



Portugal

Labour System



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Context

Portugal is a modern country, with an attractive work market with peaceful labour relations, presenting a set of competitive advantages for foreign investors.

As a member of the European Union, Portugal has a labour system similar to the other EU members. The structure is especially close to the Southern European partners. In fact, joining to the E.U. led to the adoption of several European Directives referent to labour relations.

In terms of regulation, the main Act is the labour code, *Código do Trabalho* (Lei 99/2003 dd 27/8), enacted to systematize sundry legislation, as well as modernize the previous code. However, there are several other regulations which, combined with the Act previously mentioned, discipline labour activities. Among them, we must highlight the collective labour contracts which are agreements celebrated between trade unions and employers associations aimed at regulating the activity of the sectors. These contain precise and detailed agreements so as to consider almost every possible situation. These agreements are mandatory, thus, overruling the parties' stipulations.



Some of the values and rights enshrined by the Portuguese Constitution and labour acts include: worker protection for example, in case of disease, of work accidents; non-discrimination on grounds of race and gender; equality of opportunities; maternity protection, the right to professional training; workers participation in the company's management albeit in a very limited way.

1. Types of Contracts

The labour relations are a widely regulated system, by means of the agreements celebrated between the trade unions' representatives and the employers' associations, covering almost every working area.

As a rule, individual employment contracts are synthetic, since the rest of the contract stipulations are provided and defined in the Act. On the other hand, the contractual omissions are overcome (or fulfilled) by the above mentioned collective labour regulations.

The minimum age required to celebrate a contract of employment is 16 years old and the retirement is compulsory at the age of 70.

Notwithstanding the set of contracts defined by the Labour Code, there are two main commonly used type of contracts: temporary and not temporary.

1.1 Contracts with Term – Temporary or Time Contract

These contracts are established to last a certain period of time. But the Act imposes some restrictions. The main ones refer to the prohibition of more than one renewal; in any case they cannot last more than a period of three years.

In this kind of agreement, the contract expires when the agreed stated period comes to an end. If the contract exceeds the limits above mentioned, the contract turns automatically into permanent.

1.2 Contracts Without Term - Not Temporary or Indefinite Contracts

This type of contract is permanent, which means, it does not have any time limitation. It only expires at will of the parties, or in the cases set force by the Act.

1.3 Trial Period

The Act considers a trial period for contracts during which the rescission by both parties is free, without requiring a previous notice or the right to a compensation or severance pay.

The trial period length can vary, since it depends on the type of contract. In the case of the contract without term it can range from 90 to 180 days depending on the complexity of the job position, and for the management and board positions it can go up to 240 days.

As for time contracts, the trial period is 15 days if their length is less than six months. If it is more, the trial period is 30 days.

It is a mandatory condition that the term is clearly determined in writing, otherwise it is not valid.

1.4 Required Formalities

The time contract has to be in writing, but this clause doesn't apply to the contract without term. The time contract must have other mandatory stipulations that have to be put in written form: the job for which the worker is hired, the place of employment, the pay conditions. In the case of the contract without term this is not mandatory, but those elements have

to be known, and acknowledgement by both parties must be able to be proved. In any case, the worker may demand the employer to have these conditions being put in writing.

It is worth to refer that these agreements, between professional associations and the employers' representatives (Collective Labour Agreements or Collective Labour Contracts), which are recognized as part of the regulation for the sectors involved, end up functioning as true ruling acts of the activity in those sectors. For instances, in the case of service sectors, they substitute the clauses of the individual contracts. In fact, sometimes it is enough the mere mention of the professional category, or the job for which the worker was been hired (for example: secretary) for the job description to be contractually defined, and be legally binding; hence it is not technically necessary to detail the job for which the worker was hired. The same case applies to the stipulations regarding the working hours.

As to the formalities to be fulfilled towards the Official Entities (the Social Security and to the Labour Inspectors Committee), the main ones are: the obligation of sending the workers identity data, the working hours schedule, professional categories or job description, and pay.

In the case of an industrial unit, the working authorization depends on the issuance of a license by the Ministry that governs the activity sector of the enterprise.

Relevant Institutions:

**Ministério do Trabalho e da Solidariedade Social
(Ministry of Labour)**

www.mtss.gov.pt

IEFP

www.iefp.pt

ACT

www.act.gov.pt

UGT

www.ugt.pt

CGTP

www.cgtp.pt

**Conselho Concertação Social
(Committee for Social Dialogue)**

www.ces.pt

2. Rescission

In general, contracts end either due to the expiring of the respective temporary contract and at will of both parties in the contract without term, or if some unexpected circumstances occur that impede the continuation of the employment relationship.

The Act calls for some limits regarding rescission, of which, for its relevance, it should be mentioned the minimum time for previous notice of rescission, and dismissal.

