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Contents

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1. Terms of Employment

1.1 Status of Employee

Portuguese law does not distinguish between blue-collar and white-collar workers as such, but certain terms and conditions of employment differ depending on the employee's functions. Hence, and for example, the admissible duration of the probationary period increases as the employee's tasks become more complex or his or her responsibilities higher; similarly, the parties may agree to extend the prior notice for termination due by employees in management, representation or responsibility functions. Employees in functions based on a particular need for trust – management positions or their personal assistants – are the only employees who may lawfully enter into a particular type of contract of employment where (contrary to the norm in Portuguese law) the employer may bring the contract to an end by giving notice and paying severance; those in management positions may also be forced by the court to accept an indemnity (as opposed to reinstatement) in the event of unlawful dismissal. Employees with autonomous decision-making power are less protected in terms of working time and periods of rest compared to other employees; those working outside the company premises on a regular basis may agree to working exempted from a timetable. Employees who have access to information that is particularly sensitive from a competition point of view may commit to enlarged post-contractual non-competition commitments.

Certain types of employees are subject to specific regulations, the Labour Code applying to the extent its rules are compatible with the contract's specificities. That is the case with sports work, work in ports, maritime work, work from home and domestic service, to name a few. Civil servants and (generally speaking) employees carrying out functions of a public nature are also subject to specific statutes.

1.2 Contractual Relationship

For constitutional reasons (the Portuguese Constitution guarantees security of employment), the typical contract of employment pursuant to Portuguese law is entered into for an indefinite period of time. Despite the fact that such contract need not be entered into in writing, in compliance with EU legislation employers are under the obligation to provide employees with written information on a variety of aspects, so that most employers choose to enter into the contract in writing anyway. Terms and conditions of employment of which the employee must be informed in writing during the

first 60 days of employment (or before a termination date, if earlier) include the following: the employer's identification, head office and group relationship; the workplace or places, if there is no fixed or predominant workplace; the employee's category or a brief description of his or her functions; the date the contract is entered into and the date it becomes effective; the likely duration of the contract, if entered into for a term; the duration of annual leave, or criteria to determine it; applicable notice periods for both the employer and employee, or criteria to determine them; the amount and periodicity of pay; the daily and weekly periods of work, with a reference to situations where they are defined on average; the work accidents insurance policy and company; the applicable collective bargaining agreement, if any; and the applicable work compensation funds, or equivalent mechanism.

Other than open-ended contracts of employment, Portuguese law sets forth several other types of contract of employment, all of which are to be entered into in writing: for a fixed or unfixed-term, part-time work, intermittent work (where periods of activity are followed by periods of inactivity), contracts restricted to management positions or their personal assistants, remote work and temporary agency work, to name the most frequent. The above-mentioned terms and conditions of employment are either included in the contract (as is usually the case) or provided separately, in the latter case within the same deadlines.

Specific types of contracts of employment must include specific contractual provisions. Hence, and for example, fixed-term contracts must show the motive for the contract to be entered into for a temporary period and establish the relationship between the motive and the contract's term. Contracts providing for part-time work must indicate the working period of those working full-time and contracts providing for intermittent work must indicate the number of hours of work per year or the number of days per year in which work will be rendered full-time. Contracts entered into with managers or their personal assistants must have an express reference as to whether the contract ends upon termination of the special regime or if it continues, in the latter case indicating the functions the employee will carry out thereafter. A contract of employment entered into with foreign workers (meaning, for these purposes, non-EU or EEA citizens, or citizens of countries with which Portugal has not established equal treatment in terms of free access to work) must mention the visa or permit that entitles the employee to render work in Portugal and name his or her beneficiaries in the event of death arising from a work accident or occupational disease.

In addition, certain types of working conditions must be agreed to in writing, regardless of the type of contract of employment. That is the case with the employee's undertaking to work exempted from a timetable or to be bound by a post-contractual non-competition restriction.

1.3 Working Hours

As a rule, employees may not work more than eight hours per day and 40 hours per week. However, flexible arrangements are possible, both as a result of individual agreements or collective bargaining regulation. A typical example of flexibility arising from individual negotiation is where employees in certain job positions agree not to be subject to the maximum daily and weekly periods in terms of working time, overtime work being limited to work they render on the weekly days of rest or bank holidays. Typical examples of flexible arrangements resulting from collective bargaining agreements are time-banking systems, where periods of more work (ie, in excess of the eight or 40-hour limit) are compensated with periods of less work or (depending on the relevant time-banking system) others forms of compensation (eg, an increase of the period of annual leave or payments in cash).

