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Portugal


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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

Employment law in Portugal is governed by several sources, listed below in descending order:

- international sources, notably European law;
- local law;
- collective agreements;
- individual agreements (e.g., contracts of employment); and
- established practices that are not contrary to the principle of good faith.

If there is a conflict, the applicable provisions of higher sources from which there can be no derogation will always prevail over lower sources. For example, local law over collective agreements or collective agreements over employment contracts.

A collective agreement or an employment contract may prevail over non-mandatory employment law provisions if it has more favourable terms and conditions for the worker. In both these cases, the lower sources (collective agreement and employment contract) would prevail over the non-mandatory employment law provisions.

Similarly, an employment contract may only prevail over the provisions of a collective agreement where it sets out conditions which are more favourable to the worker. However, if such provisions are mandatory, an employment contract may not prevail, even if it sets out more favourable conditions. The parties to a collective agreement may agree that a particular provision is one from which there can be no derogation.

The most important statutes are:

- Law 7/2009, of 12 February (Employment Code); and
- Law 105/2009, of 14 September (regulating the Employment Code).

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Employment law does not include any classification of workers, although specific provisions or protection are applicable to:

- workers employed on fixed-term contracts;
- part-time workers;
- juvenile workers; and
- working students.

Categories of worker based on the different duties and responsibilities are usually set by collective agreements.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

An employment contract is a contract whereby a person undertakes, in return for payment, to work for another person or other persons under its/their authority and direction.

Offer and acceptance are traditional elements of contract formation and are rarely an issue. Acceptance of an offer may be implied (notably by performance) or express.

Employment contracts are not subject to any special form unless otherwise provided for by law. However, the following contracts, among others, must be made in writing:

- promissory employment contracts;
- fixed-term employment contracts;
- employment contracts for foreign workers save as otherwise provided by law;
- secondment agreements;
- multiple employer employment contracts;
- part-time employment contracts;
- early retirement contracts; and
- loaning of labour contracts.

Terms and conditions of employment need not be expressly agreed and are governed by statutory provisions, collective agreements, work regulations or established practices.

1.4 Are any terms implied into contracts of employment?

Terms and conditions of employment need not be expressly agreed and are governed by statutory provisions, collective agreements, work regulations or established practices.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

There is a minimum national salary (EUR 705 for 2022) set by law, limitations on daily and weekly working time, place of work and remote working, and parental leave, among others.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Collective bargaining instruments benefit from very extensive freedom to set the terms and conditions of employment.

They can, and generally do, provide chiefly on working time, job categories, salaries, training, and worker's representative rights. Most collective bargaining agreements are at industry level; however, there is a possibly of collective bargaining agreements at company level.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Trade union organisations acquire legal existence upon registry with the services of the Employment and Social Security Ministry.

2.2 What rights do trade unions have?

Trade union organisations are entitled to:

- negotiate and settle collective labour agreements;
- provide financial and social services to their members;
- participate in the drafting of employment laws;
- represent their affiliated workers at company level and appoint union representatives;
- participate in dismissal proceedings that concern their affiliated workers; and
- receive information and be consulted about:
  - recent and probable future evolution of the company's activity;
  - probable evolution of employment;
  - any decision that may entail a material change in the work organisation of employment contracts; and
  - participating in company restructuring processes, particularly where training measures or changes in working conditions are planned.

2.3 Are there any rules governing a trade union's right to take industrial action?

No, there are not.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

Employers are not required to set up works councils in any situation.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

Works councils are entitled, among others, to the following:

- receive all the information required for the collective protection and enforcement of the rights of the employees;
- management control in the undertaking;
- participate in any restructuring process, in particular, where training measures or changes to the work conditions are planned;
- participate in the drafting of employment laws;
- meet regularly (at least once a month) with the management bodies to discuss any employment-related matters;
- use the company's facilities as appropriate, in addition to the material and technical means required for them to pursue their activities; and
- distribute information regarding the employees' concerns and post that information in the appropriate places.