In case of rescission and in the case of time contracts (temporary contracts), the previous notice must be disclosed 8 or 15 days before, only depending if the contract has a term of six months or more than six months.

In the contracts without term (indefinite contracts), a previous notice varies from 7, 30 or 60 days depending on the contract length: six months, more than six months and less than two years, or more than two years.

As pursuant to the Act, an employee may be dismissed if any of a series of situations (not accumulative) put in jeopardy the employer/employee relationship. These reasons

are outlined in the Act and are mostly related with behaviours that can jeopardize the company and its workers, with occurrences of not following the orders, or the employers' lack of trust in the employee.

2.1 Formalities

It is always mandatory that the dismissal is preceded by a special procedure, similar to a judicial one, which is called "*processo disciplinar*". If this procedure is not instated the termination is considered null. The final decision is subject to be contested in court either by the employer or by the employee. If the latter wins, he can choose to be reinstated in the company and receive a severance pay, or just receive the severance pay that was set by the Labour Court.

2.2 *Justa Causa*

The concept of *justa causa*, is defined in the Act and it is a situation in which the employment relationship is impossible to keep. When *Justa Causa* is verified there is no compensation.



3. Working Hours

3.1 Legal working hours

There is no official working hours. The Act imposes the impossibility to work more than eight hours per day and maximum 40 hours weekly.

This working hours should contain breaks no less than an hour, nor over two hours. Pursuant to the Act, it is not legally possible to have a consecutive shift of five or more hours.

As stated above, there is no definite working hours, legally fixed, common to all activities, but there are agreements for activity sectors that define the period from 9a.m to 5p.m. Working out of this period is considered as overtime.

Overtime is admissible, but the Act sets a two hour daily maximum up to a maximum of 200 hours per year.

However, some acts and regulations define different working hours from the above mentioned for certain activities.

3.2 Special Working Hours

The existence of special working hours, meaning different working hours from the "regular" one, is regulated by the Act.

This occurs, for instances, in industries working on shift basis, or shopping malls. Usually, the shopping malls follow different opening hours, but in practical terms these working hours are considered as regular without any extra salary payment. This situation requires always a previous authorization so that the company is allowed to operate out of the regular working hours.

3.3 Conventions and uses

The special working hours may be defined in particular regulations (as it is case of shopping malls /centres) but still

it is necessary to present them to the Inspeção Geral de Trabalho (Labour Inspectors Committee). The non response from the part of the L.I.C., after a legal 30 day length of time, is considered as a tacit authorization.

In the majority of the sectors the regular working hours runs between 9.00/9.30 and 17.00/17.30 with, a least, one hour minimum for lunch time, between 12.30 and 14.00.

3.4 Holidays

After a year of labour in the company, employees acquire the right to 22 workdays of holiday. In the Portuguese Labour Code, this is a right that cannot be waived, which means that even with the consent of the employee it's not possible to transform those days into monetary compensation.

Holidays are not accumulative which means that it is not possible to accumulate holidays of past years. However it is possible to enjoy holidays of the previous year during the first trimester of the next year. The holiday period settlement is a right of the employer, but the common situation is an agreement between both parties. In case of disagreement the employer must fixate them between May the 1st and October the 31st. This right, as long as it is performed within the Act, cannot be contested in court.

If the employee has been working in the company for less than 1 year, but has already worked at least 6 complete months, the Code provides two workdays for each month of effective work up to 20 weekdays maximum of holiday.

It is possible to divide holidays into two different periods, opening the possibility of spending them outside the established legal period.

Holiday period is determined according to the best interests of the company; so there is no required authorization or previous communication to any organization or institution.



By force of traditions in certain sectors, it is possible to close the company and, in practice, impose a holiday period, from May 1st to October 31. At Christmas this is possible too, but for a shorter period: only 5 days.

Pursuant to the Act, the leave on maternity grounds is a right of any women worker. This situation is shared by Social Security Services. There is a 120 day period 100% shared by Social Security. The father is conceded up to a 20 day maximum leave on his child birth.

3.5 Absences

The Act specifies a group of situations which are considered absences with leave. All the others outside this enumeration and of sundry acts, are considered as absences without leave, that could entail disciplinary and salary consequences, which can lead to dismissal or *Justa Causa*.

The absences with leave, except those on illness grounds, may or may not be paid by the employer. Considering the absence for illness, Social Security shares up to 60% of the daily net retribution amount.

The worker absences payment (relating to the percentage not shared by the Social Security) is discretionary and there is no fixed custom on this.

Therefore, in some situations they are not paid (being discounted from the salary) and in others they are paid.

3.6 Public Holidays

Legally, there are 13 national bank holidays or public holidays and 1 council public holiday.

