# Employment and Employee Benefits in Portugal: Overview

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## SCOPE OF EMPLOYMENT REGULATION

**1. Do the main laws that regulate the employment relationship apply to:**

- **Foreign nationals working in your jurisdiction?**
- **Nationals of your jurisdiction working abroad?**

### Laws Applicable to Foreign Nationals

The mandatory provisions of Portuguese employment legislation apply to all workers regardless of their nationality.

Foreign national workers who are not from the European Union (EU) but who have Portuguese residence/work permits have the same employment rights and duties as any other EU citizen. However, a written employment contract is required for these types of foreign national workers and a copy of the residence/work permit must be attached to the written employment contract. The beneficiaries of any compensation due in the event of the employee's death resulting from a work accident or occupational disease must also be identified in the employment contract. In addition, the employer must communicate the fact that it is employing a non-EU worker, in advance of the employment, to the Portuguese labour authorities (though there is no minimum timeframe within which this must be done before employment). The employer must also communicate the termination of this type of employment contract to the Portuguese labour authorities within 15 days of the date of termination.

For both EU nationals and non-EU nationals, under EU law, the employer and the employee are free to choose the law applicable to the employment contract. However, this choice of law cannot have the result of depriving employees of the protection afforded to them by the mandatory provisions of Portuguese employment law, irrespective of any choice of law in the employment contract. Where an employee of any nationality habitually works in Portugal, that employee will still have the protections afforded by the mandatory provisions of Portuguese employment law (irrespective of any choice of law in the employment contract), as these mandatory provisions cannot be derogated from by any agreement under Portuguese law. Both the mandatory provisions of Portuguese employment law and any applicable collective bargaining agreements (CBAs) will apply automatically and can only be derogated from where the derogating provisions provide more favourable treatment for the employee. In any event, certain mandatory provisions (mainly concerning dismissal requirements and allowable causes for termination of employment) can never be derogated from and will always apply.

As a general rule, in the absence of the parties' choice of law in the employment contract, if the employee legally and habitually works in Portugal, the employment contract will be governed by Portuguese employment law.

### Laws Applicable to Nationals Working Abroad

If an employee (whether that employee is Portuguese or a foreign national worker) habitually works in Portugal, but is sent temporarily to another country, the Portuguese Posting of Employees (Secondment) Rules (which bought the Posted Workers Amendment Directive (*(EU) 2018/957*) into force in Portugal) will apply.

Any employee posted from Portugal to temporarily work in another country will be entitled to the same working conditions provided by Portuguese law and will be covered by any CBAs with overall effectiveness, whenever these provisions are more favourable to the employee than those generally applicable in the country of work, on all the following provisions:

- Protection against dismissal.
- Maximum working hours.
- Minimum rest periods.
- Holiday entitlements.
- Minimum remuneration and the payment of overtime.
- Transfer of employees by temporary employment agencies.
- Provision of occasional employees.
- Health and safety at work.
- Protections granted specifically to parents of minor children.
- Equal treatment and non-discrimination.

## EMPLOYMENT STATUS

**2. Does the law distinguish between different categories of worker? If so, what are the requirements to fall into each category, the material differences in entitlement to statutory employment rights and are there any maximum time periods for which each category of worker can be engaged?**

### Categories of Worker

**Employee/Worker or Independent Contractor/Self-Employed?**
An employment contract is a contract under which a person (employee) agrees, upon payment, to work for an employer within the employer's organisation and under their authority.

Portuguese employment laws do not apply to independent contractors or self-employed persons. However, a person formally contracted as an independent contractor or a self-employed person may still, in fact, be considered as an employee. For this purpose, the Employment Code establishes a set of requirements which are used to determine whether a certain relationship is an employment relationship:

- The work is done in a place belonging to, or determined by, the beneficiary of the work being done.
- The equipment and tools of work that are used in performing the work belong to the beneficiary of the work being done.

- The person performing the work (employee) observes the start and end times of the work, which are determined by the beneficiary of the work being done.
- A specified amount of money is paid to the person performing the work (employee), at regular intervals, in exchange for the work.
- The person performing the work (employee) performs management or directorial functions within the organisational structure of the employing company.

If at least two of any of the above requirements are met, it will be assumed that there is an employment relationship (rather than an independent contractor or self-employed person contractual relationship).

Where an employer misclassifies an employee as an independent contractor/service provider, the employer must pay the employee for all of the employment rights that vested during the period of the employment contract (for example, Christmas and holiday allowance, holiday payments, compensation for any overtime worked and so on). In addition, any social security payments that should have been made during the period of the employment contract must also be paid. The misclassification of an employee as an independent contractor/service can also constitute a very serious administrative offence, for which the employer may be subject to fines.

### Entitlement to Statutory Employment Rights

Statutory employment rights are automatically granted to all employees (irrespective of whether the employee is full-time, part-time and so on). Neither independent contractors nor self-employed persons are entitled to benefit from statutory employment rights.

### Time Periods

Employment contracts can be for an indefinite term, for a fixed term, for a specific event (uncertain term), or can be temporary employment contracts (agency employment contracts). However, the following types of employment contracts can only be concluded for the following specific situations expressly provided for by the law, and for the following maximum time periods:

- Fixed-term employment contracts: these types of employment contracts are only permitted if they are either:
  - necessary to address a temporary need of the employing company; or
  - necessary for reasons that relate to state employment policies (such as to hire long-term unemployed individuals, or to promote the start-up or establishment of a company that has fewer than 250 employees).
- The duration of this type of employment contract is limited, and the minimum duration of this type of employment contract is generally six months (though there are a few exceptions to this rule). The maximum duration of this type of employment contract (including the possibility to renew for a maximum of three renewals) is two years. However, the total duration of any renewal cannot exceed the initial contract's duration (that is, if the initial contract was for six months, any subsequent renewal period must not exceed six months).
- Uncertain term employment contracts: an uncertain term employment contract remains in force until the occurrence of the event for which it was concluded. However, the duration of this type of contract cannot, in any event, exceed four years.
- Contract for the placement of temporary employees: a temporary employment contract is an employment contract (for a fixed or uncertain term) which is concluded between a temporary employment agency and an employee, under which the employee agrees to work, for payment, for a third party while remaining contractually bound to the temporary employment agency (this is also known as an agency employment contract in other jurisdictions).
- Under Portuguese law, it is also possible to have a contract for the use of temporary employment, which is concluded between a company (which requires the services of temporary employees) and a temporary employment agency. These types of employment contract can be for a fixed or uncertain term, under which the temporary employment agency agrees to supply temporary employees to the company. There are strict rules concerning the duration of a contract for the use of temporary employment (including any renewals), but generally, this type of employment contract cannot exceed the duration of the justifying reason/cause for using this type of employment contract, and even then, it is subject to a two-year, six-month or 12-month limitation (depending on the reason for using this type of contract). The limitations applicable to the duration of this type of contract between a temporary employment agency and a temporary employee are the same as those applicable to a contract concluded between a temporary employment agency and the user company to whom the temporary employee is posted.

## BACKGROUND CHECKS

### 3. Are there any restrictions or prohibitions on carrying out background checks in relation to applicants?

### Restrictions/Prohibitions on Conducting Background Checks

An employer cannot require a job candidate to provide information relating to that candidate's private life (such as information that concerns drug tests, financial and credit checks, or criminal checks) unless that information is strictly necessary and relevant to assessing their suitability to perform the relevant employment contract. Furthermore, where such a request for this type of information is made, the grounds for making that request must be provided to the candidate in writing.