In compliance with EU legislation, part-time workers are entitled to similar terms and conditions of employment as those working full-time, unless objective reasons justify a difference in treatment or the law provides for one (eg, pursuant to the law, those who work less than five hours per day need not be paid the same meal allowance as those working full-time). Work may be rendered only in a given number of days per week, month or year, the parties having to agree on the number of days of work. Certain employees are entitled to work part-time (eg, for parental reasons) and those who went part-time for a limited period of time are entitled to resume their full-time position upon expiry of the agreed period.

Overtime work (ie, work outside timetable hours) is extensively regulated by the law, both in terms of admissibility and duration. Collective bargaining agreements may rule duration, and often do, but not admissibility. On the first, the rule of the law is that employees may only be asked to render overtime work (and have the obligation to do so) in the event of a temporary increase of work that does not justify the hiring of another employee, to prevent or repair a serious damage to the employer or in cases of force majeure. However, certain types of employees are exempted from the obligation to render overtime work: female employees who are pregnant or parents with a child aged less than 12 months; while breastfeeding, if necessary for health-related reasons; minors under the age of 16; those with a disability or chronic disease; and students, unless overtime is required for reasons of force majeure.

In addition, overtime work is subject to daily and annual limits, which vary (respectively) depending on the relevant day of the week or the company's size, measured in terms of the number of its employees. Particular limitations apply to part-time workers. Collective bargaining agreements may rule the annual (but not daily) limits of overtime work, as well as the increased remuneration due as a result (other-

wise, such pay increase can be found in the law, ranging from 25% to 50%, depending on the relevant day of the week). In specific cases – overtime work rendered on the mandatory day of rest or that which made it impossible for the employee to rest a minimum of 11 hours between working days – overtime work entitles the employee to compensatory rest, in addition to the pay increase.

Finally, overtime work gives rise to a number of obligations in terms of registration, registration which the employer must keep for a minimum period of five years.

1.4 Compensation

Pursuant to the law, the concept of minimum wage includes both base remuneration and other forms of pay, such as remuneration in kind, commissions on sales and gratuities that constitute remuneration.

The minimum wage for 2019 was set at EUR600.00. It applies to all employees working full-time, with the exception of trainees and those with reduced work capacity in excess of 10%. In the case of trainees, the minimum wage may be reduced to 20%. The applicable decrease for those with reduced work capacity should correspond to the difference between full capacity and the employee's effective capacity, up to a 50% decrease. Failure to pay the minimum wage constitutes a very serious misdemeanour, punishable with the payment of fines.

In addition to the minimum wage, employees covered by collective bargaining agreements must be paid no less than the minimum wage set forth in the collective agreement.

Other than setting the minimum wage, the government intervenes in compensation due to employees by enacting rules on pay that apply to groups of employees not covered by existing collective bargaining agreements (as is the case with administrative employees, whereby those in job positions that do not guarantee career progression are entitled to seniority premiums) or ruling over mandatory or necessary arbitration, which may also include matters of pay. But provided the employee is paid in line with the minimum wage and the applicable collective bargaining agreement, there is no legal obligation to increase the employee's pay.

Pursuant to the law, employees are entitled to be paid annual leave, holiday allowance and Christmas allowance, so that they are usually paid 14 times per year. Contrarily to pay during annual leave, which must not be inferior to that during effective work, the legal basis for calculating holiday and Christmas allowances may result in the payment of an amount lower than monthly remuneration (collective bargaining agreements may rule differently).

Other types of special remuneration may be mandatory in view of the employee's functions: regular night work entitles the employee to a 25% increase in pay and employees working exempted from timetable are entitled to a special allowance, which amount depends on the type of exemption. As in most matters of pay, collective bargaining agreements may dictate otherwise. Allowances that have since become frequent – such as meal allowance – are set forth in collective bargaining agreements or agreed between the parties, as their payment is not required by law.

The payment of bonuses and premiums is likewise not mandatory under the law. The fact that, in principle, they do not constitute remuneration means they do not benefit from the prohibition of reduction that applies to other forms of pay (eg, base remuneration). However, where they are regularly attributed, payments linked to the employee's or the company's good performance may constitute remuneration after all.

1.5 Other Terms of Employment

Employees are entitled to a minimum period of paid leave per year: 22 working days, which collective bargaining agreements increase at times. Special provisions apply in the year of hire and termination of employment and whenever the contract was suspended due to the employee's inability to work (eg, due to illness).

