

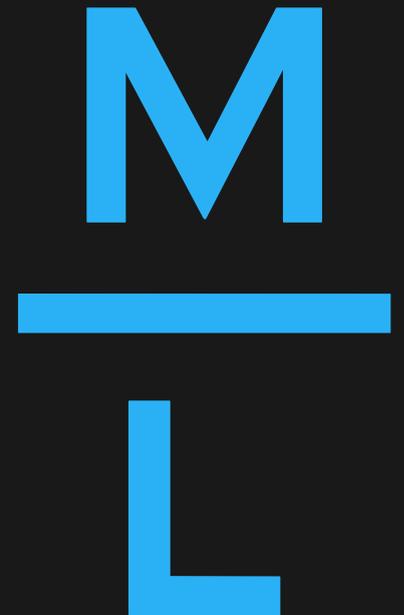
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DECENT WORK AGENDA – PORTUGAL

MAIN CHANGES

April 2023

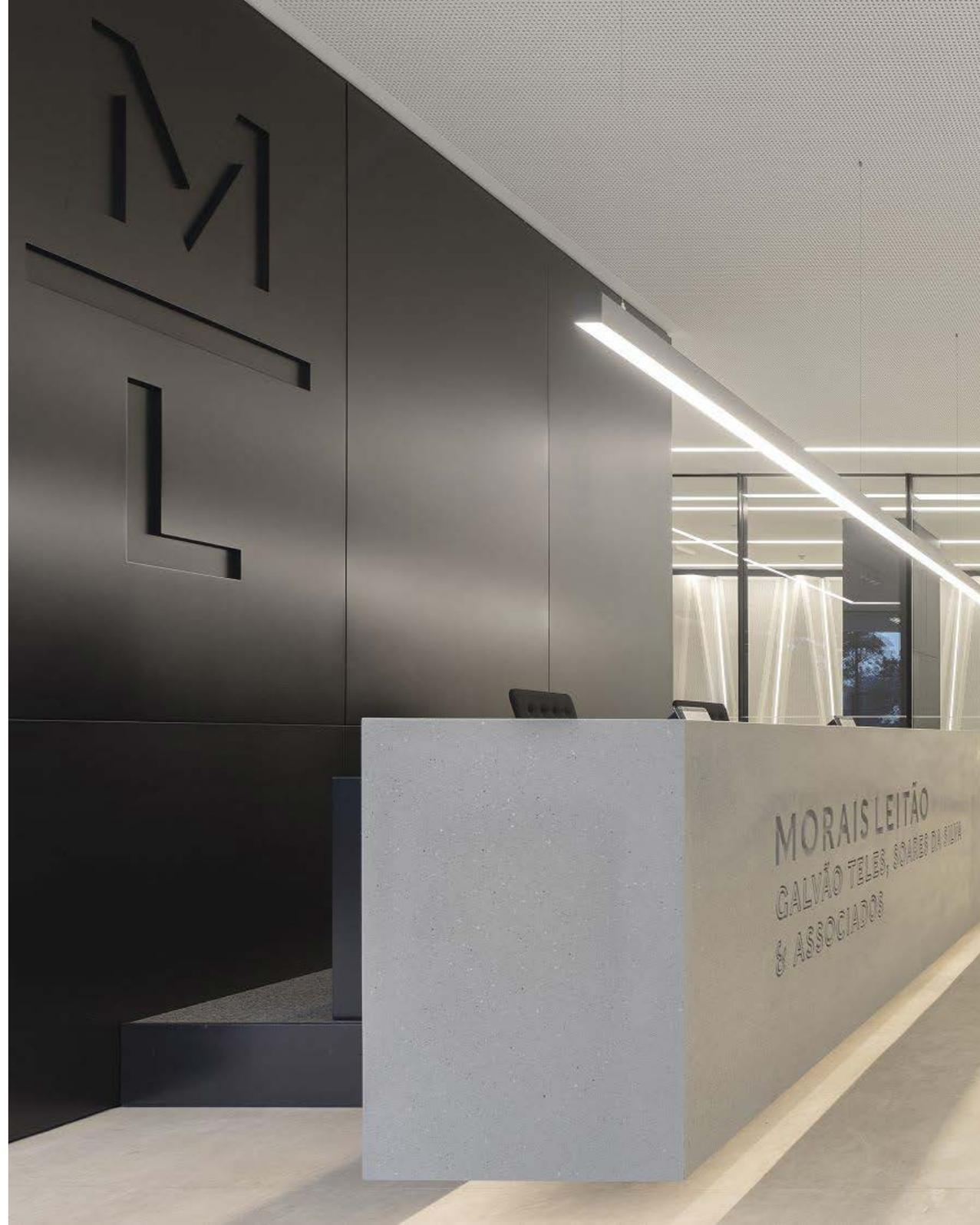


Introduction

Law no. 13/2023 was published on April, 3, amending the [Portuguese Labour Code](#) and related legislation in implementation of the, so-called, Decent Work Agenda. The Law will enter into force on 1 May 2023.

Morais Leitão prepared a brief summary of the main changes introduced, together with information on the level of expected impact for each measure.

The new rules will apply not only to employment contracts entered into after May 1st, but also to existing contracts (except for amendments pertaining to contract validity conditions and to the impact or effects of facts or situations occurred prior to that date). Notwithstanding the indicated general principle on the application of the new legal provisions, special rules are provided with respect to provisions on compensation for dismissal, fixed-term and temporary work contracts and with respect to the requirement and timings to adjust provisions contained in collective bargaining agreements that are contrary to new mandatory rules.



DECENT WORK AGENDA – PORTUGAL

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1. Probationary period

Main changes

The employer is required to provide written information to the employee on the duration and conditions of the applicable probationary period, at the beginning of the contract. There is a legal presumption that the probationary period is excluded whenever the employer fails to comply with such (new) information duty.

The probationary period of 180 days that may be adopted when hiring first-job seekers or long-term unemployed will be reduced in cases where the relevant candidate was previously engaged, by a different employer, under a fixed-term contract with the duration of 90 days, or will be excluded, in such same case, if the duration of the previous fixed-term contract has exceeded 90 days.

The probationary period is also reduced if the employee has attended and obtained approval in a professional traineeship program with the minimum duration of 90 days, for the same role, provided by a different employer, within the 12 months period immediately prior to being engaged by the new employer.

The notice period applicable to the employer, to terminate the employment contract during the probationary period, is extended from 15 to 30 days, whenever the probationary period established in the contract exceeds a 120 days duration.