The employer must provide for a general health assessment to be conducted in order to evaluate every candidate's general physical and psychological health to perform the role for which they have applied. In this context, these health assessments may be required for the candidate's own protection and/or safety. Additional information relating to the candidate's health or pregnancy may be requested only where there are particular requirements inherent to the nature of the work to justify such a request, and the reasons for any such request must be provided to the candidate in writing. In this case, the information must be provided by the candidate to a doctor, who can then only inform to the employer whether the candidate is fit for the job in question.

The employer can ask candidates for information on their academic qualifications and professional experience, and for candidates to provide evidence of these things. Portuguese legislation does not have specific rules on the provision of information between employers regarding the professional experience of job candidates. Therefore, the rules of the General Data Protection Regulation (*(EU) 2016/679*) apply in this respect and the communication of this information between employers requires the consent of the job candidate.

### Background Checks by Third Parties

Background checks can be carried out by specialised third parties on an employer's behalf provided that the candidate specifically consents to this.

## REGULATION OF THE EMPLOYMENT RELATIONSHIP

### 4. How is the employment relationship governed and regulated?

#### Written Employment Contract

Only certain categories of employment contract must be made in writing (*see below*), and generally there is no mandatory requirement for employment contracts to be set out in writing (though employers must provide employees with information concerning, among other things, the professional category into which their work falls, their working hours and their place of work).

An employment contract must be made in writing if it falls into any of the following categories of contract:

- Employment contract made with a non-EU citizen.
- Fixed-term or part-time employment contract.
- Temporary work contract or intermittent employment contract.
- Teleworking employment contract.
- Employment contract with multiple employers.
- Employment contract that contains non-competition clauses.

There is no legal obligation for employment contracts to be concluded in Portuguese provided that the employee understands the language that is used. However, where the employment contract must be filed with any Portuguese authority, contracts not concluded in Portuguese must be translated into Portuguese before filing.

#### Implied Terms

An employment contract can only derogate from the mandatory provisions of Portuguese employment law to the extent that it establishes more favourable treatment for the employee than what is provided for in the law. As a result, the employment relationship in Portugal is essentially governed by the legal provisions of the Employment Code, together with other employment rules, and most employment contract clauses that are frequently used merely repeat the legal provisions or make them clearer.

The Employment Code also implies the following duties on the employee and the employer:

- For the employee:
  - to respect and to treat the employer, hierarchical superiors, fellow employees and other people who relate to the company, with civility and probity;
  - to show up at work with assiduity and punctuality;
  - to carry out the work with care and diligence;
  - to participate diligently in vocational training actions provided by the employer;
  - to comply with the employer's orders and instructions (which are not contrary to the employee's rights) concerning the work or disciplinary matters, as well as health and safety at work;
  - to be loyal to the employer, by not dealing on their own account or on behalf of others in competition with the employer, or divulging information concerning the employer's organisation, production methods or business.
- For the employer:
  - to respect and treat the employee with civility and probity, including not acting in any way that may affect the employee's dignity, or that is discriminatory, harmful, intimidating, hostile or humiliating for the employee;
  - to pay the employee's remuneration punctually (which must be fair and appropriate to the work);
  - to provide good working conditions;
  - to contribute towards increasing the employee's productivity and employability, by providing appropriate vocational training to develop their qualifications;
  - to prevent occupational risks and illnesses, and to compensate the employee for any damages suffered that result from occupational accidents;
  - to adopt, as regards safety and health at work, the measures arising from the law or from any applicable collective bargaining agreement;
  - to provide the employee with the appropriate information and training to prevent occupational accidents or disease risks;
  - to adopt codes of good conduct to prevent and combat harassment at work, (where the company has seven or more employees);
  - to initiate disciplinary proceedings in the situation where the employer is aware of any activities constituting harassment at work.

#### Collective Agreements

As employees have the right to full freedom of association they can join (or leave) any trade union that they choose. The general rule on collective bargaining agreements (CBAs) is that they will apply to the employer and employee according to their associations: that is, CBAs made between a trade union and a company, multiple companies or an employers' association will apply to:

- All employees who are members of that trade union.
- All those employers who either signed the CBA or are members of the employer's association that signed the CBA.

A CBA's application can also be extended by a governmental decision (Ministerial Extension Order). Where this happens (and depending on the extension provided for in the governmental decision), the relevant CBA will apply to:

- All of the companies operating in the sector or industry specified in the governmental decision (on either a regional or national basis).
- All the employees in in those companies' service.

### 5. What are the main points to consider if an employer wants to unilaterally change the terms and conditions of employment?

Employers can exercise their powers of management in certain specified situations to unilaterally alter the terms and conditions of employment. When the interests of the company so require, the employer can (where there are justified reasons to do so) request the employee to temporarily perform duties that are not included in the employee's normal contracted work as long this does not result in a substantial modification of the employee's usual employment position. Such a change must not exceed two years in duration or involve any reduction in pay, and the employee must be given the most favourable working conditions that can be provided (considering the duties performed) whilst performing these temporary duties.

An employer can also unilaterally change an employee's place of work (either temporarily or permanently) where there is a full or

partial closure of the usual place of work, or another business-related reason for changing the place of work. Temporary changes to the place of work cannot, as a rule, exceed a six-month period and should not be seriously detrimental to the employee's interests. Permanent changes to the place of work must also not be detrimental to the employee's interests, although if they are, the employee has the right to terminate the employment contract and claim a severance payment from the employer. Where an employee's place of work is unilaterally changed by the employer, the employer must pay for any additional costs incurred by the employee as a result of this change (for example, increased travel expenses or, in the case of a temporary change to the place of work, the costs of temporary accommodation). Provisions specifically concerning relocation can also be included in the employment contract (*see Question 26*).

Where a work schedule has not been individually agreed with an employee, employers can also make unilateral changes to an employee's work schedule (where the work schedule is individually agreed with the employee, namely in the employment contract, these types of changes must be agreed between the employer and employee).

## MINIMUM WAGE AND BONUSES

### 6. Is there a national (or regional) minimum wage? Is it common to reward employees through contractual or discretionary bonuses?

#### Minimum Wage

All employees are entitled to a nationally applicable minimum salary, which is fixed annually by the law and for 2022 is EUR705 per month for a full-time employee. During the employee's holiday period, the employee is entitled to receive the same salary that they would ordinarily when working (which includes the base salary together with an average of any normal additional compensations). In addition, employees are also entitled to receive both a holiday allowance and a Christmas allowance each calendar year, which are each equal to one month's salary. This means that, in Portugal, it is mandatory to pay each employee the equivalent of 14 months' salary, which effectively takes the minimum monthly wage up to EUR882.50. CBAs can also set higher minimum salaries that apply to employees falling into specific professional categories.

There are no mandatory payment methods for salaries or salary caps that apply. However, if the employer pays any part of an employee's salary in kind, the Portuguese Employment Code provides that this payment must be intended to satisfy the personal needs of the employee or their family (for example, the provision of food, housing, and so on) and cannot be assigned a value by the employer that is higher than its actual current value in the region. In addition, the value of any payment in kind cannot exceed the value of the part of the salary that is paid in cash (except if a CBA provides otherwise).

It is quite common for employees in Portugal to also be paid a meal allowance in addition to salary. Where this is provided, it is exempt from social security contributions:

- Up to a value of EUR4.77 per day, where it is paid in cash.
- Up to a value of EUR7.63 per day, where it is paid in food stamps.