The law contemplates a variety of leaves and absences, for both parental, illness and other reasons (eg, at the time of marriage, employees who are running for public office, those who form part of fire brigades). The majority of leaves and absences for parental and health reasons cause loss of pay and are therefore compensated by the public social security system, provided the employee meets the respective criteria (for example, protection by the State in the event of illness depends on the employee having contributed to the system for a minimum period of six months). Most leaves and absences relating to childcare or illness are subject to procedural requirements and absences on false pretexts are relevant from a disciplinary point of view.

Confidentiality during employment arises from the law, there being no need for the parties to establish contractual provisions. Contrarily, post-employment confidentiality is not expressly contemplated in the law, so employers who wish to enforce it are advised to request the employee to commit to it in writing, either in the contract of employment or at the time of termination. There are no express legal provisions on non-disparagement; to a certain degree, however, particularly during employment, they may derive from the duty of good faith.

Employees are liable for their conduct, in the sense that (where applicable) disciplinary liability does not prevent civil or criminal liability from being assessed. In some cases, the law sets the indemnity due: employees who terminate the contract without observing the required prior notice

owe the employer an amount equivalent to the remuneration correspondent to the missing notice period. Conversely, employers may be found liable for damages arising from the conduct of employees in their service, harassment being a typical example thereof.

2. Restrictive Covenants

2.1 Non-competition Clauses

In principle, provisions in contracts of employment or collective bargaining agreements that are likely to impair the employee's freedom to work following the contract's termination are null and void.

It is, however, lawful to limit the employee's activity in the two years following termination, provided the following conditions are met: the commitment is entered into in writing, namely in the contract of employment or a termination agreement; the relevant activity is likely to cause harm to the employer; and the employee is paid compensation during the restricted period (employers being therefore advised to pay specific compensation, rather than to consider that the remuneration during employment or the severance paid at the time of termination included the compensation due as a result of the non-competition covenant). If the employee carried out functions that required a particular relationship of trust or had access to information particularly sensitive from a competition point of view, the restricted period can be extended to three years.

Despite the fact that compensation is unquestionably due, the law does not set its amount or provide criteria to determine it. The only clue arising from the law points to compensation being (lawfully) inferior to the employee's monthly remuneration at the time of termination. The structure of the employee's remuneration at the time of termination is worth taking into consideration, as paying compensation on the basis of base remuneration only when the employee's pay included an important variable part may render the compensation insufficient, thus compromising the commitment's enforceability.

The law also states that compensation may be reduced when the employer incurred significant expenses with the employee's occupational training. Likewise, income earned by the employee as a result of activities initiated after the termination of the contract may also be deducted from compensation.

2.2 Non-solicitation Clauses - Enforceability/ Standards

Portuguese law specifically prohibits agreements between employers, notably in the context of temporary agency work, that forbid the admission of employees who work or have worked for them, or that provide for indemnities in the event of hiring. Both are viewed as contrary to the constitutionally based right to work.

The wording of the law seems to be excessively narrow, so that one may extend the prohibition to unilateral commitments and to contexts where one employee (for example, in a termination agreement) is acting as prospective employer.

There are no similar restrictions (as far as employment law is concerned) in what concerns customers. The note of caution in this respect is that wide commitments not to contact customers may operate as non-competition commitments, which are subject to the restrictive legal framework described above.

3. Data Privacy Law

3.1 General Overview

The Labour Code contains several provisions aimed at safeguarding the employee's right to privacy, covering a wide range of topics: data protection, biometric data, medical tests and exams, means of remote surveillance and correspondence and access to information using the company's means of communication.

Particularly in the field of data protection, the regime of the Labour Code is be read in conjunction with the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and the Council of 27 April 2016) and the national legislation supplementing it. One of the most significant features of such legislation is the express enshrinement that recorded images and other personal data obtained by means of remote surveillance may be used for disciplinary purposes, where they are used for criminal purposes (so far, their use in the disciplinary context has been controversial and has given rise to contradictory judicial decisions at the level of the appeal courts).

4. Foreign Workers

4.1 Limitations on the Use of Foreign Workers

Two general principles may be identified in the field of the use of foreign workers.

The first is that existing limitations do not apply to citizens of EU or EEA member states, citizens of countries with which the EU has concluded agreements providing for the free movement of people, citizens of third countries who reside in Portugal as refugees or beneficiaries of subsidiary or temporary protection and family members of Portuguese citizens or of foreign workers in one of the situations described above.