These changes require reviewing contract provisions and practices regarding the admission of employees and the termination of contracts during probationary periods.

IMPACT OF THE MEASURES



2. Employer information duties

Main changes

The duty of information incumbent upon the employer is extended to cover the following new issues: (i) the use of algorithms and artificial intelligence systems for certain HR purposes, (ii) the duration and conditions of the probationary period, if applicable, (iii) the individual rights of the employee to professional training, (iv) the identification of the temporary work user, (v) the rules applicable to the provision of overtime work and shift work, (vi) the method of payment of the remuneration and a breakdown of its constituent elements, (vii) formal requirements applicable in case of termination of contract, (viii) the parties of the applicable collective bargaining agreement (if any), (ix) social protection systems, including benefits complementary to or substituting those assured by the general social security system and x) the identification of the Work Compensation Guarantee Fund (*Fundo de Garantia de Compensação do Trabalho*).

The information must be provided on or before the seventh day upon the employment becoming effective or, for certain matters, within one month as of the same date, and the employer must keep evidence of the transmission or receipt of information.

New information obligations concerning the provision of work abroad are established.

The deadline to provide any written update to the employee on any changes to the elements covered by the information duty – with the exception of those resulting from a legal modification or from new collective bargaining agreement provisions – is also changed. Such information must have been provided by the date upon which the relevant amendment takes effect.

Compliance with the information duties acquires renewed importance, and its omission may affect the content of employment relationships, notably with regard to the probationary period.

IMPACT OF THE MEASURES



3. Term contract

Main changes

The unfixed-term employment contract must include an express reference to its foreseeable duration.

The prohibition of successive fixed-term contracts is reinforced through the rule under which termination of a contract for reasons not attributable to the employee prevents the admission of a new employee or assignment of an employee, not only for the same job position, but also for the same professional activity, before a period equivalent to one third of the duration of the terminated fixed-term contract has elapsed.

