

Decent Work Agenda

Last 10 February 2023, the Portuguese Parliament approved Bill 15/XV, which introduces more than 150 employment law changes in the context of the Decent Work Agenda. This Newsletter sets out to highlight the main legal amendments that are expected to enter into force in April, after enactment by the President of the Republic.

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Work-life balance

- Increase in the duration of the father's exclusive parental leave.
- Possibility of combining parental leave with part-time work.
- Creation of a justified absence for gestational bereavement .
- Increase in duration of justified absences due to death of the employee's spouse
- New rights for employees with the status of secondary informal caregivers, namely an annual leave of five days, an exemption from overtime work, the right to telework and enhanced protection in the event of dismissal.

Information duties and probation period

- Extension of the employer's information duties.
- Legal presumption of exclusion of the probation period if the employer does not comply with information duties regarding probation.
- Reduction or exclusion of the probation period for first-time jobseekers and long-term unemployed persons, as well as for workers who have completed a professional internship for a different employer, if certain requirements are met.
- Extension of the notice period due by the employer to terminate the contract during the probation period, when it has lasted more than 120 days.

Term contracts

- The hiring of a term employee, a temporary employee, or a service provider to perform the same professional activity (no longer only for the same job position) will be prohibited after the termination of a term contract for reasons not attributable to the employee and before 1/3 of the duration of such contract has elapsed. This prohibition also applies to companies in a group or control relationship or sharing organisational structures with the employer.
- Increase in the compensation due to the employee upon expiry of the term contract to 24 days of base salary and seniority payments for each full year of seniority, unless the termination is instigated by the employee.

Temporary work contracts

- The transfer of a temporary employee by a non-licensed employment business shall now constitute permanent employment relationship with the user.
- Extension of the ban on successive contracts once the maximum term of a contract for the use of temporary work is reached, by prohibiting succession in the same professional activity (not only in the same job position) and the engagement of service providers for the same purpose or activity. This prohibition also applies to companies in a group or control relationship or sharing organisational structures with the employer.
- Reduction of the maximum limit of renewals of temporary work contracts, from six to four.
- Imposition of a maximum term of four years for successive temporary work contracts in different users, concluded with the same employer or with a company in a group or control relationship or sharing organisational structures with the employer.

Extracurricular professional internships

- The trainee shall be entitled to a minimum monthly internship allowance corresponding to 80% of the national minimum monthly wage.
- The internship promoting entity is required to purchase an occupational accident insurance for the trainee.

Telework

- Extension of the right to telework to employees who live in the same household with children with disability, chronic illness, or cancer, regardless of their age, provided that teleworking is compatible with the activity performed.
- The parties must agree on the amount due to the employee as compensation for the additional expenses incurred by virtue of the telework. In the absence thereof, additional expenses are those corresponding to the acquisition of goods and or services that the employee did not have before the telework agreement, as well as those costs determined by comparison with the employee's monthly expenses in the last month of face-to-face work. The compensation paid to the

employee should not be considered employment income and should be exempted from personal income tax and social security contributions up

to the threshold to be defined by Government Ordinance.

Overtime work

- Increase of the remuneration due for the provision of overtime work that exceeds 100 hours per year.

Waiver of employment claims

- The waiver of employment claims by the employee is prohibited, except through an in-court settlement.

Outsourcing

- The employer is prohibited from acquiring external services from a third party to satisfy needs that were assured by an employee whose contract ended in the last 12 months due to collective redundancy or redundancy by elimination of job position.
- The collective work regulations that bind a company acquiring services will apply to the service providers hired by the company to perform activities included in its corporate purpose, after 60 days of rendering of services.

Digital platforms

- Introduction of a legal presumption of existence of an employment contract if evidence is found of an employment relationship between the service provider and the digital platform. The presumption may also operate in relation to the natural or legal person who acts as an intermediary of the digital platform.

Dismissals

- Increase of the severance due to the employee in the event of a collective redundancy, a redundancy by elimination of job position or a dismissal for maladjustment, to 14 days of base salary and seniority payments for each full seniority year.

Collective Bargaining

- Extension of representation and collective bargaining rights to economically dependent self-employed workers, namely the right to negotiate or to be covered by a collective bargaining agreement.
- Admissibility of union activity in companies without unionized workers (right to assemble, right to have access to facilities and right to post and distribute union information).
- The party for whom a collective bargaining agreement has been denounced can now request an arbitration for the assessment of the grounds invoked by the counterparty to withdraw from the collective bargaining agreement, thereby suspending the effects of the withdrawal. If the statement of grounds is held unfounded by the arbitral court, the withdrawal shall not take effect.

Labour Inspectorate

- When there is evidence of an unlawful dismissal (notably in the event of a disciplinary dismissal, a collective redundancy, or a redundancy by elimination of the job position), the labour inspector will give notice to the employer to regularize the situation, under penalty of reporting the facts to the Public Prosecutor's Office for the instigation of precautionary proceedings to suspend the dismissal .
- The Labour Inspectorate is granted the power to initiate a procedure with a view to regularising the contractual relationship if it finds:
 - a) The presence of characteristics of an employment contract in those cases where the service provider acts as an individual entrepreneur or through a single-member company; or
 - b) Evidence of a breach of the rules regarding the admissibility of contracts for the use of temporary employment, of temporary employment contracts or term contracts.
- Introduction of an extended number of new employment and social security infringements.
- Imposition of the ancillary penalty of deprivation of the right to make applications in calls for application ('auctions') or bid in public tenders for a period of up to 2 years in the event of repeatedly contracting service providers apparently self-employed but under conditions that are characteristic of an employment contract (false self-employment).

Social Security

- The status of contracting entity may now be granted when the services are rendered by individual entrepreneurs or by the holders of individual private limited establishments (and not only by self-employed workers).
- The employer who does not report the hiring of new employees to the social security within the 6 months following the legally required period may be subject to imprisonment up to 3 years or a fine of up to 360 days.

- Imposition of the ancillary penalty of deprivation of the right to grants or subsidies granted by a public entity or service (including European funds) or of the right to make applications in auctions or bid in public tenders, both for a period of up to 2 years, in the event of a repeated violation of the duties to report the hiring of new employees or to include employees in the monthly social security remuneration statements.
- This Newsletter was prepared on 6 March 2023 in accordance with the legislation or legislative proposals published up until then. This Newsletter is intended for clients and contains general and abstract information updated to the aforementioned date. The information provided herein is not a substitute for professional legal advice adjusted to each specific case.

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