The second principle is that other foreign workers must be in possession of an appropriate visa or permit to be allowed to render a professional activity in Portugal, be that independent or subordinated work. The respective requirements depend on the type of visa and permit, and on the nature of the work to be carried out, more expeditious procedures applying to particular activities (eg, highly qualified).

4.2 Registration Requirements

The registration requirements applicable to foreign workers in need of a visa or permit are those contemplated in the process to obtain the visa or permit. Such process is, in most cases, complex and lengthy, requiring the collection of several items of data. Also, in most cases, formalities are to be conducted prior to the foreign worker entering Portugal.

Citizens of EU or EEA member states exempted from the need to obtain a visa or permit prior to residing and working in Portugal who nevertheless intend to stay for more than three months must register with the competent authorities.

5. Collective Relations

5.1 Status/Role of Unions

For constitutional reasons, unions are the only employee representative bodies with two very important powers: the power of collective bargaining and the power to call a strike. Works councils and groups of employees may enter into agreements with the employer, but such agreements do not have the legal nature of a collective bargaining agreement. And it is only in companies where the majority of employees are not affiliated with trade unions that an assembly of workers may call a strike, provided several thresholds are met (eg, the assembly is convoked by a minimum of 20% of company employees).

In addition, unions have the power to call meetings in the workplace, during or outside working hours; they may appoint company employees as their representatives in the company; they are entitled to carry out their activities in designated premises inside or near the company, on a permanent basis where a minimum of 150 employees work therein; they are allowed to post and distribute union-related information; they must be informed and consulted on a number of matters, with the prerogative to issue a non-binding, prior opinion (eg, on decisions likely to cause substantial changes to the contracts of employment or a decrease in the number of employees); and they may not be forced to change workplaces, unless the move is due to a collective change of the business unit in which they work.

Trade union representatives in the company and members of the union's management bodies are entitled to paid time off to carry out union-related duties, the number of company employees who benefit from such entitlement and the number of hours of paid time out depending on the number of company employees who are affiliated with unions. Absences for union-related reasons in excess of the threshold defined in the law are justified (subject to specific requirements, in the case of union delegates who are company employees) but cause loss of pay.

5.2 Employee Representative Bodies

Works councils and trade unions are the most important employee representative bodies, in the sense of being the two with the widest scope of intervention. European works councils typically intervene in transnational matters; and employee representatives in the field of health and safety – whose institution is freely decided by the employees – operate in those areas only.

Works councils are incorporated by a decision of company employees. The voting must be called by a minimum of 100 or 20% of company employees. The works council's members and bylaws are also elected, both acts being publicised in the official gazette.

Despite the fact that they have no bargaining power or power to call strikes, works councils are the employee representative body with the widest range of powers. Where both works councils and trade unions are active in the company, in some cases – collective dismissals, for example – works councils have a pre-emption right in terms of information and consultation (ie, where a works council exists, unions need not be informed or consulted). In addition to having the same powers that union representatives have (as described above), works councils have others: they are to meet management on a regular basis; the scope of matters of which they should be informed and consulted about is wider; they have the right to participate in company restructuring procedures, with an express right to issue their views on the projects or plans of restructuring prior to their approval by management; and the premises provided by the company must be equipped with the necessary material and technical means.

Unions, on the contrary, are a type of employee representative body that is incorporated from outside the company. Accordingly, the union's bylaws are approved by the union and its members are appointed by the union (not by company employees, as in the works council). The law affords unions a wide set of powers, including the prerogative of collective bargaining and calling strikes. They are also the employee representative body with the largest margin for intervention in judicial proceedings, in representation or substitution of employees affiliated with the unions.

5.3 Collective Bargaining Agreements

The typical collective bargaining agreement is that where trade unions negotiate with an employer's association, a group of employers or one employer. Other than these, the contracting party of one collective bargaining agreement

may allow for a non-contracting party from the other side to adhere to the agreement (eg, a trade union would allow for a non-contracting employer to adhere to the collective bargaining agreement entered into by that trade union). The parties may also resort to voluntary arbitration, the decision of the arbitration tribunal having the same value as a collective bargaining agreement.

The typical collective bargaining agreement has a dual nature: it rules the relationship between the contracting parties, in the same way a contract does; and it defines terms and conditions of employment applicable to contracts of employment in force between third parties, as a law would do. Strictly speaking, they apply only where both the employer and employee are affiliated with the contracting parties (or are the contracting party, in the case of the employer); however, employers frequently apply the terms and conditions of employment defined in the collective bargaining agreement to all employees, for reasons of equal pay (imposed by the Constitution) and to simplify the management of HR.

