Labour Law

A Practical Global Guide

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1. Employment agreement

Employment agreements are subject to the Constitution of the Portuguese Republic, to the laws in force, especially the Labour Code (LC), and to regulations regarding collective bargaining. On an international level they are subject to the conventions of the International Labour Organization.

1.1 Definition

An employment agreement is an agreement whereby an individual undertakes to perform an activity for another person or organisation under that person's or organisation's authority and discipline. The employment agreement has no specific format, unless required by law.

The law establishes that certain employment agreements must be in writing. These include promissory employment agreements; fixed-term agreements; seasonal agreements; executive employment agreements (see section 1.3(d) below); call centre agreements (see section 1.3(e) below); temporary employment agreements; open-ended employment agreements for temporary assignments; employment agreements with foreign employees; multiple-employer agreements; and part-time employment agreements.

1.2 Probationary period

A probationary period is the initial part of the actual execution of the contract. During the probationary period, any of the parties may terminate the agreement without just cause and without any right to compensation.

In open-ended employment agreements the duration of the probationary period will be as follows:

- 90 days for the majority of employees;
- 180 days for employees with positions entailing technical complexity, or a high level of responsibility or in positions which require a special qualification, or where trust is a fundamental element; and
- 240 days for post holders in the administration or top management of the company.

In fixed-term agreements the duration of the probationary period will be as follows:

- 30 days if the agreement is for six months or more; and

- 15 days if the fixed-term agreement is for less than six months, or if the estimated duration of a permanent agreement is less than six months.

In executive employment agreements a probationary period must be expressly stipulated; its duration, however, must not exceed 180 days.

It is not necessary to include reference to the probationary period in the employment agreement, because it automatically applies. It is, however, necessary to make specific reference should the probationary period be omitted or reduced. It is not possible to increase the probationary period.

Where the parties anticipate a probationary period exceeding 90 days, it is recommended to state this in writing.

1.3 Types of employment agreement

(a) Employment agreement under a resolutive condition

The parties may agree that the employment agreement is contingent upon the occurrence of a future event which causes termination of the employment relation. Employment agreements under a resolutive condition can only be entered into in order to satisfy a temporary need of the employer and for a time period strictly necessary to that effect. This type of agreement can only be used in situations expressly provided for in the Labour Code.

Fixed-term agreements can be renewed up to three times, but they cannot exceed three years. However, a limit of 18 months or two years will be allowed in special situations. Permanent employment agreements cannot exceed six years.

Fixed-term employment agreements are terminated on the agreed-upon date or upon renewal, following service of a mandatory 15/8-day written notice by the employer/employee respectively.

Permanent employment agreements end, if it is possible to foresee the occurrence of the term, when the employer informs the employee concerning the termination of the agreement with a minimum 7-, 30- or 60-day notice period, depending on the duration of the agreement (ie six months, six months to two years, or more than two years, respectively).

(b) Part-time work

Part-time work is when the number of hours performed weekly by each employee is lower than the normal working hours performed full time in a similar situation. Part-time employees are entitled to receive remuneration and other benefits proportionate to the respective weekly normal working hours.

(c) Seasonal work

This type of agreement may be used by employers engaged in so-called 'discontinuous' activities (ie the company does not perform any activity during a certain period of time) or activities of variable intensity (ie the company is always operational but there are peaks of activity).

The duration of the work performed under this scheme cannot be less than six

months of a year full time, and four of those six months must be consecutive.

During the inactive period the employee receives a special remuneration equivalent to 20% of the agreed remuneration. During the inactive period the employee may engage in another activity without losing this special remuneration.

(d) Executive employment

This scheme may be applied for top management posts, in the executive office directly under the top management and to the respective support staff.

(e) Call centre employment

Work in call centres is performed as subordinated work normally outside company premises and by means of information and communication technologies.

(f) Temporary employment

Temporary employment is based on a triangular relationship between a temping agency, an employee and a user. The temping agency hires an employee and assigns him to the user, temporarily and with entitlement to pay.

2. Employee retention agreements

In an employee retention agreement, the parties agree that the employee may not terminate the employment agreement for a period not exceeding three years to compensate the employer for expenses incurred, resulting from the employee's professional training.

These expenses do not include amounts that are considered to be normal, or the costs of professional training which the employer is obliged to provide.

The employee may withdraw from the retention agreement at any time by paying the total amount of the expenses incurred.