#### Bonuses

It is common to reward employees with bonuses, which can be based on an employee's individual performance or on the company's business results. However, where bonuses are usually granted on a permanent and/or regular basis, and this creates a legitimate expectation on the employees' part of receiving them, such bonuses may be deemed to constitute part of the employees' ordinary pay (meaning that, under the principle of the irreducibility of pay, the employer cannot unilaterally either reduce or eliminate such bonuses).

## WORKING TIME, HOLIDAYS AND FLEXIBLE WORKING

### 7. Are there restrictions on working hours, and if so, can an employee opt out? Is there a minimum paid holiday entitlement? Is there a statutory right for employees to request to work flexibly?

#### Working Hours

**Restrictions on Working Hours.** Unless otherwise provided for in a CBA, the normal working hours cannot exceed eight hours per day and 40 hours per week. The normal working hours can be measured as an average over either:

- A maximum period of four months, by agreement between the employer and the employee.
- A maximum period of 12 months, if provided for in a CBA.

In these cases, the daily work schedule can provide for an increase of up to two hours each day (by agreement between the employer and the employee) or up to four hours each day (under a CBA), and the weekly work schedule can be increased to up to 50 hours (by agreement between the employer and the employee) or up to 60 hours (under a CBA), provided that the average working time over the relevant time period is not exceeded.

The Employment Code also contains special provisions (called the "Time Bank") which allow employers to request that employees increase their working hours where unexpected situations arise within an employing company that require additional work to be carried out. These provisions can only be implemented either through a CBA or a group agreement within the employing company. Under these arrangements, employees can be asked to increase their working hours, which can be compensated in one of the following ways:

- An equivalent reduction of working hours provided to the employee at another time.
- An increase to the employee's holiday period.
- An overtime payment.

In addition to the above, employees performing certain duties (such as those in managerial positions or positions of trust/supervision, those who perform work outside the usual working hours, and remote workers) can agree with their employers to "opt out" of the normal restrictions that apply to working hours, though these employees must be adequately compensated by the employer for opting out of these provisions.

The employer is responsible for determining the working hours of its employees within the rules and limitations described above. Work requested beyond the normal working hours will be considered to constitute overtime work.

**Overtime Pay.** Unless otherwise provided for in the collective bargaining agreement, overtime work is paid at the hourly rate with the following increases:

- An additional 25% for the first hour (or fraction of an hour) and 37.5% for each subsequent hour (or fraction of each subsequent hour) on a working day.
- An additional 50% for each hour (or fraction of an hour) for overtime completed on a mandatory or complementary weekly rest day or on a public holiday.

**Special Restrictions Applicable to Shift Workers.** There are no special provisions or restrictions that apply to shift workers.

### Rest Breaks

**Rest Breaks During the Working Day.** The daily working hours must usually be interrupted by a rest break of at least one hour (but no more than two hours). However, CBAs can increase or reduce the duration of an employee's daily rest break, and the rest break can be excluded altogether with the applicable authorisation from the inspection department of the Ministry of Labour, Solidarity and Social Security.

**Rest Periods Between Working Days.** Employees are ordinarily entitled to a rest period of at least 11 consecutive hours between two consecutive daily working periods. Unless otherwise provided for in a CBA, employees are also entitled to at least one day off per working week.

**Special Provisions for Night/Shift Work.** Night work and shift work are subject to the general rules regarding the minimum rest breaks and rest periods. There must also be a rest day between a shift change.

In the case of night work, the normal daily working hours of a nightshift employee cannot exceed eight hours per day, as a weekly average, although a CBA can provide otherwise. However, employees must not work more than eight hours in a 24-hour period where they undertake nightshift activities in any of the areas specified in the Employment Code that involve special risks or significant physical or mental strain (for example, the construction industry, the mining industry, and so on).

### Holiday Entitlement

**Minimum Paid Holiday Entitlement.** Full-time employees are entitled to 22 days of paid holiday each year once they have completed at least one year's service with an employer (employees who are in their first year of employment with an employer are entitled to two days of paid holiday). Whilst employees can waive the right to some of their holiday entitlement, they must always take a minimum of 20 days of paid holiday each year.

**Public Holidays.** There are ten mandatory paid public holidays in Portugal. In addition to these mandatory public holidays, Shrove Tuesday and local municipal holidays can also be considered as paid public holidays under an applicable CBA or the employment contract.

On mandatory public holidays, all employers who conduct activities that are not ordinarily permitted on Sundays must close or suspend work. Where an employee does agree to work on a mandatory public holiday, the employer can choose to compensate that employer by either:

- Providing the employee with a compensatory rest period equivalent to half of the number of hours worked.
- Providing the employee with an additional 50% increase in pay for the hours worked.

### Flexible Working

There are special rules on flexible working which are aimed at protecting an employee's ability to provide childcare. Employees with a child under the age of 12 (or, regardless of the child's age, a child with a disability or chronic illness) who lives in the same household as the employee can request a flexible work schedule or to work part-time. This right [can] be exercised by either parent, or by both parents. The request must be made in writing to the employer, who must be given 30 days' notice by the employee before the flexible working/part-time work commences. Employers can only refuse to grant these requests where they have exceptional business reasons for so doing or where the employee is irreplaceable/indispensable to the functioning of the business. In any event, where these requests are refused by an employer, that refusal must be reviewed Portuguese Commission for Equality in Labour and Employment, whose decision on the refusal can only be challenged by the court.

## ILLNESS AND INJURY OF EMPLOYEES

**8. What rights do employees have to time off in the case of illness or injury? Are they entitled to sick pay during this time off? Who pays the sick pay and, if the employer, can it recover any of the cost from the government?**

### Entitlement to Paid Time Off

In cases of illness or injury, employees are entitled to take sick leave, which grants them the right to take paid time off. Employees are provided with a sickness allowance, paid by social security, as follows:

- Sick leave of up to 30 days: 55% of the employee's pay is provided.
- Sick leave of between 31 to 90 days: 60% of the employee's pay is provided.
- Sick leave of between 91 to 365 days: 70% of the employee's pay is provided.
- Sick leave for more than 365 days: 75% of the employee's pay is provided.

The maximum period for which an employee can receive sickness allowance is three years.

The employee must meet all of the following requirements to receive sickness allowance:

- Have a Certificate of Incapacity to Work (CIT), issued by a doctor from the National Health Service.
- Have paid at least six months' worth of social security contributions (whether consecutively or not).
- Have worked for at least 12 days during the first four months of the previous six months before the sick leave is taken (the six-month period includes the month in which they stopped working because of illness).

Employees also have the right to be absent from work for up to 30 days during a year to provide immediate and necessary assistance where their child, grandchild, spouse/partner or another member of their household is ill or has been involved in an accident. In this case, employees are entitled to receive a social security allowance corresponding to 65% of their normal salary.

### Entitlement to Unpaid Time Off

In certain cases, employees are entitled to take unpaid time off, namely in the context of childcare. The employee may request unpaid leave for a period of up to two years to take care of a child under the age of six. This request may be extended up to three years if the employee has three children. The right to grant these kinds of unpaid time off is entirely at the employer's discretion.

### Recovery of Sick Pay from the State

Unless otherwise provided for in an applicable CBA, the employer is not obliged to pay any sick pay as this is covered by social security.

