Portugal - Labour System

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aicep Portugal Global

Contents

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1. Framework

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

As a member of the European Union, Portugal has a similar employment law system to that of its partners, especially those in Southern Europe. as regards both architecture and solutions. In addition, the country's membership of the E.U. has led to the incorporation into its laws of a set of European directives on labour relations, which apply throughout the European Area.

In terms of legislation, the principal law is the Employment Code, approved by Law nº 7/2009[1], which has already been amended by Law nº 105/2009 of February, Law nº 53/2011, of 14 October, and, more recently, by Law nº 23/2012 of 25 June.

There are also regulations which, like the above-mentioned Law, govern labour and employment. Of these, emphasis should be placed on the instruments that regulate collective labour matters (collective agreements, membership agreements and arbitration decisions in voluntary arbitration proceedings), the most common being the collective employment contract, an agreement made between the trade unions and the employers' associations, with the objective of regulating the activities of the relevant sectors.

The Law also provides for single-undertaking agreements, which are agreements made between a trade union and an employer for one undertaking or establishment. These are highly detailed agreements that cover almost all foreseeable situations and take precedence over the wishes of the parties.

The protection of employees, for example, as regards sickness, accidents in the workplace, sexual and racial non-discrimination, equality of opportunity, maternity protection, the right to occupational training, participation by employees' representatives in the life of the undertaking, or the definition of general rules governing the country's economic activity, are some of the values and rights included in and actively protected by the employment laws.

The Law also enshrines the principle of equality of treatment of foreign employees working on Portuguese soil, who enjoy the same rights and are subject to the same duties as Portuguese employees.

1 This Law revised the previous statute - Law nº 99/2003 of 27 August

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2. Employment contract

The legal definition:
"A contract of employment is a contract whereby a natural person agrees to work for another person, or persons, as part of their organisations and under their direction and control, in exchange for payment."

The principle characteristic of this relationship is the employee's duty to work for another in return for pay. The employer is entitled to determine the work to be done by the employee, subject to the limits defined in the employment contract, subject also to the employee's rights and duties as enshrined in the law.

An employment contract differs from a contract for the supply of services, to the extent that the latter is essentially the supply of a result and does not require continuous working.

The Portuguese legal system accepts the principle of the contractual freedom of parties. The general rule is that employment contracts must be made for an indefinite period. Accordingly, employment contracts made for a term (which can be either be fixed or conditional) are only permitted in the specific circumstances expressly provided in the law.
Employment contracts are not subject to any specific formalities except when the law provides otherwise.

As a general rule, individual employment contracts are very summary, as many of the contractual terms are already stipulated by the law. Furthermore, omissions in contracts are resolved by recourse to private employment regulations.

Sixteen[2] is the minimum age at which an employee can make an employment contract. The statutory age for retirement is 65 years and, as a general rule, contracts expire on retirement through old age or on the attainment of 70 years.

2.1 Probation periods

The Law provides a probation period for contracts, during which they may be freely rescinded by the parties, without need of prior notice or any right to compensation, unless otherwise agreed in writing. It is an essential condition that any notice period be defined in writing, failing which it will not be valid.

The duration of the period is variable, according to the type of contract. In a contract for an indefinite period, it may be from 90 to 180 days, depending on the complexity of the work performed, and for managers or senior executives it may be as long as 240 days.

In fixed-term contracts of employment for 6 months or more the probation period is 30 days. In fixed term contracts of employment for less than 6 months or for an unspecific term if it does not exceed that limit, the probation period is 15 days.

The employee's length of service is calculated from the start of the probation period.

2 Minors under the age of 16 years who have completed their compulsory schooling or are registered with and attending secondary school may undertake light work consisting of simple defined tasks which, by their nature, according to the physical or mental efforts required or the specific conditions in which they are carried out, are not likely to jeopardise their physical condition, health and safety, school attendance, participation in orientation or training programmes or capacity to benefit from the education provided , or their physical, psychological, moral, intellectual and cultural development (Law nº 47/2012 of 29 August, introducing the 4th amendment to the Employment Code).

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2.2 Invalidity of employment contracts

Where a contract of employment is partially void or partially annulled, the whole contract is not thereby rendered invalid, unless it is proved that the parties would not have entered into it in the absence of the defective part.

Let us take as an example an employee engaged as a heavy goods vehicle driver who claims that he holds an HGV licence, when in fact he holds a licence to drive light vehicles. In such a case, the contract is void so far as that employee is concerned and immediately ceases to have legal effect.

In the case of a contract made with an employee who makes false representations as to his literary skills, the contract will be declared void as soon as the employer becomes aware of that falsity, but will have legal effect as long as it has been performed, in other words, as if it were a valid contract, and the employee cannot be required to repay his wages or salary or the employer to return the professional work provided.

Wherever a clause in a contract infringes a statutory rule, the latter is deemed to replace it. In such situations there can be no partial invalidity, inasmuch as this constitutes an exception to the legal rule governing breach of contract, and thus the contract remains intact.

Save as to contracts of employment the purpose of which is contrary to the law or public policy or immoral, a contract will always be validated as soon as the cause of invalidity ceases during the performance of the contract, and will be regarded as valid ab initio.

2.3 Types of contract

The Labour Law identifies defines a group of types of contract of employment, of which the following, all of which must be in writing, should be emphasised:

2.3.1 Employment contracts subject to a term

This type of contract may be made only to meet a temporary need, and must cease as soon as that need is satisfied.
The duration of the labour relations is limited, and the contract must be examined to determine whether its term is specific or unspecific.
The situations are described in the Law and relate to the replacement of employees, seasonal work, exceptional increases in work, occasional work, start-up of new businesses of uncertain duration, start-up of an undertaking with fewer than 750 employees and engagement of workers seeking their first jobs in a long-term unemployment situation, or some other situation for which employment policy has provided special legislation.

Fixed term employment contracts

The minimum duration of a fixed term employment contract is 6 months, except in those cases specifically provided in the law. Its maximum duration, including the possibility of 3 renewals, may not exceed 3 years, except in the case of persons seeking their first job, in which the maximum duration may not exceed 18 months, and cases of start-up of businesses of uncertain duration and engagement of employees seeking their first job, in which it may not exceed 2 years.

Fixed-term employees have the same rights and duties as permanent employees in a comparable situation.

Law nº 3/2012 of 10 January creates an extraordinary renewal regime for fixed-term employment contracts the maximum duration of which is reached by 30 June 2013.
Such contracts may be the subject of two extraordinary renewals, which may not exceed 18 months. The duration of each renewal may not be less than 1/6 of the maximum duration of the fixed-term contract, or its actual duration, whichever is the lesser. The Law also determines that the maximum limit of validity of a fixed-term contract which has been renewed under the extraordinary regime shall expire on 31 December 2014.

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Indefinite fixed-term employment contracts

Indefinite fixed-term contracts of employment will continue in force for as long as is necessary to ascertain that the event for which they were entered into has taken place, particularly the return of an absent employee or the completion of the activity for which the employee was engaged, but may not have a maximum duration of more than 6 years.

Indefinite fixed-term contracts are converted into indefinite-term contracts wherever an employee continues to work under such a contract for more than 15 days after its expiry date.

Very short-term employment contracts

Very short-term contracts of employment need not be made in writing and apply to seasonal or agricultural work or touristic events of a duration not exceeding 15 days[3].
The employer must notify the appropriate Social Security office by electronic means that such a contract has been made, using a form which must state the following:
a) Identities, signatures and address or registered office of the parties;
b) Type of work assigned to the employee and remuneration to be paid;
c) Date of starting work;
d) Place of work.

The total duration of contracts of this type with the same employer may not exceed 70 days' work in a calendar year. In case of infringement of these rules, the contract is regarded as made for a period of six months, including the duration of any previous contracts entered into under the same regime.

2.3.2 Part-time employment contracts

This type of contract is entered into in cases where the normal working period is shorter than that worked by full-time employees, and may be made for a number of days per week, per month or per year.

Part-time employees have the same rights as full-time employees in a comparable situation calculated as a proportion of the relevant normal weekly working period.

2.3.3 Intermittent employment contracts

Wherever an undertaking carries on a non-continuous activity or one of variable intensity, a contract of intermittent employment may be made between the parties, in which it is agreed that the services rendered shall be interspersed with one or more periods of inactivity and the start and end of each working period is defined.

The employer must inform the employee of the start of the working period at least 20 days in advance.

