, corresponding to half the normal period of daily working time.

Mother's exclusive parental leave

- Increases from 6 weeks to 42 days, the compulsory use, by the mother, of consecutive days of leave following childbirth.

Father's exclusive parental leave

- Increases to 28 consecutive or interspersed days, of at least 7 days, in the 42 days following the birth of the child, 7 of which must be taken consecutively immediately afterwards.
- The father can now enjoy 7 additional days of leave, consecutive or interpolated, simultaneously with the mother's initial leave.
- In case the child has to be hospitalized right after the birth, the father can apply for leave suspension during that time.

Adoption leave

- In case of adoption of a minor under the age of 15, the applicant for adoption is now entitled to the exclusive parental leave of the father.
- The applicant for adoption can now use up to 30 days of initial parent leave during the transition and follow-up period.
- In case of multiple adoptions, the period of leave shall be increased by 30 days or 2 days, regarding the days foreseen for initial parental leave and father's exclusive parental leave, respectively.

Absence and leave regime modifications in case of adoption

- There is no longer a limited number of layoffs to travel to the social security services or to receive technicians at home for questions related to the adoption procedure.
- Any procedure provided for by law in terms of adoption can now sustain a layoff.
- Every leave framed in the adoption and foster care procedures is considered as effective work.

Prohibition of discrimination

- The employer is the one having to demonstrate the inexistence of discriminatory practices - in case the employee invokes any - in access to work or professional training or in working conditions, in particular for reasons of exemption for any parental purposes or any kind of conciliation with private life.

Extension of parental rights

- In addition to the rights already provided, it is possible to grant an initial parental leave to situations similar to parenthood.

Employment contract with students

- There is a new special regime for employment contracts celebrated with students
- This type of contracts, in force during school holidays or school interruption, do not have to be written, safeguarding the particularities of fixed-term and temporary work
- The celebration of these contracts is not conditioned by obtaining the working student status
- The employer shall communicate the celebration of this type of contracts to the competent social security service, by electronic form, in accordance with the established requirements. That service ensures the necessary communications with other entities.
- There are special provisions regarding the participation of minors in shows and other cultural, artistic and advertising activities.

Economically dependent self-employed workers

- In order to define an economically dependent self-employed worker, we must take into consideration the criterion foreseen in the Contributory Code, which focuses on the percentage of income obtained by the beneficiary entity, being considered that there is only one beneficiary whenever the work provider performs activities for several beneficiary companies among which there is a corporate relation of reciprocal participations, dominium or group, or that have common organizational structures. However, this depends on a declaration by the service provider addressed to the beneficiary of the activity, accompanied by proof that the service provider obtains more than 50% of the total amount of its activity from the beneficiary.

- For this type of service providers, the rules concerning collective bargaining agreements applicable to the beneficiary of the activity will also become applicable, as well as the administrative extension of the regime of a collective agreement or an arbitration award, and the administrative fixing of minimum working conditions.
- Economically dependent self-employed workers will now be entitled to have their socio-professional interests represented by a trade union association and by a workers' committee, and to negotiate collective bargaining regulation instruments, specific to self-employed workers, through trade union associations.
- The right to collective representation of economically dependent self-employed workers will be defined in specific legislation that ensures, (i) monitoring by a workers' council and by a trade union association; (ii) that collective agreements specifically negotiated for economically dependent self-employed workers respect the general principles relating to instruments of collective regulation of work and require prior consultation with associations of self-employed workers representing the sector and (iii) that the application of already existing collective bargaining instruments to economically dependent self-employed workers who perform functions corresponding to the company's object for a period of more than 60 days, depends on a choice.

Digital platforms

- The digital platform cannot establish more unfavorable access conditions for activity providers establishing a direct relationship with the platform compared to the rules and conditions defined for intermediary operators.
- The digital platform and the intermediary operator are jointly liable for the worker's credits arising from the employment contract, or from its breach or termination, as well as for the corresponding social costs and for the payment of the fine.
- There is now a presumption of the existence of an employment contract in cases where certain characteristics are verified in the way this type of activity is carried out, namely when the remuneration is fixed and when the digital platform or intermediary operator:
 - Exercises management power and determines specific rules;
 - Controls and supervises the provision of the activity;
 - Verifies the quality of the activity provided;
 - Restricts the activity provider's autonomy as regards work organization, in particular the choice of working time or periods of absence, the possibility to accept or refuse tasks, the use of subcontracts or substitutes, through the application of sanctions, the choice of clients or to provide activity to third parties via the platform;
 - Exercises disciplinary power;
 - Make available the equipment and working tools.

Information duty

Additional information to be provided to the employees

The following information shall also be provided to employees:

- The individual right to professional training.
- Social protection regime, including complementary and substitute benefits.
- The parameters, rules and instructions in which the algorithms or other artificial intelligence systems that affect the employer decisions are based on, including the elaboration of profiles and the control of professional activity.
- User identification in temporary work.
- The annual number of hours worked, the annual number of full time work days, the period of work and the individual right to compensation during the period of inactivity, in case of intermittent work.
- The term stipulated on the contract.
- In the event of termination of the employment contract, the formal requirements to be observed by the employer and the employee.
- The method of remuneration payment, discriminating its constitutive elements.
- Additional work regime, organization shift work regime, within the scope of the normal daily and weekly working hours.
- The designation of the celebrating entities of the collective bargaining agreement, if existent.