### Provisions Concerning COVID-19

Where an employee cannot work because they are shielding as there is a danger that they may have contracted COVID-19, they are entitled to take a leave of absence, and are paid 100% of their normal salary by social security for the first 14 days of leave. An employee who has tested positive for COVID-19 is entitled to take a leave of absence and will receive a social security allowance amounting to 100% of their normal salary for up to a maximum of 28 days (the normal social security allowance for sick leave is then paid after this 28-day period if the employee is still on sick leave).

## RIGHTS CREATED BY CONTINUOUS EMPLOYMENT

**9. Does a period of continuous employment create any statutory rights for employees? If an employee is transferred to a new entity, does that employee retain their period of continuous employment? If so, on what type of transfer?**

### Statutory Rights Created

Employees are entitled to all the statutory rights afforded to them under the law and any rights provided under an applicable CBA from the date their employment commences. Once an employee has completed their probation/trial period, the employee can only be dismissed for just cause or for objective reasons (for example, redundancy). However, an employee's length of service will have an effect on the following matters:

- The calculation of the severance payment due in the case of redundancy or unfair dismissal.
- The length of the notice period that the employer must provide in the case of redundancy.
- The likelihood of being selected for redundancy where there is a redundancy situation.

In addition, where the employee has a right to receive length of service payments, the employee's monthly salary will increase with each year of service.

### Consequences of a Transfer of Employee

The Employment Code protects employees' employment if they are transferred to a new entity/employer, regardless of the means by which this transfer occurs. On a transfer, the employees are entitled to maintain the same employment status that they held with the previous employer, with the same terms and conditions of employment (including with regard to retaining their length of service).

## FIXED-TERM, PART-TIME AND AGENCY WORKERS

**10. To what extent are temporary and agency workers entitled to the same rights and benefits as permanent employees? To what extent are part-time workers entitled to the same rights and benefits as full-time workers?**

### Temporary Workers

Under Portuguese employment law, all employees enjoy the right to receive equal treatment, irrespective of whether they are full-time, part-time, fixed-term, temporary or agency workers (though certain benefits, such as holiday entitlements, can be provided on a pro rata basis for part-time employees). This means that temporary workers, agency workers, fixed-term workers and part-time workers are entitled to the same rights and benefits as those afforded to full-time employees (on a pro-rata basis where relevant).

### Agency Workers

See above, *Temporary Workers*.

### Part-Time Workers

See above, *Temporary Workers*.

## DISCRIMINATION AND HARASSMENT

**11. What protection do employees have from discrimination or harassment, and on what grounds?**

### Protection from Discrimination

Employees cannot be discriminated against based on any factor or ground, including ancestry, age, sex, sexual orientation, marital status, family or financial situation, education, origin, social condition, genetic heritage, reduced capacity to work, disability, chronic illness, nationality, ethnic or territorial origin, language, religion, political or ideological beliefs, or trade union membership, both during the employment relationship and at the time of recruitment.

Discrimination can be either:

- Direct discrimination, where one person is treated less favourably than another person on the grounds of any discriminating factor (or has been, or would be, treated less favourably in a comparable situation).
- Indirect discrimination, where an apparently neutral provision, criterion or practice is liable to place one person at a particular disadvantage compared with another person on the grounds of any discriminating factor (unless that provision, criterion or practice is objectively justified by a legitimate aim, and the means of achieving that aim are appropriate and necessary).

If an employee suffers discrimination, regardless of their length of service (and even during the recruitment process), that employee will have the right to bring a claim for compensation for any financial loss, or pain and suffering, caused by the discriminatory conduct. The employee can claim bring a claim for compensation for discriminatory conduct up to one year after the termination of the employment contract. In addition, employers who have been proven to have acted in a discriminatory manner can be liable for committing a serious administrative offence.

### Protection from Harassment

Harassment is defined as unwanted conduct (including conduct based on a discriminatory factor) that occurs either during the recruitment process or during the employment, work or vocational training which has the purpose or effect of disturbing or constraining a person, affecting their dignity, or creating an intimidating, hostile, degrading, humiliating or destabilising environment. Unwanted verbal, non-verbal or physical conduct of a sexual nature which has the same purpose or effect constitutes sexual harassment.

Harassment entitles the victim to bring a claim for compensation for any material and non-material damage that the harassment causes, and the employee can bring this type of claim up to one year after the termination of the employment contract. Any harassment conducted by the employer (rather than by another employee) constitutes a serious administrative offence and can also, in certain circumstances, constitute a crime. Harassment also amounts to sufficient grounds for an employee to immediately terminate the employment contract and bring a claim for compensation.

If it has a workforce of more than seven employees, the employer must adopt a good conduct code to both prevent and fight harassment in the workplace. The employer must also begin disciplinary proceedings if it becomes aware of any case of harassment.

## TERMINATION OF EMPLOYMENT

### 12. What rights do employees have when their employment or employment contract is terminated?

#### Notice Periods

In Portugal, dismissals are only allowed on the grounds of just cause (that is, the employee's gross misconduct or repudiatory breach of the employment contract) or for objective reasons (that is, collective redundancies, individual redundancy, or dismissal for unsuitability for the job role). The unilateral termination of an employment contract by the employer is heavily regulated by Portuguese law and can only occur under one of these grounds. Employers can only dismiss employees without any ground/justification during the probationary/trial period (and employees can also terminate the employment contract with no reason during this period).

If an employer intends to dismiss an employee for just cause, it must carry out the following disciplinary procedure to legally dismiss the employee:

- The disciplinary procedure to dismiss the employee must be initiated within 60 days after the employer has become aware of the infraction.
- The right to dismiss the employee with just cause expires one year after the infraction has been committed or within the time limits provided for by criminal law (if the infraction also constitutes a crime).
- The disciplinary procedure to dismiss the employee expires one year after the procedure to dismiss the employee commenced if the employee has not been notified of any dismissal decision.
- The employer must give notice to the employee of the dismissal decision within 30 days after end of the evidence stage or after the workers' representative's opinion has been received.

The dismissal takes effects immediately after being notified to the employee.

Employees can immediately terminate an employment contract with just cause where the employer acts in such a way that it becomes immediately impossible to continue the employment relationship (for example, in cases of harassment). Otherwise, where an employee terminates the employment contract, one of the following notice periods must be provided to the employer:

- For permanent employment contracts of a duration of up to (and including) two years: 30-day notice period.
- For permanent employment contracts of a duration of more than two years: 60-day notice period.
- For fixed-term or temporary employment contracts with an agreed (or expected) duration of less than six months: 15-day notice period.
- For fixed-term or temporary employment contracts with an agreed (or expected) duration of six months or more: 15-day notice period.

Where the relevant notice period is not provided, the employee must compensate the employer with an amount equivalent to their base pay for the duration of the relevant notice period (without prejudice to any other claim the employer may have for loss or damage caused by the failure to comply with the notice period).

#### Severance Payments

If an employee is lawfully dismissed with just cause, no severance payment is due. However, if a court rules that the dismissal of a full-time employee was unlawful, the employee can choose between:

- Being reinstated with the employer.
- Receiving a severance payment of between 15 and 45 days of base salary plus a length of service bonus for each year (or fraction of a year) of service that the employee had completed at the time of dismissal (though the length of service bonus must, at a minimum, be equal to three months of base salary).

In either case, where a dismissal is held to be unlawful, and in addition to the payments mentioned above (where they are chosen), the employee will also be entitled to:

- The salary payments that the employee would have received if the dismissal had not taken place.
- Compensation for any damage suffered as a result of the unlawful dismissal.