The work must be full-time for a period of at least 6 months, of which at least 4 months must be consecutive.

During the period of inactivity the employee may take on other work, but retains the right, unless another sum is fixed in a collective regulation instrument, to 20% of the basic remuneration, payable at the same intervals as that remuneration, and to holiday and Christmas pay.

2.3.4 Teleworkers' contracts

Under a telework contract, an employee does his/her work at a place outside the company's premises, using information and communication technology resources.

Apart from other aspects, such a contract must contain express mention of the teleworking arrangement and rules, the correspondent remuneration and an indication of the normal working period.
Teleworkers have the same rights and duties as other employees.

3 More than twice the time specified in the previous version of the Employment Code

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2.3.5 Temporary employment contracts

A temporary employment contract is one made for a fixed or non-specific term between a temporary employment agency and a worker, whereby the latter agrees to provide services to third parties for remuneration, while contractually employed by the agency.

There is also a contract for the use of temporary labour, or in other words a contract for services, for a fixed or indefinite term, made between an undertaking and the temporary employment agency, whereby the latter agrees to provide temporary workers to that undertaking for remuneration.

Its duration, including renewals, may not exceed a limit of 2 years or the period for which the reason for the contract continues to exist, or 6 months in cases of vacancies where recruitment for the post is already in progress, or 12 months, for cases of exceptional increases in the company's business.

Contracts for the use of temporary labour are signed in duplicate and must contain the requirements set out in Art. 177 of the Employment Code [Código do Trabalho] (CT). Of those requirements, it is important to emphasise the need to annex proof of membership of the "*fundo de compensação do trabalho*"[4] or some equivalent institution. If no such arrangement exists, the user is jointly and severally liable for payment of any compensation which would otherwise be payable by the fund on termination of the contract.

The duration of a temporary employment contract, whether the term is fixed or unspecified, may not exceed that of the contract for use of the services.

2.3.6 Occasional assignment contract

Occasional assignment consists of the temporary supply by an employer of an employee to provide services to another undertaking, to whose management he is subject, while his original contractual relationship with his employer remains in force.

The employee assigned must be bound to the assignor company by a contract of employment for an indefinite period.

Assignment depends on a written agreement between the assignor and the assignee, which must contain a set of requirements as provided in Art. 290.º of the CT, and its duration must not exceed a year, renewable for similar periods up to a maximum of five years.

The employee is entitled to the remuneration that corresponds to his duties or that agreed at the time of the assignment, if more favourable, to holiday and Christmas pay and to any other regular periodic benefits to which the assignor's employees are entitled for the same work.

Requisite formalities

Reduction to writing is an essential element of a fixed-term contract, but not of a contract for an indefinite period.

The duties for which the employee has been contracted, the place of work and remuneration are essential elements of the contract, which, in the case of a fixed-term contract, must be expressed therein.

In the case of contracts for an indefinite period this is not obligatory, but the terms and conditions must be known and it must be possible to prove that they exist. In any event, the employee may demand that the employer put these conditions in writing.

It is important to mention that agreements between professional associations and employers' representatives (Collective Employment Agreements or Collective Employment Contracts) which are recognised as having regulatory value for the relevant sectors, eventually come to operate as actual laws governing business in those sectors.

In the case of the Services they replace in practice the clauses of individual contracts. In addition, it is sometimes

4 A business-based system of compensation designed to guarantee part-payment of compensation to the worker on the termination of the contract of employment, applicable to contracts of employment signed after the law which will create the said fund comes into force. This subject is still under negotiation between employers, unions and the Government

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sufficient merely to state the professional category for which the employee was engaged (e.g. secretary), for it to be unnecessary to define his/her duties. The same applies to working hours.

In terms of the formalities to be observed by the employer with the Official Authorities, it should be emphasised that information identifying personnel, including their professional categories, working hours and remuneration, must be sent to Social Security and the Working Conditions Authority [Autoridade para as Condições do Trabalho] – ACT.

On the entry into force of the new Code governing the System of Contributions to the Social Security Welfare System, on 01 January 2011[5], it also became obligatory for the employer to disclose the type of contract of employment made with the employee (fixed-term or indefinite-term).

Where a foreign employee is taken on it is also obligatory to submit the necessary documents to comply with the legislation regulating the permanent entry, departure and removal of foreign nationals into and from Portuguese territory.

The statement of engagement of the employee by the employer must be submitted between 24 hours before the date and time at which the contract has legal effect, and, for certain exceptional and duly proved reasons defined in the CT, within 24 hours of his/her starting work.

In the event of termination, suspension or alteration of the type of contract of employment, the information must be sent by the 10th day of the month following that on which the event occurs.

Notification, submission of requests and compliance with obligations must be effected via the Internet, except in the cases expressly mentioned in the CT.

5 Law nº 110/2009 of 16 September, as amended by Law nº 55-A/2010, of 31 December - State Budget for 2011, by Law nº 64-B/2011 of 30 December – State Budget for 2012 and by Law nº 20/2012 of 14 May (1st amendment to SB 2012).

In the case of manufacturing plants, permission to work is subject to the issue by the Ministry of a licence covering the business sector in which the undertaking operates.

3. Provision of labour

3.1 Working hours

3.1.1 "Normal" working hours

The normal working period must not exceed 8 hours per day and 40 hours per week.
The daily working period must be interrupted by a rest period which must not be les than 1 hour or more than 2 hours, so that employees do not work for more than 5 consecutive hours.

The normal daily working period of an employee who works on weekly rest days only may be increased to 4 hours per day, without prejudice to the provisions of any collective employment contract.

Under the collective employment regulations it is possible to increase normal working hours, reduce, exclude or increase rest periods, and also to create other rest periods[6] .

Employees are entitled to a rest period of at least 11 consecutive hours between two consecutive daily working periods, save as provided in the Law (Art. 214 of the CT).

3.1.2 Limits of work duration

The Law opens the door to flexible working hours (increase or reduction), within certain limits, so that, given the current state of the labour market, undertakings may have greater capacity to adapt to economic necessities. To that end, new guidelines are defined for the rules governing working

6 Such situations must be expressly authorised by the competent inspectorates of the Ministry responsible for the area of employment involved.

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hours to make them more flexible, while safeguarding the necessary rest periods, and they must be agreed by collective negotiation.

Flexibility by collective regulation

Normal working hours in collective contracts may be defined in average terms[7], in which case the daily limit may be extended to 12 hours and the weekly working period may be as long as 60 hours and 200 hours per year, provided that the average does not exceed 50 hours per week over two months.

Where a collective agreement introduces a flexible system, the employer may extend its application to all the employees in a team, section or economic unit, subject to the agreement of at least 60% of all the employees in the unit in question (group flexibility).

Individual adaptability

By written agreement, employer and employee may define a normal working period in average terms and hours may be increased up to 10 hours per day or 50 hours per week, or reduced to 6 hours per day, or to days and half-days, in the case of weeks whose duration is less than 40 hours.

If this proposal is accepted by at least 75% of all the employees in the team, section or economic unit to which it is put, the employer may apply the same system to all the employees in those structures (group flexibility).

Agreed hours

The normal working period may be increased, by agreement between employee and employer, to 12 hours per day in order to concentrate the normal weekly working period within a maximum of 4 days. It is permitted to reduce it by collective agreement to only 3 consecutive days, followed by at least 2 rest days, on average, within a reference period of 45 days.

Employees covered by this system cannot at the same time be subject to the rules of flexible working hours.

3.1.3 Organisation of working hours - Hour bank system

Individual hour bank system

By written agreement between the employer and the employee, the normal working period may be increased to 10 hours per day and 50 hours per week, provided that the increase is limited to 150 hours per year.

Also under these rules, the employer may extend its application to all employees in a team, section or economic unit, provided that at least 75% of all the employees in those units have agreed to it (group hour bank).

Hour bank system by collective regulation

By collective regulation agreement the normal working period may be increased to 12 hours per day and 60 hours per week, subject to a limit of 200 hours per year.

The employer may extend the application of this hour bank regime to all employees in a team, section or economic unit, provided that at least 60% of all the employees in those structures agree to it and the possibility thereof is provided for in collective contractual negotiations (group hour bank).

The work performed is not regarded as extraordinary and may be offset as follows:

- an equivalent reduction in working hours;
- an increase in the holiday period;
- payment in money.