3. Pact of non-competition after termination of the employment agreement

It is common practice to include in an employment agreement a non-competition clause which places a restriction on the employee's activities for a period of up to two years following termination of an employment agreement. This limit can be extended to three years when the duties of the employee are based on a special relationship of confidentiality or the employee has access to information which is particularly sensitive from the competition viewpoint, provided that the following conditions are satisfied:

- The agreement must be in writing.
- The activity, if performed, may cause damage to the employer.
- Compensation must be paid to the employee during the restricted period, which may be reduced if the employer paid for the employee's professional training.

The law does not explicitly state the amount of compensation, and therefore it must be determined reasonably and in accordance with the type of activities

undertaken by the employee. Normally, the amount of compensation is set at around 25% of the respective remuneration.

4. Salary

4.1 Remuneration

Any payment received by an employee in consideration for the work performed includes basic salary and other regular or periodic payments in money or kind, paid directly or indirectly.

Unless proven otherwise, remuneration is presumed to include any payment made by the employer to the employee.

The following do not count as remuneration:

- expenses, travel and transport costs, relocation costs and other equivalent allowances, as long as they are justified and do not exceed normal amounts;
- bonuses or performance-related payments, provided they are not owed pursuant to prior agreements or amounts that, due to their regular and permanent nature (ie being the same amount every month, or amounts paid even when the company has losses), should be considered remuneration;
- performance-related payments which are neither guaranteed in advance nor regular and periodic, and which cannot be regarded as permanent; and
- shares in company profits, as long as the agreement provides appropriate remuneration for the work.

Payment in kind is destined to meet the employee's personal needs or those of the employee's family and may not exceed amounts that are normally applied in the respective geographical region. The amount cannot be greater than any payment received in money, unless stipulated otherwise in collective agreements.

Remuneration may be fixed, variable or mixed, and itemisation will be based on circumstances defined in advance. Remuneration must be paid in money, except for payments in kind, and must be paid at the place where work is performed, or at another location if agreed, on the due date or the working day prior to this.

4.2 Supplementary payments or additional allowances

(a) Christmas bonus

The employee must receive a payment equal to one month's salary by December 15 as a Christmas bonus.

(b) Vacation and vacation bonus

An employee is entitled to holiday with pay equivalent to the remuneration received during normal working periods, plus an additional vacation bonus corresponding to 22 working days of basic pay and any other allowances, which must be paid prior to the beginning of the vacation period unless agreed otherwise.

(c) ***Exempt schedules***

Exemptions relate to employees who are not subject to overtime provisions (ie who do not observe the maximum limits of normal working hours). Work performed under this kind of regime gives the employee the right to an allowance equivalent to one additional hour of work a day or 22 additional hours a month, if no other amount is stipulated in relevant collective agreements.

Only employees in management or administrative positions may renounce such exemption. Waiver of the exemption by other employees is void.

(d) ***Night work***

Night work is paid at 25% above the remuneration due for equivalent daytime work, provided that no other amount or compensation is set forth in applicable collective agreements.

Thus, for all the working hours performed during the night period (which, unless otherwise provided for in the relevant collective agreement, will be the period between 8:00pm and 7:00am of the following day) an additional 25% will be paid.

The present scheme does not apply to activities which take place exclusively or predominantly during the night, or which due to their nature must be performed at night to attend the public, or if the remuneration already includes pay for night work.

(e) ***Performance-related or functionally linked duties***

If for the performance of these duties the employee is entitled to receive increased remuneration, this must be paid even if the duties are complementary.

(f) ***Overtime***

Unless another amount is agreed in collective agreements, every hour or fraction of an hour is paid as follows:

- on working days: 50% for the first hour or part thereof and 75% for the following hours; and
- on holidays and rest days: 100%.

(g) ***Holidays***

If work is performed in a company that runs a continuous operation (ie any operation or service normally carried on without regard to Sundays or public holidays), the employee may opt to receive 100% additional pay or to be compensated with an equal number of rest days.

4.3 Salary guarantees

(a) ***Guaranteed minimum monthly remuneration*** **(Retribuição mínima mensal garantida – *RMM*)**

The minimum monthly remuneration (RMM) is mandatory and establishes a legal minimum below which remuneration cannot fall. The RMM is set forth annually in a legal diploma. It was fixed at €485 for 2011.

The amount of the RMM does not include allowances, bonuses, gratuities or any other regular or occasional payments. A minimum remuneration amount above the RMM may be specified by collective agreements.

(b) ***Salary protection guarantees***

While an employment agreement is in force, the employee's remuneration cannot be reduced; nor can the employee refuse to accept payment, in whole or in part.

Remuneration is protected by law and a court cannot seize more than one-third of the amount; nor may employees surrender, voluntarily or by way of obligation, more than one-third of their remuneration.