Where a fixed-term employment contract terminates (because its term has expired), the employee is entitled to a severance payment equivalent to 18 days' salary for each year of service completed, together with a length of service payment for each full year of service (in the case of fractions of a year, the amount of this element of the severance payment is calculated proportionally).

Where an uncertain-term employment contract terminates (because the work for which the employee was hired has been completed), the employee is entitled to a severance payment equivalent to:

- 18 days' salary for each year of service completed, together with a length of service payment for each full year of service [(which will apply to the first three years of the contract).
- 12 days' salary for each year of service (after three years of service), together with a length of service payment for each full year of service (for each year of service completed after three years). In the case of fractions of a year, the amount of this element of the severance payment is calculated proportionally.

For the purposes of calculating total severance payment amounts, the following limitations are applied that relate to both the employee's normal salary and the current minimum wage:

- Neither the total days of salary payment nor the length of service payment can exceed 20 times the monthly national minimum wage.
- The total severance payment (that is, the total days of salary payment taken together with the length of service payment) cannot exceed either:
  - 12 times the normal monthly basic pay that would be payable to the employee; or
  - 240 times the monthly national minimum wage.

If any employment contract terminates due to the conclusion of a termination agreement between the employer and the employee, there is no legal requirement to provide any severance payment.

#### Procedural Requirements for Dismissal

In order for a dismissal for just cause to be considered lawful/fair, it must comply with certain procedural requirements. The employer must notify the employee in writing of the employer's intention to proceed with the dismissal for just cause, and a statement outlining the details of the misconduct with which the employee is being charged must then be sent to the employee within 60 days of the day on which the employee acknowledges receipt of the notice to dismiss. A copy of both the notice of dismissal and the statement outlining the misconduct must also be sent to any applicable employee representative bodies.

The employee has the right to assert any defence to the misconduct claim and to request evidence from the employer. After all the evidence has been analysed, the employer has 30 days to notify the employee in writing of the dismissal decision. Where the employer decides to dismiss the employee for just cause, no severance payment is due, and the employer must file the relevant form with the social security to notify them of the termination of employment.

### 13. What protection do employees have against dismissal? Are there any specific categories of protected employees?

#### Protection Against Dismissal

**Grounds for Dismissal.** Portuguese employment law allows an employer to dismiss an employee for just cause (which is based on the misconduct of the employee) or for objective reasons (that is, collective redundancies, individual redundancy, or dismissal for unsuitability for the job role). Dismissal for just cause occurs as the result of the employee's serious and culpable conduct which makes it immediately impossible for the employer to continue the employment relationship. For further information on dismissal for objective reasons (redundancy), see *Question 15*.

Dismissals for objective reasons (unsuitability for the job role) are very uncommon in Portugal as it is very difficult for employers to establish that the requirements have been met to justify dismissal. As a result, employees dismissed for this reason can initiate a claim before the Employment Court to challenge such dismissals. Where the court finds that such a dismissal is unlawful/unfair, the employer will be ordered to:

- Pay the employee compensation for all material and non-material damage caused by the dismissal.
- Reinstate the employee (if the employee opts for this), or make a severance payment to the employee in an amount determined by the court (this amount usually includes a payment of between 15 to 45 days' basic salary for each year of service, together with length of service payments for each year of service, though in any event such payments cannot be lower than the equivalent of three months' worth of basic salary payments).
- Pay the employee all of their basic salary payments that would have been due had the dismissal not taken place (paid up to the date of the court decision).

**Procedural Requirements for Dismissal.** See *Question 12, Procedural Requirements for Dismissal*.

**Prerequisites to Qualify for Protection Against Dismissal.** There are no prerequisites that apply to qualify for the protections against dismissal.

#### Protected Employees

Certain categories of employees have special protection against dismissals, which includes:

- Pregnant women that have given birth in the last 120 days, breastfeeding mothers and any employee on parental leave enjoy special protection against dismissal. Therefore, the dismissal of any employee in these categories requires the approval of the Portuguese Commission for Equality in Labour and Employment (CELE). If such approval is not provided, the employer can only proceed with the dismissal if it obtains a court decision recognising the existence of a valid reason for the dismissal. This application to the court must be filed within 30 days of the issuance of the CELE's decision.
- Employees who participate in collective employee representation (for example, a trade union) enjoy special protection against dismissal. In particular, if an employer dismisses an employee because that employee holds (or applies to hold) a position within a collective employee representation structure, the dismissal will be considered to be abusive, and the employer will have to either reinstate the employee or make an increased severance payment to the employee (at the employee's choice). Such dismissals can also constitute a serious administrative offence.

## RESOLUTION OF DISPUTES BETWEEN AN EMPLOYEE AND EMPLOYER

### 14. Is there a governmental or independent organisation to which employees can refer complaints in the event that there is a dispute between the employee and the employer?

The employment courts have jurisdiction to settle disputes between the employee and employer. However, there are also two main organisations that can also assist with resolving employment-related disputes:

- The Portuguese Authority for Working Conditions (*Autoridade para as Condições do Trabalho*) (ACT): ACT is an administrative authority that seeks to promote the improvement of working conditions in Portugal. Employees can submit complaints to ACT that concern employer misconduct. ACT works under governmental supervision and has the power to bring administrative proceedings against employing companies that commit employment-related administrative offences and serves to defend, free of charge, employees' rights within employment. ACT (*https://www.act.gov.pt/(pt-PT)/Paginas/default.aspx*) can be contacted by email (*dir.mail@act.gov.pt*; *dspsst.mail@act.gov.pt* (for health and safety at work matters)) or by telephone (+351 300 069 300).
- Public Prosecutor's Office (*Ministério Público*): this is a constitutional body with the powers to prosecute those who commit employment-related criminal offences, participate in implementing employment-related criminal law policy, and represent the state in defending the interests determined by law. It also plays an important role in employment relationship disputes by assisting, *ex officio*, employees and their families in defence of their social and employment rights. The Public Prosecutor's Office (*https://en.ministeriopublico.pt*) can be contacted by email (*correiopgr@pgr.pt*) and by telephone (+351 213 921 900).

## REDUNDANCY/LAYOFF

### 15. How are redundancies/layoffs defined, and what rules apply on redundancies/layoffs? Are there special rules relating to collective redundancies?

#### Definition of Redundancy/Layoff

Portugal's rules concerning redundancies provide that a redundancy situation will constitute collective redundancies where either:

- There are dismissals (either simultaneously or successively within a three-month period) of two or more employees, where the employer employs up to 50 employees.
- There are dismissals (either simultaneously or successively within a three-month period) of five or more employees, where the employer employs more than 50 employees.

The legal grounds for collective redundancies are the definitive closure of one or more parts of the company, or the entire company, or a reduction in staff that is required for structural, technological or market reasons.

A layoff is defined as a reduction in regular working hours or the suspension of employment contracts due to structural, technological or market reasons, or due to catastrophes or other events that seriously affect the employer's normal business activity.