Collective bargaining agreements being, as explained, typically negotiated, collective regulation may also result from governmental action. The government may decide to extend existing collective bargaining agreements to non-affiliated employers and/or employees of the same business sector or to enact rules that apply to groups of employees not covered by existing collective bargaining agreements (eg, administrative employees). Decisions of arbitration tribunals as a result of mandatory or necessary arbitration also have the value of collective regulation.

6. Termination of Employment

6.1 Grounds for Termination

Where motivation for termination on the part of the employer is required, it is required a priori. That is usually the case: it is only during the probationary period or in the special type of contract of employment applicable to management positions and their personal assistants that the employer need not disclose its motivation (or have a motivation at all) to bring the contract to an end. In fixed or unfixed-term contracts, motivation arises from the very nature of the contract: in the former, the contract reached its end date, as established by the parties; in the latter, the event on which the establishing of the term was based is about to take place (eg, the absent employee who was being replaced will resume work) or it becomes clear such event will not take place at all (eg, the same employee will not return to work, the temporary need to replace him or her ceasing to exist).

Accordingly, motivation is required, and must previously be disclosed, in most cases of termination by initiative of the employer. That is the case with disciplinary dismissal, collective dismissal, dismissal based on the extinction of job positions and dismissal based on the employee's failure to adapt to the job position. In all cases, the ground for termination invoked by the employer during the applicable dismissal procedure binds the employer, in the sense that no further grounds may be added when, for example, the lawfulness of the dismissal is being assessed by the court.

Differently, motivation on the part of the employee is required only where he or she terminates the contract with allegation of cause, usually with a view to being paid an indemnity. Other than this, employees are free to terminate the contract of employment (the rationale being that one may not be forced to work) and only a prior notice is due (other than during the probationary period, where no such notice requirement applies to the employee unless the parties so agree). Failure to observe the applicable notice period does not prevent the contract from ending but the employee will be held liable for an amount equivalent to the remuneration correspondent to the period of notice missing (without prejudice to additional damages as a result thereof). In situations where the employee undertook to remain in service in return for a significant investment of the employer on his or her occupational training, he or she is likewise free to leave but must reimburse the employer for such expenses.

Where dismissal is prompted by the employer, each ground for dismissal corresponds to a specific procedure for termination. Despite its differences (and there are many), all procedures for termination are similar in so far as all of them are compulsory: their breach invalidates the dismissal. There are also similarities to the extent that, broadly speaking, all procedures for termination by the employer are complex, comprising three stages: one where written information is provided to the employee (eg, on the infraction of which the employee is accused, or the grounds for redundancy, or the criteria to select employees to be made redundant in dismissals based on the extinction of the job position); one where the employee or employee representatives share their view (eg, the written defence presented by the employee to be dismissed on disciplinary grounds, the negotiation phase of collective dismissals, the written opposition to be submitted by the employee and his or her representatives in the dismissal based on the extinction of job positions); and the final stage of decision, where the employer issues a detailed, written dismissal decision, the mandatory content of which depends on the specific procedure for termination.

Collective redundancies are unique to the extent they trigger the participation of governmental bodies. In collective dismissals (ie, those that affect two or more employees in companies with fewer than 50 employees or five or more employees in companies with 50 employees or more), such participation is mandatory: they are the recipient of information to be provided by the employer in several stages of the procedure and intervene in the meetings of the information and negotiation phase where representatives on the side

of employees – works councils, trade unions, an ad hoc committee incorporated by the employees for those purposes in the absence of employee representative bodies – are present. In dismissals based on the extinction of job positions (applicable otherwise; ie, when only one employee is to be made redundant or fewer than five are, in companies with 50 employees or more), the active intervention of the inspection service of the Ministry of Employment depends on the employee, or his or her representative bodies, requesting its participation.

Other than this, the common feature of the two types of collective redundancies – collective dismissals and dismissals based on the extinction of job positions – is that they share an identity in terms of the respective grounds: both allow for the termination of contracts of employment based on market, structural or technological motives. An example (as the list in the law is not exhaustive) of a market motive is a reduction of the company's activity based on a decrease in demand for its products or services; examples of structural motives are a financial imbalance, a reorganisation of the business structure, change of activity or a replacement of dominant products, and changes in production techniques, informatisation of services and automatisation of means of production amount to technological motives. Collective dismissals may also be based on the shutdown of company sections or equivalent structures.

