



EMPLOYMENT & LABOUR LAW

NINTH AMENDMENT TO THE EMPLOYMENT CODE

INCREASE IN PARENTAL RIGHTS LAW NO. 120/2015 OF 1 SEPTEMBER

Law no. 120/2015 has been published in the Portuguese official gazette Diário da República (Series I, no. 170) of 1 September. The aim of this new law, as stated in its article 1, is to increase maternity and paternity rights, which it does by making amendments to a number of rules in the Employment Code on this matter. In line with this, the new law also makes changes to the welfare system for parents.

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I. THE CHANGES

The changes introduced are essentially the following:

1. The possibility for initial parental leave to be enjoyed simultaneously in cases in which the leave is shared between the parents (under the old rules, this was enjoyed consecutively). This leave is between 120 and 150 days, taken after the mother's exclusive leave (six weeks from the birth);
2. An increase, from 10 to 15 working days, of the parental leave exclusive to working fathers, with a consequent adjustment of the welfare rules to extend the period for the corresponding parental subsidy (paid by the Social Security) from 10 to 15 working days;

3. A statement that an employee with a child under the age of 12 or, regardless of the age, with a child with a disability or chronic disease that lives in the same household as him or her, who opts, under the applicable legal provisions, for part-time work or flexitime cannot be penalised in terms of career appraisal and progression;¹
4. The duty of the employer to post a notice in the company premises with "all the information relating to parental rights (...)" or, if an internal regulation on the matter has been prepared, "to set out all this legislation [in the regulation]";

¹ Note that under the terms of article 64(1) of the Employment Code, «the adoptive parent, guardian, person awarded judicial or administrative care of the minor, as well as the spouse or unmarried partner of any of the former or of the parent, as long as they live in the same household as the minor, benefit (...)», from various rights given to the parents and under the same conditions, including the option to work part-time or flexitime.

5. An increase in the scale of seriousness, from minor administrative offence to serious administrative offence, for the failure of the employer to comply with its duty to communicate to the CITE (Commission for Inequality in Work and Employment), within five working days, the reason for any decision not to renew a fixed-term employment contract relating to an employee who is pregnant, has recently given birth, or is breastfeeding;
6. The right for any employee with a child under the age of three:
 - a) To work on a teleworking basis, when this is compatible with the duties performed and the employer has the recourses and means for the purpose;
 - b) Not to be covered by an average working hours scheme or hours bank scheme implemented by decision of at least 75% of the employees or by collective bargaining agreement that applies to 60% of the workers but does apply to the employee, except if the latter indicates his or her agreement to this in writing.

II. ENTRY INTO FORCE

The changes described above come into force on 6 September 2014, except for those relating to the increased to 15 working days of the parental leave exclusive to the working father (see no. 2 above), which comes into force with the Law that approves the 2016 State Budget (which would normally occur on 1 January of next year).

III. THE LEGAL CHANGES PREVAIL OVER THE COLLECTIVE LABOUR REGULATIONS

Finally, as they relate to “protection of parental rights”, the changes we have described to the Employment Code prevail over the rules that appear in negotiable collective labour regulations (for example, CCTs, ACTs, AEs) or non-negotiable regulations (for example, PEs) that regulate the same matters, except if the provisions of the said regulations are more favourable to the employees.

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