#### Procedural Requirements

To begin a collective redundancy procedure or a layoff procedure, the employer must give notice in writing to the works council (if there is one) or otherwise to the inter-union committee or union

committees. If there are no employee representative bodies, the employees who may be affected by collective redundancies must instead be notified and can appoint, from among them, an employees' representative committee to negotiate on behalf of the whole group of affected employees. This notice must provide relevant information regarding the grounds for the procedure, the workforce affected and the criteria for selecting the employees in question. For collective redundancies, the information must include the timeframe of the dismissals and a calculation of the severance payments that will be made. For layoffs, the information must include a description of the length of time during which the measures will apply, and details of any training to be given to affected employees during the period of work reduction or suspension (if applicable). A mandatory information and negotiation stage must take place between the company and the employees' representative body before any final decision is taken on collective redundancies/layoffs.

For collective dismissals, the appropriate department of the Ministry of Employment must also be given notice to participate in the information and negotiation stage. The scope of its participation is only to ensure the fulfilment of the formal legal requirements and it has no power to interfere in any decisive or binding manner in the outcome. Moreover, it cannot make any decision on the merits or otherwise of the grounds alleged by the employer for the redundancies. The notice period for termination of the employment contracts (for collective redundancies) varies between 15 and 75 days, depending on the length of service of the affected employees.

### Redundancy/Layoff Pay

Employees whose employment contracts are terminated as a result of collective redundancies are entitled to receive a severance payment, equivalent to 12 days' basic pay together with a length of service payment for each full year of service completed. For the purposes of calculating total severance payment amounts, the following limitations are applied that relate to both the employee's normal salary and the current minimum wage:

- Neither the total days of salary payment nor the length of service payment can exceed 20 times the monthly national minimum wage.
- The total severance payment (that is, the total days of salary payment taken together with the length of service payment) cannot exceed either:
  - 12 times the normal monthly basic pay that would be payable to the employee; or
  - 240 times the monthly national minimum wage.

Slightly different rules apply in the calculation of the severance payment for employees who were employed with the employer on or before 30 September 2013.

The severance payments for redundancies (together with any other amounts owed to the employees, such as outstanding holiday pay) must be made to the affected employees on the date the termination of employment takes effect (failure to make these payments on time constitutes grounds for unfair dismissal).

Layoff periods cannot generally exceed six months, though where they are caused by a catastrophic event/event seriously affecting the employer's normal business activity, this time limit is up to one year, with the possibility of a further six-month extension in certain circumstances.

Employees are entitled to be paid their normal hourly rate for the hours worked in the case of a reduction of working hours. In both cases of a reduction of working hours, and a suspension of working hours, the employees affected will be entitled to receive monthly compensation corresponding to two-thirds of their normal salary (including basic pay, length of service payments and all regular and periodical benefits inherent to their work). In any event, the total salary payments made to these employees cannot be lower than the applicable minimum wage, and cannot be higher than three times the applicable minimum wage. These payments are made by both the employer (30%) and social security (70%).

### Collective Redundancies

See above, *Definition of Redundancy/Layoff.*

## EMPLOYEE REPRESENTATION AND CONSULTATION

**16. Are employees entitled to management representation (such as on the board of directors) or to be consulted about issues that affect them? What does consultation require? Is employee consultation or consent required for major transactions (such as acquisitions, disposals or joint ventures)?**

### Management Representation

Employees' representative bodies do not have the right to participate in the board of directors or other corporate bodies, but they must be consulted on certain issues. Employees can be represented by a works council or by trade union representatives. The establishment of an employees' committee is optional, and its maximum number of members varies between two to 11 (depending on the relevant company's number of employees, from less than 50 employees to more than 1,000 employees). The employees' committee has the right to meet once a month with the company's management, to request information about the company's activities and to participate in certain major company transactions/events.

### Consultation

The employees' committee is entitled to receive information on important aspects of the company's activity, such as its turnover, production, people management, and financing and accounting situation. In addition, the employees' committee must be consulted with or informed about the most relevant issues of the company's life, in particular with respect to:

- Careers and criteria for the promotion of employees.
- A change of location/place to the company (or one of its establishments).
- Bankruptcy procedures applicable to the company.
- The processing of biometric data.
- The use of means of remote surveillance.
- Disciplinary proceedings that concern either dismissals and/or restructuring.

The employees' committee does not have the power to negotiate Collective Labour Regulation Instruments (*Instrumentos de Regulação Coletiva de Trabalho*) (IRCTs), as this power falls exclusively within the remit of the trade unions.

There are certain other matters which require the provision of information to, or consultation with, employees' representative bodies. If there is no employees' committee in existence, the company must comply with its information and consultation obligations with the union delegates elected by the employees. The maximum number of union delegates depends on the number of unionised employees:

- One delegate: up to 50 unionised employees.
- Two delegates: up to 99 unionised employees.
- Three delegates: up to 199 unionised employees.
- Six delegates: up to 499 unionised employees.

### Major Transactions

It is mandatory to provide certain specific information to, or consult with, the relevant employees' representative body on the following issues:

- Training plans.
- Organisation of working times.
- Transfer of undertakings.
- Layoffs.
- Disciplinary procedures involving union representative employees.
- Redundancy procedures.

However, whilst these information/consultation duties exist and must be complied with, the agreement of the employees' representative body is not necessary or mandatory to initiate any of the above matters.

**17. What remedies are available if an employer fails to comply with its consultation duties? Can employees take action to prevent any proposals going ahead?**

### Remedies

Generally, the failure of an employer to comply with its information and consultation obligations towards employees' representative body may constitute an administrative offence and the employer can be subject to fines.

In the case of the procedure concerning layoffs, the employer must send the minutes of the required negotiation with the employees' representative body to the ministerial department responsible for social security. If there are no minutes of this negotiation, the employer must send a document setting out the reasons for the failure to negotiate and the final positions of the parties. During the layoff, if it transpires that the legal requirements have not been met, the employment inspection body, on its own initiative or at the request of any party, must terminate the application of the layoff. As a result, the employer will not have the required support to initiate this measure. Furthermore, failure to comply with these formalities can constitute an administrative offence. Where a works council is not provided with information that is has requested and has a right to access, it can bring a legal action to force the employer to provide the relevant information.

### Employee Action

There are generally no actions employees can take to prevent proposals from going ahead. However, where an employer has not complied with its information and/or consultation obligations in the context of redundancy, this non-compliance will invalidate the redundancy procedure. The employees affected can then challenge the redundancies (as unfair/unlawful dismissals) and claim either reinstatement or the relevant severance payments.

## CONSEQUENCES OF A BUSINESS TRANSFER

**18. Is there any statutory and/or common law protection of employees on a business transfer?**

### Automatic Transfer of Employees

Under Portuguese employment law and Directive 2001/23/EC (Acquired Rights Directive), in the case of a transfer of a business (or part of a business) which constitutes an economic entity, the employment contracts, including the rights and benefits acquired during the employment relationship, are automatically transferred to the new employer by operation of law, regardless of any contrary agreements in place between the transferor and the transferee.

The transferor and the transferee must inform the employees' representative body of the date and the reasons for the transfer, the legal, economic and social consequences for the employees, and the measures to be taken (if any) concerning the employees. If there is no such employees' representative body, the transferor and the transferee must instead directly inform the employees themselves and, within five working days, the employees can appoint an employees' representative committee from amongst themselves. This information must be given in writing and with adequate prior notice in relation to the transfer of the business undertaking and, in any event, at least ten days prior to the consultation period.

The transferor and the transferee must then initiate a consultation period with the employees' representative body, in advance of the transfer, to try to reach an agreement on the measures they intend to take in relation to the employees as a result of the transfer. The appropriate department of the Ministry of Employment may also be asked to participate in the information and consultation stages to ensure that the formal legal requirements are met and to conciliate between the parties.