Collective dismissals being regarded as more protective of employees' rights (even though applicable notice periods and severance do not differ between the two procedures), dismissals based on the extinction of job positions are subject to additional, express legal conditions. Hence, and for example, no fixed or unfixed-term employment contracts providing for the exercise of functions similar to those of employees to be made redundant in the dismissal may be in place; it is the law setting the criteria to select employees to be made redundant, where there are several job positions of similar content and only part thereof will be eliminated; and the dismissal is lawful only where the employer has no alternative job position, compatible with the employee's professional category, in which to place him or her.

6.2 Notice Periods/Severance

Other than probationary periods that last no more than 60 days or disciplinary dismissals, most causes for termination on the initiative of the employer require the giving of notice. The respective duration depends on both the cause for termination and the employee's period of service with the company.

In probationary periods lasting more than 60 days, the employer must serve a seven-day notice; in probationary periods lasting more than 120 days, the employer must serve a 15-day notice. In both cases, the employer may choose to pay (in whole or in part) in lieu of notice. No specific formality applies, and no severance or indemnity is due.

Unless the contract is not subject to renewal from the outset, employers must communicate the end of a fixed-term contract 15 days in advance of the end date of either the initial term or the renewal in force; the applicable notice period for employees is eight days. Contrarily, given the nature of the event triggering the term of the contract, only employers may bring unfixed-term contracts to an end at the end of the term (employees may do so at any time), the applicable deadline being seven, 30 or 60 days, depending on whether the contract lasted up to six months, from six months to two years or for more than two years. The employer, however, may pay in lieu of notice. In all cases, termination ought to be communicated in writing.

In collective dismissals or dismissals based on the extinction of the job position, the period of notice depends on each employee's period of service with the company: 15 days' notice for employees with less than one year of service; 30 days' notice for employees with one or more years of service, up to five years; 60 days' notice for employees with five or more years of service, up to ten years; and 75 days' notice for employees with ten or more years of service. These are also the periods of notice applicable to dismissals based on the employee's failure to adapt to the job position.

In these types of termination, severance – due on top of notice – for employees hired from 1 October 2013 onwards amounts to 12 days of base remuneration and seniority premiums for each year of service (fractions of year of service are compensated proportionally). The severance due to employees hired prior to 1 October 2013 is for the moment subject to a complex, transitory legal framework, depending on when the employee was hired – up to 1 November 2011; or from 1 November 2011 onwards, until 30 September 2013 – different periods of execution of the contract entitle the employee to different severance – 30 days, 20 days, 18 days and/or 12 days – or to no severance at all, in the latter case when the threshold of 12 months of base remuneration and seniority premiums is met or exceeded.

In contracts entered into with managers or their personal assistants (where the parties expressly chose that specific type of contract), both parties are under the obligation to serve a 30 or 60-day notice, depending on whether the contract lasted up to two years or for more than two years. The parties are free to establish different notice periods and to pay in lieu of notice. Severance (calculated in the same way as in redundancy procedures) is only due where termination was communicated or prompted by the employer.

The same notice period (30 or 60 days) applies to employees in open-ended contracts of employment who wish to leave. Where they are hired under fixed-term contracts of

employment, the correspondent notice period is 15 days if the contract was entered into for less than six months or 30 days otherwise. In unfixed-term employment contracts, the 15 or 30-day notice refers to the contract's effective duration. The expiry of the fixed-term contract on the initiative of the employer entitles the employee to 18 days of severance for each complete year of service (fractions of year of service are compensated proportionally) and the expiry of unfixed-term contracts entitles the employee to those same 18 days during the first three years of duration of the contract and to 12 days thereafter.

Differently, if the employee resigns with cause – for example, on the basis of the employer having breached the contract – no notice period is required and indemnity, depending on the cause for termination, may be due. Such indemnity is to be set by the court, ranging from 15 to 45 days of base remuneration and seniority premiums for each year of service or fraction thereof.

The contracts of employment of employees who have retired and chose to continue working or those who have turned 70 years old without retiring convert into a six-month, fixed-term contract by operation of law (no limits applying in terms of maximum duration or maximum number of renewals). In such cases, both the employer and employee have the right to cause the contract to expire, by serving notice, respectively, 60 and 15 days in advance. The expiry of the contract does not entail the payment of severance, even if decided by the employer.

6.3 Dismissal for (Serious) Cause (Summary Dismissal)

Against a constitutional background that forbids dismissals without cause, Portuguese law does not contemplate summary dismissals.