3.2 Shift work

Shift work is considered to mean work where teams of employees are formed and occupy the same posts by turns

7 The average working period is calculated by reference to the period laid down in the instrument governing collective labour matters, which must not exceed 12 months, or, failing that, to a period of 4 months, which may be increased to 6 months, in the cases specified in Art. 207.2 (e.g. a type of industry where for technical reasons the process cannot be interrupted)

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for various periods of time. Rotational shift work is the most frequent form and may be of a continuous or non-continuous type.
The working period of each shift may not exceed the maximum limit for normal working periods.
Different personnel shifts must be organised wherever the operating period exceeds the maximum limits of the normal working period.
Employees may change shift only following the weekly rest day.

Continuous-work shifts, or those providing services that cannot be interrupted, must be organised in such a way that the workers on each shift enjoy at least 1 rest day in every 7-day period, without prejudice to any additional rest period to which they may be entitled.

Provided that the workers opt for shift work, the Law permits night shifts and working on weekly rest days (including the obligatory weekly rest day), and 3 shifts of 8 hours each must be organised, which in real terms (with 1 rest/lunch/dinner hour) corresponds to 7 actual working hours per shift. It is also necessary to form at least 4 teams to conform to this system of 3 x 8 hours per day.

3.3 Night shift work

Night shift work is work performed during a period with a minimum duration of 7 hours and a maximum duration of 11 hours, which includes the period between midnight and 5 a.m. Unless otherwise defined, night shift work is regarded as work between 10 p.m. on one day and 7 a.m. the next.

The normal working period of a night shift worker must not exceed 8 hours per day as a weekly average, calculated without counting the obligatory or any additional weekly rest days or public holidays.

A night shift worker is considered to be one who does at least 3 hours' normal work during a night shift every day.

The remuneration for night shift work is 25% more than that paid for equivalent work performed during the day, and may be offset, by collective regulation, by an equivalent reduction in the normal working period, or by a fixed increase in basic remuneration, provided that this does not represent a less favourable form of treatment for the employee.

Night shift and shift work is subject to extra payment (night shift work is already included in the extra payment for shift work).

3.4 Overtime

Overtime means any work performed outside working hours. The Law lays down a maximum limit of 2 hours for normal days and 8 hours for obligatory or additional weekly rest days or public holidays.

Where a company has to deal with a possible temporary increase in work and cannot justify taking on additional labour for that purpose, overtime is limited to 175 hours per year in the case of micro-and small companies and 150 hours per year in the case of medium-sized and large companies.

In the case of part-time employees the limit is 80 hours per year, which may be increased to 130 hours per year by written agreement between employer and employee. These limits may be increased up to 200 hours per year, by collective regulation.

Overtime payment

Law nº 23/2012 of 25 June has suspended for a period of 2 years, that is to say until 31 June [sic] 2014, all clauses in collective agreements or contracts of employment which provide for contributory increases associated with overtime in excess of those permitted by the CT, which are as follows:

Overtime shall be paid at the hourly rate of pay, plus:
- for a working day, 25% for the first hour or part of an hour and 37.5% for every subsequent hour or part of an hour;

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- for an obligatory or additional weekly rest day or a public holiday, 50 % for every hour or part of an hour.

Compensatory rest periods

Compensatory rest periods for overtime worked on a working day, additional weekly rest day or public holiday have been compulsorily abolished by Law nº 23/2012 of 25 June. Any provisions for such compensatory rest periods contained in collective agreements or contracts of employment are void.

Employees are entitled to compensatory rest periods only in the following cases:

- where **the overtime they work prevents them from taking a daily rest period**[8] they are entitled to a paid compensatory rest period equivalent to the hours' rest lost, to be taken on one of the next 3 working days.
- where **they work overtime on an obligatory weekly rest day**, they are entitled to a day's paid compensatory rest, to be taken on one of the next 3 working days.

A record of compensatory rest periods must be kept by agreement between employee and employer, or, failing that, by the employer.

The employer must keep a permanently up-to-date record, in its own documentary form, of overtime worked by employees and the corresponding compensatory rest days taken, for a period of 5 years. It must also send the competent inspectorate at the Ministry responsible for that area of employment a list of employees who have worked overtime during the previous calendar year.

Requisite formalities

Special working hours may be defined in specific regulations (as in the case of Commercial Centres which have different working hours from "normal"; in practical terms these are regarded as working hours with no extra pay), but they must always be submitted to the Working Conditions Authority. If that authority does not react within the statutory period of thirty days, tacit permission is deemed to have been given.

There are specific printed sheets for statements of working hours, provided by that authority.

In most sectors normal working hours are from 9.00/9.30 a.m. to 5.00/5.30 p.m. with at least an hour for lunch, between 12.30 and 2.00 p.m.

4. Maternity/paternity leave

Maternity and paternity are of eminent social value. Employers are entitled to be protected by society and the State in the exercise of their irreplaceable right to maternity or paternity leave.
The new Employment Law encourages the sharing of parental leave between mother and father and increases its duration to 1 year.

Mothers may take up to 30 days' parental leave before birth takes place. Father and mother are entitled to an initial period of parental leave of 4 or 5 months (paid at 100%), after the birth of the child, but if they decide to share their leave, its duration is extended to 6 months (paid at 80%), where each of the parents is individually entitled to a period of 30 consecutive days, or two periods of 15 consecutive days, after the mother's obligatory period of leave – six weeks from the date of birth. This means that, for example, the mother may stay at home for 5 months and the father for 1 month. On the expiry of that period, the parents are still entitled to a further 3 months each, but receiving only 25% of their gross pay.

Fathers are entitled to parental leave of 10 working days, consecutive or intermittent, out of the 30 days following the birth of the child, 5 of them immediately following the birth.

In the case of multiple births, the period of leave is increased to 30 days for each sibling born after the first.

8 Employees are entitled to a rest period of at least 11 consecutive hours between two daily periods of uninterrupted work.

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On the adoption of children under 15 years old, the parents have exactly the same rights and their leave is likewise increased by 30 days where more than one child is adopted.

Pregnant, puerperal or lactating employees are entitled to be excused from work under the flexible hours, hour bank or concentrated working hours systems until the child attains the age of 12 months, and is not obliged to work any overtime. She is also entitled to be excused night shift work for a period of 112 days before and after giving birth, at least half of them before the event, and for the whole of the nursing period.

5. Holidays, public holidays and absences

5.1 Holidays

Employees are entitled to a period of paid holiday leave in every calendar year, ending on 01 January, and relating to the work performed during the previous calendar year. At the end of a working year at a business undertaking, employees acquire the right to 22 working days' holiday[9]. This is a non-waivable right, which means that it cannot be replaced by monetary compensation, even with the employee's consent.

Should an employee's rest days coincide with working days, Saturdays and Sundays other than public holidays are included in the calculation of holiday periods in substitution for them.

In their year of engagement, employees are entitled to two working days' holiday for each month of the duration of their contract, up to 20 working days, which may be taken after 6 months' full performance of the contract.

Holidays are not accumulable, that is to say, it is not permitted to accumulate holiday entitlement from previous years. The law does, however, permit an outstanding holiday period to be taken up to 30 April of the following year, by agreement between the parties.
In the last analysis the right to fix holiday periods lies with the employer, but the normal practice is for it to be fixed by agreement between the parties. Should they not agree it is for the employer to fix them between 1 May and 31 October. This right cannot be challenged in the Courts provided that it is exercised in accordance with the terms of the law.

Holiday periods may be split, by agreement between employer and employee, provided that at least 10 consecutive working days are taken at a time.
Holiday periods are fixed according to the interests of the undertaking, with no obligation to obtain permission from or give notice to any authority.

Working practices in certain sectors make it possible to close down the business and, in practice, impose a holiday period, during the period between 1 May and 31 October. During the Christmas school holidays, the employer may close the business for a period of five consecutive working days.

9 The increase of up to 3 days, in addition to the 22 days, where there have been no justified absences, or only a few, has been abolished. Increases to the annual holiday period laid down in instruments of collective labour agreement regulation, or clauses in contracts of employment made after 01 December 2003 and before 01 August 2012, are also compulsorily reduced by an equivalent amount of up to 3 days.

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Businesses may likewise close on a working day between a public holiday falling on a Tuesday or Thursday and a weekly rest day, that day being considered as a "holiday" and therefore deducted from the 22 working days' holiday. In such cases, the employer must inform the employees by 15 December of the previous year (this alteration takes effect on 01 January 2013).