Employees have a right to oppose the transfer of their employment contracts where they have reasonable grounds to believe that the transfer could cause serious harm (for example, because of the transferee's lack of solvency or financial difficulties). An employee exercising this right of opposition must inform the employer of this fact in writing, either within five days after the date the employees' representative body should have been appointed (where this body was not appointed) or by the end of the consultation period (where this body was appointed). Employees exercising this right, under this procedure, will retain their employment contracts with the transferor.

Where employment contracts are transferred, both the transferor and the transferee share joint liability for certain employment-related obligations that arose before the transfer for a period of one year following the date of the transfer.

### Protection Against Dismissal

If the transferee intends to commence redundancy procedures after the transfer of the undertaking, it must disclose that intention during the information and consultation stage. In addition, the transferee must follow the collective redundancy procedure provided by law (*see Question 15*). The same procedure must also be followed by the transferor if the transferor intends to initiate collective redundancies for employees who oppose the transfer. Any employees who are made redundant as a result of the transfer have the same rights as any other employee who has been subject to collective redundancy.

### Harmonisation of Employment Terms

The transferee can apply its internal policies to the transferred employees. However, any CBA that applied to the transferor will still apply to the transferred employees until either the end of its term, or for a minimum of 12 months following the transfer (where another CBA replaces it).

## EMPLOYER AND PARENT COMPANY LIABILITY

**19. Are there any circumstances in which:**

- **An employer can be liable for the acts of its employees?**
- **A parent company can be liable for the acts of a subsidiary company's employees?**

### Employer Liability

The employer will be liable where an employee commits any type of employment-related administrative offence where that offence is committed by the employee in the course of their employment

(without prejudice to any other liability assigned by law to other parties). In addition, an employer can be vicariously liable for any loss or damage caused to a third party by an employee where the employee commits an act causing such loss/damage within the scope of their work duties.

### Parent Company Liability

A parent company is jointly liable with its subsidiary/subsidiaries for any non-compliance on the part of a subsidiary with the employment law provisions, and for any administrative/criminal offences committed by a subsidiary company or a subsidiary company's employees (including for the payment of any applicable fines).

## EMPLOYER INSOLVENCY

**20. What rights do employees have on the insolvency of their employer? Is there a state fund which guarantees repayment of certain employment debts?**

### Employee Rights on Insolvency

The employer's insolvency does not automatically terminate the employees' employment contracts, and instead the procedures concerning collective redundancies must be followed. Even where an employer's insolvency is declared by the court, the procedures on collective redundancies must be still followed, and the employees have the same rights as in any other case concerning collective redundancies. Employment-related debts owed to employees benefit from special credit privileges over other general creditors, over both the employer's assets and real estate.

### State Guarantee Fund

In 2013, a compensation fund and a mutual compensation fund were created for employment contracts concluded after their creation to guarantee part of the statutory severance payments due on an employer's insolvency. Employers must now deposit the equivalent of 1% (0.925% in the compensation fund and 0.075% in the mutual compensation fund) of the employee's basic monthly salary and length of service payments into these funds. The employer can withdraw the relevant deposits made from these compensation funds in the event that any employment contracts are terminated and either no severance payment is due, or any due amounts have been paid.

Where an employee is due a severance payment that has not been paid by the employer, the employee can request that the compensation funds pay up to half the amount due (even if the employer has not made the relevant deposits with the compensation funds).

There is also an additional guaranteed salary fund that can apply in the event of the employer's insolvency to guarantee debts owed to employees. This fund will guarantee the payment of debts arising from employment contracts for up to six months prior to the issuance of insolvency proceedings against the employer (the overall limit for payments is up to six months' remuneration, with the monthly limit being capped at three times the national monthly minimum wage). Where any amounts are covered by the compensation fund or the mutual compensation fund mentioned above, those amounts covered will be deducted from any amounts paid out by this fund.

## HEALTH AND SAFETY OBLIGATIONS

**21. What are an employer's obligations regarding the health and safety of its employees?**

### Promotion of Health and Safety at Work

Employers must ensure appropriate health and safety conditions for all employees in all work-related areas and must take any necessary measures concerning health and safety, taking into account the general principles which focus on prevention. Employees must comply with all of the health and safety at work requirements determined by the law, by an applicable CBA, or imposed by the employer. Employers must ensure that measures are in place to prevent the occurrence of health and safety issues, and must inform employees about, and train employees on, health and safety matters. Employers have a duty to monitor health and safety in the workplace to identify and avoid any potential risks, and any breach of an employer's health and safety obligations can constitute a serious administrative offence for which fines can be imposed.

### Work Accidents and Occupational Diseases

Employees (and their dependants) are entitled to compensation for any loss or damage suffered that results from a work accident or occupational disease, and employers must maintain specific insurance to cover claims arising from work accidents or occupational diseases. Failure to maintain such insurance constitutes a serious administrative offence for which fines can be imposed on the employer, and where no insurance is maintained the employer is personally liable for any such claims for compensation arising from employees (or their dependants).

## TAXATION OF EMPLOYMENT INCOME

**22. What is the basis of taxation of employment income for:**

- **Foreign nationals working in your jurisdiction?**
- **Nationals of your jurisdiction working abroad?**

### Foreign Nationals

Foreign nationals will ordinarily be tax resident in Portugal if one of the following conditions is met:

- An individual remains in Portugal for 183 days or more (consecutively or alternately) in any 12-month period. To establish the 183-day period, an individual is considered to be in Portugal on any whole day or part of a day that includes an overnight stay in the country.
- An individual has a household (in a condition that suggests the intention to maintain and occupy it as its usual residence) and habitual residency in Portugal.
- An individual is a crew member of a ship or an aircraft owned by a Portuguese tax resident entity.

Individuals who meet one of the above conditions become tax resident as from the first day of the period of their stay in Portugal, except where they have been resident in the country on any day of the previous year. In this case, they will be considered tax resident in Portugal from the first day of the year in which either of those conditions is met. As a general rule, the loss of tax resident status occurs as from the last day an individual stays in Portugal. Any conflicts of residence should be settled, when applicable, through the rules contained in the tax treaties signed by Portugal.

Additionally, taxable individuals who meet the conditions to qualify as tax residents under Portuguese law but who have not been tax residents in Portugal during the five previous years may benefit from the non-habitual tax resident (NHR) regime for a period of ten years (inclusive of the year of their registration as resident in the Portuguese territory). To benefit from this regime, each taxable person must register as a tax resident in Portugal and submit an application (annually) until 31 March of the year following the one from which they became a tax resident in Portugal. Under this special regime:

- Employment and business/professional income obtained from any high added value activity of a scientific, artistic or technical nature performed in Portugal is subject to a special tax rate of 20% (together with social security payments due).

- Employment and business/professional income, dividends, rental income, and capital gains obtained from abroad may be exempt from personal income tax if certain conditions are met.
- Pension income earned from abroad is subject to a tax rate of 10%.

Non-tax resident employees are liable to pay Portuguese personal income tax (*Imposto sobre rendimento das pessoas singulars*) (IRS) only on their Portugal-source income. Portugal-source employment income obtained by non-tax resident employees is subject to the IRS withholding tax rate (25%). This IRS withholding tax rate may be reduced or eliminated if a double tax treaty applies.

