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EMPLOYMENT LAW OVERVIEW
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TABLE OF CONTENTS.

I.	GENERAL OVERVIEW	03
II.	HIRING PRACTICES	06
III.	EMPLOYMENT CONTRACTS	08
IV.	WORKING CONDITIONS	10
V.	ANTI-DISCRIMINATION LAWS	12
VI.	PAY EQUITY LAWS	14
VII.	SOCIAL MEDIA AND DATA PRIVACY	16
VIII.	TERMINATION OF EMPLOYMENT CONTRACTS	18
IX.	RESTRICTIVE COVENANTS	24
X.	TRANSFER OF UNDERTAKINGS	26
XI.	TRADE UNIONS AND EMPLOYERS ASSOCIATIONS	27
XII.	EMPLOYEE BENEFITS	29



I. GENERAL OVERVIEW

1. INTRODUCTION

Portuguese labour law is highly protectionist. Its rules and principles apply both to individual employment relationships and to collective bargaining agreements, which endow trade unions with an important role, particularly in business areas or industries where said agreements are applicable on a broader scale as a result of government extension measures. In 2009 the Labour Code (originally issued in 2003) underwent a relevant reform. This resulted in more flexible solutions, namely on work time organisation issues. From 2011 onwards, in view of the austerity package measures, a number of relevant changes were also introduced, e.g. reductions to the severance compensations due in case of redundancy and reductions to extra work pay. Some of these measures were changed in 2016 under a tendency to withdraw some of the previously applied austerity provisions (e.g. national holidays that had been suspended were put back in place in 2016).

2. KEY POINTS

- A relevant reform to labour law took place in 2009 and additional changes were introduced after 2011. These reforms had a significant impact on employee rights and obligations.
- Two of the most striking features of Portuguese law are probably the variety of its sources and the level of protection it grants employees.
- Collective bargaining agreements are entered into at the regional, national or industry levels, between the unions and employers' organisations or on company or multiple company levels between the unions and the relevant employing companies.
- The scope of application defined in a collective bargaining agreement may be extended, after its entry into force, by a government extension act. In such cases, the provisions of the extended collective agreement, depending on the extension terms, will apply either in a specific region or at a national level, to all companies operating in the relevant business sector or industry and employees at their service (regardless of such employees being union affiliated).

3. LEGAL FRAMEWORK

Employment law, rules and guidelines prevailing in Portugal are mostly based upon the following laws:

- The Portuguese labour and social Constitution provisions;
- The Portuguese Labour Code subject to a major reform in 2009 and subsequently amended and respective implementing decree;
- The Social Security Contributory Code and respective implementing decree [Law no. 110/2009, of September 16 (last amended by Law no. 2/2020, of March 31) and Implementing Decree no. 1-A/2011, of January 12 (last amended by Decree-law no. 84/2019, of June 28)];
- Procedural legal framework on labour and social security misdemeanours (Law no. 107/2009, of September 14, last amended by Law no. 55/2017, of July 17);
- Legal framework on age and invalidity retirement (Decree-Law no. 187/2007, of May 10, last amended by Decree-Law no. 79/2019, of July 14);
- Legal framework on protection in the event of sickness (Decree-Law no. 28/2004, of February 4, last amended by Decree-Law no. 53/2018, July 2);

- Legal framework on protection in the event of parenting (parental leave and respective subsidies) [Decree-Law no. 91/2009, of April 9, last amended by Law no. 90/2019, of September 4];
- Legal framework on the Public Capitalisation Scheme (Decree-Law no. 26/2008, of February 22, last amended by Decree-Law no. 82/2018, of October 16);
- Legal framework on Safety and Health at Work (Law no. 102/2009, of September 10, last amended by Law no. 79/2019, of September 2);
- Legal framework on the compensation of accidents at work and occupational diseases (Law no. 98/2009, of September 4);
- List of Professional Illnesses and National Table of Disabilities (Decree-Law no. 352/2007, of October 23 and Implementing Decree no. 6/2001, of May 5, amended by Implementing Decree no. 76/2007, of July 17);
- Social Security's Disability Verification System (Decree-Law no. 360/97, of December 17, last amended by Law no. 2/2020, of March 31);
- Legal framework on unemployment protection applicable to employees (Decree-Law no. 220/2006, of November 3, last amended by Decree-Law no. 75-B/2020, of December 31);
- Legal framework on unemployment protection applicable to self-employed professionals (whose services are mostly provided to a single contracting authority) [Decree-Law no. 65/2012, of March 15, last amended by Decree-Law no. 53/2018, of July 2];
- Legal framework on unemployment protection applicable to self-employed professionals with an entrepreneurial activity and to members of corporate bodies (Decree-Law no. 12/2013, of January 25, last amended by Decree-Law no. 53/2018, of July 2);
- Legal framework on Work Compensation Funds (Fundo de Compensação do Trabalho and Fundo de Garantia de Compensação do Trabalho) [Law no. 70/2013, of August 30 (amended by Decree-law no. 210/2015 of September 25)].

In addition to the abovementioned legal sources, employees' and employers' contractual relationships are also governed by the following instruments:

- Collective bargaining agreements (convenções coletivas de trabalho), i.e., agreements negotiated between one or more trade unions and one or more employers' organisations or employers;

- Employment contracts;
- Company internal regulatory instruments (regulamentos de trabalho) implemented by each organisation to apply to its own employees;
- Precedent court decisions are not legally binding. However, the decisions of the Constitutional Court (Tribunal Constitucional) and the Supreme Court (Supremo Tribunal de Justiça) have in certain cases general application.

4. NEW DEVELOPMENTS

The current general framework on employment law stems from 2009's major reform of the labour laws. 2003 marked the turning point with the approval of a complete Labour Code – replacing an extensive number of legal acts that had been multiplied and reviewed in the previous twenty to thirty years. This had an important impact on the rights and obligations of employees. More flexible solutions and measures to safeguard and promote employment, and to protect the unemployed were implemented. In fact, the Labour Code known as the new 2009 Code was amended in the context of several public reforms that aimed to increase corporate competitiveness and productivity by allowing labour law, collective bargaining agreements, and individual employment contracts to be more flexible.

2012 also registered relevant reform amendments in labour law, affecting specific provisions of the Portuguese Labour Code namely on severance pay for contract termination.

In 2016, following the new government that took office, changes occurred / were implemented in the short run. The most relevant of which as far as private employment matters were an increase of the minimum wage, which has continued progressively, and the reinstatement of number of suspended national holidays. As far as public servants are concerned, measures such as the end of pay cuts and the reinstatement of the 35 hours working week after working hours of the public servants having been increased to 40 hours a week in the context of the austerity measures applied in Portugal, deserves a highlight.

Decree n.º 25/2018, of January 18, set the retirement age in 2019 at 66 years and 5 months. The same applied in 2020 (Ordinance no. 50/2019,

of February 8). For 2021, the standard age to access the old-age pension of the general social security scheme has been set at 66 years and 6 months (Ordinance no. 30/2020, of January 31).

The year 2018 brought changes to rules on the transfer of undertakings (TUPE). Essentially, these new measures related to the operative concept of an economic unit, the duties of information and consultation of workers and their representative structures, and conferring with the employees on the right to oppose a change of employer resulting from the transfer of the undertaking, and the right to terminate the employment contract, in certain circumstances.

2019 brought, yet again, a new set of amendments to the Portuguese Labour Code and the Contributory Code – social security protection rules - resulting from the tripartite agreement reached in the Social Concertation, with the aim of fighting precarious employment in the labour market and thus, reinforcing job security, in particular for young employees. The new rules brought a number of changes at various levels: employment contracts; organisation of working time; instruments for collective labour regulation; employees who have cancer; and additional contributions.

2020 was, in every sense of the word, an atypical year following the global outbreak of the COVID-19 pandemic. The Portuguese Labour Code and related employment and social security legislation were not sufficiently flexible, single-handedly, nor as swift as the circumstances demanded, in order to fully respond to the wide-ranging requirements of a national state of emergency. The Portuguese Government adopted temporary exceptional measures – including swift furlough and financial support measures and allowances – in the form of successive legislative measures, which were not always easy to interpret, but had to be applied. The measures had an impact on several matters such as, inter alia, employer Occupational Safety and Health Services issues, remote working, holiday scheduling and financial support and incentives for employers (including swift furlough procedures and dismissal bans and restrictions on responding to the business crisis resulting from lockdown measures and acute losses in turnover and business activity).