Works councils are also entitled to issue written, non-binding opinions on the following matters within 15 days of the date of the employer's formal written request:

- regulation concerning the use of electronic equipment for surveillance in the workplace;
- preparation of company's internal regulations;
- amendment of criteria for professional classification and promotions;
- outlining the working time schedules applicable to all or some employees;
- outlining of the employees' holiday chart;
- relocation of the undertaking or establishment;
- any measures that may involve a significant decrease in the number of the company's employees or may adversely affect employees' terms and conditions of employment and that could lead to substantial modifications in the work organisation plan or in the employment contracts;
- closing of establishments or production lines; and
- the company's dissolution and/or an insolvency petition.

2.6 How do the rights of trade unions and works councils interact?

They are independent workers' representative bodies, which generally do not interact. In practical terms, however, there tends to be a significant proximity between unions and works councils.

2.7 Are employees entitled to representation at board level?

No, they are not.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Portuguese employment law has long safeguarded employees' rights to equality and non-discrimination.

All employees are entitled to equal opportunities and treatment in applying to work, vocational training, promotions and working conditions.

The employer cannot discriminate, directly or indirectly, and no employee or job candidate may be privileged, benefited, wronged, deprived of any right or exempted from any duty based on ancestry, age, sex, sexual orientation, marital status, family situation, genetic heritage, decreased work capacity, handicap, chronic disease, nationality, ethnic origin, religion, political or ideological convictions, or union affiliation.

In particular, harassment of a job candidate or employee is considered to be discrimination and is understood as any undesirable behaviour, relating to any of the factors listed above, which occurs while applying for work or in the workplace, during work or vocational training, with the intent or result of affecting the person's dignity or creating an environment that is intimidating, hostile, degrading, humiliating or destabilising. In particular, any undesirable behaviour of a sexual nature, whether verbal, non-verbal or physical, with the purpose or effects referred to above is considered harassment.

3.2 What types of discrimination are unlawful and in what circumstances?

These include any direct or indirect discrimination that privileges, benefits, wrongs, deprives of any right or exemption from any duty based on ancestry, age, sex, sexual orientation, marital status, family situation, genetic heritage, decreased work capacity, handicap, chronic disease, nationality, ethnic origin, religion, political or ideological convictions, or union affiliation.

3.3 Are there any special rules relating to sexual harassment (such as mandatory training requirements)?

Employers with seven or more employees are required to approve an anti-harassment policy. In addition, whenever the employer becomes aware of the existence of situations of harassment at work, it must start the appropriate disciplinary proceeding to investigate, sanction and stop the harassment.

3.4 Are there any defences to a discrimination claim?

Employers should approve clear internal policies on salaries, performance assessment, career progression, access to benefits and effectively follow those policies. There is no discrimination if the employer is able to demonstrate that the different treatment between two employees is based on objective factors such as performance, qualifications, seniority, and attendance at work, among others.

3.5 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Employees may seek to enforce discrimination rights by lodging judicial claims. They must indicate the employee compared with whom they consider themselves to be discriminated against; however, the employer must prove that the different treatment between both employees is based on non-discriminatory reasons. Employers and employees can settle claims before or after they are made.

3.6 What remedies are available to employees in successful discrimination claims?

Employees may be entitled to compensation and, to the extent possible, can be placed in an equal position with their colleagues compared with whom they consider themselves to be discriminated against.

3.7 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

No, they do not.

3.8 Are there any specific rules or requirements in relation to whistleblowing/employees who raise concerns about corporate malpractice?

Portugal just recently approved, but is yet to publish, the general Portuguese framework concerning the implementation of Directive EU 2019/1937 of the European Parliament and Council of 23 October 2019. This Directive establishes general rules not only regarding the setting up of reporting channels, but also on whistleblowing protection. Before this new legislation, there was no specific law on whistleblowing matters. However, we underline the law regarding the prevention of money laundering and financing of terrorism (approved by Law 83/2017 of 18 August and further amendments) that establish rules to protect anyone who reports these matters.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Upon the birth of their child, both parents are entitled to initial parental leave of 120 or of 150 consecutive days, which can be shared by them. The mother has the additional entitlements referred to in section 2.

This leave can be enjoyed simultaneously by both parents between the 120th and 150th days.