The Labour Authority may trigger the procedure for an *ex-officio* recognition by the competent labour courts for mandatory conversion of the fixed-term employment contract into a permanent contract, through the appropriate special lawsuit procedure filed by the public Prosecutor services.

IMPACT OF THE MEASURES



4. Temporary work

Main changes

The temporary employee will be deemed to be employed by the user under an open-ended employment contract, whenever the contract for the use of temporary work is signed with an unlicensed temp agency.

The prohibition of successive contracts is extended to cover the succession, not only in the same job position, but also in the same activity, by both temporary and fixed-term contract employees, as well as independent contractors, agreed with the same employer or a controlled or controlling company or company under group relationship, or between companies sharing organisational structures.

The currently maximum admitted number of renewals of temporary employment contracts is reduced (from six) to four. The overall duration of successive temporary work contracts for different users, agreed with the same company, controlled or controlling companies, company under group relationship, or companies sharing organisational structures, is limited to a maximum of four years.

Relevant amendments are also made to the rules on the exercise and licensing of private recruitment agencies and temp agencies, enshrined in [Decree-Law no. 260/2009, of 25 September](#).

The Labour Authority may trigger the procedure for an *ex-officio* declaration by the competent labour courts, through the appropriate special lawsuit procedure filed by the public Prosecutor services, that the contract for the use of temporary work or the temporary work contract were not entered into under the legally admissible situations.

IMPACT OF THE MEASURES



5. Working from home (teleworking)

Main changes

The entitlement to work from home is extended to employees with disabled children, regardless of age, or children suffering from chronic disease or oncological illness living with the employee, whenever working from home is compatible with the professional activity performed.

The agreement for the provision of teleworking must fix the compensation payable to the employee to cover additional expenses arising from work being provided from home. In the absence of such stipulation, the employer must pay the additional expenses arising from the acquisition of goods or services used to provide work that the employee did not own before, as well as the increased costs incurred, assessed by comparing current expenses with the homologous expenses in the last month of work provided at the company site.

Compensation for teleworking expenses is considered a tax cost for the employer and is not taxed as employee income up to a limit to be established by ordinance.

IMPACT OF THE MEASURES



6. Professional traineeship

Main changes

The legal act ruling professional traineeships, contained in [Decree-Law no. 66/2011, of 1 June](#), is amended.

For social security purposes, professional traineeships covered by the abovementioned act are subject to the same provisions as applicable to employment.

In addition, professional trainees are entitled to an allowance, corresponding to at least 80% of the mandatory minimum monthly remuneration (which, in 2023, is fixed at EUR 760).

The traineeship promoter must contract work accident insurance coverage to protect professional trainees against occupational accidents and this replaces the personal accident insurance that was mandatory until now.

IMPACT OF THE MEASURES



7. Self-employed workers in a situation of economic dependence

Main changes

A definition of “*economic dependence*”, instrumental to the application of certain rules of the Labour Code to independent contractors, is inserted.

Specifically, economic dependence is deemed to exist whenever the independent contractor, aka self-employed worker, *(i)* is a natural person, who *(ii)* provides, directly and without the intervention of third parties, an activity to the same beneficiary and *(iii)* obtains at least 50% of the product of his/her activity from the beneficiary. Whenever the activity is provided to several companies, in a corporate relationship of reciprocal participations, control or group relationship, or sharing organisational structures, these multiple beneficiaries are treated, for this purpose, as one single beneficiary.

The application of this regime requires the self-employed worker to declare his/her status, before the beneficiary of the activity and to provide proof of fulfilment, in practice, of the requirement indicated above, in *(iii)*.

In innovative terms, the applicability of collective bargaining agreement provisions in force in the relevant professional and geographic sector of activity is extended to economically dependent self-employed workers providing their activity to beneficiaries in the same sector.

In similar terms, certain rights of a collective nature are extended to these service providers, namely the right to be represented by trade unions and works councils and the recognition of trade unions negotiating collective bargaining agreements for self-employed workers.

IMPACT OF THE MEASURES





8. Parental protection

Main changes

With regard to initial parental leave, the main innovation is the possibility that, after 120 consecutive days of leave, parents may combine the remaining days of leave with part-time work.

