

Portuguese Employment Law

Employment Law in Portugal is regulated by new Labour Code, which came into effect on 17 February 2009. The code has been amended and enforced by four bills that have been approved on 7 May 2009, by the Council of Ministers in Portugal. The approved bills, which were to be submitted to the parliament, address the following issues: regulation of the Labour Code, health and safety at work, administrative infraction proceedings and revision of the Code of Labour Procedure.

The first bill sets out legal provisions to enforce and amend the new Labour Code (Law No. 7/2009) and aims to change the previous provisions defined by Law No. 35/2004, which regulated the previous Labour Code.

The second bill intends to regulate the recent revision of the Labour Code in matters concerning occupational health and safety. It seeks to promote the unification of key issues in this field, as well as to implement the goals of the National Strategy for Safety and Health at Work 2008–2012, including refining, streamlining and simplifying the rules in this area.

The bill also reflects the measures defined in the Tripartite Agreement for a new system of regulation of industrial relations, employment policy and social protection in Portugal (PT0807019I). In addition, it envisages the adoption of mechanisms for improving the process of authorisation for external services of safety, hygiene and health.

The third bill defines the competencies of the Authority for Working Conditions (Autoridade para as Condições de Trabalho, ACT) and of the

Institute of Social Security (Instituto da Segurança Social), providing them with powers to act in identifying cases of concealment of an employment contract. This is in order to prevent and discourage the infringement of social obligations and contributions by companies and to ensure workers' protection rights as defined by the social security system.

The fourth bill authorises the government to amend the Labour Code of Procedure, approved by Decree Law No. 480/99. It is intended to provide greater speed, efficiency and functionality in response to labour conflicts.

According to the proposal, court actions to challenge the unfair dismissal of trade union leaders, pregnant women or breastfeeding mothers will be considered special and of an urgent nature. The bill creates two types of actions regarding dismissal: special and urgent action, when workers are fired on the basis of a written disciplinary procedure; and common action for workers who have been fired without such a procedure, in which case the proposal reduces the period that the workers have to contest the employer decision from 12 months to two months.

Portuguese Employment Law is very strict, ruling the terms of contract and regulating the relation between employees and employers leaving not much for the parties to rule in contract. Therefore, it is imperative that employers choose the right adviser in this key area.



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The essential principles and rules concerning Employment Law in Portugal reside currently in the Labour Code (approved by Law nr 99/2003, of 27 August, and most recently amended in 2009 by Law nr 7/2009, of 12 February, generally referred to as the "New Labour Code").

As many aspects of the Portuguese labour law are determined within the European Union, in the context of the adoption of EU Directives, there are no significant differences in the scope and standards between the various countries on the southwest of Europe, in relation to Employment Law.

Notwithstanding, it is true that regarding the flexibility in some detailed aspects – like the regulation of hiring, working hours and dismissal (difficulty of redundancy, redundancy costs and other dismissal related costs), the Portuguese labour system still needs to be adapted to the needs of the country's production system.

This said, one must emphasise that the Portuguese labour system is already more flexible than its closest neighbours, like Spain or France.

The most recent developments in Portuguese Employment Law are linked with the changes to the Labour Code and also with other significant changes, some already ongoing and some yet to be implemented, regarding the social security system.

In both cases, companies will face new solutions – often, not completely transparent to non specialists. For a full understanding, it needs to be articulated with a context of several rules; also, because the Labour Code is still very recent, only now we are starting to see a set of court decisions which need to be well known and understood as part of the process of setting up the more adequate legal solutions.

Raposo Bernardo is a Portuguese full-service law firm with offices in Europe and Africa. Its Lisbon based team provides wide range of services pertaining to employment law advice in Portugal. The firm has recently helped several international companies (namely, in the tech, communications, financial and tourism sectors) to enter the Portuguese market, through specific tailor-made assessment of their particular needs, in terms of each one's labour internal organisation, identifying the best solutions consistent with the Portuguese legal framework.

In the recent years, some change and flexibility was achieved in Portuguese Employment Law, in order to better align the labour law with the companies' real managerial, organisational and productivity needs. Continuance of this more flexible approach is necessary and inevitable as the rigidity of the labour system is one of the main difficulties of the problematic Portuguese productive system; however, the fact that some of the fundamental principles of the Portuguese labour law are contained in the national Constitution impairs the process of change.

In this context, and in a context of structural crisis, one can expect further changes mainly at the level of the social security system, with new initiatives for the support of employment maintenance and growth. Several such measures have already been published during the first months of 2010, some said to be applicable only during 2010, and these can both create opportunities or threats for companies, depending on how they position themselves regarding their labour organisation.