II. HIRING PRACTICES

1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

A general principle foresees that expatriates working on work permit are granted equal rights and obligations as national employees. Written form is required for employment contracts with expatriates working on work permit (non-EU). The employer's contract copy must have a copy of documents attesting compliance with legal obligations on the entry and residence of the foreign employee in Portugal duly attached to it. Moreover, the contract must include information on the employee's residence visa or work permit required to carrying out a professional activity as employee in Portugal. The employee must also attach to the contract the identification and address of the legal beneficiary(ies) in the event of death resulting from work accident or occupational disease. In addition, the employer must communicate to the Portuguese labour authorities, through electronic form:

- the execution of the employment contract prior to the beginning of its entry into force;
- the contract's termination, within 15 days upon termination.

In accordance with the law, companies must assure the candidate holds a residence visa or permit specifically granted for carrying out a professional activity as employee in Portugal. In cases where the employer has the intention to employ a foreign citizen (non-EU) currently living abroad, a statement confirming that the employment offer is included in the legal defined quota or that no quota has been set and that no preferential candidate (Portuguese, EU citizen) was found to perform the job shall be issued by the Portuguese Institute of Employment and vocational training and delivered to the candidate for submission together with the visa request. For the same purpose, the employer shall also provide the candidate with an employment contract or promise of employment contract.

Hiring a foreign employee who does not hold a residence visa or permit for carrying out a professional activity as an employee in Portugal may trigger an employer misdemeanour and in addition an order to suspend the employer's activity may be issued for a time length of between 3 months up to 5 years. In setting annual overall quota of job opportunities available for non-EU citizens, the Portuguese Government may exclude sectors or activities where labour is not considered as needed; however, no quota has been set since 2009.

2. DOES A FOREIGN EMPLOYER NEED TO ESTABLISH OR WORK THROUGH A LOCAL ENTITY TO HIRE AN EMPLOYEE?

Foreign employers are not necessarily required to establish or work through a local entity to hire employees.

From a corporate perspective, and as a rule of thumb, if engaging local employers means that the foreign employer is intending to exercise its business activity in Portugal for more than one year, then a local permanent representation should be incorporated, adopting the form of subsidiaries or branches.

In addition to the permanent establishment issues – and the interconnected corporate tax issues – having employees working from Portugal will, nevertheless, trigger new procedures and obligations that require measures to be taken with regards to: i) accident at work insurance; ii) social security benefits and contributions; and iii) employee income tax issues.

3. LIMITATIONS ON BACKGROUND CHECKS

There are some legal restrictions on conducting background verifications on job candidates and employees such as drug tests, financial and credit checks, criminal checks, academic qualifications or previous employments.

In what concerns the selection process, for example, there are some legal restrictions on information that may be sought in candidate screening, including information that the candidate may be asked to provide at an interview, during the hiring practices and in the employment agreement.

An employer is not allowed to request information on the candidate's private life except for information that is strictly necessary or relevant to assess the candidate's aptitude and abilities for the job. In such cases, the specific reasons for requiring such information must be provided in writing to the candidate by the potential employer.

The employer is also not allowed to request information about the candidate's health or pregnancy, except when relevant in view of specific requirements imposed by the nature of the job role. Again, in such case, the potential employer must provide written information on such requirement to the candidate.

In this latter case, the information must be provided to a doctor who will merely inform the employer on whether the candidate qualifies or not for the job.

In what concerns the possibility of obtaining supporting documents such as previous employment contracts, educational certificates, past pay slips, and others, the screening of candidate supporting documents on previous employment experience and educational certificates may be requested from the candidate insofar as the information is relevant and not excessive for the purpose for which it is required.

Some legal restrictions also apply to conducting health checks and to selecting a candidate on the basis of health information.

In fact, except for general health exams that are specifically required to evaluate the candidate's

general physical and psychic conditions to exercise the role being engaged and to evaluate potential effects of the activity in question and working conditions on the employee's health condition, the employer is not allowed to require any other health or medical tests or exam results from the candidate.

There are some exceptions, however, to this rule, namely:

- exams required for purposes of the employee's own protection or safety or that of a third party; or
- exams justified by the specificities of the role / activity to be performed.

In both cases the potential employer must provide the candidate with due explanation, in writing, on the reasons for the additionally required tests or exams.

Under data protection laws, personal data must be maintained only for the period strictly required.

4. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

Restrictions or limitation on application or interview questions are in line with the above referred limitations on background check information, on information about the candidate's private life and on the candidate's health or pregnancy.

The Portuguese Labour Code requires employers to keep the following information on recruitment processes launched, disaggregated by gender of candidates, for a period of 5 years:

- invitations for available positions;
- employment-offer advertisements;
- number of candidates for Curriculum Vitae appraisal;
- number of candidates called for pre-selection interviews;
- number of candidates awaiting recruitment;
- admission or selection test results;
- social reports performed to assess possible gender discrimination in the access to job positions, training, promotions and work conditions.

III. EMPLOYMENT CONTRACTS

1. MINIMUM REQUIREMENTS

Generally speaking, the employment contract does not require any special form and may, therefore, be agreed under written form or verbally. However, there are certain situations in which the contract or some clauses must be executed in writing, examples of which are: i) fixed term employment contract; ii) part-time employment contract; iii) temporary work contract or intermittent employment contract; iv) teleworking contracts; v) single employee contracts with multiple employers; vi) non-competition clauses.

Where the law requires written form for certain employment contracts, failure in this requirement, does not entail, in principle, the nullity of the contract. In fact, what happens in most cases is that the contract is deemed to be subject to general employment rules (e.g. part time contract will be deemed to be full time; temporary contracts will be deemed permanent employment, etc.).

In order to supply the employee with a minimum set of information, the Code requires the employer to provide the employee with written information on the employment contract and working conditions, such as identification of the employer, the employee's workplace, the employee's category or a concise description of the employee's duties, remuneration, normal daily and weekly working hours, etc.

When executed in written form, the employment contracts must be signed by the person or persons who are authorised to represent the company in dealings with third parties according to the company's articles of association or duly empowered to do so.

There is no legal requirement for employment contracts to be executed in Portuguese, thus the use of other languages (e.g. English) is acceptable provided the employee understands the language used. Moreover, bilingual versions may also be used, in which case it is recommended to set a prevailing version. Nevertheless, contracts drawn in a foreign language, as a rule, will have to be translated into Portuguese when filed with a Portuguese authority or official and a translation certification may also be required.

2. FIXED-TERM/OPEN-ENDED CONTRACTS

Unless otherwise specified by the parties, employment contracts are deemed open-ended (i.e. permanent employment). Fixed term contracts are permitted by law provided that they are executed in written form and provided they are meant to fill a role required on the basis of a merely temporary need of the employing company. Hence, if there is no written contract, the employment contract will be deemed to be an open-ended contract.

3. TRIAL PERIOD

Trial periods (initial probation) for permanent employees are 90 days, 180 days for high complexity, trust or responsibility roles and 240 days for management, directorate and equivalent responsibility roles.

Fixed and unfixed term temporary contracts are subject to shorter probation periods (i) 15 days if agreed for an expected or fixed duration shorter than 6 months; and (ii) 30 days for durations equal to or longer than 6 months.

During the initial probation/trial period, the employer and the employee are free to terminate the employment. For termination within the contract trial period by the employer, no prior notice is required within the first 60 days. Termination during the probation period requires the employer to give a seven or 15-day prior notice in cases where the probation period has lasted for more than 60 or 120 days, respectively.

Termination of a labour agreement by either of the parties during the probation period does not require any grounds of justification and no indemnification is due. The maximum terms for the probation period vary between 15 and 240 days, according to the type of activity and the nature of the agreement (for a permanent employment contract, the average probation period is 90 days). The employee is not subject to any prior notice to terminate the contract during the trial period.

4. NOTICE PERIOD

The employee is free to resign, subject only to certain prior notice periods:

For permanent employees: 30 days for contracts which have been on force for up to 2 years; 60 days for contracts which have been on force for more than 2 years;

For fixed (or unfixed) term (temporary) employment agreements: 15 days for contracts, which agreed (or expected) duration is less than 6 months; 30 days for contracts, which agreed (or expected) duration is equal to (or longer than) 6 months.

It is not possible to agree on longer probation periods than those legally foreseen, but it is possible to agree on shorter probation periods, as well as to fully exclude probation periods. Companies often pay salary in lieu of notice period in situations of collective dismissal, but the legality of this practice is questionable. The employee is allowed to do it with the consent of the employer. The salary must be fully paid until the date of the proper termination of the contract.