In industrial sectors it is common practice to close factories in August, either for the whole month or for the second half, since the 15th is a national holiday. This does not occur in the service industries, although they traditionally operate with reduced staffing during the month of August.

5.2 Public holidays

There are 9 national public holidays (4 public holidays – two civil and two religious[10] - have been abolished with effect from 01 January 2013) and one municipal public holiday.

In Portugal public holidays are not movable, and thus their dates cannot be changed to minimise mid-week interruptions. Nor can public holidays that coincide with rest days be taken on the next working day.

In addition to the obligatory public holidays, Shrove Tuesday may be observed as a holiday by collective agreement or the terms of a contract of employment.

The Autonomous Regions may declare other public holidays according to their traditions, in addition to those laid down by law, provided that they correspond to existing customs and practices.

On days considered obligatory public holidays, all businesses not licensed to operate on Sundays must close or suspend work.

10 5 October – Inauguration of the Republic; 1 December - Restoration of Independence; Corpus Christi (a movable feast celebrated 60 days after Easter); 1 November – All Saints' Day .

5.3 Absence

The Employment Law lists a number of situations which allow absence to be regarded as justified (Art. 249 of the CT). Outside that list and any situations mentioned in supplemental laws, absences are considered unjustified and entail salarial and disciplinary consequences which may include dismissal.

Justified absences, other than those caused by sickness, may or may not be treated as paid leave by the employer.

In the case of absence through sickness, Social Security takes a share of up to 60% of the daily amount of remuneration.

Payment by the employer company for leave of absence for employees (as to the part not covered by Social Security) is a matter for the company's discretion, there being no established custom.

In that respect, there are situations where no payment is made (and the days are deducted from the employee's wages or salary), and others where payment is made.

Unjustified absence during a normal period or half-period of daily work, immediately before or after a rest day or half-day or a public holiday, results in a loss of remuneration for the rest days or half-days or public holidays immediately before or after the day of absence.

For example, if an employee is unjustifiably absent on a Friday, the loss of remuneration will cover 2 days (Friday and Saturday).

Unjustified absence constitutes a breach of the obligation for assiduity and results in a loss of pay for that period of absence, which is not included when calculating the employee's length of service, and may even constitute just cause for dismissal, if 5 consecutive or 10 non-consecutive days' absence occurs in any calendar year.

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6. Foreigners' employment contracts

Contracts of employment made with foreign employees, except in the case of citizens who are nationals of a member country of the European Economic Area, or of another State which upholds the principle of equality of treatment in the free exercise of professional activities, must be made in writing and contain all the information stipulated in the law, without prejudice to any others that may be required in the case of a fixed-term contract.

Contracts of employment must be drawn in duplicate and the copy that remains in the employer's possession must have annexed to it the original documents proving due compliance with the statutory obligations relating to entry and the foreign employee's presence for an extended period or permanent residence in Portugal.

The employer must notify the competent inspectorate of the Ministry responsible for the signature of the contract (http://www.act.gov.pt/(pt-PT)/AreasPrincipais/Empregadores/Paginas/default.aspx), by the date on which the performance of that contract begins and the determination thereof within 15 days following the date of the said determination.

6.1 Residence and visas for foreign nationals

Law nº 29/2012, of 9 August [11] amends and re-publishes Law nº 23/2007, of 4 July, approving the legal rules governing the entry, presence for an extended period, departure and removal of foreign nationals into, in and from the national territory.

For the purpose of better regulation of migratory flows, encouraging legal immigration, this Law contains a set of provisions concerning admission and residence which directly apply to foreign citizens simplifying and accelerating procedures and, in particular, facilitating access and circulation for technical personnel, researchers, teachers, scientists and students, alterations particularly relevant to boosting the job opportunities market. It also helps to attract investment, which creates wealth and jobs, by granting residence permits to foreign nationals who wish to invest or carry on a business activity in Portugal.

6.1.1 Visas

In order to enter or leave Portuguese territory, foreign citizens must hold a travel document recognised as valid, for a period exceeding the duration of their stay, except in the case of re-entry of a foreign citizen resident in the country. The foreign citizen must also hold a valid visa appropriate to the purpose of his journey (short-term airport stopover visa, temporary stay or residence), which authorises him to present himself at a frontier post and apply to enter the country.

Airport stopover and short-term visas may be valid for one or more Signatory States to the Application Agreement, whereas temporary stay and residence visas are valid for Portuguese territory only and require prior permission from the SEF – Serviço de Estrangeiros e Fronteiras [Department of Foreign Nationals and Frontiers].

Types of visa

Airport stopover

- This is intended to enable the holder to pass through an airport belonging to a Signatory State to the Application Agreement but only to have access to the international area of the airport from which he must continue his journey.

Short-term

- This is intended to permit entry to Portuguese territory for purposes that do not justify the issue of another type of visa, and may be granted for a period of one year, renewable for up to 180 days, and for one or more entries, but an uninterrupted stay or the total duration of successive stays must not exceed 90 days, out of every 180 days counted from the date on which he first crosses an external frontier.

11 Takes effect 60 days after the date of publication.

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Temporary stay

- This is intended to permit entry to Portuguese territory for medical treatment, provision of services and professional training for citizens of member States of the WTO[12] or to carry on a temporary professional, subordinate or independent activity[13], normally for a period not exceeding 6 months[14], or less than 1 year in the case of scientific or highly qualified research and also, in exceptional circumstances, for periods exceeding 3 months to attend study courses or unpaid training placements lasting a year or less.

This type of visa is normally valid for 4 months and may be renewable for up to 2 years, for multiple entries to the national territory, except in cases of exercise of a professional activity where its validity extends to the period of duration of the contract.

In exceptional circumstances, a temporary stay visa may be granted for the exercise of a temporary, subordinate professional activity for a period exceeding 6 months, provided that the activity in question is exercised pursuant to an investment agreement, and within the time limit of the performance thereof.

The prior approval of the SEF is required for the grant of this type of visa.

The maximum time limit for a decision on the application is 30 days, from the date of examination of the application.

Residence

- This is intended to permit entry to Portuguese territory to enable the holder to apply for a residence permit. It is valid for two entries and authorises the holder to stay in Portugal for a period of 4 months, renewable for up to 90 days.

The maximum time limit for deciding an application is 60 days.

The prior approval of the SEF is required for the grant of this type of visa.

12 WTO – World Trade Organisation

13 In these cases there must be a valid contract of employment.

14 The period may be extended provided that the activity is carried on pursuant to an investment agreement and within the time limit of performance thereof

a) Residence visa for the exercise of a subordinate professional activity

The Law allows the grant of a residence visa for the exercise of a subordinate professional activity, provided that there are opportunities for employment, not taken up by Portuguese nationals, by nationals of Member States of the EU, nationals of the European Economic Area, nationals of a non-EU State with which Portugal has entered into an agreement for free movement of persons, and by employees who, being nationals of non-EU States, are legally resident in Portugal.

A quota of job opportunities not taken up by the employees indicated above is fixed each year by the Portuguese Government, and, up to the limit thereof, a residence visa may be granted to a foreign national who has a contract of employment or qualifications appropriate to the exercise of the activities listed in the quota.

The IEFP [Instituto do Emprego e Formação Profissional, "Institute of Employment and Professional Training"] has a permanently updated information system on job opportunities, accessible to the public via the Internet.

b) Residence visa for the exercise of an independent professional activity or for immigrant entrepreneurs

A visa for the exercise of an independent professional activity may be granted to nationals of non-EU States who have contracts for the supply of professional services and are qualified to carry on that type of business.