Non-tax resident employees working in Portugal who are resident in another EU or EEA member state (and for EEA residents, provided there is an obligation for administrative co-operation in tax matters equivalent to that established in the EU) can request a full or partial refund of the tax withheld and paid insofar as this withholding rate is higher than the IRS rate that would ordinarily apply to tax residents in Portugal. The refund of the tax withheld and paid must be requested from the Tax and Customs Authority within two years of the end of the calendar year following the year in which the taxable event occurred, and the refund must be made by the end of the third month following presentation of the documents and information required to legally request the refund.

### Nationals Working Abroad

Portuguese tax residents are liable to pay IRS on their worldwide income (including foreign employment income). Portugal grants a tax credit for foreign taxes paid on foreign-source income. This tax credit is taken into account when calculating the IRS due by taxpayers upon presentation of the annual IRS return. For income sourced in countries with which Portugal has signed a double tax treaty, this tax credit cannot exceed the fraction determined in the applicable double tax treaty.

**23. What is the rate of taxation on employment income? Are any social security contributions or similar taxes levied on employers and/or employees?**

### Rate of Taxation on Employment Income

IRS is charged on an individual's annual income, which is separated into different income categories (including employment income), after the specific deductions applicable to each category have been made. As a rule, employment income is subject to IRS withholding tax (at variable rates depending on the employee's remuneration among certain other things) with the withholding payment being made on account of the final tax due.

IRS on employment income is charged at progressive tax rates that vary from 14.5% up to 48% (which is charged on taxable employment income of EUR80,882 and above). On top of this, an additional solidarity tax is also charged, at a rate of:

- 2.5% for taxpayers with taxable employment income exceeding EUR80,000 and up to EUR250,000.
- 5% for taxpayers with taxable employment income exceeding EUR250,000.

### Social Security Contributions

The current social security rate charged against employment income for employees is 34.75% in total:

- 11% paid by the employee.
- 23.75% paid by the employer.

## INTELLECTUAL PROPERTY (IP)

**24. If employees create IP rights in the course of their employment, who owns the rights?**

### Inventions (Patents, Utility Models and Designs)

The general rule on the ownership of inventions is that the right to an invention belongs to the inventor (or their successors in title). If there are two or more inventors, any of them can apply for protection of the invention for the benefit of all the inventors.

However, if the inventor is an employee and the inventive activity is covered in the employment contract, the right to the invention belongs to the employer, and the employee will be entitled to receive special remuneration in return for the employer having this right (if such remuneration is not already established in the employment contract). These principles also apply to inventions made to order. Where the inventive activity is not covered in the employment contract, the employer will, in principle, still have the right to claim ownership of any inventions where either:

- The technical solution created by the invention specifically relates to the employer's activity.
- The invention was created by the employee with the use of the employer's materials.

However, the employee will still be entitled to receive special remuneration in return for the employer's right to the invention.

Where inventions are created a result of research conducted by the employees of public entities dedicated to research and development, the general principle is that the right to the invention will vest in the public entity. However, the inventor will have the right to a share of the economic benefits earned by the public entity from the use or sale of any patent rights (the terms of each parties' share will be defined by the internal intellectual property regulations the relevant public entities).

In any event, original inventors have a right to be named as the inventor even when they are not the party applying for the protection/registration of the invention.

### Copyright

The general rule on the ownership of copyright is that the rights belong to the intellectual creator of the work. However, contractual provisions (for example, as contained within an employment contract) can effectively provide that copyrights created during the course of an employee's employment belong to the employer.

## RESTRAINT OF TRADE

**25. Is it possible to restrict an employee's activities during employment and after termination? If so, in what circumstances can this be done? Must an employer continue to pay the former employee while they are subject to post-employment restrictive covenants?**

### Restriction of Activities

**Restriction of Activities During Employment.** During the course of an employment contract, the employee has a duty to remain loyal to the employer. This includes the obligations:

- Not to negotiate on their own behalf, or on behalf of any third party, in competition with the employer.
- Not to disclose information regarding the employer's organisation, production methods or business.

**Restriction of Activities After Termination of Employment.** See below, *Post-Employment Restrictive Covenants*.

### Post-Employment Restrictive Covenants

Post-employment non-competition covenants can be included in the employment contract and will be valid and enforceable provided all the following conditions are met:

- The covenant is in writing.
- The covenant relates to activities of the employee that could be capable of causing harm to the employer.
- Fair compensation is provided to the employee for complying with the covenant (the amount of this compensation can be reduced where the employer has incurred great expense in the employee's professional training).

Where the employee terminates the employment contract based on the employer's unlawful conduct, or the employer unlawfully dismisses the employee, the compensation due must, at a minimum, be equivalent to the employee's basic salary (for the duration of the covenant).

Non-competition covenants cannot generally have a term of more than two years after the employment terminates, though for employees who had special duties of trust and confidence which gave them access to particularly sensitive information, this term can be extended to up to three years.

## RELOCATION OF EMPLOYEES

**26. Can employers include mobility clauses in employment contracts, or take any other measures, to ensure that employees are obliged to relocate?**

The employer and the employee are expressly permitted to include a mobility clause within an employment contract, and there are no specific geographical limitations set out in law that apply to these types of clauses. However, such clauses can only last for a maximum of two years; if the mobility clause is not exercised within that two-year period, it will expire.

Where an employee is transferred (permanently or temporarily) to another place of work, the employer must pay the employee for any additional costs incurred by the employee as a result of that transfer that relate to travel arrangements or a change of residence (and for temporary relocations, the cost of temporary accommodation must be covered by the employer). There is no further legal obligation on the employer to provide any other assistance to the employee, but the law provides that the employer must give between eight (for temporary relocations) and 30 (for permanent relocations) days' written notice to the employee about the relocation.

Temporary changes to the place of work cannot, as a rule, exceed a six-month period and should not be seriously detrimental to the employee's interests. Permanent changes to the place of work must also not be detrimental to the employee's interests, although if they are, the employee has the right to terminate the employment contract and claim a severance payment from the employer.

## PROPOSALS FOR REFORM

**27. Are there any major proposals to reform employment law in your jurisdiction?**

The Portuguese Government has started a public consultation process based on the Green Paper on the Future of Work. This document covers various employment-related topics that the Portuguese Government intends to open a social dialogue on in the context of reforming certain employment legislation. The public consultation process is currently in its very early stages, but the intention is to negotiate with various social partners on the following matters (among others):

- Adopting measures to promote employment growth in heavily digitalised sectors, to both promote professional mobility (particularly in light of the major reforms to the labour market that have resulted from the increased use of automated systems and automated decision-making) and reduce the underrepresentation of women in the field of technology.
- Creating a new legal framework to support the increased use of teleworking, particularly in light of the COVID-19 pandemic. This will include regulating matters concerning employees' privacy, limitations on working hours, and providing assistance with any additional costs incurred by employees who are subject to teleworking.
- Introducing regulations that are specific to persons working on digital platforms, particularly where those persons are not categorised as employees. The intention is to draw clearer legal distinctions between employees and self-employed persons working on digital platforms, to ensure all such workers have adequate access to social and employment protections.

# Practical Law Contributor Profiles


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**Languages.** Portuguese, English, German

**Publications**

- *Proteção de dados e inteligência artificial, Cambridge Publishing Scholars, Edited by Lourdes Mella Méndez, Nuno Cerejeira Namora and Duarte Abrunhosa e Sousa, 2018.*
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- *Destacamento de Trabalhadores, Actualidade Jurídica, Úria Menendez, No. 18, publication with André Pestana Nascimento, 2007.*
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