It may be increased by 30 days if each of the parents enjoy, exclusively, a period of 30 consecutive days, or two periods of 15 consecutive days, following the mandatory period of six weeks following the childbirth to be enjoyed exclusively by the mother.

In case of multiple births (e.g., twins), the duration of the initial parental leave is increased by 30 days for each child beyond the first one.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

Women on maternity leave will be paid 100% of their normal salary by Social Security. This period of leave cannot prejudice the position of the woman concerning any of the remaining entitlements, notably those dependent on attendance to work.

4.3 What rights does a woman have upon her return to work from maternity leave?

Upon return to work, the woman is entitled to receive vocational training to be updated on the changes to her role and possible reskilling, and to be excused from working under an average hours scheme or from working overtime. The woman worker is also entitled to have flexible working hours or to work part-time and to take a two-hour/day breast-/bottle-feeding leave.

4.4 Do fathers have the right to take paternity leave?

Yes. Parents are entitled to 20 working days, consecutive or non-consecutive, to be taken within six weeks following birth (five of which must be taken immediately after the birth). This may be extended for five more working days provided it is taken at the same time as the mother's initial parental leave.

Fathers may also share parental leave with the mother as indicated in question 4.1 above.

4.5 Are there any other parental leave rights that employers have to observe?

Yes. Parents are entitled to extended parental leave, up to three months, to be taken after the initial parental leave. Following this extended leave, parents are also entitled to leave within the first two years of the child's life to provide assistance to the child

(in case of triplets or more, the leave may go up to three years). Parents may share this leave successively. There is no mandatory payment of the employer during these leave periods.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Yes. Employees with children under 12 years of age or irrespective of age with a disability or chronic illness who live with the employee and are under their care are entitled to work part-time or to work under a flexible working hours scheme.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

A share sale does not typically entail the transfer of employees to the entity acquiring the share capital, as the employer remains unchanged. In asset deals, employees automatically transfer to the acquiring entity.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

Employees impacted by a business sale retain their tenure, role and any other terms and conditions that constitute acquired rights. Employees remain covered by the collective bargaining agreement that was applicable prior to the business sale, until it expires, in not more than 12 months, except if the new employer enters into a new collective bargaining agreement after the business sale is fully effective.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

At least 30 to 45 days prior to the effective transfer date, both the transferor and the acquirer must communicate in writing to the workers representatives (i.e., works council, union or inter-union committees) or, if none exist, to the employees covered by the transfer themselves, about: (i) the date of and reasons for the transfer; (ii) the legal, economic and social consequences; (iii) the measures planned for those employees as a consequence of the transfer (if no measures are planned that must be expressly indicated); and (iv) the content of the contract between the transferor and the acquirer that concerns the employment and labour aspects of the deal.

On the same date, the transferor must communicate, in writing, to the Authority for Working Conditions (i) the content of the contract between the transferor and the acquirer that concerns the employment and labour aspects of the deal, and (ii) all the elements that are part of the economic unit that is being transferred.

If there are no workers representatives, employees which are covered by the transfer may within five business days appoint an *ad hoc* representative committee.

Within 10 business days of the initial notice, a consultation stage should take place by conducting meetings with workers representatives or with the *ad hoc* committee.

Following the conclusion of the consultation stage, the transferor should inform employees in writing to confirm the transfer and the content of the agreement (if any) with workers representatives or with the *ad hoc* committee.

5.4 Can employees be dismissed in connection with a business sale?

The legal grounds for redundancy dismissals are as follows:

- definitive closure of the company;
- closure of one or more sections; or
- a reduction in staff for structural, technological or market reasons.

In many cases, a business sale triggers the existence of redundancy for structural, technological or market reasons. However, by itself, the business sale is not an acceptable cause for termination.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

No. Employers are not entitled to change terms and conditions of employment in connection with a business sale, except as regards those terms and conditions that could be unilaterally changed by the previous employer prior to the business sale.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

The employer may be entitled to terminate the employment contract by dismissal:

- with just cause;
- on grounds of redundancy; or
- on grounds of failure to adapt.