In Portugal, public holidays are not movable; so they can't be altered or changed to another date, in order to minimize the week interruptions.

On the other hand, public holidays that match weekend days can't be moved to the next first workday.

3.7 Industries uses and customs

In most industry sectors it is a common practice to close factories during the month of August, either for the entire month, or just for the second half, having in consideration that the 15th of August is a national public holiday.

The same doesn't occur in the service sectors although, by tradition, August usually has less staff working.

Relevant Institutions:

**Ministério do Trabalho e da Solidariedade Social
(Ministry of Labour)**
www.mtss.gov.pt

IEFP
www.iefp.pt

4. Residence and Permanent Entry Visa

The permanent authorization for residence is conceded when an employee has a labour contract, rent contract or a permanent residence evidence document and is registered in the Social Security Services.

The request is processed at the Serviço de Estrangeiros e Fronteiras (SEF) Branch.

The requests are regulated by the act Lei 23/2007 dd 4/07 and by the Decree-Law Decreto Regulamentar 84/2007 dd 05/11.

Relevant Institutions:

**Serviço de Estrangeiros e Fronteiras
(Foreigners' Services Provider):**
www.sef.pt

5. Tax on Individuals Income

The tax applied to the individual income in Portugal is called IRS (Individual Income Tax) and is a progressive system with seven tax brackets.

The taxable income cover all the earnings resulting from work for a employer, or as an independent, as well as other income not resulting from work, whatever origin it might have, either from stock sale, dividends, rents and so on.

Tax return must be done between January and May of the following year.

The tax bracket inferior limit is 0% for incomes up to 6,000 euros per year and the superior limit is 42% for income equal to or over 62,000 euros per year.

There are several tax deductions and tax exemptions, ranging from expenses with education, health etc. The tax base is calculated after the exemptions and deductions.

Foreign workers are subject to the tax, as long as their earnings are obtained in Portugal, and only on the earnings obtained in the Portuguese territory.

Payments received as travelling allowance, living-out allowance, or other allowances are not included as taxable income.

When it comes to foreign employees they usual celebrate a labour contract with a company with head office in Portugal, thus the contract is ruled by Portuguese Law.

In the case of expatriate employees, that is to say, those who have been sent by a foreign company to provide a service in a satellite company (branch or other), after 180 days, they are considered residents and must regulate their situation at The Treasury services, fulfilling the legal procedures. But they do not have to change the labour contract into a local one.

The income obtained in Portugal will be subject to IRS under the same terms and conditions as a national citizen.

5.1 Employers' Obligations of Discount at Source

It is an employers' obligation to discount and later deliver a part of the employee's salary to the Tax Office, which is considered collectable.

That amount has in consideration the employee's income or his family income and is legally called *Retenção na Fonte* (Discount at Source).

In the subsequent year, it is an employee's duty to fill his Tax return and the amount already paid by acting the discount at source acts as an advancement over the levying of the tax. This way, if the employee is over discounted, the Tax Office will proceed to a giving back.

It is an employers' obligation to deliver, until the 20th of each month, the discount at source amount at The Treasury office where the company is registered, using a proper form which currently, due to the fact that almost all the tax procedures are already on an electronic form, this can only be found on the internet.

5.2 Conventions and uses

The employee must register himself/herself at The Treasury office and get his/her CIF number. Without that enrolment the employer can't pay the salary or any other remuneration.

The CIF number is, in practice, for life, since it goes with the employee wherever he works and is not altered in case of loss or for having been working overseas.

Relevant Institutions:

**Ministério das Finanças
(Ministry of Finance)**
www.min-financas.pt

ACT
www.act.gov.pt

6. Social Security

The Social Security contribution is compulsory for all who work for someone else and falls up on the total income amount obtained by any means, except on some payments not collectable, such as lunch allowance.

This obligation doesn't prevent employees to subscribe to alternative retirement savings and private health care plans, nor, this fact, reduces the legal due payment.

The expatriates who discount for mandatory regimes in their country of origin, can keep doing it during a period of up to two years working period in Portugal.

6.1 Amount

The general rule is: the employer contribution is 23.75% and the employee 11%, of the gross monthly salary.

6.2 Obligation

The contribution is mandatory and it is the employers' responsibility to deliver it.

6.3 Uses

The registration in the Social Security is done by the employer. There are several forms provided by the Social Security office now digitally available on the internet (apart from existing in paper). Although the above mentioned registration is an employers' obligation, once registered in the system the worker's Social Security number will never change.

Relevant institution:

**Ministério do Trabalho e Solidariedade Social
(Ministry of Labour)**
www.mtss.gov.pt

7. Sources

Código do Trabalho (General Labour Code)



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Agência para o Investimento
e Comércio Externo de Portugal