

#WHYPORTUGAL 2021

## WHAT YOU NEED TO KNOW TO AVOID EMPLOYMENT ISSUES IN PORTUGAL

Employment laws play a particularly important role in decision-making when it comes to setting up business or working in any country. Whether as an employer or employee, Portugal's employment legal framework ensures you know where you stand.

The employer-employee relationship has long been a sticking point for potential investors into any country due the rigidity of the laws as well as the obligations, constraints and fine print that come with it. Ten years ago, Portugal addressed this point with a change in the legal regime that it has been revising and adapting to strike the right balance between securing employee rights and giving employers a level of necessary flexibility.

If you look at recent data from the World Economic Forum (WEF), the European Trade Union Institute and PORDATA (the statistical database of socioeconomic subjects) you will see Portugal has a less rigid system and is at the lower end of labour dispute figures and days lost to labour disputes when compared with other EU countries.

Your go-to for everything employment is the 2009 Labour Code, with everything you need in one place including the type of contracts, duration, working hours, holidays, absences and termination. It's employer-friendly, as it allows certain types of flexible working schedules without increasing costs to the employer, as well as having an overall flexible regime designed by the Government to make the country's employment legal framework fairer, more balanced and increasingly investor-friendly.

### LOOKING TO HIRING EMPLOYEES?

The mandatory rules set forth in the Labour Code, as well those part of any collective bargaining agreements with Trade Unions, set out the legal framework that you must follow when hiring an employee in Portugal. Under certain circumstances, however, you and your employees may be allowed to agree different rules, if more favourable to the latter.

### YOU NEED TO BE AWARE OF EMPLOYEES' DUTIES AND OLIGATIONS

These are figures to take note of. You have a maximum 40-hour work-week and a 8-hour work-day, along with a minimum rest of 11 consecutive hours between workings days and a mandatory weekly rest day.

Employees' are entitled to 22 working days of paid annual leave. This limit may be increased by collective bargaining agreements.

Employees are also entitled to public holidays – a total of 13 days in 2021.

### EMPLOYEE'S PAY

In 2021, the minimum national wage is set at €665 per month. In addition to this there are two extra month's salary known as the 'Christmas allowance', payable up to 15 December each year, and "holidays allowance" payable before the holidays, unless employer and employee agree otherwise (in writing).

#### AND WHAT ARE THE EMPLOYEES' RIGHTS IN RELATION TO ABSENCES?

The Labour Code establishes an exhaustive list of justified absences, which, in general, do not affect any rights of the employee.

#### THINGS TO BE AWARE OF REGARDING EMPLOYMENT CONTRACTS

Contracts can be open-ended, for a fixed term or for an unfixed term, and certain types must be made in writing, e.g. those with a 'term', part-time contracts, contract executed with an underaged person. Fixed and unfixed term contracts can only be used to meet temporary work needs of the employer and for specific periods, and have a maximum duration of two years, renewable up to three times and the total duration of renewals may not exceed the contract's initial duration.

The duration of the unfixed term contract may not exceed four years.

#### DOES THE LAW ALLOW FOR PROBATION PERIODS?

Yes, and the length of the probation period depends on the type of contract.

For open-ended contracts, the probation period is equal to 240 days for management positions, 180 days for employees performing functions of high responsibility or high complexity, first job seekers and long-term unemployed, and 90 days for the rest of the employees.

For fixed or unfixed term contracts, the probation period is equal to 30 days for contracts over six months and 15 days for contracts of less than six months.

During this period both parties are free to cut the contract short, without justification or notice period.

#### WHAT ARE THE KEY RULES IN RELATION TO TERMINATIONS AND DISMISSALS?

Again, the Labour Code sets out all the circumstances covered as well as the processes to follow. And you must comply with the set criteria otherwise the termination will not be considered effective.