Only employees who are dismissed on grounds of redundancy or on grounds of failure to adapt must be given notice of termination as follows:

- employees with under one year of service: 15 days;
- employees with between one year and under five years of service: 30 days;
- employees with between five years and under 10 years of service: 60 days; or
- employees with 10 or more years of service: 75 days.

In addition, during the trial period, either employer or employee may terminate the contract without prior notice (save if the trial period has lasted more than 60 days, in which case the employer must give prior notice of seven days) or just cause. There is no right to any compensation unless otherwise agreed in writing.

Term contracts lapse at the end of their term provided the employer or the employee notifies the other in writing of the intention to terminate the contract, 15 or 8 days, respectively, prior to the end of the term.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Yes, they can.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

The employee may apply to the Employment Court for a declaration of unlawfulness of the dismissal.

The court should declare the unlawfulness of the dismissal in the following situations:

- failure to follow a disciplinary procedure prior to the dismissal;
- the dismissal was motivated by political, ideological, ethical or religious grounds;
- absence of just cause for dismissal; or
- invalidity of the disciplinary procedure due to non-compliance with the legal requirements.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

The dismissal of pregnant workers and workers who have recently given birth or are breastfeeding always requires the prior opinion of the equal opportunities authority. If this opinion is not in favour of the dismissal, the employer is only permitted to continue with the dismissal following a court finding of just cause.

In addition, the dismissal of an employee that is a workers' representative is presumed to be made without just cause.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so, how is compensation calculated?

The employer may be entitled to terminate the employment contract by dismissal:

- with just cause;
- on grounds of redundancy; or
- on grounds of failure to adapt.

Only employees dismissed on grounds of redundancy or of failure to adapt are entitled to compensation which corresponds to 12 days' base salary per year of service, capped to a maximum amount equivalent to 12 salaries.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

Yes. All the procedures are specifically provided for in detail in Portuguese law and must be followed. Failure to do so may invalidate the dismissal. The dismissal procedure varies depending on the type of dismissal to be executed.

If the employer wishes to dismiss an employee with just cause, it must begin a disciplinary procedure against the employee.

The procedure starts with the employer addressing a written statement of misconduct to the employee, containing a full description of the relevant facts, particularly those that may be considered just cause for dismissal.

Within 10 working days of receipt of this document, the employee may present a written defence and request that the relevant evidence, such as witness statements, be examined.

The employer must accede to the requests made in the written defence, or risk the disciplinary procedure being held as invalid.

After the conclusion of these proceedings, the employer must make a final decision within 30 days.

If the employer decides to dismiss, it pays no compensation to the employee for the termination of the employment contract, except the legal amounts due for the termination and in respect of the *pro rata* holiday pay and Christmas bonus due.

If the dismissal is made on grounds of redundancy, the employer must notify its intention, in writing, to the works' council, if there is one, or otherwise to the inter-union committee or union committees. The notice must contain:

- the reasons given for the collective dismissal;
- a workforce table, broken down into the enterprise's organisational structures;
- indication of the criteria serving as a basis for the selection of the workers to be dismissed;
- the number of workers to be dismissed and occupational categories covered by the dismissal;
- the period of time over which the dismissal is to be made; and
- the method to calculate any redundancy payments to be awarded to the redundant workers, over and above that provided for by law or by collective agreement.

At the same time the employer notifies the workers, it must also send a copy of the letter and the enclosures to the appropriate department of the ministry responsible for labour that deals with collective employment relationships.

Where there are no workers' representative bodies, the letter must be sent to each of the employees who may be affected by the collective redundancies. Within five business days of the date of receipt of the initial notice, the employees may appoint, from among themselves, a workers' representative committee of no more than three or five members, depending on whether the dismissal will cover up to or more than five workers.

In the 15 days following the date of receipt of the initial notice, the employee and/or the workers representatives may issue a non-binding opinion about the dismissal and propose alternative measures.

Twenty days after the initial notice has been received, if employment contracts are to be terminated, the company must inform each of the workers who are affected, in writing, of the decision to proceed with the redundancies, expressly stating the grounds for termination and the date of termination of the employment contract.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

When a dismissal is declared unlawful, employees are entitled to compensation for financial and personal damage arising from the unlawful dismissal, reinstatement without prejudice to their category and length of service, and to the earnings they did not receive from the time they were dismissed until the time the court decision becomes final. Any sums they may have received as a result of the termination of their employment contract which they would not have received were it not for their dismissal (e.g., unemployment subsidy) will be deducted from this compensation.

