



Labour Code Changes

This is a brief information on the main changes of Law no. 93/2019 of September 4th with impact, notably, on the Portuguese Labour Code ("LC") and on the Portuguese Social Security Code ("Social Security Code").

A – Changes to the Portuguese Labour Code

Trial Period

The maximum limit of the trial period applicable to fixed-term employment contracts entered into with employees seeking a first job or in a long-term unemployment situation is now of 180 days.

The period of professional training previously carried out for the same activity and for the same employer shall be considered for the purpose of reducing or excluding the trial period of the employment contract, similarly to what already happens with prior (i) fixed-term employment contracts for the same activity, (ii) temporary employment contracts for the same position and with (iii) services provision agreement for the same object.

Professional Training

The minimum hours per year of professional training to be provided by the employer to its employees increases from 35 to 40. For employees with fixed-term employment contracts with a duration equal to or longer than 3 months, the minimum number of training hours continues to be pro-rated to the duration of the contract.

Fixed-Term Employment Contracts

The possibility of Collective Bargaining Agreements (CBAs) waiving the application of the fixed-term employment contract legal regime is eliminated, even if more favourable to the employee. This impossibility does not apply to the list of situations considered as temporary needs of the company, or to the rules foreseeing the precedence in hiring employees under term employment contracts.

Fixed-term employment contracts grounded on the launch of a new activity of uncertain duration or of a new company or undertaking may only be executed by companies with less than 250 employees, thus reducing the previously established 750 employees threshold. The new law also clarified that this motive will only be valid for the two years subsequent to the the facts that triggered it.

Seeking for first job and long-term unemployment are excluded from the admissible reasons for the execution of term employment contracts. However, these contracts may still be executed based on very long-term unemployment, i.e. persons aged 45 years or older, registered in the employment centre for at least 25 months.

Fixed-term employment contracts will be subject to a maximum duration of 2 years (instead of 3), and the total duration of its renewals, up to the limit of 3, shall not exceed its initial period.

Unfixed term employment contracts will be subject to a maximum duration period of 4 years (instead of 6).

Employees' entitlement to compensation for forfeiture of term employment contracts is now expressly foreseen, even when the contract's non-renewal has been agreed between the parties.

Finally, the duration of very short-term contracts was increased from 15 to 35 days, the application of this regime being now applicable to all sectors which register an exceptional and substantial increase of activity.

Bank of Hours

The individual bank of hours regime was eliminated. Existing individual bank of hours agreements will be automatically terminated within the period of one year as of the new law coming into force.

On the other hand, new rules are foreseen for the implementation of the group bank of hours regime, which can now be applied, for a period not exceeding four years, if approved by referendum, subject to specific rules, with the favourable vote of at least 65% of the employees to be affected.

Intermittent Work

The minimum period of full-time work is reduced to 5 months per year (instead of 6), and

consecutive work must correspond to at least 3 months (instead of 4).

The new law foresees that, whenever the employee carries out another professional activity during the inactivity period, the amount of the remuneration earned shall be deducted from the salary compensation paid by the employer.

Temporary Work

The posting of a temporary employee in a user company, without the correspondent temporary employment contract or indefinite term employment contract for temporary posting having been executed, determines the inclusion of the temporary employee in the user's headcount – and not in the headcount of the temporary work agency – under an open-ended employment contract.

The contract for the use of temporary work which does not expressly include the mandatory references legally foreseen is null.

A maximum limit of 6 renewals is introduced for fixed-term temporary employment contracts, this limit not being applicable to contracts executed for the replacement of an absent employee, for reasons not due to the employer (sickness, accident, parental leaves and similar situations).

The CBA applicable to the user company will now be automatically applicable to the temporary worker, instead of only after 60 days of work having lapsed.

Collective Agreements

Whenever the employer applies more than one agreement, the employees may choose the CBA applicable to them if they are part of the activity, professional and geographic sectors of the chosen agreement.

CBA's provisions which are contrary to LC's rules must be updated on the first review occurring within the 12 months subsequent to the new law coming into force. In case they are not updated until 30.09.2020, such rules will be considered null.

Termination of the Contract for Harassment

The employee is now entitled to terminate the employment contract for cause due to "harassment by the employer or other employees".

At the same time, the disciplinary sanction applied by the employer due to the employee (i) claiming to be a victim of harassment or (ii) being a witness on a judicial or misdemeanour procedure based on the practice of harassment, is considered abusive.

B – Enactment

The new law will come into force on 01.10.2019, not being applicable to (i) fixed-term employment contracts' validity, renewal and duration, or to (ii) temporary employment contracts' renewal, where such contracts have been executed before the above mentioned date.

Modifications regarding the trial period extension, the generalization and encouragement of very short-term employment contracts and the forfeiture of collective agreements have recently been sent to the Constitutional Court for examination and may therefore shortly be subject to additional changes.

C – Changes to the Social Security Code

An additional contribution for excessive rotation, meant for protection in unemployment is

implemented as of 01.01.2020.

Employers who, in the same calendar year, have an annual term-hiring rate higher than the respective sectorial indicator in force (published in the first quarter of each calendar year), will be subject to an additional contribution of progressive application, based on the difference between their annual term-hiring weight and the sectorial average, up to a maximum of 2%.

We stress that this regime does not apply to (i) term employment contracts executed for the replacement of an employee on parental leave or on sick leave for a period equal or longer than 30 days, (ii) very short-term employment contracts and (iii) contracts mandatorily executed for a temporary period.

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