The mother's exclusive parental leave will now be counted in days instead of weeks, corresponding to 42 consecutive days following childbirth.

The duration of the father's exclusive parental leave is fixed at 28 days, to be taken consecutively or in interpolated periods of at least seven days, in the 42 days period following the birth, to which an optional seven days' leave is added.

A new form of complementary parental protection is introduced, consisting in the entitlement to provide part-time work for three months.

In particular, the right to time off work during an adoption or foster care procedure, and an entitlement of absence days in case of gestational grief are newly attributed.

IMPACT OF THE MEASURES



9. Care worker

Main changes

The Labour Code includes new provisions on the recognition of certain protection measures for the benefit of the, so called, care workers. These are defined as employees who have been granted the status of non-principal informal carer under the terms of the applicable legislation, upon presentation of the corresponding proof.

The care worker is granted several rights, namely to take leave for providing care to the person being cared for, to work in a part-time regime for a maximum of four years or under a flexible working time regime for as long as the need for care persists, as well as not being compelled to provide overtime work.

The care worker benefits from protection in case of termination of the employment contract, in similar terms to that foreseen for parenthood.

IMPACT OF THE MEASURES



10. Absences to work

Main changes

Proof of illness as a reason for justified absence may be obtained by means of a certification issued by the digital service of the National or Regional Health Services, obtained on the basis of a self-declaration issued by the employee, under oath. This possibility is limited to cases in which the duration of the illness does not exceed three consecutive days and can only be used up to twice a year.

In the case of death of a spouse who is not legally separated, a child or a stepchild, the employee may be absent from work, with justification, for up to 20 consecutive days.

IMPACT OF THE MEASURES



11. Digital platforms

Main changes

Work for digital platform operators is regulated in the Labour Code mainly through establishing a rebuttable presumption of the existence of an employment contract, whenever at least two of the characteristics provided for by law to qualify the case as that of an employee (as opposed to an independent contractor) are present.

IMPACT OF THE MEASURES



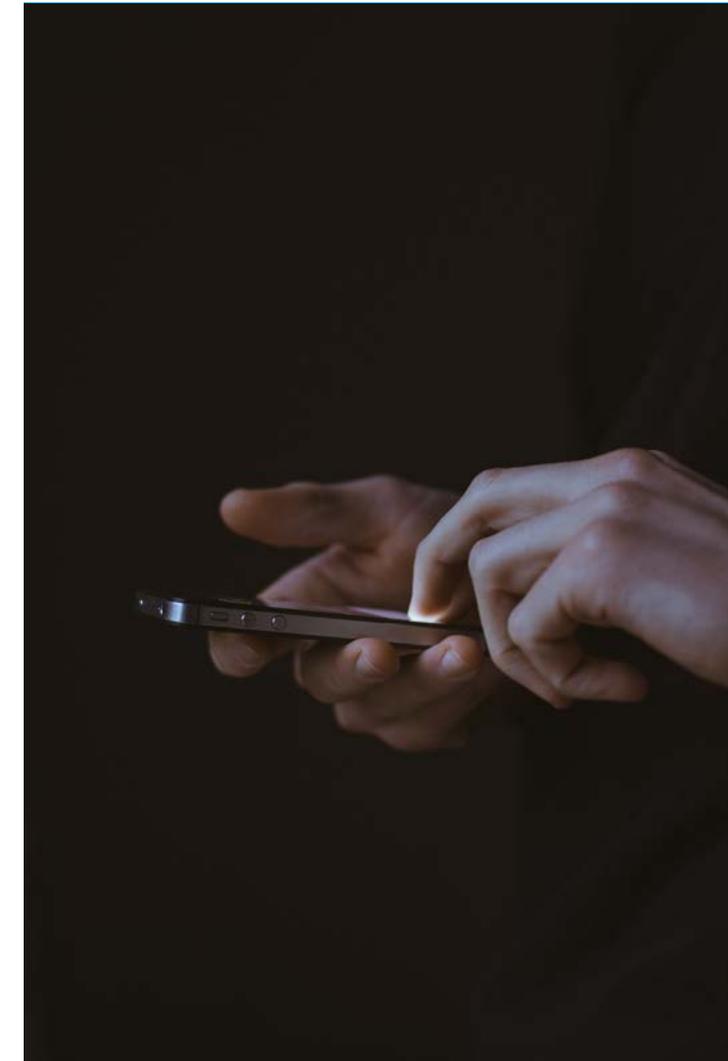
12. Algorithms and artificial intelligence

Main changes

The use of algorithms and artificial intelligence for the hiring of employees or the management of working conditions generates information duties towards employees, works council and union delegates.

