



## EMPLOYMENT AND LABOUR

# Changes to the Employment Code

Law 93/2019 has been published in the official gazette, Diário da República and, among other legislation in the field of employment, it amends the Employment Code itself.

Apart from some specific rules on the application of the law over time (some of which will be referred to below), Law 93/2019 will come into force on 1 October.

Among the many changes this law introduces, one highlight is the important restriction on the use of fixed-term contracts and temporary work. The new law reduces the time limits and the grounds on which these forms of hiring can be used.

It eliminates the possibility using fixed-term contracts to recruit young people looking for their first job and to recruit the long-term unemployed. Now, it will only be possible to use fixed-term contracts with the very long-term unemployed, that is, people who have been unemployed for 25 months or more who are 45 or older.

The new law also limits the possibility of using fixed-term contracts on the grounds of the beginning of operations or on the occasion of the opening of new establishment or of launching of a new activity. From now on, these grounds may only be used by companies that have fewer than 250 employees. The law makes it clear that, in these cases, the contracts can only be in effect for the period of two years following the start of the activity or of the operation of the establishment.

The restrictions on fixed-term contracts do not only affect the grounds that can be used for them. Their duration is now subject to a maximum of two years for fixed-term contracts and four years for contracts of an uncertain term. The limit of a maximum of three renewals is maintained. However, the total duration of these renewals may not exceed the duration of the initial period of the contract. Companies will have to adapt to this new scenario, which represents a departure from the old rules, which allowed the parties to stipulate freely the duration of renewals, provided they did not exceed the maximum limit.

Another highlight is the introduction of a new rule that prevents the use of collective labour agreements to exclude the Employment Code rules on hiring fixed-term workers. This is an important limitation on self-regulation in the labour market. It eliminates the possibility of more appropriate fixed-term hiring schemes being used for specific sectors of activity.

**"This law introduces important restrictions on the use of fixed-term contracts and temporary work."**

It is important to note that fixed-term contracts signed before the entry into force of the new law are excluded from these changes. This exclusion applies to both the grounds that justify their use and to the duration and renewals possible. These are only applicable to new contracts.

**"The fixed-term contracts signed before the entry into force of the new law are excluded from these changes."**

The rules on temporary work have also been changed. Previously, there were no limits on renewals of temporary employment contracts. However, the new wording of the Employment Code includes a limit of six renewals of these contracts, provided always that the ground that gave rise to the use of this type of contract remains in place. An exception to this rule is the direct or indirect replacement of absent workers, where there are no limitations on renewal.

The maximum duration of two years is maintained for most contracts. The maximum specific durations for the cases of vacant posts or exceptional increases in the activity of the company are of 6 and 12 months, respectively.

In addition to these changes, the rules on open-ended (permanent) contracts have also been changed. The trial period of 180 days previously only applied to people in positions of technical complexity, a high degree of responsibility or of trust. Now it also covers workers looking for their first job and the long-term unemployed. Now excluded from fixed-term contracts, with this measure, the legislature has chosen to favour the open-ended hiring of these workers and their insertion into the labour market. As a safeguard for the employer, the law establishes a six-month trial period after which, if there is no interest in maintaining the employment relationship, the contract can come to an end without invoking just cause and, depending on the case, without notice.

Two changes have been made to the banco de horas (time bank) scheme. First, it is no longer possible to adopt new individual time bank schemes. Second, individual time banks schemes that were introduced before the entry into force of the new law (1 October 2019) must come to an end by 30 September 2020.

Furthermore, besides eliminating the individual time bank, a new form of group time bank is introduced. It is now going to be possible to apply this scheme without being required to first provide for it in a collective bargaining agreement. By adopting a specific procedure that includes a secret ballot (with at least 65% of votes in favour) by the workers in the team, section or economic unit affected, it is possible to apply the time bank system to all employees for a maximum period of four years, after which it the procedure must be repeated.

Finally, this same legislation introduces an amendment to the Social Security Contributions Code that creates an additional contribution for companies with excessive employee turnover. The rate of this contribution is progressive and can rise to 2% of the total value of the base fixed-term contract salaries in force in the company during the calendar year of the calculation. The implementation of this measure depends on the publication of a Government order in the first quarter of each calendar year, with the definition of an index for each sector. However, it is not clear how this index will be calculated.