The information provided to the employee must be in writing or electronic format.

The employer must keep proof of transmission or reception until the seventh day following the beginning of the contract, in case of information contained in a) to e), h), i), o) and q) of article 106/3 of the Labor Code, or in case of other information within a month from the beginning of the contract.

The employer shall inform the employee of any change in relation to information duty, in writing and at the most, until the date on which it begins to produce effects.

Additional information to be provided to employees working abroad

- If an employee whose employment contract is governed by Portuguese law carries on business in the territory of another State for a period exceeding 1 month, the employer shall provide him with the following additional information:
 - Where the work is to be performed.
 - Mode and place of payment of benefits in kind, if applicable.
 - Conditions of repatriation.

- Remuneration to which workers are entitled, under the terms of the applicable law in the host State.
- Subsidies related to posting of workers and reimbursement of travel, accommodation and food expenses, when applicable.
- Official website of the host state, created in accordance with the specific legislation applicable to posting of employees.

Trial period

- The employer must now inform the employee about the duration of the trial period, if applicable.
- The documents containing that information must be handed to the employee within 7 days following the beginning of execution of the contract.
- If the employer does not comply with these new requirements, it is presumed that the parties agree on the exclusion of the trial period.
- The trial period for employees in search of first employment or long term unemployed is reduced or excluded depending on the duration of their previous employment contract (celebrated with a different employer) being 90 days or over.
- The trial period is also reduced depending on the duration of a previous professional internship with a positive evaluation for the same activity but for a different employer being 90 days or over, in the previous 12 months.
- In case the trial period lasts more than 120 days, the termination of the contract by the employer depends now on 30 days notice.
- Is now mandatory to inform CITE in case of termination of the contract during the trial period when a caregiver worker is concerned.
- Is now also mandatory to inform ACT, by electronic form, in case of termination of the contract during the trial period when an employee in search of first employment or a long-term unemployed is concerned, within 15 days following the termination of the employment contract.
- It is unlawful the termination of contract that constitutes an abuse of rights, appreciated in general terms
- The abusive nature of the conduct can only be declared as so by the court and the consequences of it are the same as those established for the unlawful dismissal.

Term employment contracts

- The indefinite term contract must specify the predictable period of duration.
- The employer shall now inform CITE about the reasons for non-renewal of the caregiver employee's employment contract, at least 5 working days before the notice period.

- The fixed-term contract termination, for a fact non attributable to the employee, will block the celebration of a new fixed-term contract or temporary work or service agreement for the same professional activity, before the end of a period equivalent to 1/3 of the duration of the contract, including renewals.
- In the event of expiration of a fixed-term employment contract, the employee is now entitled to compensation corresponding to 24 days of basic remuneration and seniority allowances (*diuturnidades*) for each full year of length of contract.

Teleworking regime / home office

- The teleworking agreement must specify:
 - The amount of compensation due to the worker to cover additional expenses.
 - In the absence of agreement on a value, additional expenses are considered to be those corresponding to goods and services acquired for work that the employee did not have before the celebration of the agreement, as well as those determined by comparison of similar expenses with those of the last month in face-to-face work.
 - The compensation for additional expenses is, for tax purposes, considered as employer expense and not as part of the income of the employee, until the limit provided by order of the competent services is reached.

Temporary work

- Temporary fixed-term contracts can now be renewed up to 4 times (instead of the 6 times currently foreseen).
- If the temporary employment agency does not have a license for the exercise of its activity, temporary work is considered to be provided under an employment contract without term.
- If case the maximum of possible duration of the contract for the use of temporary work has been reached, it is expressly forbidden the celebration of employment contracts, for the same workstation, of temporary employees or fixed-term employees before a period of 1/3 of the previous employment contract has elapsed, including renewals.
- The duration of a succession of temporary employment contracts celebrated between different users and the same company or company that has a controlling or group relationship with it, or maintains common organizational structures, cannot exceed 4 years.
- Temporary employment agencies shall identify the user entities in the social security information system.

Outsourcing services

- Outsourcing services are forbidden, when requested to satisfaction of needs that were ensured by an employee whose contract has ceased in the previous 12 months due to collective dismissal or dismissal due to job termination.

- In the event of valid outsourcing, after 60 days providing the activity the collective labor regulation instrument that binds the beneficiary of the activity is applicable to the employee, as long as it is more favorable to the him.
- Service providers are considered to be natural persons or employees of service providers that are legal persons.
- The service provider is always entitled to the minimum remuneration provided for in the collective labor regulation instrument of the beneficiary of the activity or that practiced by the latter for equivalent functions.

Adaptability and group hours' bank

- The group adaptability and group hours bank regimes are no longer applicable to employees that have child(ren) younger than 3 years old or, regardless of age, child(ren) with disability or chronic illness, unless written statement of his/ her agreement.
- The group adaptability and group hours bank regimes are no longer applicable to employees that have child(ren) between 3 and 6 years old and present a document stating that the other parent is occupied with a professional activity and because of that, is unable to provide assistance.