IV. WORKING CONDITIONS

1. MINIMUM WORKING CONDITIONS

In Portugal, collective labour regulation instruments can determine the minimum working terms and conditions. At the same time, collective labour agreement instruments can only be set aside by a labour contract when the latter establishes more favourable conditions for the employee and if the contrary does not result from the collective labour agreement rules.

Workers posted abroad are entitled to local working conditions provided by law and collective bargaining agreements with overall effectiveness, whenever these are more favourable than those that generally apply in the place of work, on the following subject matters:

- protection against dismissal;
- maximum length of working time;
- minimum periods of rest;
- holiday;
- minimum remuneration and payment of overtime;
- transfer of workers by temporary employment agency;
- occasional provision of workers;
- safety and health at work;
- protection of parenthood;
- child labour protection;
- equal treatment and non-discrimination.

2. SALARY

The monthly minimum wage in Portugal in 2020 was fixed at €635. However, in the Azores islands the minimum wage was €666,75 and in Madeira island €650,88, in order to compensate for insularity.

Amounts have risen to €665 in 2021 (increasing to €698,25 in the Azores and €682 in Madeira).

3. MAXIMUM WORKING WEEK

The maximum weekly and daily working periods are set at 40 and 8 hours, respectively. However, subject to certain rules, these limits may be assessed on an average basis measured by reference to four or six month periods. This is a system known as adaptability and the additional work hours rendered by the employee on specific days or weeks exceeding the aforementioned 40 and 8 hour limits do not qualify and are not paid as overtime work but are, instead compensated by equivalent reduction of hours worked on other days or weeks.

Similar flexibility may also be obtained by resorting to the so-called hour bank. In this case additional working hours may be performed, compensated by a monetary compensation, an increase on the vacation period or on a reduction of hours worked on other days.

In general, only work rendered between 10 p.m. and 7 a.m. qualifies as night-time work, entitling the employee to an appropriate salary increase (an increase of 25% over the payment of equivalent work rendered during the day). Collective bargaining agreements may, nevertheless, extend or adjust the period that qualifies as night-time work and they very frequently do so, for instance, setting the starting point for night-time work from 8 p.m., instead of 10 p.m.

4. OVERTIME

The employee may be required to provide overtime work: i) when the company has to cope with temporary increase of work that do not call for additional employee recruitment; or ii) in case of force majeure or when the overtime work is needed to prevent or remedy serious injury to the company or its viability. Overtime work is paid at the normal hourly rate plus:

- 25% for the first hour or part thereof, and plus 37.5% for every subsequent hour or part thereof, on working days;
- 50% for the first hour or part thereof, on weekly rest, compulsory or complementary, or on bank holiday.

Overtime work rendered on weekly rest entitles the employee to a remunerated compensatory rest day, during one of the following three working days.

5. HEALTH AND SAFETY IN THE WORKPLACE

A. EMPLOYER'S OBLIGATION TO PROVIDE A HEALTHY AND SAFE WORKPLACE

The employer has the obligation to permanently ensure employee health and safety conditions at work. To comply with such duty, the employer must follow a set of general principles focused on the prevention of work accidents and professional illnesses, and thus to comply with several duties. In general terms, the employer must put in place and ensure:

- technical work accident preventive measures;
- employee training, information and consultation on workplace safety;
- internal or external health and safety services.

The employer must implement appropriate company healthy and safety (H&S) activity at work. This includes organising and keeping appropriate H&S services and other preventive measures, like ensuring risk exposure assessments and the performance of tests and other actions on occupational risks and health monitoring.

At the same time, an insurance to cover work accidents risk must be contracted by the employer for each hired employee. On the other hand, there might be the necessity to set up an internal service of H&S depending on the activity of the company (high risk activities), as well as on the number of employees.

Concurrently, it is mandatory to set up an internal structure that ensures first aid, fire-fighting and evacuation activities. Specific measures must be defined for adoption in case of emergency and certain employees must be appointed as responsible for the implementation of same measures and for calling the competent authorities in case of emergency.

Moreover, the employer has to provide proper H&S training to its employees and must identify the potential occupational risks and try to minimise them, for instance, when choosing work equipment and facilities, or when designing workstations.

If risks to the employee are assessed in connection with work features or requirements, specific medical checks are also required, and must be carried out before the employee is subject to risk exposure. Employee health surveillance and the monitoring of the exposure to potential occupational risks are mandatory. Pregnant or lactating employees cannot perform some activities, due to a high-risk of exposure to physical, biological or chemical agents and activities carried out in dangerous working conditions.

B. COVID-19 MEASURES

The COVID-19 pandemic outbreak has had a huge impact on H&S issues. Employers are now required to organise appropriate contingency plans relating to the SARS-CoV-2 infection, and procedures to be followed in case of employees presenting symptoms of COVID-19 at the workplace, in line with the guidance issued by the health authorities (some measures are specific to certain business areas or industries). Also, employers should be mindful of any particular workplace organisation and health requirements for a post lock-down return to the workplace.

V. ANTI-DISCRIMINATION LAWS

1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

There is a subsection in the Labour Code on equality and non-discrimination. Employees cannot be discriminated against throughout the duration of the employment contracts, including access thereto and termination thereof.

2. EXTENT OF PROTECTION

Discrimination based on any grounds is forbidden. The law expressly prohibits discrimination grounded on parentage, age, sex, sexual orientation, gender identity, marital status, family situation, economic situation, education, origin or social conditions, genetic heritage, reduced work capacity, disability, chronic disease, nationality, ethnic origin or race, territory of origin, language, religion, political or ideological beliefs and affiliation with trade union, without prejudice of other discrimination grounds.

3. PROTECTION AGAINST HARASSMENT AND REMEDIES

A number of reinforced legal measures for the prevention of harassment in labour context have been in force as from the last quarter 2017 providing for new obligations on the part of the employer, of which the following may be highlighted:

- the presumption of the abusive nature of any disciplinary sanction applied by the employer to an employee that has reported harassment cases up to one year after the employee reported the

case and/or exercised his/her rights resulting from harassment;

- recognition of harassment as sufficient grounds for the affected employee to terminate the employment contract with immediate effect and to claim compensation, as a result of an act of harassment by the employer, conditional to it having been reported to the Authority for Labour Conditions;
- liability of the employer for compensation of damages resulting from occupational diseases caused by harassment acts;
- the requirement for employers (except those with a workforce of less than seven employees to adopt codes of good conduct to prevent and fight harassment in the workplace; and
- the employer's duty to initiate disciplinary proceedings when it becomes aware of harassment cases.

In 2019, amendments to the Portuguese Labour Code established:

- additional duties to respect and treat fellow employees with urbanity and probity, ruling out any acts that may affect the employee's dignity, which are discriminatory, harmful, intimidatory, hostile or humiliating to the employee, namely harassment;
- the disciplinary penalty to be deemed abusive, when inflicted on employees claiming to be victims of harassment or who are appointed as witnesses in a judicial and/or administrative offence for harassment;
- breach of legal or contractual guarantees against discrimination and in particular, acts that qualify as harassment by the employer or fellow employees, become grounds for termination for cause of the contract by the initiative of the affected employee, allowing him/her to seek compensation.

In addition, the Law provides that the Authority for the Conditions of Work must provide an electronic address for the reception of harassment complaints and must include information on harassment and harassment preventive, fighting and reaction measures in its Internet site.

4. EMPLOYER'S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

There is no specific provision or requirement for employer to provide accommodations to employees.

In certain sectors, collective bargaining agreements may establish rules on accommodation provisions or on the payment of allowances for the purposes of supporting reasonable accommodation, particularly in cases where the employee is temporarily displaced and prevented from performing his work.

5. REMEDIES

Discrimination and harassment are forbidden and employees who are the object of discrimination or harassment acts may claim indemnification and compensation for monetary and non-monetary damages caused. The liability of the employer to compensate damages arising from an occupational disease caused by harassment, is subject to further regulation, yet to be approved.

6. OTHER REQUIREMENTS

Gender quotas apply to governing and supervisory bodies of public sector business entities and of listed companies, for nominations occurring as from January 1, 2018.

Public sector companies must have a minimum representation of 33.3% of male and female members in the different governing bodies of the company.

In the private sector (i.e. listed companies), companies are required to fulfill a minimum 20% quota of each gender, from the first electoral general assembly held as of the 1st of January 2018. The minimum quota requirement will increase to 33.3% from the first electoral general assembly held as of January 1, 2020.

The aforementioned limits are to be introduced in the first shareholder meeting held after the mentioned dates. As such, these new requirements shall not apply to existing mandates (except when they are renewed or substituted).