Remuneration levels follow the principle of equal pay for equal work.

Employees may terminate the contract with just cause if remuneration is not paid.

(c) ***Legal deductions***

Remuneration is subject to deductions for social security, usually at 11%, paid by the employee, while the employer usually withholds 23.75% of the employee's salary.

Income tax (IRS) is deducted according to a variable rate.

5. Working day

5.1 Normal working hours

Normal working hours comprise the period during which the employee is normally required to work, indicated in hours per day or per week and limited by the start and end time of the working day, the rest breaks and rest days.

5.2 Limits on the working hours

Normal working hours cannot exceed eight hours a day or 40 hours a week, though these limits can be reduced in relevant collective agreements.

5.3 Alternative work schedules

(a) ***Flexible schedule***

This regime allows the employee to work more hours on a particular day or in a particular week as long as on another day or week less time is worked, so that the average working hours during the reference period are eight hours a day and 40 hours a week.

(b) ***Hour bank***

The normal working hours may be increased by up to four hours a day and reach 60 hours a week, up to a limit of 200 hours a year, with compensation for the extra work performed by an equivalent later reduction in working hours and/or payment in money.

(c) ***Compressed work schedules***

It is permissible to increase the normal working day by up to four hours, so as to concentrate the normal weekly working hours into a maximum of four working days.

(d) ***Exemption from working hours***

Certain groups may not be subject to overtime provisions. This applies to employees who:

- are in management or administrative positions, or hold trust-based positions, or are part of the respective support staff;
- undertake preparatory or supplementary works that, by their nature, can only be performed outside normal working hours;
- work in call centres, or otherwise perform their duties outside normal work premises without the immediate control of their superior; or
- work in other situations which may be specified by collective agreement.

(e) ***Shift work***

This may be resorted to when the operating period of the company exceeds normal daily working hours. The working schedules for the same positions in different shifts are set in a manner that the end of one shift coincides with the start of next.

(f) ***Night work***

The duration of night work must be between seven and 11 hours. This must include the period between midnight and 5:00am and has to be determined in relevant collective agreements. In the absence of such agreement, night work will be deemed to be between 10:00pm and 7:00am of the following day.

(g) ***Overtime***

Overtime is work performed outside working hours. It may only be undertaken when the company is faced with an occasional and temporary increase in work that does not justify the hiring of additional staff or with situations of *force majeure*, or such working is necessary either to prevent or remedy serious damage to the company, or to ensure the viability of business.

Overtime is subject to a maximum number of hours per year according to the number of employees:

- In so-called micro companies (one to nine employees) or small businesses (10 to 49 employees), the limit is 175 hours a year.
- In medium-sized businesses (50 to 249 employees) or large companies (250 or more employees), the limit is 150 hours a year.

These thresholds may be increased up to a maximum of 200 hours a year, pursuant to a collective work agreement.

As to part-time employees, the overtime limit is 80 hours a year, or the number of hours equivalent to the corresponding ratio between the relevant ordinary work period and that of a full-time employee (in an equivalent situation) if the latter is higher.

On a regular work day a two-hour increase may be agreed upon by means of written agreement between the employee and the employer, up to a maximum of 130 hours a year or, pursuant to a collective work agreement, up to 200 hours per year.

Work performed on a weekly rest day, regardless of whether it is a mandatory or complementary rest day or holiday, will be paid according to the number of hours worked at the rate applicable to normal working days. For work performed during half a day on a complementary rest day, the employee is entitled to his regular remuneration pursuant to the number of hours worked.

The dispositions regarding complementary work on a work day, complementary rest day or holiday will give the employee the right to paid rest, which will correspond to 25% of the additional hours performed. Compensation for complementary work may be in the form of a reduction equal to the work period, payment in cash, or both. Such arrangements may be agreed in collective work agreements.

An employee who performs complementary work which renders the enjoyment of the daily rest period impossible is also entitled to paid rest in the amount equivalent to the unused rest hours, which must be taken in the three following working days. The paid rest is due when the number of hours accrued equals the ordinary daily work period and must be used in the following 90 days. Again, compensation for extra hours may take the form of a reduction equal to the work period, payment in cash, or both. Such arrangements may also be agreed in relevant collective work agreements.

Employees who work on a mandatory weekly rest day are entitled to one paid compensatory rest day, to be taken in the three following working days. The compensatory rest period is scheduled by means of agreement between the employee and the employer or, when this is not possible, by the employer.

6. Leave

6.1 Leave

There are many circumstances when an employer may grant leave of absence to an employee. The most common are set out in the table following on the next three pages.