Overtime work

- The overtime work that exceeds 100 hours per year is paid by the amount of the hourly remuneration with the following additions:
 - a. 50% for the first hour or fraction thereof and 75% per hour or subsequent fraction, on a business day;
 - b. 100% for each hour or fraction, on weekly rest day, mandatory or complementary, or on holiday.

Absence regime

- Absence due to death of spouse not separated from persons and property, son or stepson can now go up to 20 consecutive days.
- Absence due to death of another blood relative or of a relative by affinity in the first degree in the straight line can now go up to 5 consecutive days.
- Establishment of the right to absence motivated by gestational grief, corresponding to 3 consecutive days of mourning for the loss of a child still in the gestation phase. Both parents will be entitled to the bereavement days, without any loss of rights or pay cut.
- In case of employee with non-primary informal caregiver status, the employee has now the right to be absent from work to provide assistance to the members of the household, in case of disease or accident involving the cared person.

- The employer can not oppose the employee request for replacement of loss of remuneration due to absence.

Collective dismissal and dismissal due to extinction of labor position

- As compensation for collective or individual redundancies, the employee is now entitled to 14 days of basic remuneration and seniority allowances (*diuturnidades*) for each full year of seniority.
- This amendment only applies to the period of the contractual relationship counted from the beginning of the validity and production of effects of this law.

Abdicative remission / worker's statement on credits

- In the event of termination of the employment contract by whatever means, limitations are placed on the possibility for employees to waive claims owed by the employer. Waivers will have to be taken into consideration in the calculation of end of contract compensations and cannot be waived.
- Employees' claims can no longer be extinguished by means of a waiver, except by means of a judicial settlement, i.e. by an agreement in court.

Collective bargaining agreement and union activity

- Extension of collective bargaining agreements and representation of labor interests/ rights' regime to people in a situation of economic dependence.
- Tax incentive for collective bargaining.
- The choice of applicable convention cannot take place if the employee is already covered by an extension order of collective convention applicable within the same sector of activity in both professional and geographic terms.
- The termination of a collective convention must be substantiated, specifying the reason for that decision, whether economic, structural or due to problems of the regime itself.
- There is now a special regime of arbitration to consider termination of collective bargaining agreements.
- Extension of the expiry of collective bargaining agreements' regime to cases where there is:
 - a final court decision;
 - a written clause;
 - transfer of ownership of an establishment, and with that, the end of application of the previous convention, or
 - act/ fact that determines the legal extinction of a company that is part of a company or collective agreement.

Union activity in the company

- The union delegate is now entitled to the same information that already had to be provided to the works council and now includes also all the information regarding the digital system in charge of controlling the access and maintenance of employment, as well as the working conditions, including the elaboration of profiles and the control of the professional activity.
- In companies with less than 50 unionized employees, they can meet whenever the union delegate calls a meeting. Thus, it is no longer specified the moment in which those meetings must take place.
- Companies without union representatives have now the right to develop union activity as well.

Labor compensation fund and labor compensation guarantee fund

- The obligation to pay contributions to the Labor Compensation Guarantee Fund will be suspended for the duration of the medium-term agreement for the improvement of income, wages and competitiveness.
- The obligation to pay contributions to the Labor Compensation Fund will be suspended until the changes to the legal framework of the Labor Compensation Fund come into effect.

Internship contract (Decree-Law 66/2011, June 1)

- In case of extra-curricular internships, it is established that an intern cannot receive less than 80% of the monthly minimum wage, which amounts to Euro 760.00 in 2023 (i.e. the internship allowance cannot be less than Euro 608.00).
- The company must have a working accidents insurance covering the intern.
- The legal relationship that arises from the celebration of an internship contract is equivalent, for social security purposes, to a labor relationship.

Entry into force and application in time

- This law shall enter into force on the first working day of the month following its publication, i.e. on May 1, 2023.
- Articles 500, 500-A, 501, 501-A, 502, 510, 511, 512 and 513 of the Labor Code shall enter into force on the day following its publication.
- Employment contracts entered into prior to the entry into force of the Labor Code, approved by Law 7/2009, of 12 February, in the wording given by this law, shall be subject to the provisions of the Labor Code, except with regard to conditions of validity and the effects of facts or situations prior to that moment.
- The provisions of a collective bargaining agreement that are contrary to the mandatory provisions of the Labor Code must be amended in the first revision that occurs in the 12 months following the entry into force of this law, on pain of nullity. This does not invalidate the

provisions of collective bargaining agreements that are null and void under the repealed legislation.

- A transitional period is established, until January 1, 2024, for the amendment of the provisions of a collective bargaining agreement that are contrary to the regime of payment for overtime work now approved.
- The regime established in the Labor Code, in the wording given by this law, does not apply to term employment contracts, with regard to their admissibility, renewal and duration, and to the renewal of temporary employment contracts, in case they were entered into prior to the entry into force of this law.

More information:

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