Public-sector companies and listed companies will also have to draw up, annually, equality plans to achieve effective equal treatment and opportunities for men and women, by promoting the elimination of gender-based discrimination, and promoting the reconciliation of personal, family and professional lives. These must be published on the company's website and sent to the Commission for Citizenship, and to the Gender Equality and the Commission for Equality in Labour and Employment.

Minimum quotas for disabled workers (disability levels equal or over 60% disability classification) are also applicable to medium and large-sized enterprises, when engaging and organising their workforce. The quotas applicable are the following: i) medium-sized enterprises: 1% quota for disabled workers; and ii) large-sized enterprises: 2% quota for disabled workers. These percentages are based on the average number of employees in the previous calendar year. These are requirements that were introduced in February 2019 and four and five year transition periods are in place, depending on whether the company exceeds 100 persons employed.

VI. PAY EQUITY LAWS

1. EXTENT OF PROTECTION

In Portugal, on February 21, 2019 Law no. 60/2018, of August 21, entered into force approving measures to reinforce equal payment across gender for equal work or work of equal value.

This law amended a previously existing law (Law no. 10/2001, of May 21), establishing annual reporting duties upon employers on equal opportunities between men and women. It also updated provisions contained in 2009 legislation (Law no 105/2009, of September 14) and legislation (Decree-Law No 76/2012, of March 26) governing the employment public body for non-discrimination – Comissão para a Igualdade no Trabalho e no Emprego (“CITE”).

At national level, a cabinet resolution (dated May 21) approved, inter alia, the global action targets for the period 2018-2030 in the framework of the National Strategy for Equality and Non-Discrimination, as well as the respective Action Plans. At EU level, the Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee - EU Action Plan 2017-2019 of 20 November 2017 with a view to closing the gender pay gap, should also be mentioned.

2. REMEDIES

The current rules (as of August 21, 2019) allow for any employee or union representative to request an opinion from CITE on the existence of gender based wage discrimination. The request must be submitted in writing and contain a duly substantiated allegation of wage discrimination.

The employer is notified to speak up and provide information on its remuneration policy, and criteria underlying the calculation of the remuneration of the applicant and of the employee(s) identified in the request for an opinion, with the CITE to deliver a technical proposal for an opinion.

If the employer exercises its response rights and CITE concludes that there are indications of discrimination, the employer will be given a 6 months period to justify such evidence or demonstrate the adoption of corrective measures to correct differences.

CITE will give a final, binding opinion following the expiry of the above referenced period or to issue a proposal for an opinion, depending on whether the employer has, or has not, made available information concerning the remuneration policy, and the criteria used for the calculation of the applicant’s remuneration and the employee(s) whom he believes are discriminating against him.

CITE’s final opinion is notified to the labour authority (ACT), for the purposes of fining the employer on gender based discrimination, which qualifies as a very serious offence under the Portuguese Labour Code (article 25(8)).

The lack of information is tantamount to not justifying pay differences, which are deemed to be based on discrimination. This procedure applies to any employer, regardless of the number of employees in his service.

Dismissal or other sanctions allegedly imposed to punish a labour offence, shall be presumed as being abusive if they take place up to one year after the request for an opinion.

3. ENFORCEMENT/ LITIGATION

Since the entry into force of Law no. 60/2018, of August 21, there is still no significant litigation about the equal payment.

4. OTHER REQUIREMENTS

Employers are subject to adopting a transparent remuneration policy, built on the basis of evaluation

of the components of the functions performed by employees, underpinned by objective criteria common to both sexes (e.g. merit, productivity, attendance or seniority).

The concept of remuneration, for the effects of the law, includes not only the base remuneration, but also other regular benefits and regular payments made, directly or indirectly, in cash or in kind, as well as certain benefits.

In the event of an allegation of compensation discrimination, it is for the employer to demonstrate that it has a transparent and objective remuneration policy, in particular as regards the remuneration of the employee who claims to have been discriminated against, in relation to the remuneration of the employee(s) whom he believes are discriminating against him.

The Single Report and Duty to Inform Employees, drawn up annually by companies, must now include nominative information, segregated by gender. Such information must also be made available to employees.

At the first half of each calendar year, the competent service of the Ministry of Labour provides statistical information on pay differences by gender (a general barometer and by industry, and a balance sheet by company, profession and level of qualification). This information is also forwarded to the Authority for Working Conditions.

Companies with gender pay differences must submit, within 120 days, an assessment plan if and when notified by the ACT (within 60 days upon receipt of the statistical statement).

Failure to submit and adopt an evaluation plan as described above, and to communicate the results thereof, constitutes a serious administrative infraction that, in addition to the applicable fines, can also involve an ancillary sanction of temporary banning from public tenders for a period of up to two years.

VII. SOCIAL MEDIA AND DATA PRIVACY

1. RESTRICTIONS IN THE WORKPLACE

Employers may dictate the terms for the use of company information technology (IT) and communication means but employees are entitled to keep their private use confidential, including the content of personal emails and Internet access. According to the Portuguese Data Protection Authority, the employer may define the rules on the admitted private use of IT and communication means made available at the workplace and rules should form part of internal company regulations.

A. CAN THE EMPLOYER MONITOR, ACCESS, REVIEW THE EMPLOYEE'S ELECTRONIC COMMUNICATIONS?

Closed circuit TV (surveillance cameras) in office premises cannot be used to control the employee's performance. In the workplace, surveillance cameras may be used to protect the safety of persons and goods or when the nature of the activity so requires. Before the GDPR, its use was subject to a prior authorisation from the Data Protection Authority, and employee work councils had to be consulted at least 10 days prior to the authorisation request being filed with the competent data protection authority. The employer is under the obligation to inform the employees of the existence of such equipment. As with any other data processing activities, the employer, whilst acting as Controller in the processing of data regarding its employees, must fulfil the information duties set by the General Data Protection Regulation, as well as all other principles and duties resulting for the GDPR. In this light, the employee must, for example, be duly informed of the categories of his/her personal data processed by the employer, purposes of and legal basis for the processing, the

recipients or categories of recipients of such data, and other information required by articles 13 or 14 of the GDPR. The data subject is also entitled to information on his/her rights of access to his/her data and on the rights to his/her data correction, erasure and updates and how to exercise same rights.

Generally, the transfer of personal employee data outside the EEA can only happen when the country of destination ensures the same level of protection for the rights and freedoms of the individuals, in relation to the processing of their data, as the Member States of the EEA or if there is an adequacy decision from the Commission regarding the State which will receive the data.

2. EMPLOYEE'S USE OF SOCIAL MEDIA TO DISPARAGE THE EMPLOYER OR DIVULGE CONFIDENTIAL INFORMATION

As a general rule, employees are entitled to privacy in personal and family life, including in the workplace. The use by the employees of social media communication means, cannot be used or monitored, when evaluating the employee. The aforementioned principle does not grant the employee total freedom to do or publish discretionarily on social media, this meaning that, for example, if the employee disparages or divulges confidential information of or relating to the employer, its business, its customers, or its employees, sanctions could be pursued for such behaviour. The employee is subject to general loyalty and respect duties toward the employer. As

such, if the employee does not comply with these general duties he/she may be subject to disciplinary measures available to the employer (which range from a reprimand to a dismissal with just cause), depending on the seriousness of the violation and the damages caused to the employer.



VIII. TERMINATION OF EMPLOYMENT CONTRACTS

1. GROUNDS FOR TERMINATION

According to Portuguese law, the termination of an employment contract depends on very strict rules that demand the gathering of grounds and several formal procedures. The contract may terminate in the following situations:

- expiry;
- mutually agreed termination;
- dismissal for disciplinary grounds subject to prior internal dismissal disciplinary procedure;
- collective dismissal (for economical, structural or technological reasons), subject to an internal procedure and prior notice periods which depend on the seniority of the employees affected by dismissal;
- dismissal for extinction of labour position subject to an internal procedure and prior notice periods in which the notice period will also vary according to the seniority of the employee;
- dismissal for employee's failure to adapt to a working position, also subject to internal formalities and prior notice periods.

The contract expires in one of these situations: i) once its term elapses; ii) supervening impossibility, absolute and definitive, of the employee rendering work of the employer receiving such work; and iii) with the employee's retirement for age or disability.

2. COLLECTIVE DISMISSALS

The closing down of a company or of one or more of its departments and the reduction of personnel based on market, structural, or technological grounds allows for a collective employee dismissal to take place, provided the grounds affect at least two or five employees, depending on whether the

company has less than 50 employees or more than that. Employees subject to collective dismissal are entitled to compensation (the calculation basis varies).