It is also possible for residence visas to be granted to immigrant entrepreneurs intending to invest in Portugal, provided that they have effected investment transactions or prove their intention to invest in Portuguese territory.

c) Residence visa for research or highly-qualified activities

Residence permits are granted for purposes of scientific research to nationals of non-EU States who have qualified

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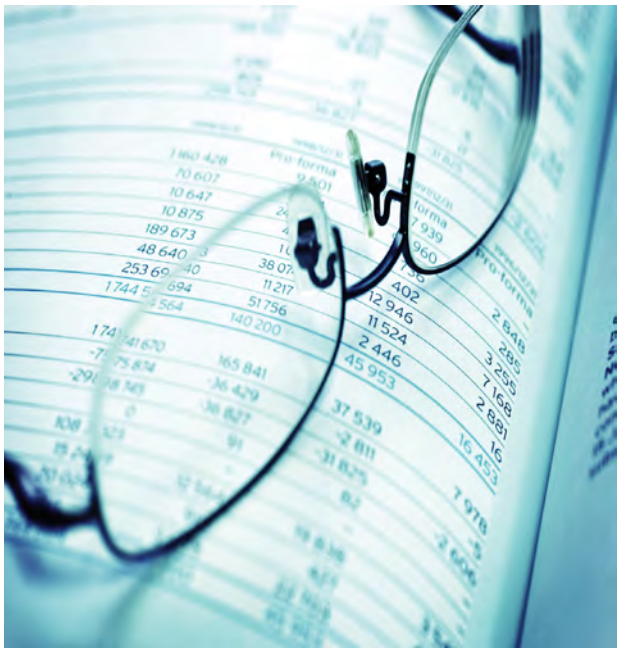
as candidates for doctorates, researchers or teaching staff in Portuguese institutions, with contracts of employment, contracts for the supply of services, or research grants.
The time limit for a decision on the issue of a visa is **30 days.**

Law nº 29/2012 of 9 August extends the grant of this type of residence visa to subordinate employees who are nationals of non-EU States for the exercise of highly-qualified activities, provided that they hold:
- a contract of employment valid for at least a year, with an annual remuneration of 1.5 times the national average gross wage or 3 times the value of the IAS [Indexante dos Apoios Sociais, "Social Supports Index"][15];
- high professional qualifications, appropriate to the activity or duly proved, in the case of a regulated profession.

Entry without a visa is permitted for foreign citizens holding residence permits, renewed stay permits or identity cards issued by the Ministry of Foreign Business, subject to the approval of the SEF, or those for whom entry is authorised under the terms of any international conventions to which Portugal is a Party.

15 In the case of professions which particularly need foreign employees from non-EU States, the pay threshold provided corresponds to at least 1.2 times the national average gross wage or twice the value of the IAS.



Visas are issued abroad by Portuguese Embassies, Consular Posts and Consular Sections, subject to proof of satisfaction of a number of necessary prerequisites for issue, within 20 days from the day following the date of receipt of the application. In exceptional circumstances, supervised frontier posts may grant a short-stay entry visa for entry with a validity period which may not exceed 15 days, provided that the statutory requirements are fulfilled.

6.1.2 Residence permits

Residence permits may be temporary or permanent. In the first case, a residence permit, valid for a period of 1 year from the date of issue and renewable for successive periods of 2 years, is issued to foreign citizens. In the second case the Law does not prescribe a validity period, but a permanent residence permit must be renewed every 5 years, or whenever there is any change in the identification details recorded in it.

The renewal of a temporary residence permit depends on proof that certain requirements are fulfilled, particularly the existence of means of subsistence, housing, a regular tax and Social Security situation and no criminal convictions carrying a sentence of more than 1 year's imprisonment, even if the sentence is suspended. An acknowledgment of receipt of an application to renew a permit is equivalent to a residence permit for a renewable period of 60 days.

A permanent resident permit, to be submitted to the SEF, depends on proof of all the following requirements: foreign citizens must have held a temporary residence permit for at least 5 years, during which period they must not have been convicted of any criminal offence carrying a sentence of more than 1 year's imprisonment even if the sentence is suspended., and must have means of subsistence and housing and must prove that they have a basic knowledge of the Portuguese language.
Applications for the grant of permanent residence permits must be decided within a period of 60 days and for renewal

within 30 days. If no decision is given within the said period the application is regarded as tacitly granted and the residence permit is issued immediately.

Holders of residence permits are entitled to education and to teach, to carry on dependent and independent professional activities, to obtain professional training and to have access to health care, the law and the Courts. They are also guaranteed equality of treatment as regards Social Security and tax allowances.

Residence permits for professional activities

Residence permits may be granted to citizens who are nationals of non-EU States for subordinate or independent professional activities, provided that, in addition to the general requirements laid down in the law, the following are fulfilled:

1. For workers employed by others - a contract of employment entered into in accordance with the Law and registration of the employee with Social Security;
2. Self-employed persons and contractors – incorporation as a firm or company, a declaration to the Financial Authority and Social Security of commencement of business as a self-employed person or a contract for services for the exercise of a liberal profession.

Employees may become self-employed, or vice versa, by changing their type of residence permit, provided in either case that they fulfil the applicable requirements.

Residence permits for research or highly qualified activities

In addition to the general conditions for the grant of temporary residence permits, to carry on research, teaching or other highly qualified activities, nationals of non-EU States must be members of officially recognised institutions and hold contracts of employment or for services or a scientific research grant and be registered with Social Security.

Residence permits for "investment business"

Law nº 29/2012 of 9 August extends the grant of residence permits to nationals of non-EU States who, in addition to satisfying the general requirements laid down by the Law for the grant of such permits, hold valid Schengen visas, regularise their presence in Portugal within a period of 90 days from the date of their 1st entry to the national territory and carry on a form of investment business[16] which, as a rule, leads to at least one of the following situations within the national territory for a minimum period of 5 years:

- transfer of capital sums amounting to 1 million euros or more;

- creation of at least 30 jobs;

- acquisition of real property worth 500 thousand euros or more.

Residence permits may be renewed for 2 years, provided that the requirements relating to investment business continue to be satisfied.

Conditions for the application of this Status are defined in Order n.º 11820-A/2012 of 4 September.

Residence permits for holders of long-term resident status in another Member State of the EU

A residence permit may also be issued to a national of a non-EU State who has acquired the status of a long-term resident of another EU Member State and remains within the national territory for a period of more than 3 months, provided that he carries on a subordinate or independent professional activity, attends a professional training course or submits an acceptable reason for establishing his place of residence in Portugal.

This situation does not apply to employees on secondment.

"EU Blue Card" residence permits

Residence permits which entitle the holder to reside and carry on a highly qualified activity within the national

16 Any activity carried on personally, or through a company.

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territory are known as "EU blue cards" and are granted to national citizens of non-EU states who produce:
- a contract of employment compatible with the exercise of that activity for a period of not less than 1 year for an annual remuneration of at least 1.5 times the national average gross annual salary, or 1.2 times in the cases specified in Art 61-A.
- health insurance or proof of cover by the SNS[17];
- proof of registration with Social Security;
- proof of professional qualifications or certification, where applicable.

Applications for a blue card must be submitted by the national of a non-EU state or his/her employer to the SEF of his/her area of residence, accompanied by the necessary supporting documents. The decision must be sent to the applicant in writing within a period not exceeding 60 days. Blue cards have an initial validity period of 1 year, renewable for successive periods of 2 years.

Blue card holders are treated in the same way as nationals.

Holders of EU Blue Cards who have lived for at least 18 months as holders of those cards in the Member State that granted them for the 1st time may exercise a highly qualified activity in Portugal and may be accompanied by members of their families.

6.2 Long-term resident status

Nationals of non-EU States may enjoy the benefit of long-term resident status[18], provided that they have been legally resident for an uninterrupted period of 5 years immediately preceding the submission of the application, that they have a regular steady income sufficient to keep them and their families and that they have health insurance and accommodation, and prove that they are fluent in basic Portuguese.

17 SNS – Serviço Nacional de Saúde, "National Health Service"

18 Also applicable to beneficiaries of international protection, from the date of submission of the application from which that protection resulted.

This requirement must be submitted to the local SEF office in the applicant's area of residence, and the applicant must be notified of the decision in writing within a period of 6 months, which may be extended for a further 3 months. Absence of notification within a period of 9 months is equivalent to the grant of the application.

Long-term resident status is permanent if based on a permit (EU Permit), with a minimum validity period of 5 years, automatically renewable on request at the end of the validity period.

The grant of a residence permit to a national of a non-EU State who holds an EU long-term residence permit issued by another Member State is preceded by an enquiry to that State to ascertain whether the applicant still has the benefit of that status.

7. Employees on secondment

An employee is considered to be on secondment where he/she works for a limited period (not expected to exceed 12 months), within the territory of a State other then the one where he/she carries on his/her activity.

7.1 Within the territory of Portugal

A secondment arrangement is considered to exist wherever an employee under contract to an employer established in another State provides services within the territory of Portugal:
- for an undertaking owned by the same employer or another employer by which the first company is owned or which it owns, or which is a member of the same group;

or

- pursuant to a contract between the employer and the beneficiary of the activity, even if on a temporary work basis.

Without prejudice to any more favourable scheme provided by the Law or contract of employment, employees on

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secondment are entitled to the working conditions prescribed by Portuguese law.