Serious cause for dismissal is defined as a guilty conduct of the employee, the seriousness and consequences of which make it immediately and practically impossible to maintain the employment relationship. The law lists a number of such behaviours (eg, unlawful disobedience, unjustified absences, conflicts with co-workers, abnormal reductions in productivity and the infliction of serious financial damage to the company) but the list is neither exhaustive nor self-sufficient: other behaviours may constitute cause for dismissal and any behaviour, even if listed in the law, must be of the above-mentioned type (ie, so serious that it makes it impossible to continue the contract).

The employee's disciplinary liability must be assessed in compliance with a detailed, complex procedure set forth in the law (which is only lighter for companies with fewer than ten employees). Such procedure consists of essentially three stages: accusation, where the employee is given a detailed written description of the facts of which he or she is accused and warned of the employer's intention to dismiss him or her; defence, where the employee has a period to consult the disciplinary file, respond to the accusation in writing and request for probative diligences, which the employer is not at liberty to refuse (unless it finds them irrelevant or a delaying tactic, assessment to justify in writing); and decision, where the employer issues the dismissal decision, which must be grounded and in writing. Should they exist, employee representative bodies may issue a non-binding opinion on the dismissal, the employer having the obligation to take into consideration prior to reaching its decision.

Upon receipt of the dismissal decision by the employee (or whenever he or she failed to receive it due to his or her fault only), the contract of employment ends. The employee has henceforth five working days to seek an injunction to suspend the effects of dismissal and 60 days to challenge the dismissal in court.

6.4 Termination Agreements

Contracts whereby the parties agree on the termination of the contract of employment are permissible. They must be entered into in writing, signed by both parties and include a limited number of mandatory items: the date the agreement is entered into, the date of termination of the contract of employment and the deadline for the employee to revoke the termination agreement (which deadline amounts to seven days counted from signature, unless the signatures in the agreement are recognised with a notary office).

If, in the termination agreement or together therewith, the parties agree on a global pecuniary severance, there is the legal presumption that all credits of the employee due at the time of termination or arising from termination were included in the severance. The employee, however, may prove otherwise.

Severance and other credits arising from the contract of employment (such as remuneration, allowances, variable pay) are subject to different regimes in terms of tax and social security, so employers are advised to draft the termination agreement carefully.

Specific terms and conditions for termination are subject to specific limitations. That is, for example, the case with post-contract non-competition covenants, which are often found in termination agreements.

Termination agreements may also have an impact on the employee's ability to seek unemployment allowance with the public social security system. This feature of the agreement should be assessed in advance, not that the employee accepted to leave the company on the basis of being entitled to the allowance, which then turns out not to be the case. Where such a belief of the employee was created by the employer,

the employer may be held liable before the Social Security to pay for the employee's unemployment allowance.

6.5 Protected Employees

Pursuant to Portuguese law, no employee is prevented from being dismissed. However, particular categories of employees benefit from increased protection in the event of dismissal.

That is the case with employees who are pregnant, in the 120 days following birth, breastfeeding or taking parental leave: regardless of the type of dismissal, the employer is under the obligation to take the procedure up to a certain point identified in the law (eg, end of probative diligences requested by the employee in disciplinary dismissals; end of consultation in collective dismissals) and to then request the equality commission for a prior ruling. Where such ruling is contrary to dismissal, the employer is prevented from issuing the dismissal decision and must request the court's authorisation to proceed to dismissal. Failure to do so renders the dismissal null and void; employers may not oppose reinstatement and the indemnity due to the employee (where the employee did not choose reinstatement) is increased to 30 to 60 days of base remuneration and seniority premiums for each year of service or fraction thereof, with a minimum of six months' pay, instead of the usual 15 to 45 days, with a minimum of three months' pay. It is the court that sets the indemnity due.

Employee representatives do not benefit from comparable protection. There is, however, the presumption that any disciplinary sanction (including dismissal) applied up to six months following the employee having run for office as an employee representative or exercising functions of that kind is abusive. If confirmed, the indemnity due to the employee (again, where the employee did not choose reinstatement) is also increased to 30 to 60 days and the six months' pay minimum. The framework in terms of severance is the same where the dismissal of an employee who is a member of an employee representative body is found to be unlawful by the court.

Where the employee to be dismissed on disciplinary grounds is a trade union representative, the respective trade union must be informed of the intention to dismiss and has the opportunity to issue a non-binding opinion on the merits of the dismissal, which the employer is under the obligation to consider in advance of reaching its decision.