The procedure for collective dismissal begins with a written communication addressed to the Works Council or, if there is no such council, to the company union or inter-union representative structure in the company. If none of these structures exist, the affected employees will be informed, in writing, of the intention to perform a collective dismissal and employees will be invited to nominate, within five working days of receiving the notice, a Representative Committee (of up to three or five members, depending on whether the dismissal concerns up to five or more workers) that will act as a representative structure for that purpose.

In the above-referenced communication, the employee representative structures will be provided with the following information:

- description of the legal grounds for dismissal;
- the list of the company's personnel, organised by sectors of activity;
- the criteria that will determine the selection of employees to be dismissed;
- the number of employees to be dismissed and their professional categories;
- period during which the collective dismissal will take place; and
- criteria for any possible general compensation to be granted to the involved employees besides the specific compensation set forth by law or collective agreement.

At the same time, a copy of the communication and the annexed documents shall be sent to the competent department of the Portuguese Ministry of Employment.

Within a 5-day period following the initial communication, a phase of information and negotiation between the company and the employees' representatives must be initiated in order to try to reach an agreement on the dimension and effects of the measures taken, as well as to decide on possible alternative measures that could reduce the number of dismissed employees, namely: i) suspension of work, ii) reduction of normal working periods, iii) professional reconversion and reclassification and iv) early retirement or pre-retirement.

After a minimum of 15 days after the initial communication, or as soon as an agreement has been reached, the employer may send a written communication to each one of the dismissed employees, containing the dismissal decision, expressly indicating the motives and date of the dismissal, the amounts of the compensation and the labour credits, as well as the manner, moment and place of their payments.

On the date on which the decision is sent to the employees, the employer shall send to the competent department of the Portuguese Ministry of Employment (i) the minutes of the negotiation meetings, or, failing that, information on the justification for such a failure, the reasons for the agreement and the parties' final positions, as well as (ii) a list containing the name of each employee, address, date of birth and of admission to the company, social security situation, profession, category and salary, as well as the individual measure applied and the date foreseen for its implementation. On the same date, a copy of such list is addressed to the employee's representatives.

Until the termination date, the employer must pay the dismissed employee the compensation that is due by law as well as all other existing labour credits. The termination of the employment contract must be communicated with the following prior notice:

- 15-day prior notice period, for employees whose seniority is less than 1 year;
- 30-day prior notice period, for employees whose seniority is of between 1 year and less than 5 years;
- 60-day prior notice period, for employees whose seniority is of between 5 years and less than 10 years;

- 75-day prior notice period, for an employee whose seniority is equal to or exceeds 10 years.

3. INDIVIDUAL DISMISSALS

Extinction of a labour position is applicable only when the company lacks grounds to proceed with a collective dismissal as a result of an insufficient number of employees involved (i.e., the company has more than 50 employees and the closing of the section affects only three employees) in a redundancy caused by the above-referred market, structural or technological motives.

If there are at least two similar work positions that may be extinct, the employer must comply with a sequence of non-discriminative legal criteria (starting with the worst performance assessment carried out on the basis of previously disclosed parameters), in order to select which employees will be affected by the extinction. Employees subject to the extinction of their labour position are entitled to compensation equal to that set for collective dismissal situations.

Even when the grounds occur, extinction of labour position may only determine the termination of the employment contract should the maintenance of the employment relationship prove to be impossible, in terms of the employer failing to have an alternative job position that is compatible with the affected employee's professional category.

Furthermore, it is mandatory that the employer has no fixed term employees executing functions corresponding to the labour position to be terminated.

When there are more equivalent job positions than the number of the positions to be terminated, the identification of the labour position to eliminate has to be made in accordance with the criteria set forth by the law:

- worst performance evaluation, according to an appraisal system and criteria previously known to all the affected employees;
- less academic and professional qualifications;
- bigger burden in terms of costs for the company;
- less experience in the job;
- less seniority in the firm.

Employees who have been transferred to the labour position to be extinguished less than 3 months before termination are entitled to reoccupy the former position (if existing), with no loss of remuneration. Procedural requirements also apply in this case. The intention to terminate the employment contract based on the extinction of the labour position must be communicated in writing to the employees' representatives and to each employee involved.

Together with the communication, the employer must indicate the grounds for the extinction of the affected labour positions, identify the relevant section they belong to, provide an explanation on the need to dismiss and indicate the professional categories of the employees affected by the job extinction, and the criteria used to select the employees to be dismissed.

The employees involved, if the employee is the trade union representative, the respective trade union association and the employees' representatives, have a 15-day period from the initial date of the communication to oppose the extinction measure, in writing, notably alleging the lack of grounds or that the employer has failed to comply with the requirements described above, and alternatives to mitigate the effects of dismissal.

Within 5 business days counted from the initial communication's date, employees' representatives and employees may request the competent department of the Portuguese Ministry of Employment to issue a report on whether the employer has complied with the referred requirements.

Following at least 5 days counted from the term of the 15-day period referred to above or from the report's reception or the expiry of the deadline for its issuance, the employer may communicate to the employees the decision to terminate their employment agreements based on the extinction of their labour positions.

A copy of the decision must be sent to the employees' representatives and to the competent department of the Ministry of Employment. The decision must be formalised in writing and include:

- the grounds for the extinction;
- confirmation of the existence of the above described requirements;

- proof that the legal selection criteria for the determination of which position to extinguish, has been followed, if there has been opposition to this;
- an indication of the amounts of due compensation and all labour credits due, as well as the manner, moment and place their payment will occur; and
- the date on which the employment agreement will terminate.

Finally, the compensation (severance pay) to which the employees are legally entitled and the mandatory prior notice are the ones described under the collective dismissal regime.

The employer may also terminate the labour agreement if:

- the employee's productivity and quality decreases continuously,
- repeated technical problems in the resources affected by the labour position,
- risks to the safety and health of the employee, other employees or third persons or
- the employee developing management functions or functions of technical complexity has failed to comply with objectives previously agreed in writing, provided that it implies the impossibility to maintain the labour relationship.

The grounds above depend on the cumulative verification of the following requirements:

- the introduction of new production procedures, technologies or equipment within the labour position based on different or more complex technology, in the six months preceding the initiation of the procedure,
- the employee having been given adequate professional training to adapt to the changes
- the employee having been given time, at least 30 days, to adapt to the new technologies at the workplace or outside of it, whenever the performance of duties in that position is likely to cause damage, or pose risks to the health and safety of the employee, other employees or third parties,
- no other position in the firm is available and compatible with the employee's category.

It is also possible to dismiss an employee in a case where no modifications were made to the

position, as long as the following requirements are cumulatively verified:

- a) the employee's work level has modified substantially in such a way that foreseeably it will lead to continuous productivity and quality decrease, repeated technical problems in the resources affected by the labour position, risks to the safety and health of the employee, other employees or third persons, determined by how they are exercised and which, in the light of the circumstances, is reasonable to expect to be definitive;
- b) the employer informs the employee, with a copy of the relevant documents, with a description of the facts and evidence of the substantive modification to the manner the work has been performed, as well as informing that an answer to this communication can be given in 5 working days.
- c) after the answer, the employer must communicate orders and instructions adequate to the execution of the position's functions, with the intention of correcting them.
- d) b) and c) above have been verified.

The employer must send a copy of the communication and the documents to the employee's representatives and, if the employee is a union representative, to the corresponding trade union.

Employees who have been transferred to the labour position to be made redundant less than 3 months before are entitled to reoccupy the former position (if existing), with no loss of remuneration. Moreover, the dismissal can only take place if the compensation and all other labour credits are made available to the employee, by the end of the period of notice.

Employees subject to the termination of their employment agreement for failure to adapt are entitled to compensation equal to that set for collective dismissal situations. In order to formalise the dismissal proceeding, the employer must communicate to the employee, and if the employee is a union representative, to the corresponding trade union:

- the intention to dismiss and the grounds for dismissal;
- the modifications introduced in the position or the substantial modification in the performance of the tasks of the position;

- the results of the professional training and the following adaption period.

Within 10 days following the previous communication, the employee is entitled to require diligence to gather evidence, and the employer has to inform the employee, the employee's representatives and the corresponding trade union, if the employee is a union representative, on the result of such diligence. Any of these people/structures may send the employer their opinion on the grounds of the dismissal. The employer then has 30 days to proceed with the dismissal, through a grounded, written decision stating:

- the motives or the dismissal;
- confirmation of the requirements set for the determination of the failure to adapt;
- the amount due or the compensation and for the labour credits, as well as the means, moment and place of their payment;
- the date of the termination.