In lieu of reinstatement, employees may choose to receive a compensatory award, the amount of which is established by the courts and is equivalent to between 15 and 45 days of basic pay and length of service payments for each full year or fraction of a year's service.

If companies have a maximum of 10 workers, or if the workers are directors or managers, the employer is entitled to oppose reinstatement provided it can justify that the return of these workers would seriously interfere with and prejudice the normal running of the company. The court must assess the grounds alleged by the employer.

6.8 Can employers settle claims before or after they are initiated?

Yes, they can.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

No, they do not.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

The enforcement of employees' rights in relation to dismissals, irrespective of the number of employees impacted, by bringing a legal action to challenge the dismissal.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Portuguese employment law allows restrictive covenants, notably confidentiality, non-competition (and in that context, non-solicitation) and/or minimum stay obligations.

7.2 When are restrictive covenants enforceable and for what period?

The duration of the post-employment non-compete duty cannot exceed two years from the termination of employment.

In cases of employees who hold positions that entail a special level of trust (e.g. management positions) or that have access to sensitive information from a competition standpoint, the restricted period can be extended to a maximum of three years. The minimum stay duty can be set at a maximum of three years.

7.3 Do employees have to be provided with financial compensation in return for covenants?

Employees covered by a post-contractual non-compete duty must receive financial compensation during the restricted period.

Portuguese law does not set a specific criterion to determine the compensation to be paid during the non-compete period. Constitutional Court case law follows the understanding that the compensation must be fair, adequate and proportional. This means that the non-compete duty financial compensation must be sufficient to support the employee during the restricted period, taking into account their salary while employed by the company.

Although the law leaves the parties some room to establish the time of payment, the purpose of the compensation is to ensure the employee can obtain a suitable income source during the restricted period. It is therefore recommendable that the payment of the compensation is made on a monthly basis during the restricted period.

If any agreement fails to provide for compensation, or if the compensation is considered insufficient, the agreement will be null and void, and thus release the employee from complying with it and the employer from paying the compensation.

The amount of compensation may be reduced in cases where the employer has expended large sums on the employee's vocational training.

7.4 How are restrictive covenants enforced?

The remedies for a non-compete breach are limited to the possibility of seeking compensation from the former employee. The burden allegation, quantification and proof of the damage falls solely on the former employer. In many cases, it is quite hard to quantify the damage as the value of information is immaterial. In addition, it is quite difficult to prove damage which arises as a result of the employee's behaviour.

In order to mitigate this risk, it is usual for the parties to agree on a penalty award.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

In Portugal, personal data processing is governed by the GDPR and Law 58/2019 of 8 August, which incorporates the GDPR into Portuguese law.

When it comes to employees' personal data, special category data may be collected, processed, and used by employers when necessary to meet obligations and exercise rights under employment, social security and social protection law or a collective bargaining agreement.

The Portuguese data protection law establishes that the consent given by the employees does not constitute a legitimate legal basis to process their personal data if the processing results in a legal or economic advantage for the employees, except as otherwise specified by law. However, the Portuguese supervisory authority (*Comissão Nacional de Proteção de Dados – CNPD*) holds that this provision is not compliant with EU law.

Transfers of personal data to third countries in and outside the EU (including Norway, Liechtenstein and Iceland) are only permitted if the conditions set under the GDPR are met. Furthermore, Transfers to third countries (outside Europe) are also permitted if appropriate safeguards (e.g., binding corporate rules, standard contractual clauses) are provided by the controller or processor of personal data and only if enforceable rights and effective legal remedies are available for the data subject. In any case, the transfer of personal data must observe the main data quality principles established under the GDPR: lawfulness; fairness and transparency principle; purpose limitation principle; data minimisation principle; accuracy principle; storage limitation principle; and the integrity and confidentiality principle.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Yes, the employee has the right to access his/her personal data, and to rectification or erasure. If applicable, he/she may even request the limitation of treatment and exercise his/her right of opposition and portability of the data. All of these rights should be exercised according to the rules established under the GDPR and the local data protection framework.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