(a) Exemptions

There are exemptions for certain kinds of work or schedules, such as for antenatal medical appointments, breastfeeding or nursing for pregnant employees or employees who have recently given birth.

The leave and exemptions do not result in the loss of rights, except the right to remuneration, and are considered to form part of the employee's period of service. The social security system pays benefits which may offer compensation for the loss of remuneration.

(b) ***Unjustified absences***

It is important to note that the following reasons are grounds for dismissal with just cause:

- fraudulent statements regarding the justification of absence;
- unjustified absences which may result in direct damage or serious risks for the company; and
- if the employee in any given year has five consecutive, or 10 accrued unjustified absences, regardless of whether they cause damage or risk.

Reasons for absence	Legal basis	Remuneration paid by
Maternity leave	May enjoy up to 30 days of leave before the birth and it is mandatory to take six weeks after the birth	Social security
Paternity leave	10 working days, consecutive or accrued, five of which have to be taken consecutively after the birth	Social security
Initial parental leave	Mother and father may enjoy leave of 120 to 150 days after the birth	Social security
Family assistance	15 days a year, for illness or accident; however, the assistance has to be undelayable and indispensable	Loss of remuneration
Time off for dependants	30 days a year for illness or accident if the minor is 10 years old or younger, or while the minor is admitted to a hospital	Loss of remuneration

continued overleaf

Reasons for absence	Legal basis	Remuneration paid by
Work accident	Justifiable absence under Art 248(2)(d) of the Labour Code	By operation of law, civil liability of the employer is transferred to an insurance company
Time off for activities as trade union representative	5 hours a month 8 hours a month if an inter trade union representative (meaning representative between different trade unions)	Employer
Acting as a volunteer	The absences of volunteers duly summoned are considered as justifiable. Volunteers Law number 71/98 (DL-389/99)	Employer
Visits to the educational establishment of a dependant in order to review academic achievements	4 hours quarterly for each child	Employer
Absence for blood giving	Provided the employees do not have any urgent or undelayable work, absence of the employee is authorised. Law 25/89	Employer
Time off for medical appointment	Must be authorised by employer	Loss of remuneration
Sick leave	Justifiable absence under Art 248(2)(d) of the Labour Code (DL-28/2004)	After the fourth day, paid by social security

continued overleaf

Reasons for absence	Legal basis	Remuneration paid by
Marriage	15 consecutive days around the date of marriage	Employer
Bereavement (death of spouse or relative)	5 days for spouse or first-degree relative, and 2 days for second-degree relatives	Employer
Time off for exams in an educational institution (worker student)	Two days for each exam: the day of the exam and the day immediately prior to that. Maximum of four days per school subject. Law 35/2004	Employer
Candidate for election for public office	30 days prior to the election. Law 1/2008	Employer
Court duty	Justifiable absence under Art 248(2) of the Labour Code	Court (travel expenses included)
Firefighter duties	When requested for service, but must not exceed an average of 3 days per month (DL-179/2007)	National Authority for Civil Protection
Authorised or approved by the employer	Justifiable absence under Art 248(2)(i) of the Labour Code	Loss of remuneration

7. Vacation and off-work days

7.1 Vacation

Every employee is entitled paid holiday for each calendar year. The minimum period is 22 working days.

By law the duration of the annual vacation is extended to 25 working days taking into account the performance of the employee during that specific year. In order to

be granted this extension, the employee should not have any unjustified absences, and justified absences should not exceed a maximum of three days during the year concerning that vacation.

In the case of fixed-term contracts, in the year of admission the employee is entitled to two working days of vacation for each month of the duration of the contract up to a maximum of 20 working days. These vacation days can only be taken following six complete months of employment.

Holiday should be taken during the relevant calendar year. However, if there is an agreement between employer and employee, or when the employee wishes to take leave with family living abroad, holiday can be taken until April 30 of the following year.

The employee may waive some days of vacation and receive the relevant remuneration and allowances in lieu, as long as they take at least 20 working days' vacation.

7.2 Public holidays

Portuguese law sets forth 13 mandatory public holidays in the year and considers Shrove Tuesday and local municipal holidays as non-mandatory public holidays.

8. Change of tasks or post, and geographic mobility

8.1 Functional mobility

Functional mobility allows the temporary attribution of duties to the employee which are not provided for in the employment agreement, as long as this does not brings about substantial modification to the employee's position.

For the purposes of functional mobility, the following three conditions must be satisfied:

- the mobility must be in the company's interests;
- the nature of the necessity underlying mobility must be temporary; and
- mobility must not result in substantial modification of the employee's position.