The termination of the employment contract must be communicated to the employee, the employee representatives, the trade union, if the employee is a union representative, and the competent service of the Employment Ministry, with the following prior notice:

- 15-day prior notice period, for employees whose seniority is less than 1 year;
- 30-day prior notice period, for employees whose seniority is between 1 year and less than 5 years;
- 60-day prior notice period, for employees whose seniority is between 5 years and less than 10 years;
- 75-day prior notice period, for employees whose seniority is equal to or exceeds 10 years.

A disciplinary proceeding must precede dismissal by the employer on disciplinary grounds. Such dismissal is only lawful if the employee is guilty of committing a serious breach in his duties as employee (just cause).

Termination under these circumstances requires the existence of just cause, which means a guilty behaviour that due to its seriousness and consequences makes it immediately and practically impossible for the labour relationship to subsist. A disciplinary process must be set in motion, involving:

- previous inquiry into the matter when necessary;
- accusation note, which must state the facts that justify the dismissal and may or not be accompanied by the employee's preventive suspension;
- the employee has 10 working days to rebut the accusation;
- the employer must undertake an investigation and take into consideration any evidence the employee may have requested in his/her rebuttal;
- decision of dismissal or non-dismissal (e.g. application of an alternative disciplinary measure).

In addition, the employer is obliged to deliver the decision in writing, explaining the facts and grounds on which the decision is based. The decision must be communicated to the employee and to the work committee or trade union, if the employee is a union representative.

A. IS SEVERANCE PAY REQUIRED?

Employees subject to collective dismissal, dismissal resulting from job extinction or failure to adapt to the job position are entitled to compensation which calculation basis varies, depending on the seniority period under consideration and date on which the contract was initially executed, between 1 month, 20, 18 or 12 days base salary and seniority premiums per year of service (fractions of seniority are to be calculated on a proportional basis).

Both the labour credits and any compensation that may be due to the employee must be expressly recognised in the decision of dismissal. The amount, as well as the means, moment and location of payment have to be included in the communication giving prior notice.

Should the basis for the decision to dismiss an employee be non-existent or should the employer fail to comply with the procedural requirements, the termination of the labour agreement is unlawful and the employee is entitled to the payment of her salary from the date of dismissal until the final court decision. The employee is also entitled to choose one of two remedies: her reinstatement into the company or payment of a compensation for dismissal to be set by the court. The indemnity may vary between 15 and 45 days' base salary plus the seniority premiums for each year (or fraction of a

year) of seniority, with a minimum of three months' remuneration.

If the dismissed employee's role involved management responsibilities or if the company has less than 10 employees, the employer may oppose to his/her reinstatement in the job position on the grounds that this would seriously affect the employer organisation. If the court decides in favour of the employer, ruling against reintegration, the indemnity to be granted to the employee will be calculated between 30 and 60 days' base salary plus the seniority premiums for each year (or fraction of a year) of seniority, with a minimum of six months' remuneration.

4. SEPARATION AGREEMENTS

A. IS A SEPARATION AGREEMENT REQUIRED OR CONSIDERED BEST PRACTICE?

Employee and employer may freely agree to terminate an employment agreement in written form. An employee may revoke the termination agreement within seven days from the date the employee signs the termination agreement, except when the agreement was signed in the presence of a notary.

In a number of cases, even when other grounds could support dismissal, separation agreements are considered a best practice. Only in specific cases where agreements are made in the context of company restructuring or based on the same grounds that allow collective dismissal (and subject to cap limits of the number of employees involved in separation agreements within each triennial period) will the employee be entitled to unemployment allowance. This sometimes restricts the availability of employees to proceed with separation agreements.

B. WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?

In general terms, separation agreements address the agreed compensation payable to the employee as a

consequence of the termination; other monetary compensations or rights that are due, if they were, or when they are paid, and if nothing else is reciprocally due, may be claimed on the basis of the agreement, and of the employment relationship, as well as the agreed effective date for the separation.

It is also standard practice to include provisions on documents handed to the employee, e.g. 1) a work certificate; and 2) other legally required documents, such as, for instance, the social security form for unemployment allowance.

It is also fairly standard to find provisions on the return of documents, information and assets belonging to the employer by the employee and confidentiality provisions. Non-compete clauses are sometimes included, subject always to time limits and appropriate compensation.

C. DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE?

A separation agreement may be celebrated at any time, and age makes no difference. There are, however, alternatives to pure separation agreements for employees 55 years of age or older, as provided by the so called pre-retirement agreements. These allow for an agreement to reduce or suspend the provision of work, by agreement between the employer and an employee of 55 or more years of age, from the time the agreement is executed to the date on which the employee reaches retirement age (and retires, or earlier if the employment contract is meanwhile terminated).

5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

Employees may not be dismissed without a valid motive or for political or ideological reasons.

In the case of collective dismissal, extinction of labour position or failure of employee to adapt, employees are entitled to a pecuniary compensation.

Pregnant women that have given birth in the last 120 days and those breastfeeding, as well as any employee on paternity license, enjoy special protection. For this reason, dismissal of any of these categories of employee's is illegal without a prior favourable opinion from the competent authority in the area of equality of opportunities between men and women (Comissão para a Igualdade no Trabalho e no Emprego - CITE).

If the CITE's opinion is unfavourable, the employer can only proceed with dismissal of the protected employees by obtaining a court decision recognising the existence of a valid motive in a lawsuit that may be filed up to 30 days after the unfavourable opinion has been issued.

If the dismissal is considered illegal, the employer cannot oppose to the reintegration of the employee (except if either of the parties requires the payment of extra compensation instead of reintegration), but the employee may choose between the right to reintegration and the right to compensation.

6. WHISTLEBLOWER LAWS

The Portuguese data protection authority (CNPD) addressed the specific matter of "Whistleblowing Hotlines" in a guideline decision in 2009, containing the authority's official guidelines for Whistleblowing procedures, which should be taken into account when an employer wishes to set-up and manage such lines. As with other matters that concern personal data, the applicable law for this type of processing activity is now the GDPR. As such, GDPR principles and duties must be fulfilled by the employer when developing and implementing whistleblowing hotlines and similar mechanisms. Legislative measures towards transposing the EU Whistleblower Protection Directive are on their way as the deadline of December, 31 2021 moves closer.

IX. RESTRICTIVE COVENANTS

1. DEFINITION OF RESTRICTIVE COVENANTS

The Portuguese Labour Code has a subsection on clauses that limit the freedom of work. These include, among others, provisions on non-competition covenants and minimum permanence duration agreement.

Agreements to restrict the activity of employees during employment or after contract termination are allowed under certain terms and conditions.

Exclusivity clauses during employment are allowed as are non-compete agreement to produce effects after the termination of the contract.

2. TYPES OF RESTRICTIVE COVENANTS

A. NON-COMPETE CLAUSES

Non-compete agreements (after termination) are only legal if the activity of the employee is likely to cause harm to the employer and payment of a non-competition compensation amount is agreed and complied with.

As a general rule, the non-competition covenants are subject to a maximum duration period of 2 years. However, if the employee in question was allocated a role involving special trust nature that entails a special relationship with the company or a role that granted the employee access to particularly sensitive information that is relevant for competitors, the duration of the agreement may be increased to up to 3 years.

It is also possible for the employee to agree to a non-termination covenant, by which the employee undertakes not to terminate the contract, subject to a maximum period of 3 years, as a way to compensate the employer for high expenses incurred with the employee's professional training. The employee may in any case anticipate the end of this period by reimbursing the employer for the relevant expenses incurred.

B. NON-SOLICITATION COVENANTS

Although it is common to find companies including non-solicitation covenants in their outsourcing, service provision and joint venture agreements, among others, these restrictive covenants are actually not enforceable under Portuguese labour laws.

3. ENFORCEMENT OF RESTRICTIVE COVENANTS – PROCESS AND REMEDIES

To enforce restrictive covenants after termination of employment, the agreement must state either the amount of the compensation due to the employee or the criteria for its determination. This compensation can be paid in fractions during the term of the agreement or it can be paid all at once.

The parties may agree on contractual penalties that may be claimed in case of breach of agreed restrictive covenants. Damages caused by breach of such covenants may be claimed from the party at fault.