In the case of secondment of a qualified employee of an undertaking which supplies an article of goods, for purposes of initial assembly or installation indispensable to its operation, provided that the said secondment is included in the contract for supply and its duration does not exceed 8 days in one year, the employee is not entitled to remuneration, holidays or overtime, except in cases where he/she is seconded for purposes of construction work[19].

Obligations in Portugal

In the case of secondments not exceeding 12 months, the employee or his/her employer must prove to Social Security that the employee is covered by an obligatory social protection scheme in the country in which the employer undertaking is situated and the latter must in every case apply to the Social Security Institute for recognition of the temporary nature of the work in question.

7.2 Abroad

Wherever an employee under contract to an undertaking established in Portugal[20], goes to work within the territory of another State, secondment is considered to exist:

- with an undertaking owned by the same employer or another employer by which the first company is owned or which it owns, or which is a member of the same group;

or

- pursuant to a contract between the employer and the beneficiary of the activity, even if on a temporary work basis.

In all such cases, the employer must send the competent inspectorate of the ministry responsible for the area of employment, 5 days before the date of the secondment, details of the identity of the employee, the undertaking with which he/she will be working and the expected starting date and term of the secondment.

It must also, within 8 days of the date of secondment, notify that fact to Social Security, provided that the secondment does not exceed 12 months. If it lasts for a longer period, the employer must apply to the Social Security Institute for recognition of the temporary nature of the work in question, supporting its application with the necessary documentary proof.

Employees on secondment remain subject to the general Portuguese Social Security scheme throughout the duration of the secondment.

8. Remuneration

Remuneration is regarded as the consideration to which an employee is entitled for the work he performs. In a contract of employment remuneration may be fixed, variable or a combination of both, where it consists of a fixed component and a variable component.
Employees are entitled to holiday pay, without any right for the employee to offset it with extra work.

An employee who works as normal on a public holiday for an undertaking not obliged to suspend work on that day is entitled to a rest day in lieu consisting of the number of hours worked, or a 50% increase in the corresponding remuneration, at the employer's choice (Art. 269.º of the CT).

Employees are also entitled to receive holiday and Christmas pay for each calendar year equivalent to one month's basic salary and other benefits by way of specific consideration for their work, corresponding to the minimum duration of their holidays. Employees must also be paid for public holidays (national or municipal).

19 Activities undertaken for the purpose of constructing, repairing, maintaining, altering or demolishing buildings.

20 The undertaking must have its registered office in Portugal, and over 25% of its billing must be issued in Portugal, it must have been in operation for more than 4 months, or in the case of a temporary employment agency, must hold a valid permit to carry on that type of business.

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Guaranteed monthly minimum remuneration [Remuneração mínima mensal garantida] (RMMG)

Employees are guaranteed a monthly minimum remuneration whatever the type paid, the value of which is determined each year by specific legislation. In 2012 the value of the RMMG is 485€.

9. Temporary closure and reduction of business/Reduction or Suspension of employment contracts

In the event of temporary closure or reduction of business of an undertaking, **not associated with a crisis in its business situation,** employees are entitled to 75% of their remuneration provided that the said closure or reduction is caused by act of God or force majeure, or the whole of their remuneration if it is caused by an act or event attributable to the employer.

A temporary closure is regarded as an act or event attributable to the employer wherever, by the employer's decision, the business ceases to be carried on or access to the workplace is denied or the provision of work, working conditions or working tools is refused, causing a stoppage of work.

Crisis in Business Situation - Layoff

Employers may temporarily reduce normal working periods or suspend contracts of employment **in a business crisis situation** which seriously affects the undertaking's normal activity, provided that such a measure is indispensible to secure the viability of the undertaking and preserve jobs.
An undertaking which resorts to this scheme must be up to date with its tax payments and Social Security contributions, save where the measure is decided in the context of a declaration by the undertaking of a difficult economic situation, or, subject to the necessary adaptations, of the business recovery process provided in the CIRE[21].

21 CIRE - Código da Insolvência e da Recuperação de Empresas, "Business Insolvency and Recovery Code"

The reduction or suspension must be for a previously defined period not exceeding 6 months or one year, either of which may be extended for a maximum period of 6 months, if duly justified and notified in writing to the employees' representative organisation, and that the said organisation does not submit a written objection within 5 days thereafter.

During that period, employees are entitled to receive a minimum sum equal to 2/3 of their gross salary, or the guaranteed monthly minimum remuneration for their normal working period, whichever is the higher, to maintain their social benefits and to carry on another paid activity.
Employees are also entitled to remunerative compensation which, together with the remuneration received at or outside the company, enables them to obtain the pay to which they are entitled, up to three times the guaranteed monthly minimum remuneration.

Employees are entitled as a minimum to salarial compensation equal to two thirds of their gross salary or the guaranteed monthly minimum remuneration (€ 485.00), if higher, or to such remuneration as they may receive if lower than the guaranteed monthly minimum remuneration, for example, in part-time work situations (Art. 305.1.a) of the CT).

As a maximum, employees are entitled to salarial compensation equal to three times the guaranteed monthly minimum remuneration (RMMG), that is to say € 1,455.00, if two thirds of their salary exceeds that limit (Art. 305.3 of the CT).

During the period of reduction or suspension, 30% of the employee's salarial compensation is paid by the undertaking and 70% by Social Security. If the employee attends a training course approved by the IEFP, the Institute is responsible for payment of a sum corresponding to 30% of the IAS, payable to the undertaking and the employee in equal shares, and that sum is added to his/her wages or salary.
The employer may resort to this measure again only after a period of time equivalent to half the period previously used, which may be reduced by agreement between the employer and the employees' representative organisations.

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10. Non-performance of contract

A party who deliberately or negligently fails to perform his/her/its obligations is liable for any loss or damage thereby caused to the other party.
An employer who fails to pay the due remuneration shall be obliged to pay the appropriate late interest at the statutory rate, or a higher rate determined by collective agreement or by agreement between the parties.
Non-payment of remuneration shall entitle the employee to suspend or terminate the contract, in accordance with the terms of the CT.

10.1 Suspension of contract

An employee may request the suspension of his/her contract of employment wherever it is proved that his/her remuneration remains unpaid for a period of 15 days after the due date, on giving written notice to the employer and the competent inspectorate of the Ministry responsible for the area of employment, at least 8 days in advance of the date on which suspension is to begin.

Wherever an employer declares in writing that it will not pay any outstanding remuneration within a time limit of 15 days, the employee may anticipate the notice period for applying for suspension of the contract.

Suspension of the contract shall cease:
- when the employee gives notice that he/she is ending the suspension on a specified date;
- on payment of the outstanding remuneration together with late interest;
- by agreement between employee and employer to regularise the debt.

10.2 Termination of employment contract

Contracts of employment are terminated by expiry, revocation, dismissal, rescission or denunciation.

Contracts expire wherever they are proved to have ended owing to impossibility of performance by the employee or the employer or on the employee's retirement; cancellation by agreement between the parties (revocation); cancellation on dismissal (for just cause, collective dismissal, job extinction and inadequacy); cancellation on the employee's initiative (rescission) and finally by denunciation of the contract of employment by the employee, as provided in the Law.

On the termination of a contract of employment, employees are entitled to receive holiday pay and any bonus for holiday periods due and not taken, in proportion to their length of service in the year of termination.

The Law imposes certain limitations on the termination of contracts of employment, particularly as regards the minimum notice period and dismissal

10.2.1 Dismissal with just cause

It is prohibited to dismiss an employee without just cause or for political or ideological reasons.

Legally speaking, an employee may be dismissed wherever it is proved that one or more of a number of acts or events has or have occurred which make it impossible to maintain contractual. relations. These are listed in the Law and essentially relate to conduct which endangers the undertaking or its employees, failure to obey orders or loss of confidence by the employer in the employee.

Dismissal must obligatorily be preceded by the appropriate proceedings, known as disciplinary proceedings, and the final result may always be challenged in the Courts by either the employer or the employee.

10.2.2 Dismissal through job extinction

Wherever there is a reduction in the activity of an undertaking (commercial reasons), economic-financial instability, change of activity, restructuring (structural reasons) or changes in

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manufacturing or production techniques, etc. (technological reasons) and the requirements laid down in the Law (Art. 368 of the CT) are satisfied, an employer may dismiss an employee through job extinction.

The employer must be responsible for defining the criteria, which must necessarily be relevant and non- discriminatory, in the light of the underlying objectives of the extinction of the job It must likewise be responsible for stating those criteria in writing to the works committee or union representatives.