The functional mobility cannot result in a reduction of the employee's remuneration.

8.2 Geographic mobility

The employee will normally carry out his work on the premises set forth in the employment agreement without prejudice to any work-related travel that may be required by the employer.

Geographic mobility is a unilateral prerogative of the employer and permits temporary or permanent transfer of the employee to another work premises provided that:

- the company offers an objective and reasoned justification for the transfer;
- the transfer does not bring any serious harm upon the employee (burden of proof to prove to the contrary falls upon the employee); and
- in the case of a temporary transfer, the period of the transfer cannot exceed

six months, unless a different arrangement is required for reasons related to the operation of the company.

The costs entailed as a consequence of the geographical mobility must be borne by the employer.

9. Change in working conditions

An employer is not allowed to reduce an employee's remuneration and may not change an employee's professional status to an inferior category.

The employer is allowed to transfer the employee to other work premises or change his work schedule on a permanent or temporary basis. However, observance of certain legal formalities is required (see section 8).

10. Subcontracting and temporary work undertakings

The occasional assignment or temporary hiring of employees to perform services to another entity in accordance with that entity's guidelines and work organisation while maintaining employment relations with the employer can only be carried out if the following cumulative conditions are met:

- the employee to be transferred has a permanent agreement;
- the transfer takes place between companies which have some group or corporate relationship or with common organisational structures;
- the employee in question has consented to the arrangement; and
- the transfer cannot exceed one year, although it may be renewed for equal periods of time up to a five-year limit.

11. Transfer of undertakings

The transfer of a company or establishment does not provide grounds for termination of the relevant employment agreements.

In the event of a transfer of ownership of a company, establishment, part of a company or assets that constitute an economic unit, all the employer's rights and obligations in relation to employment agreements are transferred to the purchaser.

Prior to the transfer, the seller and the purchaser shall inform the employees' representatives or, if there are none, the employees themselves in writing as to the date and reasons for the transfer, as well as the legal, economic and social consequences for the employees and measures taken in relation to them.

12. Suspension of the employment agreement

12.1 Suspension

The temporary reduction of normal working hours or suspension of the employment agreement may be based on:

- the temporary impossibility of work triggered by the employee or employer;
- crisis situations, namely the necessity to ensure the viability of the business;
- an agreement between the employee and the employer (eg a pre-retirement agreement or unpaid leave); or

- the employee's initiative, due to the employer's failure to pay salary in due course.

During the suspension, rights, obligations and guarantees which are not contingent upon the performance of work remain in force; therefore, the suspension will not have any negative impact on the employee's period of service.

Suspension of the employment agreement is automatic when the temporary impediment is attributable to the employee, though with no fault of his, and it exceeds 30 days, namely in the event of illness, accident or due to mandatory military service.

12.2 Lay-off

The employer can temporarily reduce normal working hours or suspend employment agreements in crisis situations, based on market, structural or technical grounds, or catastrophes or other events which seriously affect the company's normal activity, provided that such measure is essential to ensure the viability of the business and workplaces.

For a lay-off to be granted approval, it is necessary to follow certain rules, which include negotiations with employees' representatives and the Ministry of Labour and Social Security.

Reductions or suspensions must be for a set time period which cannot be longer than six months, or one year in a catastrophe scenario or under circumstances when any other situation seriously affects the company's normal activities.

12.3 Temporary cessation of economic activity of the company

Temporary cessation of economic activity occurs when there is decision regarding the cessation of activity resulting from facts attributed to the employer, or whenever access to the workplace is barred, as well as in the event of failure to provide work, conditions and work instruments, which may result in or may lead to the inactivity of the company or establishment.

Such temporary cessation must obey specific criteria, insofar as the employees must be given advance notice and justification, along with information as to the estimated length and consequences of the cessation.

In the event of a temporary cessation of activity of a company or establishment, the employer shall not (i) distribute profits or dividends, nor pay shareholders' loans and respective interest, or amortise assets, in any form; (ii) remunerate members of the company, using any type of payment, at a higher rate than that paid to its employees, or purchase or sell assets or shares to company members; (iii) make payments to creditors who do not hold a guarantee or a privilege with preference over the employees' credits, unless those payments seek to revitalise the activity of the company; (iv) make payments to employees which do not correspond to the distribution of the available amount, proportional to the relevant remuneration; (v) pay other benefits (such as bonuses), irrespective of the form used; (vi) renounce economic rights; (vii) enter into loan agreements as a creditor; or (viii) make treasury withdrawals to cater for situations outside the company's normal field of activity.