4. USE AND LIMITATIONS OF GARDEN LEAVE

When resigning or when having been served a prior notice for dismissal (e.g. collective dismissal) employers frequently choose to grant the affected employee a paid leave. Employers cannot actually instruct the employee to stay away if he/she chooses to continue performing his/her work role until the prior notice period is completed. The only possibility given to the employer is to instruct the employees to use any unused holiday period during the final part of the prior notice being served and, therefore, in practical terms, to actually leave before the end of the prior notice period. Garden leaves in the context of pending disciplinary proceedings are allowed particularly after the accusation note has been served to the employee.



X. TRANSFER OF UNDERTAKINGS

1. EMPLOYEES' RIGHTS IN CASE OF A TRANSFER OF UNDERTAKING

When proceeding to the business transfer that involves the transfer of undertaking (one or more business units or parts of business units, i.e., organised means pursuing an economic activity) transferor and transferee must consult with employee representatives and provide relevant information on the planned transfer. The employee is entitled to maintain his job position previously held with the predecessor, with all existing terms and conditions, with the successor, once the transfer of the undertaking occurs.

The employee has the right to oppose the transfer of the employer's position in his employment contract when i) the transfer may cause serious damages to the employee; or ii) if the organisation's policy does not merit the employee's trust.

If the employee wishes to oppose the transfer of the employer, he/she must do so in writing to the transferor, identifying himself, the contracted activity and the grounds for opposition – this may result in the maintenance of the employment relation with the transferor.

In the 30 days following the day the worker gained knowledge of the transfer, the employee may also terminate the employment contract by written letter to the employer. In this case, the employee will have the right to the compensation provided for a collective dismissal.

During the 2 years subsequent to the business transfer, the transferor is jointly liable with the transferee for employee credits arising from the

transferred employment agreements, which became due prior to the business transfer date.

2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

Prior to transfer, employee representatives (Works Council and trade union representatives) or, in their absence, employees directly have to be informed in writing prior to the transfer about the transfer's date, motives and legal, economic and social consequences, as well as measures envisaged in relation to the employees and the content of the contract between the predecessor and the successor.

Where there are employee representatives and special measures are put in place as result of the transfer, employee representatives have to be consulted prior to the transfer. These obligations encumber both the transferor and the transferee, in relation to their respective employees or their representatives.

XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. BRIEF DESCRIPTION OF EMPLOYEES' AND EMPLOYERS' ASSOCIATIONS

Trade unions are recognised in Portuguese Law and its respective regime, but are primarily ruled by the Portuguese Republic Constitution and by the Labour Code.

Portuguese law recognises each employee's free right to affiliation, which means he/she may become a member and leave any trade union. Portuguese trade unions cover almost all existing professional activities. In theory, therefore, all employees could be unionised, despite of unionisation rates being quite low. There are two main trade union federations in Portugal: UGT and CGTP. Although formally independent they are strongly connected or close to left wing political parties, mainly the socialist (PS) and the communist (PCP) party.

Employers are legally prevented from interfering with union activities, even with the purpose of promoting, supporting or financing trade unions. There are several collective bargaining agreements ruling all different kinds of activities.

2. RIGHTS AND IMPORTANT OF TRADE UNIONS

The employees are entitled to associate with unions for the purpose of defending and promoting their social and professional interests. Such associations cover unions, federations, leagues and confederations.

3. TYPES OF REPRESENTATION

The unions are entitled to negotiate collective labour agreements, render economic or social services to their members, participate in the preparation of labour legislation, initiate and intervene in legal and administrative proceedings concerning the interests of its members, take part in undertaking restructuring processes, establish relationship or membership in international union associations, and others.

A. NUMBER OF REPRESENTATIVES

The following maximum number of union representatives apply: 1 member in undertakings with less than 50 unionised workers, 2 members in undertakings with 50 to 99 unionised workers, 3 members in undertakings with 100 to 199 unionised workers, 6 members in undertakings with 200 to 499 unionised workers and in undertakings with 550 or more unionised workers the number of representatives is the result of the formula $6 + [(n - 500) : 200]$, where n is the number of unionised employees.

4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

The tasks and obligations on union representatives and of members of Works Councils are similar, and in many circumstances overlap. There tasks and obligations are essentially connected with i) information and consultation rights in a number of labour related subject matters (such

as redundancies or restructuring measures); ii) rights to be informed and consulted in disciplinary procedures involving union representative employees; and iii) involvement in redundancy proceedings. Union representatives, in contrast to Works Council representatives, may also be involved in the negotiation of collective bargaining agreements.

5. EMPLOYEES' REPRESENTATION IN MANAGEMENT

Employees do not have any particular right to be part of the company's social bodies.

The employees' representation in the management is assured by the obligation that the employer has to consult the workers' representative bodies in a number of matters that regard the management of the company, namely the organisation of the company's workers' structure, careers and promotions, bankruptcy procedures, dismissals and company restructuring.

Workers' councils have the right to meet, at least once a month, with the management body of the company to assess issues related to the exercise of their rights.

6. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

For purposes of collective defence and pursuit of their rights and interests, the employees can create workers' councils / committees and sub-committees and take part in European work councils. In each undertaking, employees have the right to create a workers' committee to defend their interests and exercise consultation and information rights and other legally foreseen interests.

The maximum number of employee representatives within the committees depends on the number of employees employed within the undertaking at a certain time:

- 2 members in entities with less than 50 employees;
- 3 members in undertakings with 50 or more employers and less than 200;
- 3 to 5 members in large undertakings with between 201 to 500 employees;
- 5 to 7 members in large undertakings with between 501 to 1000 employees; and
- 7 to 11 in large undertakings with more than 1000 employees.

XII. EMPLOYEE BENEFITS

1. SOCIAL SECURITY

In Portugal, the right to social protection is enshrined in the Constitution and is affected mainly by the Social Security System. Several sectorial compensation funds mostly incorporated during the second decade of the twentieth century and in a nationwide basis are at the origin of the Portuguese Social Security system. These insurance funds were included in the Social Security System in the 70s, giving rise to the unified Social Security System. However, the General Retirement Fund, established in 1929 to ensure the protection of civil servants, maintained its autonomy, allowing employees of public administration benefit from a special regime.

The employer and the employee are subject to social insurance contributions, which must be paid on a monthly basis. The global contributory rate is 34.75% of the contribution base. The employer is in charge of 23.75% and the employee of 11%. Nevertheless, the employer has to deduct the employee's contributions from its gross wage and to deliver them to Social Security. Civil servants have a specific welfare protection scheme also subject to compulsory contributions.

At the same time, the scope of social protection granted to dependent employees covers the events of sickness, parenting, unemployment, professional illnesses, invalidity, old-age and death as well as a payment of an additional 1% must be contributed for the Work Compensation Funds (Fundo de Compensação do Trabalho and Fundo de Garantia de Compensação do Trabalho). The employer may bear the costs of contributing either under a public capitalisation scheme or under a supplementary scheme for voluntary personal insurance (in the form of pension savings plans, life assurance, etc.) to any particular employee or group of employees.

Furthermore, there is a public capitalisation scheme under which one can voluntarily complement its old-age pension amount through the payment of additional contributions during working age, that

are converted into retirement certificates. The due value of contribution may be 2.4 or 6% (the latter only if the subscriber is over 50 year old) of the contribution base (as settled out in the context of compulsory contributions), according to the subscriber's choice.

The total amount of contributions and income generated by the capitalisation will be available at the date of the subscriber's retirement, who may also choose to convert it into an annuity or to transfer it to children or spouse, if they are subscribers too.

In general, the contribution base comprises all the remunerations, whether in money or in kind, paid to an employee in exchange for the work rendered, as established in the employment agreement, in the collective bargaining agreement, law or practices (i.e. base remuneration, seniority payments, holiday and Christmas allowances). At the same time, bonuses paid are also reflected in the contribution base if frequently paid every five years or less and the employee is entitled to receive them in accordance with objective and general criteria. The law expressly excludes some benefits from the contribution base, such as values assigned to complement social security benefits, family benefits or reimbursement of medical expenses.

The Social Security System covers (i) sickness, (ii) maternity, paternity and adoption, (iii) unemployment, (iv) professional diseases, (v) disability, (vi) old age and (vii) death.

24 hours before the employment agreement takes effect, the employer shall report the hiring of the employee and the main contractual terms to the Social Security Office through its official website (Segurança Social Directa). The employer must also inform on the termination or suspension of the employment agreement and respective main reasons, as well as on any change on the agreed type of contract (permanent or fixed-term, part-time, and others.)

The employee is deemed to have started rendering work on the sixth month preceding the infringement's date. This assumption is rebuttable if the employer gives evidence of the date in which the employee actually started to render work. The employee is considered to continue to render work to the employer while the Social Security Office is not informed on the termination or suspension of the employment contract, thus continuing the duty of paying compulsory social contributions.