10.2.3 Dismissal for inadequacy

Dismissal for inadequacy is regarded as termination of a contract of employment by the employer on grounds of supervening inadequacy of the employee for the job, making continuing contractual relations impossible in practice.

Inadequacy exists wherever the following situations are proved to have arisen:

- ongoing reduction in productivity or quality;
- repeated damage to instruments provided for the job;
- risks to the safety and health of the employee, or that of third parties.

Inadequacy also exists wherever an employee assigned to a job involving technical or management complexity fails to achieve objectives previously agreed in writing.

Dismissal for inadequacy may take place only where all the requirements laid down in the Law (Art. 375 of the CT) are satisfied.

The new wording of the CT also provides for the possibility of dismissal for inadequacy unrelated to changes in the job, provided that it is proved inter alia that there has been a substantial deterioration in the employee's performance, which is likely to be permanent. With effect from 1 August 2012, however, this possibility applies only in relation to objectives that have been agreed between employer and employee.

Wherever it is proved that there is just cause for dismissal there is no right to compensation.

10.2.4 Notice periods

In fixed-term contracts, the employee must be given 8 or 15 days' notice of termination, depending on whether it relates to the renewal or end of the term defined in the contract.

In indefinite-term contracts, the notice period varies between 7, 30 or 60 days, depending on the term of the contract, whether six months, more than six months and less than two years, or more than two years.

10.2.5 Compensation for termination of contract attributable to the employer

New general rules (Art. 366 of the CT) applicable to contracts of employment ***made after 01 November 2011***

In the event of termination of his/her contract of employment an employee is entitled to 20 days' basic remuneration and seniority payments (the total amount of basic daily remuneration and seniority payments is calculated by dividing the sum of those two figures by 30) for each full year's work (in the case of part of a year, the amount is calculated proportionately).

Limits of compensation: the total basic monthly remuneration and seniority payments cannot exceed 20 times the RMMG, that is to say, 9,700€, and the maximum amount of compensation cannot exceed 12 months or 240 times the minimum wage (116,400€).

Compensation is paid by the employer and by the employment compensation fund or equivalent scheme. The employer is responsible for the whole of the payment where no such scheme exists or the employer has not been a member of it.

Contracts of employment ***made before 01 November 2011***

Compensation is calculated as follows:

a) Period of duration of contract up to 31 October 2012 – 1 month's basic remuneration and seniority payment for each full year's service;

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b) Period of duration of contract after 31 de October 2012 – 20 days' basic remuneration and seniority payment (the total amount of basic daily remuneration and seniority payments is calculated by dividing the sum of those two figures by 30) for each full year's service (in the case of part of a year, the amount is calculated proportionately).

Limits of compensation: the total basic monthly remuneration and seniority payments cannot exceed 20 times the RMMG, that is to say, 9,700€.

If the aggregate amount of these two calculations produces a cumulative total equal to or exceeding the value of 12 times the basic remuneration together with seniority payments or 240 days' RMMG, that is to say 116,400€, for the sum payable to the employee in compensation, the sum calculated for the period after 31 October 2012 is not included.
If the aggregate amount of the two calculations produces a total of less than the limit of 116,400€, the compensation payable to the employee is that which results from that sum, up to the maximum limit of 12 times the basic remuneration plus seniority payments.

In any event, the minimum value of the compensation may not be less than 3 months' basic remuneration and seniority payments.

On the **expiry of a fixed-term contract of employment**, including cases of extraordinary revocation for the purposes of Law nº 3/2012 of 10 January, **or a temporary contract of employment**, 01 November 2011, compensation is calculated as follows:
a) Period of contract up to 31 October 2012 **or** up to date of extraordinary renewal, if earlier - compensation corresponds to 3 days' (contract for term of less than 6 months) or 2 days' (contract for term of more than 6 months) basic remuneration and seniority payments for each month of the term;
b) Period of contract from 31 October 2012 on - compensation corresponds to 20 days' remuneration base and seniority payments for each full year's service.

Limits of compensation: the total basic monthly remuneration and seniority payments cannot exceed 20 times the RMMG, that is to say, 9,700€, and the maximum amount of compensation cannot exceed 12 months or 240 times the minimum wage (116,400€).

NOTE: Any provisions contained in collective employment regulatory instruments executed before 01 August 2012, establishing higher sums payable in compensation than those obtained by the methods of calculation indicated above, are void.

11. Personal income tax

Personal income tax, better known in Portugal by the initials IRS, applies to all natural persons resident within the national territory and is imposed on all income received in Portugal and abroad.
For citizens not resident in Portugal, this tax applies only to income received within the national territory.

IRS is payable on all income from work, whether performed for oneself or for others, and any other income not derived from work, whatever its origin, such as sales and purchases of shares, dividends, rents, pensions, etc.

Taxable income is determined by the application of specific deductions prescribed for each category of income (A to H) and, in the case of business and professional income (category B), it may be determined by applying the simplified scheme or the organised accounting scheme.

Normal rates of IRS are progressive, which means that they rise as taxable income increases.
In 2012, current rates vary between 11.5% (up to 4,898€) and 46.50% (over 153,300€), in mainland Portugal, between 9% and 46.5% in the Autonomous Region of Madeira, and between 8.05% and 37.2% in the Azores, respectively.

Taxable income in excess of 153,300 euros is subject to an additional "solidarity" rate of 2,5%, in the 2012 and 2013 years.

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Tax is payable on income received during a given year and in the case of employees a return must be submitted on the following dates in the year following that in which the income was earned:

In paper:

- In the month of March, for income from dependent employment or pensions.
- In the month of April, for income of other nature.

Via Internet:

- In the month of April, for income from dependent employment or pensions.
- In the month of May, for income of other nature.

Income tax assessments are the responsibility of the Tax and Customs Authority and must be made in the year following that in which the income was received, by 31 July in the case of refunds and by 31 August where payment is due, based on the return submitted and irrespective of the period within which it is submitted.

Dates for refunds may be reduced to 20 days, in cases where the return is submitted via the Internet and there are no questions concerning the reliability of the information supplied.

The law provides for deductions of various types from taxable income, such as educational and medical expenses, etc. The tax bracket is calculated after the deduction is applied.

Foreign employees are liable to personal income tax, provided that their income is received in Portugal and as to the relevant part thereof. It is necessary for that purpose that their income be considered as income subject to tax.

The normal situation as regards foreign employees is for them to enter into a contract of employment with an undertaking that has its registered office in Portugal, whatever the country of origin of that undertaking's capital.

Travelling expenses and accommodation and meal allowances are not included.

In the case of foreign employees on secondment, that is to say, those sent by a foreign undertaking to provide services in an undertaking owned by it (subsidiary or other situation) in Portugal, such employees are regarded as resident for tax purposes after 180 days, and must regularise their situation with the Ministry of Finance by observing the statutory formalities.

Income received for their work in Portugal will be subject to IRS, on the same terms and conditions as for a national.

11.1 Obligations of the employer to retain tax at source

The employer undertaking must be responsible for retaining and then delivering a proportion of an employee's income which is regarded as taxable income to the tax authority.

The relevant sum is defined according to the employee's income or the aggregate income of the family, and is technically known as Retention at Source.

The employer is responsible for delivery of the sums retained by the 20th day of the month following that in which they were deducted, to the local office of the Ministry of Finance with which the undertaking is registered, in accordance with a specific printed form.

In the case of undertakings and entities with organised accounting systems the procedure must obligatorily be effected by electronic means.

In the following year, the employee must be responsible for submitting his/her tax return, and the retention at source operates as a payment on account of the tax due.

Thus a refund is due wherever it is proved that a larger sum than was due has been deducted from the employee's pay.

11.2 Formalities

Every employee must have an NIF (tax identification number), also known as a tax roll number, corresponding to his/her identification in the register of tax subjects.

An NIF is obtained from a Local Tax Office or Citizens' Information Office. The employee must go to one of these offices and ask to be allocated a number. In the case of non-residents, he/she will have to appoint a tax representative to request an NIF for him/her under a power of attorney.

In practice a tax roll number lasts for life, inasmuch as it always goes with the employee and is not changed if misplaced or if the subject has emigrated. Without that registration number the employer undertaking cannot pay wages, salary or any remuneration.