13. Board representation

Following appointment, any employee of the company may sit on the board. However, it is not possible for a person simultaneously to sit on the board and maintain employee status. In other words, if the appointed employee has been with the company for a year or more, his employment agreement will be suspended. If the employee has been in the company for less than a year, his contract will be terminated.

Employees may also sit on the board of the company by virtue of an executive employment agreement (see section 1.3(d) above). In that case, whenever the executive employment agreement reaches its end, the employee has the right to be reinstated under the existing employment agreement before the commencement of the commission of service.

14. Right to strike

The Constitution of the Portuguese Republic and the Labour Code both recognise the right to strike as a fundamental right of employees. The resort to a strike must be decided by trade union associations, or by an elected assembly of employees representing a majority of the employees.

During the strike some obligations of the employees are suspended, although the disciplinary power of the employer remains in force.

Necessary services for the safety and maintenance of equipment and installations must be kept in place during the period of the strike. Minimum functional levels must also be maintained in companies whose activities include the provision of essential social services.

15. Termination of the contract by the worker

The employee may terminate the contract for the reasons set out next.

15.1 Termination with just cause

Termination with just cause can take place: where there has been some fault on the part of the employer which, by its grave consequences, renders continuation of the employment relationship immediately impossible; as a result of a need to comply with a legal obligation incompatible with the continuation of the contract; as a result of the substantial and sustainable alteration of working conditions by the employer in compliance with the law; and also owing to non-punctual payment of remuneration without fault.

In the event of unfair dismissal, the employee shall be entitled to be reinstated and the employer cannot refuse such reinstatement. However, the employer will not be obliged to reinstate the employee in the case of micro companies (ie those with one to nine employees) or employees appointed to management. In these cases, the employee is entitled to an indemnity to be determined by the court. The amount may vary between 30 and 60 days' salary for each year of work, but cannot be less than six months' salary.

15.2 Termination without cause

The employee may terminate the contract without cause through a prior written 30-

or 60-day termination notice to the employer, depending on whether he has more or less than two years' service.

The notice period can be increased up to six months for management, administration and representative positions, or by collective agreement.

Failure to provide advance notice of termination results in an obligation on the part of the employee to pay compensation to the employer in an amount equivalent to the remuneration due for the unobserved notice period and for the damages he has caused by his action.

15.3 Abandonment of employment

Abandonment is equivalent to the termination of a contract without prior notice and occurs when an employee does not report for work and is deemed to have repudiated his employment agreement through lack of willingness to resume work. Abandonment takes place where the employee's absence lasts for at least 10 consecutive working days without notifying the employer of the reason for the absence.

15.4 Mutual termination of agreement

An employment agreement may be terminated by mutual agreement between the employer and the employee. Such agreement must be in writing.

16. Termination of the agreement by the employer

Pursuant to Article 53 of the Constitution of the Portuguese Republic, employees are entitled to employment security; therefore dismissals without cause or on political or ideological grounds are prohibited. There are indeed several limits on the employer's right to terminate an employment agreement.

Nevertheless, there are a number of circumstances under which the employer may unilaterally terminate the agreement, and these are set out next.

16.1 Dismissal with cause due to employee's fault

This title supposes the existence of negligent behaviour or fault by the employee which by its seriousness renders continuation of the employment relationship immediately impossible.

16.2 Collective redundancies

In micro or small companies, collective redundancy occurs when at least two employees are dismissed. This number increases to five employees in medium or large companies and redundancy is based on the closure of one or more departments or equivalent structures, or on the reduction of the number of employees on market, structural or technology-related grounds.

16.3 Dismissal due to extinction of post

This title is based on circumstances where the post no longer exists due to market, structural or technological reasons relating to the company, and collective redundancy is not applicable.

16.4 Dismissal due to unsuitability

This form of dismissal is based on the position when it becomes apparent that an employee is not fit or suitable for the relevant post. This occurs when continuation of the work relation is virtually impossible due to:

- continued reduction in productivity or quality of work;
- repeated unjustified absences from work; or
- risks to the health and safety of other employees or third parties.

In management positions or in posts that entail technical complexity, the employee will be considered unfit for the position in question when failing to meet objectives set forth in writing through unsatisfactory performance of his duties which renders the continuation of the working relationship impossible.

All these dismissal proceedings must be undertaken in strict compliance with certain conditions, deadlines and with due regard for the so-called adversarial principle (meaning that no law shall be construed or applied so as to deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations).