It expressly establishes the protection of the employee or job applicant against discrimination, “even if” the decision was based on the use of algorithms or on artificial intelligence systems.

IMPACT OF THE MEASURES



13. Overtime work

Main changes

Overtime worked of over 100 hours or more per year is more onerous and must be paid double for work performed up to that limit: (i) on working days, an additional charge of 50% on the first hour or fraction thereof, and 75% on the subsequent hour or fraction thereof; (ii) on a compulsory or complementary weekly rest day or on a public holiday, an additional charge of 100% on each hour or fraction thereof.

IMPACT OF THE MEASURES



14. Non-waivability of labour credits

Main changes

The employees' labour credits arising from the employment contract, its breach or termination cannot be extinguished by waiver or remission, unless the corresponding declaration is issued in a court settlement.

Therefore, the declaration issued by the employee with regard to credits other than those which he/she

specifically received and for which he/she gave discharge no longer has extinctive effect.

IMPACT OF THE MEASURES



15. Compensation for termination of the employment contract

Main changes

Compensation due to the employee for the termination of an employment contract – severance pay – is increased to (i) 24 days of base remuneration and seniority premiums (*diuturnidades*) for each year of seniority, in the case of the termination of a fixed-term employment contract, and (from the current 12) (ii) to 14 days of base remuneration and seniority premiums (*diuturnidades*) for each year of seniority, in the case of dismissal for objective reasons (collective dismissal, redundancy resulting from extinction of the job position or dismissal due to inadaptation). The additional severance only applies to the duration of the contract after the entry into force of the new Law.

IMPACT OF THE MEASURES



16. Prohibition of outsourcing

Main changes

The outsourcing of services is prohibited, if hired to satisfy needs previously assured by an employee whose employment contract was terminated within the previous 12 months period, as a result of collective dismissal or of extinction of the job position.

IMPACT OF THE MEASURES



17. Suspension of dismissal

Main changes

Preserving powers conferred during the pandemic period, the Labour Authority continues entitled to notify the employer to correct the situation whenever it verifies the existence of signs of a certain dismissal qualifying as an unlawful dismissal.

In the absence of correction by the employer, the dismissal shall not be suspended (as was previously the case under the powers that had been provided to the Labour Authority), but the same Authority shall forward the facts to the Public Prosecutor's Office for the latter to initiate an injunction to suspend the dismissal, within 20 days.

IMPACT OF THE MEASURES





18. Trade union action in the company

Main changes

Trade unions without affiliated employees in the company are recognised the right to have an appropriate place for the exercise of their functions, in the company or establishment with at least 150 employees, as well as to post and distribute trade union information. Under specific conditions, those unions may participate in employees' meetings in the workplace.

In companies with less than 50 unionized employees, the meeting of the employees in the workplace may only be convened by a union delegate.

IMPACT OF THE MEASURES



19. Omission of communication of admissions

Main changes

Failing to inform the Social Security Service, within six months and in accordance with the terms set out in the [Social Security Contributions Regime Code](#), of the admission of employees will become a criminal offence.

The crime is abstractly punishable with a prison sentence of up to three years or a fine of up to 360 days.

IMPACT OF THE MEASURES



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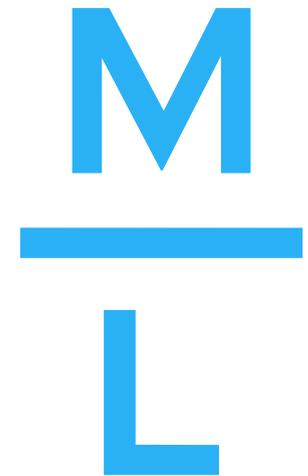
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Our team is available to clarify any specific questions and to provide assistance with any related subject.

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