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The Portuguese employment law was until 2003 spread over different laws, some almost 40 year old. Majority of these laws was compiled in what was the first Portuguese Labor Code adapted 27th August 2003, by the law n.º 99/2003.

However, after being criticised by all the social partners, the Code has been revised by the law n.º 7/2009 from 12th February 2009. As the labor minister said during the parliament debate on the proposal that approved the modification, the revision was motivated by concerns of employment policy, since we live in an era full of insecurity, segmentation and volatile employment and it discourages the use of unnecessary dismissals and improves the quality of life for employees.

Portugal is a country where the labor law is very protective for workers due the flexibility regarding allowance of the termination of employment relations. According to BCS Advogados, which is a full service law firm specialising in the provision of Employment Law, advice, it could contribute to stimulate and dinamise the labor market in Portugal. However, it causes the employers to see themselves obliged to use alternative legal schemes instead to run away from rigid employment law, which obviously influences employees adversely.

Termination of employment contract in Portugal is only possible within the strict legal terms or it would be considered illegal, even if an employer had paid a worker the compensation he has a right to. It distinguishes Portuguese employment law from the Spanish one, which allows dismissing a worker since



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The Portuguese Employment Law continues to be very protective towards workers which limits quite a lot of human resources management in its strict organisation. It is true that there have been attempts to introduce flexible mechanisms, including the cases of the figures of Adaptability and Hours Data Bank (system of debit/credit hours), but the execution of these mechanisms is highly dependent on the collective labour agreements which in many situations do not exist.

In Portugal the recruitment procedure is fairly simple, not being necessary a written contract. A major concern for companies employing the workforce in Portugal is establishing flexible forms of recruitment that assure the possibility to introduce changes during the course of the labour contract.

The new Code of Labour Procedure became effective on the 1st January 2010 and introduced several changes:

- A positive change: the employer will cease to pay salaries during the period regarding the court case after one year from the beginning of the legal proceedings;
- A negative change: the possibility for the worker to dispute fair ground employment dismissal just by filling in a form and sending it electronically. This measure will undoubtedly take us towards the judicialisation of these types of dismissals with increased costs for the companies.
- SPS is a Lisbon based full service law firm. Its Labour Law team provides legal services to the firm's client's human resources management department, aiding in the planning and organisation to obtain the best solution for each situation and to avoid conflicts that derive from precipitate decisions.

the compensation is paid. The legal limitations of term-time employment and all the complexities of employing a workforce in Portugal.

The latest developments in Portuguese employment law have been implemented after the process of law revision that took place 13th October by the law 295/2009 and have been used by our courts since 1st January 2010 and also the new support given admit new workers and to reduce precarity at work made by Decree n.º 125/2010 from 1st March. Pursuant to the developments the first law aimed to adjust the process law with the "new Code", according to which the possibility of a worker to appeal the dismissal decision has been reduced from 1 year to 60 days.

The second law allows employers to have a temporary exemption from the payment of social contributions to workers in their service to encourage the recruitment and combat of precarious employment.

The integration of EU Directives to the Portuguese Employment Law has been done throughout the various labor laws, mainly in the last update of the Labor Code which implemented, for instance, the Directive n.º 2000/43/CE from 29th June of the Council, that promotes equality between people of different races or ethnic origins. It was also enacted by the Directive 2000/78/CE of the Council, which sets a framework of equal treatment in work and professional activity and the Directive 2006/54/CE from the European Parliament and Council, which updates the principle of equal treatment between men and women.

The severe crisis that hit Portuguese economy in late 2008, contributed significantly to the increase of unemployment, whose numbers had already been falling 3 years prior to that date.

"In SPS's labour department we felt a slight change in services provided, noticing an increase on requests concerning the reduction of employees (collective dismissals and termination of workplace) and reorganisation of structures", said Gonçalo Delgado, one of the firm's partners.

Currently, the company's utmost concern is to do more with fewer resources, and SPS's task is to advise its clients in requalifying the existing resources and maximising each worker's potential.

"In the last trimester of 2009 there have been several changes in Portuguese employment legislation, so we foresee some years ahead of legislation stability", added Mr Delgado.

Throughout the years introduced flexible mechanisms that permit companies to adapt their resources to the markets demands; it is a long path, but some work has been done already. An economy that is eager to be competitive has to accept greater market mobility, allowing companies to manage resources bearing in mind their needs. It is important to introduce mechanisms that allow changes in labour contracts when there is agreement between worker and employer. It is also necessary to create flexible forms of employment dismissals, allowing the employer to reduce their number of employees paying a compensation provided by law.