Once the employer reports the hiring of a new employee to the Social Security Office the following main obligations arise and must be complied with on a monthly basis and regarding each employee: (i) reporting the remuneration that comprises the contribution base, the working time, and the applicable contributory rate; (ii) payment of the value due as mandatory contributions, borne out by the company (23.75%) and the employee (11%): the deadline for payment is between the 10th and 20th of the month after the one with which the contributions refer to.

2. HEALTHCARE AND INSURANCES

The employer does not have a duty to provide any specific fringe benefits to an employee, such as health insurance, life insurance, etc. In a number of cases, nevertheless, this type of benefit is established in collective bargaining agreements and will be required and apply accordingly. Some companies also provide these benefits under agreements individually agreed to with employees, or certain groups of employees, or in accordance with benefit policies issued and adopted by the company or group of companies, to which the employer belongs. If provided, those fringe benefits may, in some cases, be subject to social security contributions paid monthly by the employer and employee. All employers are required to retain insurance for the protection of employees against work related accidents.

3. REQUIRED LEAVE

A. HOLIDAYS AND ANNUAL LEAVE

Employees are entitled to 22 business days of paid

vacation per year. In the case of temporary contracts lasting up to 6 months, the employee is granted 2 working days of holiday for each completed month of service, and in the case of those lasting up to 12 months or ending in the year subsequent to the year of hiring, the employee is entitled to a holiday leave period proportionate to the duration of the contract.

B. MATERNITY AND PATERNITY LEAVE

Parental leaves granted for the birth of a child are provided under Portuguese law. These may be shared between the parents (in which case the total parental leave period may be 180 days). The mother may also enjoy up to 30 days of the parental leave before delivery.

The employed mother will, in any case, be entitled to a minimum mandatory period of leave (six weeks following the birth).

The father has a specific mandatory paternity leave of 15 days, to be used in the 30 days following birth (5 such days must be used immediately following the date of birth).

In case of adoption of a child under the age of 15, the adopting employee has the right to a license equal to the Initial Parental Leave.

The father and mother are entitled to supplementary parental leaves for child care (no more than 6 years of age).

The father and mother can enjoy any of the following types of regimes consecutively or up to 3 interpolated periods. One parent may not overlap his/her right with the other parent's right. During the enjoyment of any of the following, the employee cannot carry out employed work for other entities or activities that implies absence from his usual residence:

- extended parental leave for 3 months;
- part-time work for 12 months, with a normal working period equal to half the full time;
- interim periods of extended parental leave and part-time work (the total duration of absence must be equal to the normal working period of 3 months);

- interpolated absences from work with a duration equal to normal working periods of up to 3 months, if they are provided for in a collective labour regulation instrument.

The employee who wishes to enjoy any of the above must inform the company in writing at least 30 days in advance. After the right referred to above has been exhausted, the parents are entitled to childcare leave, on a consecutive or interpolated basis, up to a maximum of two years. In the case of a third child or more, the leave is limited to three years.

Parents are entitled to leave of up to six months, extendable to four years, to care for a child with a disability, chronic illness or cancer. If the child with a disability, chronic illness or cancer is 12 years old or older, the need for assistance needs to be confirmed by a medical certificate.

Parents of children affected by a disability or chronic illness, under one year of age, are entitled to a five-hour reduction in the normal weekly working period, or other special working conditions, to care for their child. This right shall not be exercised if one of the parents is not engaged in a professional activity, and is not prevented or totally inhibited from exercising parental responsibility.

An employee with a child under the age of 12 or, regardless of age, a child with a disability or chronic illness, provided that they are part of the same household, is entitled to work part-time or to work flexible working hours, which may be exercised by either or both parents.

C. SICKNESS AND DISABILITY LEAVE

Employees are entitled to receive a sickness allowance from the social security system when temporarily unable to work due to illness. The sickness leave suspends the employment contract as of 30 days and has no maximum period.

Employees have the obligation to communicate absences due to sickness as soon as possible and may be required to present medical documentation attesting the sickness (employer may request medical, hospital or health service declaration within 15 days from the communication of absence). The employer may also ask for documentation to

verify temporary or permanent incapacities related to the employee, who is on sick leave

The employer must continue to pay the salary during the first 3 days of absence, after which, payment of the sickness allowance falls to Social Security. Most employees are entitled to 1095 days of paid sick leave, independent workers and research fellows to 365 days of paid sick leave. The amount of the sick leave allowance depends on several factors and will range between 55% and 100% of the worker's reference remuneration.

There are two types of disability leave and benefits in Portugal: 1) Disability pension and 2) Special protection in disability. The disability pension is a benefit attributed to persons who are permanently incapacitated for work. The permanent incapacity can be partial – the beneficiary cannot obtain an amount corresponding to more than a third of his remuneration from the normal exercise of his profession, and is presumed not to be able to recover within 3 years from the corresponding sickness or accident leave, more than 50% of the remuneration – or absolute – definitively and permanently incapacitated for any occupation or work where the beneficiary does not have remaining earning capacity, nor is he/she expected to recover before reaching the legal age for retirement.

The special protection in disability is aimed at people who are incapacitated for work with a prognosis of rapid evolution, to a situation of loss of autonomy with a negative and irreversible impact on the profession they carry out, caused by specific diseases (familial paramiloidosis, Machado-Joseph disease, AIDS - virus human immunodeficiency virus (HIV), multiple sclerosis, cancer of the skin, amyotrophic lateral sclerosis, Parkinson's disease, Alzheimer's disease and rare diseases or other diseases of non-professional or third party liability, sudden onset or early onset).

D. ANY OTHER REQUIRED OR TYPICALLY PROVIDED LEAVE(S)

After the right to a supplementary parental leave has been exhausted in any of the aforementioned modalities, the parents are entitled to leave for childcare. This license can be taken consecutively or interpolated and lasts for a maximum of 2 years or 3 years, in the case of up to 2 children or more,

respectively. During the enjoyment of this license, the employee cannot carry out any work activity for other employers or activity that implies absence from his usual residence.

Parents are entitled to leave for up to 6 months (extendable up to 4 years) for assistance to a child suffering from disability or chronic illness. If the child is 12 years of age or older, the need for assistance must be confirmed by medical certificate.

Other licenses or leaves of absence are provided for in the following situations:

- exemption from work by a pregnant or breastfeeding employee, in order to protect her safety and health;
- waiver for prenatal consultation;
- exemption for evaluation for adoption;
- waiver (reduction of working hours) for breastfeeding;
- waiver from some forms of working time organisation;
- exemption from the provision of overtime;
- exemption from night work.

4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

The typically provided pension, besides those previously mentioned for illness and disability cases, is the old-age retirement pension, which is comprised of a monthly amount paid to protect the beneficiaries of the general social security scheme, in the old-age situation, replacing the remuneration of work. In 2018, the retirement age was set at 66 years and 4 months, and has increased by one month for 2019 and 2020, being 66 years and 5 months.

In 2021, it is set at 66 years and 6 months. If the person in question is younger than the aforementioned ages, they may be eligible for one of the following: i) early retirement due to long-term unemployment; ii) early retirement under the age flexibility scheme; and iii) special schemes for anticipating the age of access to the old-age pension - exercise of activity in certain professions. In general, employees must have a minimum of 15 calendar years of work with records of remunerations, or 144 months with

records of remuneration - beneficiary covered by voluntary social insurance.

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Morais Leitão, Galvão Teles, Soares da Silva (Morais Leitão) is a leading Portuguese full-service firm with offices in Lisbon, Oporto and Funchal (Madeira). To address the growing needs of its clients throughout the world, particularly in Portuguese speaking countries, Morais Leitão has established the MLGTS Legal Circle, which consists of a network of strong associations and alliances with leading offices and law firms in Angola, Mozambique and Macau (China).

Morais Leitão has a highly reputed labour and employment practice, both in a consultancy capacity and in litigation before labour courts. Morais Leitão provides daily assistance to a vast number of companies, including many multinationals, in all areas pertaining to labour relations. The labour and employment team has extensive and consolidated experience in the most important areas of labour relations and in line with recent developments, such as the protection of industrial and intellectual property, the conventions on confidentiality and non-competition, and the models of assistance provision and complementary benefits as established by the public system of social security. Morais Leitão is recommended for employment law by Chambers and Partners, The Legal 500, Who's Who Legal and Best Lawyers.

This memorandum has been provided by:

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