12. Social Security

12.1 Delivery of Statement of Remuneration (Declaração de Remunerações, "DR")

Employing entities must send to Social Security every month a Statement of Remuneration (Declaração de Remuneraçes, "DR") in which, for every employee in their service, they must state the amount of the remuneration which is subject to deductions, working hours and the applicable rate of contribution.
For that purpose, undertakings must be registered in the Social Security system as employing entities (responsible for employees or with paid members of statutory bodies).

Statements of remuneration must obligatorily be submitted via the Internet, by the 10th day of the month following that to which they relate, and are regarded as duly delivered on the date on which they are considered valid by "Social Security Direct", the Social Security information system, at (https://www.seg-social.pt/consultas/ssdirecta/).

12.2 Payment of Contributions

Employers are responsible for the payment of contributions to Social Security for all employees under contract to them. These contributions are obligatory and are calculated by applying the general rate to the employee's actual remuneration, which is considered the basis of liability. The agreed basis of liability is fixed by reference to the value of the IAS - indexante dos apoios sociais [Social Support Index] (1 x IAS = 419.22€), updated from the 1st day of the month following that of publication of the law updating the IAS.

Undertakings may request statement of remuneration forms via the Internet, or from Social Security Offices.

Contributions may be paid via the Internet - Homebanking, in cash, by payment order or bank cheque at any credit institution with which the contributor (the employing entity) holds an account, or at the Social Security cashier's office in cash or by cheque, if the sum payable is less than € 150, or for an unlimited amount by certified cheque or Multibanco card.

Contributions are paid monthly by employing entities between the 10th and 20th day of the month following that for which the remuneration is paid. If the final day falls on a Saturday or Sunday, payment may be made on the next working day.
The fact that contributions are compulsory does not prevent employees from having alternative private pension and medical assistance schemes, nor does it reduce the benefits legally due.

Foreign employees who contribute to obligatory schemes in their country of origin may continue to do so for two years while working in Portugal.

12.3 Rates

For employees in general (those employed by other persons) the total rate of contribution is 34.75%, of which the employer pays 23.75%, and the employee 11%.

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Social Security Contributions Regime (1)

Employees	Contributions		
	Employer	Worker	Total
Employees in general	23.75%	11%	34.75%
Members of governing bodies of corporate entities (2)	20.3%	9.3%	29.6%
Home workers			
Employees under very short-term contracts	26.1%	--	26.1%
Disabled workers (3)	11.9%	11%	22.9%
Agricultural workers	22.3%	11%	33.3%
Local fishing and coastal vessel employees, owners of boats, sea and shore fishermen	21%	8%	29%

(1) For more detailed information the reader should go to the following site: http://www1.seg-social.pt/left.asp?03.03.01#
(2) This specific scheme excludes those who, at the date of taking up management functions, had been under contract to the undertaking for less than a year The basis of liability for contribution varies between one and twelve times the value of the IAS – Indexante dos Apoios Sociais.
(3) An employee is considered disabled if he/she has a capacity for work of less than 80% of the normal capacity required of a non-disabled employee doing the same job

The rules of the new Social Security Contribution Code[22] provide for a gradual adjustment of the basis of liability for contributions, with the object of bringing the Social Security legislation closer to that relating to Personal Income Tax (IRS), and, in particular, the rules laid down in the Personal Income Tax Code as regards the liability of certain payments to Social Security now apply.

The Code also introduces an adjustment of the rate of contribution according to the type of contract of employment, reducing the employer's share of the burden to 22.75% in the case of contracts for an indefinite term and increasing it to 26.75% for fixed-term contracts. This change is expected to take effect on 01 January 2014. The employee's share of the burden remains unchanged (11%).

The Code also extends the basis of liability to other types of remuneration and benefits, such as expense and travel allowances, transport costs, representation costs, use of a company car, occasional rewards and bonuses and redundancy pay, in accordance with the terms and within the limits laid down in the said Code.

22 Law nº 110/2009, of 16 September; Regulatory Decree nº 1-A/2011, of 3 January; Law nº 55-A/2010, of 31 December

12.4 Formalities

There are specific forms provided by Social Security, which are computerised [Social Security – DRI – Declaração de Remunerações através da Internet ["Statement of Remuneration via the Internet"] (http://195.245.197.196/left.asp?01.09.02) for undertakings with 10 or more employees, and DRO – Declaração de Remunerações on-line ["Online Statement of Remuneration"] (http://195.245.197.202/left.asp?01.09.01) for undertakings with less than 10 employees] and paper forms, which must be sent to the Social Security Offices.

Although registration is an obligation for the employer, an employee's number, once registered, does not change.

13. Relevant Institutions

SEF - Serviço de Estrangeiros e Fronteiras *(Foreigners' Services Provider)*
(http://www.sef.pt/portal/v10/PT/aspx/page.aspx)

ACT – Autoridade para as Condições do Trabalho *(Working Conditions Authority)*
(http://www.act.gov.pt/)

Segurança Social *(Social Security)*
(http://www2.seg-social.pt/)

Ministério da Economia e do Emprego *(Ministry of the Economy and Employment)*
(http://www.portugal.gov.pt/pt/os-ministerios/ministerio-da-economia-e-do-emprego.aspx)

IEFP – Instituto do Emprego e Formação Profissional *(Employment and Vocational Training Institute)*
(http://www.iefp.pt/Paginas/Home.aspx)

Ministério das Finanças *(Ministry of Finance)*
(http://www.portugal.gov.pt/pt/os-ministerios/ministerio-das-financas.aspx)

Autoridade Tributária e Aduaneira (*Tax and Customs Authority)*
(http://www.portaldasfinancas.gov.pt/at/html/index.html)

DGERT – Direcção-Geral do Emprego e das Condições do Trabalho *(General Directorate of Working Conditions)*
(http://www.dgert.mtss.gov.pt/)

CES - Conselho Concertação Social *(Council for Social Dialogue)*
(www.ces.pt)

Trade Union Centres:

UGT – União Geral de Trabalhadores *(General Union of Workers)*
(http://www.ugt.pt/)

CGTP-IN – Confederação Geral dos Trabalhadores Portugueses *(General Confederation of Portuguese Workers)*
(http://www.cgtp.pt/index.php)

14. Sources

Employment Code

Law nº 7/2009 of 12 February - Employment Code
(http://dre.pt/pdf1sdip/2009/02/03000/0092601029.pdf)

Amendments to the Employment Code:

Declaration of Rectification nº 21/2009 of 18 March
(http://dre.pt/pdf1sdip/2009/03/05400/0170901710.pdf)

Law nº 105/2009 of 14 September – Introducing implementing regulations to and amending the Employment Code
(http://dre.pt/pdf1sdip/2009/09/17800/0624706254.pdf)

Constitutional Court Decision nº 338/2010 of 8 November
(http://dre.pt/pdf1sdip/2010/11/21600/0499405031.pdf)

Law nº 53/2011 of 14 October - 2nd amendment of the Employment Code
(http://dre.pt/pdf1sdip/2011/10/19800/0463604638.pdf)

Law nº 23/2012 of 25 June- 3rd amendment of the Employment Code
(http://dre.pt/pdf1sdip/2012/06/12100/0315803169.pdf)

Legal Regime for Foreign Citizens

Law nº 23/2007 of 4 July, as amended and re-published by Law nº 29/2012 of 9 August
(http://dre.pt/pdf1sdip/2012/08/15400/0419104256.pdf)

Ministerial Order n.º 11820-A/2012 of 4 September
(http://dre.pt/pdf2sdip/2012/09/171000001/0000200003.pdf)

Social Security Welfare System Contributory Scheme

Law nº 110/2009 of 16 September
(http://dre.pt/pdf1sdip/2009/09/18000/0649006528.pdf)

Law nº 119/2009, of 30 December
(http://dre.pt/pdf1sdip/2009/12/25100/0877608776.pdf)

Regulatory Decree nº 1-A/2011, of 3 January
(http://dre.pt/pdf1sdip/2011/01/00101/0000400016.pdf)

Legislative amendments contained in State Budgets

Law nº 55-A/2010, of 31 December – State Budget for 2011
(http://dre.pt/pdf1sdip/2010/12/25301/0000200322.pdf)

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Law nº 64-B/2011, of 30 December – State Budget for 2012
(http://dre.pt/pdf1sdip/2011/12/25001/0004800244.pdf)
Law nº 20/2012, of 14 May – 1st amendment to Law nº 64-B/2011, of 30 December
(http://dre.pt/pdf1sdip/2012/05/09300/0248102516.pdf)

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