7. Employment Disputes

7.1 Wrongful Dismissal Claim

Dismissals may be challenged on the basis of procedural mistakes or motivation. For example, failure to deliver a written detailed accusation, communicate the intention to dismiss, allow the employee to consult the disciplinary file and reply to the accusation or to issue a grounded, written dismissal decision renders the disciplinary dismissal invalid. Likewise, collective dismissals will be ruled unlawful if the employer failed to provide the necessary written information at the beginning of the procedure or to promote negotiation, issued the dismissal decisions prematurely or failed to pay severance and remaining credits arising from the contract's termination until the date of termination. The breach of the procedure applicable to dismissals based on the extinction of the job position entails the same consequence.

Dismissals may also be found unlawful for lack of motivation (both where no motivation was disclosed or the motivation argued by the employer was not accepted by the court). The most serious degree of unlawfulness, with an impact on the indemnity due where the employee did not choose reinstatement, is based on the dismissal having a political, ideological, ethnical or religious motivation, even if at the pretext of a different motive.

In the case of employees who are pregnant, in the 120 days following birth, breastfeeding or taking their parental leave, failure to consult the equality commission in advance of dismissal renders the dismissal unlawful as well.

Where the dismissal is declared unlawful, employees are entitled to the loss of pay between the date of dismissal and the date the judicial decision may no longer be appealed, as well as to choose between reinstatement and an indemnity. In companies with fewer than ten employees or when the relevant employee occupied a management position, the employer may request the court to prevent reinstatement. If the request is granted, the indemnity, which is normally set (by the court) between 15 and 45 days of base remuneration and seniority premiums for each year of service or fraction thereof, with a minimum of three months' pay, is increased to 30 to 60 days of base remuneration and seniority premiums, with a minimum of six months' pay.

An employee unlawfully dismissed may also claim for additional damages (such as non-pecuniary damages).

7.2 Anti-discrimination Issues

Portuguese law sets forth a variety of grounds on which discrimination is forbidden (and the list is not exhaustive): ancestry, age, sex, sexual orientation, gender identity, marital status, family and economic situation, education, social origin or condition, genetic heritage, reduced work capacity, disability, chronic disease, nationality, ethnical origin or race, territory of origin, language, religion, political or ideological belief and trade union membership. The protection against discrimination applies to both employees and applicants, and covers all stages of the contract of employment, from hiring to training, promotion, work conditions, pay, termination, etc.

The employee claiming discrimination has the burden to identify the employee or employees in relation to whom he or she is being discriminated; the employer has the burden to prove that the difference in treatment is not based on a discrimination ground.

Where discrimination is established, the employee or applicant is entitled to be indemnified of all pecuniary and non-pecuniary damages.

8. Dispute Resolution

8.1 Judicial Procedures

There are specialised employment forums: a total of 44 labour tribunals across the country. The Courts of Appeal and the Supreme Court of Justice also have sections – called the "social sections" – dedicated to employment lawsuits.

Class actions as such are aimed at other types of protected interests (eg, public health, environment, consumers, cultural heritage, public domain). Employers' associations and trade unions, employers and employees, however, may bring lawsuits, or be brought to court, together.

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Most employment lawsuits require representation by lawyers, even if only as of a certain point in the judicial procedure. The parties in a lawsuit are usually represented by a lawyer of their own choosing; those who cannot afford representation have a lawyer designated by the State. Prosecutors from the District Attorney office represent the State and other designated entities (eg, hospitals in lawsuits arising from work accidents or occupational diseases, where such hospitals have no litigation services) or intervene in particular types of lawsuits (eg, those seeking to establish the nature of the contract as being a subordinated employment contract; or the administrative phase of work accidents proceedings).

8.2 Alternative Dispute Resolution

In what concerns the parties in a contract of employment, there is no tradition of resource to arbitration. However, provided the subject matter is not exclusively attributed to the civil courts (as is the case with the lawfulness of the dismissal) or concerns unavailable rights (such as those emerging from work accidents), the possibility of arbitration is not excluded.

Arbitration is more common in the field of collective relations, either as a result of the parties' will (voluntary arbitration) or a governmental decision (mandatory or necessary arbitration). Pre-dispute arbitration agreements inserted in collective bargaining agreements are enforceable.

8.3 Awarding Attorney's Fees

Both prevailing employers and employees can be awarded attorney's fees. The losing party's liability is, however, limited to half of what both parties paid as judicial fees, so its amount is quite often significantly inferior to the prevailing party's effective cost. Where the employee was granted legal aid due to lack of financial means to pursue litigation, the prevailing employer may claim back from the State the judicial fees it paid during the proceeding but not attorney's fees.