The employer may not demand from candidates or employees information regarding their private life or health, except when the related information is strictly necessary and relevant to assess their suitability to do their work and they are provided with written justification to that effect. The collection, processing and use of this information must be carried out in accordance with the GDPR and local law.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

Employees have the right to confidentiality regarding the content of personal messages and access to information of a non-professional nature that they send, receive or consult, notably via email. However, the employer may establish and inform their employees of the rules and restrictions on the use of company communication media (e.g., email, phone calls, web browsing). This may involve the use of non-intrusive controls and they must have the least possible impact on the fundamental rights of employees. They must also have a legitimate and objective purpose, and respect the principles of necessity, proportionality, and good faith. As a rule, this control and monitoring cannot be used to assess the performance of employees at work. The guidelines established for these matters are contained in Resolution 1638/2013 of 16 July 2013 from the Portuguese supervisory authority (*Comissão Nacional de Proteção de Dados – CNPD*), which are still very relevant today.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

Considering the answer given in question 8.4 above, the employer can establish and inform its employees on the rules or limitations regarding the use of social media when using company equipment or network. However, it cannot access an employee's profile, notably to access private social networks which are not publicly available to any common user. However, under certain circumstances, posts on public social media or networks (which can be accessed and read by any common user) can be used for disciplinary action purposes whenever a breach of the employee's duties is committed.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

Employment courts have exclusive jurisdiction to hear and decide any employment-related claims or complaints. Employment courts are composed of multiple sections, each led by one judge.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

Employees may lodge any claim by starting a judicial action. The first hearing to be held is, except for a few special proceedings, a conciliation hearing mediated by the judge. Employees are required to pay court fees as applicable under law in consideration of the amount of the claim, except if they benefit from legal aid from the social security services.

9.3 How long do employment-related complaints typically take to be decided?

The duration of judicial cases depends on the area of the court where it is lodged (highly populated areas have more means, but far more cases) and on the question that is submitted to court. Cases with multiple claimants/defendants and cases about dismissals may take significantly more time. The time can range between two years and five years (appeals included).

9.4 Is it possible to appeal against a first instance decision and if so, how long do such appeals usually take?

Yes, subject to certain requirements (e.g., the amount of the claim). Appeals can take between one and two years to be decided.

10 Returning to the Workplace after COVID-19

10.1 Can employers require employees to be vaccinated against COVID-19 in order to access the workplace?

Any information concerning health status may only be requested if strictly necessary to assess whether the employee is able to perform the tasks associated with their role, and provided the request is made in writing, with an indication of the reasons for it. If requested, the information may only be provided to occupational health staff, who then assess whether the employee is fit to work.

10.2 Can employers require employees to carry out COVID-19 testing or impose other requirements in order to access the workplace?

They may require tests; however, the information may only be provided to occupational health staff, who then assess whether the employee is fit to work.

10.3 Do employers need to change the terms and conditions of employment to adopt a "hybrid working" model where employees split their working time between home and the workplace?

Yes. Any kind of remote work must be specifically agreed with by employees, who are entitled to all materials and equipment necessary to do their work and to be reimbursed for any increase in expenses relating to the use of that equipment in their home (e.g., electricity and internet costs).

10.4 Do employees have a right to work from home if this is possible even once workplaces re-open?

Employees that are victims of domestic violence and have filed criminal charges against the offender, and employees with children aged up to three years are entitled to work from home,

provided this is compatible with their work and the employer has the necessary resources and means.

Workers with children up to eight years of age are also entitled to work remotely in the following situations:

a) when both parents meet the conditions to work remotely, provided the right is exercised by both in successive periods of equal duration within a maximum reference period of 12 months; or

b) single-parent families or situations where only one of the parents is able to prove that he/she meets the conditions to work remotely.

A worker is also entitled to work from home for a maximum period of four consecutive or non-consecutive years, if he/she has been recognised as a non-main informal caregiver, by means of proof of this status, under the terms of the applicable legislation, when it is compatible with the work and the employer has the necessary resources and means.

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