An employee, of course, can quit, terminate the contract with or without just cause, being that in this last case notice must be given, equal to 30 days for contracts up to two years old, or 60 days for contracts over two years old. And contracts can of course be terminated without consequence by agreement between the parties.

#### CAN EMPLOYERS TERMINATE 'PERMANENT' CONTRACTS?

Open-ended contracts can only be terminated with just cause, i.e., when the employee breaches his/her duties or when it becomes impossible for them to continue performing their job. Termination of open-ended contracts is also

possible in cases of redundancy (individual redundancy or collective dismissal), when the company needs to reduce its work force due to market, structural or technological reasons, as long as it is extensively justified.

## AND WHAT ABOUT 'TERM' CONTRACTS?

'Term' contracts expire at the end of their term. However, the employer must give a prior notice. For fixed-term contracts, the employer must give a 15 days' notice before the term, while the employee must give an eight days' notice. For unfixed-term contracts, the prior notice is equal to seven days for contracts up to six months, 30 days for contracts with a duration between six-month and two years and 60 days for contracts with a duration over two years.

## WHAT IS KEY WHEN IT COMES TO DISMISSALS?

Employers may terminate an open-ended employment contract only with just cause. Generally, this would be on account of the employee's gross misconduct that leads to a fundamental breach of contract, or for objective reasons such as redundancy.

However, it is not enough for the employer to have a fair reason for dismissal: a strict pre-dismissal procedure must be followed. Otherwise, the termination will be deemed as an unfair by the Labour Court.

## WHAT ARE THE RULES FOR COLLECTIVE DISMISSALS OR REDUNDANCIES?

Collective dismissal refers to the termination of several contracts either simultaneously or separately over a period of three months. A company will be before a collective dismissal if the termination includes at least two employees, if the company is small, or five employees if it is a medium or large company.

On the other hand, individual redundancy exists whenever the number of employees to be terminated fall below the above-mentioned limits.

Both forms of termination must be based on market, structural or technological reasons and subject to a very strict proceeding.

## IS THERE AN OBLIGATION TO PROVIDE SEVERANCE PAY?

Severance does come into play for Collective dismissal and individual redundancy.

The calculation rules regarding the amount of such severance pay have been changed following Troika's austerity measures, which means that different regimes are applicable depending on the contract's execution date.

## HOW IS THIS CALCULATED?

For open-ended contracts, executed as of 1 October 2013, the compensation corresponds to 12 days of base salary and seniority allowance per each year of service.

However, for "old contracts" the rules are as follows:

For contracts executed between 1 November 2011 and 30 September 2013, the compensation considers three periods:

- **Period between 1 November 2011 and 30 September 2013**, the compensation is equal to 20 days of base salary and seniority allowance per each year of service;
- **Period between 1 October 2012** and the date on which the contact completes three years of duration, the compensation is equal to 18 days of base salary and seniority allowance per each year of service;
- Period subsequent to the first three years of duration of the contract and the date of the termination, the compensation corresponds to 12 days of base salary and seniority allowance per each year of service.

For contracts executed before 1 November 2011, the compensation considers three periods:

- **Period until 31 October 2012**, the compensation is equal to one month of base salary and seniority allowance per each year of service;
- **Period between 1 November 2012 and 30 September 2013**, the compensation is equal to 20 days of base salary and seniority allowance per each year of service; and
- **Period of duration of the contract after 1 October 2013**, the compensation corresponds to 12 days of base salary and seniority allowance per each year of service.

For fixed-term contracts:

- **Until 31 October 2012**: contracts with a length up to six months, two days of base salary and seniority allowance per each month of service. For contracts over six months, three days of base salary and seniority allowance per each month of service;
- **As of 31 October 2012**: 12 days of base salary and seniority allowance per each month of service.
- **After 1 October 2013**: the New Rules apply: 18 days of base salary and seniority allowance per each year of service.

For a more detailed insight into this and other employment issues, do read our Guide Why Portugal 2021 and for further clarifications or a more tailor-made approach, please do get in touch.