



Agenda for decent work

Amendments to the Portuguese Labour Code and related legislation have been approved within the scope of the Agenda for Decent Work, the most significant of which are summarised below.

These amendments will come into force on May 1st, 2023.

I. Equivalence to employment contracts and digital platforms

- *Extension of legal protection to cases where work is performed without legal subordination and under economic dependence.*
- *Possibility of application of collective bargaining agreements in force for the same economic, occupational and geographic sector to situations where work is performed by a person on behalf of another person, without legal subordination, whenever the worker is in a situation of economic dependence of the beneficiary.*
- *Development of the concept of economic dependence.*
- *People in a position of economic dependence*
 - (i) may have their interests defended by a trade union and by a works council;*
 - (ii) may negotiate special collective bargaining agreements.*

Assumption of the existence of an employment contract in the context of digital platforms, which includes a list of factors indicative of the existence of an employment relationship, and definition of “digital platform” concept.

Extension of this assumption to circumstances where the digital platform claims the activity being performed for an individual or a company acting as an intermediary of the digital platform to provide services via their own employees.

Application of this assumption to digital platforms’ activity is now expressly foreseen, notably those subject to specific legislation regarding passengers paid transportation, in regular vehicles, through electronic platforms.

II. Information duties:

- *Extension of employer’s duty to disclose relevant information regarding the employment contract, including work abroad conditions.*
- *New deadlines for compliance with the information duty.*

III. Probation period

- *Assumption of exclusion of probation period, when the employer fails to comply with the duty to disclose information regarding the duration and terms of this period, within the new deadlines.*
- *Reduction or exclusion of probation period in cases of long-term unemployment, or first employment, depending on whether the duration of a previous fixed term employment contract with a different employer lasted for 90 days, or more than 90 days.*
- *Reduction of probation period depending on whether the duration of professional training, completed during the preceding 12-month period and subject to a positive*

evaluation, for the same activity for a different employer, lasted for 90 days or more.

- Increase of the deadline for termination of the employment contract by the employer, during the probation period, to 30 days, if the contract has lasted more than 120 days.
- Creation of procedural rules regarding communication to ACT (Labour Inspection Authority) of termination of employment contracts under long-term unemployment or first employment situations.
- Abusive termination is expressly deemed unlawful and shall be subject to judicial evaluation. If confirmed, unlawful dismissal consequences may apply (e.g. reinstatement and compensation).

IV. Absence from work

- Employees are entitled to be absent from work up to 20 consecutive days after the death of a spouse or equivalent, child, or stepchild.
- Absences to assist a member of the household are extended to care caregivers.
- Absences for illness, not exceeding 3 consecutive days, may be justified by self-declaration from the employee, under oath, up to a limit of twice a year.
- Employers may no longer oppose to employees' request to substitute absence-related loss of pay, in accordance with the law.

V. Non-exclusivity

- Employers are expressly prohibited from preventing employees from having other professional activity, except for objective reasons, such as health and safety, or professional secrecy, or from treating employees unfairly for that reason.

VI. Overtime

- Creation of two annual overtime limits, with different remuneration levels:
 - (i) Up to 100 hours per year, current accruals apply (25%, 37.5%, and 50%);
 - (ii) More than 100 hours per year, accruals of 50%, 75%, or 100%.

VII. Term employment contracts

- The expected duration of unfixed term contracts must be included in the contract.
- The prohibition of successive term contracts includes not only to the same job position, but also to the same professional activity.
- Prior communication of the non-renewal of caregivers' term contracts must be given to CITE (Committee for Equality at Work).
- The new rules only apply to term employment contracts executed after the Law comes into force.

VIII. Remote work

- The right to work remotely is extended to all employees who have children with a disability, or suffering from a chronic illness, or oncological disease, regardless of their age.
- The allowance due to employees for expenses incurred while working remotely must be established in the employment contract or by collective bargaining agreement, and is exempt from tax and social security contributions, up to a limit to be ruled by the government.
- In the absence of agreement on the fixed amount of the allowance, it shall be determined by reference to the expenses' accrual incurred by the employee with (i) the acquisition of goods or services necessary for the remote work, and (ii) by comparison to the expenses incurred during the month preceding the remote work initial date.

IX. Working-student during holiday periods

- The hiring of working-students during holiday periods or school interruptions is not subject to written form.
- Communication to social security services by specific form is now mandatory, the need to justify term contracts being maintained.

X. Caregiver's status

- Caregiver's status is created, this being granted to employees who have been recognized as "non-primary informal caregivers".
- A protection regime for caregivers is created, granting employees special leaves, absences, part-time, flexible working hours, dismissal protection, and exemption from working overtime.