17. Disciplinary dismissal

A dismissal based on just cause without the right to any compensation is the most grave sanction that can be resorted to by an employer. Prior to such dismissal, disciplinary proceedings must be instituted within 60 days of the employer learning of the employee's breach.

The limitation period for disciplinary breaches occurs after a year from when those infractions took place, regardless of the employer's knowledge.

As regards disciplinary procedures, written communication explicitly stating the employer's intention regarding dismissal must be sent by the employer to the employee. This notice must indicate the breach that the employee is accused of and must include a description of the relevant facts. This will constitute the accusation that will set the boundaries of the disciplinary procedure.

The employee has 10 working days to consult the file and reply to the accusation, stating the relevant elements and offering explanation as to his participation therein. The employee may attach documents and request measures to secure evidence in order to establish the truth.

Following conclusion of the fact-finding, the employer has 30 days to make a written and reasoned decision through assessment of the factual circumstances, the seriousness of the breach and the degree of guilt of the employee, as well as the damage sustained by the company.

During the disciplinary proceedings, the employer has the right to suspend the employee, without loss of pay, if the presence of that employee in the company proves to be potentially inconvenient.

18. Failures and sanctions

Disciplinary sanctions provide a means for the employer to react when faced with a breach of contractual obligations by the employee whenever the latter violates any

rules regarding workplace conduct, diligence and punctuality, the duty to carry out work with dedication and zeal, the duty to carry out all legal instructions regarding the execution and discipline at work, and the duty to observe all health and safety rules in the workplace.

No disciplinary sanction may be imposed without regard to due process.

The employer may resort to the following disciplinary sanctions:

- simple warning (ie an oral or written warning which does not stay on the employee's file);
- registered warning (which can be either oral or in writing, but which will remain on the employee's file);
- monetary sanction;
- loss of vacation days;
- suspension from work with loss of payment and seniority; and
- termination without indemnity or compensation.

19. Representation of workers: trade union meetings and elections

Employees are represented in their company by an employees' commission and by the trade union commission. Employees who are representatives in these entities have special rights, such as the right to time off for the exercise of their commission-related duties and the right not to be transferred.

The employees may meet in the workplace and during working hours (with certain limits) subject to prior notice and upon convocation of one-third of the workforce or 50 employees (whichever is the lesser). Members of the trade union commission may participate in the meetings provided they give advance notice to the employer.

The employees' and trade union commissions are entitled to a duly equipped place for the performance of their duties, and also to post and distribute communications in the workplace.

Members of employees' commissions and trade union representatives are elected pursuant to bylaws by direct and secret ballot, according to a company's size.

The employees' commission and trade union representatives representing trade union or inter-trade union commissions have the right to be informed on all matters regarding the employees in order to control the management of those affairs, including the right to meet at least once a month with the decision-making body of the company and to submit written requests to obtain explanations or documents.

Prior to undertaking certain changes, the employer must consult with the employees' commission, especially as regards changing professional categories, removal of establishment, restructuring of human resources, and requests or statements of insolvency.

20. Prevention of occupational risks

Employees are required to observe a number of rules concerning safety, hygiene and health at work (SHHW), which are set forth in vast and diffuse legislation. Employers must guarantee that all their employees perform their duties under dignified working conditions, in order to enable personal achievement, to allow the balance between their professional activity and family life, and to avoid risks, illnesses and work accidents.

'Safety at work' means the application of adequate methodologies in order to prevent work accidents and to acknowledge and control professional risks. 'Hygiene at work' means prevention of professional illnesses, and taking action through the control of exposure to physical, chemical and biological agents. 'Health at work' takes the form of regular monitoring by physicians, concerning the health of the employees, as well promoting their physical, psychological and social well-being.

Under the SHHW the employee is subject to several other obligations. If the employee wilfully or negligently breaches such obligations, he may incur disciplinary and civil liability where his conduct has contributed to or caused a dangerous situation. Examples of such breaches include: failure to observe health and safety guidelines in work, as established by law or by the employer; actions or omissions affecting the health of other persons; misuse of machinery, equipment, dangerous substances or other equipment; and lack of consultations and medical examinations.

An SHHW representative must be elected from among the employees to represent the employees on health and safety issues.

21. Social security: registration, contribution, disability and retirement

21.1 Registration

Within the first 10 days that an employer starts to operate it must register as a taxpayer in the social security district centre. Furthermore, each employee must be registered as a beneficiary of the general social security regime. This is a lifelong registration and is undertaken at the time of entering into the first labour relation with his first employer.