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Sérvulo & Associados Employment Law team (composed of two partners, two senior associates, one junior associate and one trainee lawyer) has very diverse professional skills and a solid experience based on many years of practice. These characteristics allow S&A to deliver, in this area, services of consulting and litigation not only in Employment Law matters, but also in Social Security Law and public employment relationship Law.

The principal areas of practice include preparation of contracts and related documentation; assisting with human resource management; dealing with disciplinary matters; termination of employment contracts; pre-active advice and consultation on corporate restructuring, mergers, acquisitions and demergers; advising on health and safety and accidents at work; acting in employment regulations compliance cases; court work; assisting in collective bargaining including the preparation of collective bargaining agreements, and social security-related issues.

Professional legal assistance is decisive not only in litigation situations, but also, and increasingly, in the preparation and concretisation of all measures regarding management of employment relationships within companies. In fact, all limitations and requirements that employment law sets to the everyday management of human resources—for example: the choice of contractual models that are more appropriate to the admission of new workers, the organisation of working time, the definition of wage and complementary benefits policies, the elaboration of internal rules for the use of computer tools, and companies' restructuring procedures and dismissals—make legal advice indispensable in this domain.

"The vast and diversified experience that our team has in these areas allows



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Portuguese Employment Law has always been very protective of employees and tends to cover almost all areas of employment. This, together with the principle of the most favorable treatment of the employee, has historically left very little scope for freedom of the parties in negotiations, whether upon execution of contracts or during their term.

In 2003, a new Portuguese Employment Code (revised in 2009) came into force, which was a serious effort to unify and organise into a single legal statute the previously dispersed provisions, as well as introduce greater flexibility in employment relationships, namely in what concerns working hours.

The new Portuguese Employment Code foresees some changes regarding the termination of employment contracts, namely in what concerns dismissal for just cause, which makes the disciplinary proceeding more simple and agile. One of the most important changes was the employers' liability regarding salaries that employees ceased to receive between the date of the dismissal and the decision.

FCB&A is a full service law firm based in Lisbon. The firm's practice regarding employment matters includes, among others, advice on general and strategic employment issues, management of employment contracts, assistance in individual and collective redundancy proceedings, tax and social security issues and defense in court proceedings.

Alexandra Almeida Moia, one of the FCB&A's lawyers, said: "We believe that an accurate and effective management of employment relations between employer and employees is an essential instrument in order to optimise human resources and ensure the levels of high competition of companies."

us to render a complete and broad service that goes far beyond the mere wording of legal documents or the accompaniment of judicial law suits", said Pedro Furtado Martins, one of the partners at S&A.

S&A has a clear advantage over other law firms in the area of public employment relationships, in which the intervention of Employment Law lawyers is not common.

With the main goal of answering to employment needs' fluctuations without increased costs, the revision of the Employment Code by the European Commission established new solutions for the organisation of working time (e.g. adaptability regime, bank of hours, concentrated schedules and new rules on overtime work).

Some of these measures may be implemented through agreements between employer and employees, while others need to be ruled by collective employment bargaining.

S&A Employment Law department has rendered several services in this field, either analysing the measures that best answer the specific needs of clients and cooperating in their implementation, or paying assistance in collective bargaining procedures that rule and develop some of the new measures of organisation of working time.

In 2009, a profound reform of the rules that govern the contributions of companies and workers to the Social Security regime was made, being approved a new Code for the Contribution Schemes of the Welfare System of Social Security. The entering into force of this Code, expected in January 2010, was postponed one year. This is an important legal change in Portugal that will surely influence the behaviour of economic agents, as it has a direct impact on costs with staff.

The firm's legal practice is essentially preventive, mainly focused on a previous identification of the problems that may arise from employment relationships in order to avoid future contingencies to its clients, such as court trials.

"Our firm also tries to maintain a close relationship with its clients in order to be fully aware of the specific characteristics of their activity and, therefore, be able to find practical and appropriate solutions to their problems", added Mr Almeida Moia.

The current economic recession and the crisis affected the performance of many companies in Portugal and led employers to implement several measures in order to reduce their costs.

Among these measures the most common were the redundancies (collective or individual). However, during 2009 and in the beginning of 2010 there were also companies that tried to follow some other measures in order to avoid the implementation of such radical measures.

In order to achieve such intent, these companies were obliged to reduce their internal costs, usually costs associated with staff, such as remuneration, awards or bonus. In practical terms, the implementation of this type of measures can be very complex, as the Portuguese Labour Law is very restrictive in what concerns the possibility of reducing employees' rights and benefits. In fact and as a general rule, the employer cannot reduce an employee's remuneration, including bonus or any other benefit that should be considered as being part of the global remuneration. Therefore, employers often reduced their activity by implementing temporary reductions of working period or suspension of employment contracts.