XI. Termination of contracts - compensation and credits

- *Employee's credits arising from the execution, breach or termination of employment contracts can only be waived in the context of a judicial settlement.*
- *New compensation in case of forfeiture of fixed or unfixed term employment contracts: 24 days of base salary and seniority allowances per year of service.*
- *New compensation for collective dismissals or job elimination procedures (only applicable to the period after the new law being in force): 14 days of base salary and seniority allowances per year of service.*

XII. Outsourcing

- *Companies which have resorted to collective dismissals or job elimination procedures are prevented from resorting to outsourcing for a 12-month period as of the dismissals' date, to meet needs previously fulfilled by the dismissed employees.*
- *Whenever companies use external services' providers (individual or companies) to perform activities included in their commercial scope for a period exceeding 60 days, the collective bargaining agreement applicable to them also applies to the services providers, if more favourable to these latter.*
- *If the provision of services is shorter than 60 days, the service provider is only entitled to the minimum remuneration foreseen in the collective bargaining agreement applicable to the beneficiary company.*
- *In case of services agreements executed with companies, the contract must establish which entity is liable for the compliance with the obligations foreseen in the collective bargaining agreement applicable to the beneficiary company.*

XIII. Internships

- *The monthly internship allowance is now 80% of the monthly national minimum wage, currently EUR 608.00, no longer being calculated by reference to the IAS (Social Support Index).*
- *Internship providers are required to hire an occupational injury insurance covering the trainees, instead of a personal accidents' insurance.*
- *Trainees are considered employees for social security purposes.*

XIV. Temporary Work

- *Employers are required to identify the user in temp employment contracts, as part of their general information duty.*
- *Contracts executed between temp work agencies, under which one company leases an employee to another company for this latter to allocate the employee to a third party, are now considered permanent employment contracts executed with the user (and not with the temp work agency).*
- *It is clarified that the prohibition of successive contracts is not only applicable to the same job, but also to the same professional activity, thus extending such prohibition. It is expressly foreseen that breach of this rule triggers the existence of a permanent employment contract between the employee and the user company, the entire duration of the successive contracts being considered for length of service purposes.*
- *Fixed-term temp contracts may be renewed up to four times, instead of six.*
- *The maximum duration of work for different users, while employed by the same employer, or by Group companies or companies with shared organisational structures, is of 4 years. If this limit is exceeded, the contract is considered a permanent employment contract for temporary use.*
- *It is clarified that temp workers are entitled to the same regular periodic payments in cash, or in kind, paid by the user to its employees, for equal work, or for work of equal value.*
- *The new legal regime does not apply to the renewal of temp work contracts executed before the new law comes into force.*

XV. Parental rights

- *Permitted absence from work in the context of adoption and foster care proceedings now fall under the parental rights protection framework.*
- *A new gestational bereavement justified absence is created, under which employees are entitled to be absent from work for up to 3 (three) consecutive days, provided they have not taken pregnancy interruption leave. Fathers are entitled to be absent from work for the same number of days referred above.*
- *The initial parental leave regime is changed. After 120 consecutive days of initial parental leave, parents are entitled to combine the remaining days of parental leave with*

part-time work.

- *Compulsory maternity leave is changed to 42 consecutive days after birth.*
- *Compulsory father's leave is of 28 days, consecutive or interleaved of at least 7 days, to be taken during the 42-day period after birth, 7 of which must be used immediately after birth. If the child is hospitalised after birth, the father may request the suspension of this leave, for the duration of the hospitalisation.*
- *Following the leave period mentioned in the preceding paragraph, the father is also entitled to 7 leave days, consecutive or interleaved, provided they are used at the same time as the mother's initial parental leave.*
- *The adoption leave regime is updated, the applicants to adopt children under 15 years old being entitled to benefit from fathers' leave. In the case of multiple adoptions, a 30-day period is added to the adopters' initial parental leave, and 2 days' parental leave are added to the father's leave period, for each adoption beyond the first.*
- *The adoption applicant may use up to 30 days of initial parental leave during the transition and monitoring period.*
- *The adoption leave regime applies to foster families, with the necessary adaptations.*
- *New unlimited work leave provisions are created for employees in adoption and foster care proceedings.*
- *The additional parental leave now includes an option entitling employees to work part-time for 3 months, provided that the leave is used in full by each parent.*
- *The extension of parental rights (which includes, notably, adopters and guardians) now includes initial parental leave, additional parental leave, childcare leave, and leave to care for disabled or chronically ill children.*
- *Absences from work due to gestational bereavement and leave of absence for adoption or foster care proceedings are now covered by the parental leave, absences, and releases regime.*

XVI. Social security

- *If the employees' hiring is not communicated within the legal deadline, employees are presumed to have started to work on the 1st day of the preceding 12-month period.*

XVII. Misdemeanours

- *New misdemeanours are now foreseen for breach of employment obligations.*
- *Repeated failure to comply with obligation to communicate the admission of employees and to declare remuneration, can result in the application of the following ancillary penalties: (i) deprivation of the right to benefit from public funding, including European funds, up to 2 years, and (ii) deprivation of the right to participate in auctions and public tenders, up to 2 years.*

XVIII. General Tax Offences' Regime

- *The failure to report the hiring of employees to the social security within 6 months as of the expiry of the applicable legal deadline is now punishable with imprisonment.*

Contact:

employment@pbbr.pt

pbbr.a

SOCIEDADE
DE ADVOGADOS, SP, RL