Communication regarding admission of an employee must be submitted to the social security services 24 hours prior to the effective date of the employment agreement, or within 24 hours of the start of the activity, whenever exceptional and duly justified reasons related to short-term employment agreements or shift work mean that the communication cannot be undertaken within the above-mentioned established timeframe.

21.2 Contributions

Social security contributions are mandatory and they seek to guarantee certain monetary compensation to the beneficiaries in order to offset the employee's revenue or earning capacity losses, in the following situations:

- unemployment;
- sickness;
- disability;
- maternity; and
- old age.

Default contribution fees are usually set at 11% for the employee and 23.75% for the employer.

With the entry into force of a new Tax Code on January 1 2011, tax is being

imposed on all entitlements in money or in kind that employers must pay to the employees as remuneration for their work, on account of employment agreements, other norms that regulate labour relations, or owing to internal company practices. Furthermore, tax is being imposed on all bonuses, provided they are previously established pursuant to objective and general criteria, even if conditional, so that the employee can count on receiving that amount, regardless of the periodicity of its payment.

Subsidies paid as compensation for family-related expenses (nurseries, schools, retirement homes etc), medication and medical assistance to the employee and respective family, meals in the staff canteen or discounts in the acquisition of employers' shares are tax exempt.

Exemptions apply – although with some limitations – to expenses relating to food and drink, utilisation of personal vehicles, severance payments, and allowances for loss of funds. (With regard to the last category, a cashier can be responsible for all funds advanced to him from the time of advancement until an acceptable and correct accounting is made. It is possible to grant a monthly allowance to compensate for the extra responsibility stemming from handling cash. Should there be a shortage in the funds, the employer may resort to deducting the respective amount from that allowance.)

A three-year progressive scheme has been put into place regarding social security contributions on representation expenses, participation in company profits, transportation expenses, company bonus, life insurance, pension funds and retirement plans.

21.3 Sickness

Sick pay aims to compensate for loss of remuneration when it results from temporary incapacity for work

21.4 Disability

The social security system grants certain benefits to individuals with some form of disability (either partial or total). The disabled person is generally entitled to the benefit until he reaches the age of 65, following which the person then becomes entitled to an old-age pension.

21.5 Retirement

Retirement benefits are granted through payment of an old-age pension, which is paid monthly. To qualify for old-age pension the following three conditions must be met:

- observation of a waiting period (generally 15 calendar years with remuneration registration);
- the person must satisfy the legal age requirement (65 years); and
- intention expressed by the beneficiary. As long as the beneficiary does not apply for retirement, his social security status remains active.

If an employee reaches 70 years and has not applied for retirement by operation

of law, his employment agreement is automatically considered a fixed-term agreement, for six months. This agreement may be renewed, as long as the employer does not terminate the agreement at the end of its term.

22. Judicial procedures of a labour nature

The labour courts are specialised courts with jurisdiction over labour-related legal processes.

The Labour Code entered into force on January 1 2010 and introduced several modifications to the previous labour scheme. Currently, the Labour Code provides for the following types of judicial proceedings:

- legal action in standard proceedings;
- lawsuits on work-related illnesses;
- complaints regarding collective redundancy;
- money judgments and debt collection resulting from healthcare services or any other matters falling under the jurisdiction of the labour courts;
- injunctive relief (standard and specific: suspension of dismissal, suspension of collective redundancies, and in matters related to safety, hygiene and health at work);
- special litigation relating to welfare institutions;
- non-penal trade union disputes;
- executions not based on judicial decisions;
- other so-called precatory letters and 'letter rogatory', when not resorted to exclusively for the purposes of notification and summons;
- other legal processes (judicial opposition regarding confidentiality of information or refusal to render confidential information or refusal to undertake consultations of confidential information; legal processes for the protection of the employee's person; legal processes regarding equality and non-discrimination based on gender; and all other special and urgent legal processes);
- other miscellaneous legal processes;
- complaints challenging the orderly nature and legality of dismissal; and
- lawsuits resulting from accidents at work.

Labour Law

A Practical Global Guide

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The legal and financial treatment of labour regulation can vary significantly from country to country. An understanding of these differences is of the utmost importance when evaluating the labour implications for any company establishing itself in a new jurisdiction.

The perfect companion to Globe Law and Business's book on company formation, *Labour Law: A Practical Global Guide* features over 35 chapters by practising professionals, providing a succinct overview of the labour regulations in force in a number of key jurisdictions. This is particularly important in this field because of the singularities in the regulation of labour relations that exist in different countries. Topics covered in each chapter include the labour contract, non-compete covenants, changes in working conditions, board representation, termination by both employer and employee, leave and social security.

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