

THE NEW EMPLOYMENT CODE

As of 17th February 2009, the alterations to the Portuguese Employment code, approved by law number 7/2009, of 12 February, enter into force.

January 1st had been forecasted as the initial date in which it was to come into effect, however, the constitutionality of specific rules raised by the President of the Republic delayed the process.

The main changes introduced to the code can be summarised as follows:

Definition of an employment contract - presumption

Article 12 foresees a new presumption that aims in assisting the manner in which the employment contracts are qualified.

Parental Rights

The change introduced sees an increase in the assistance parents may provide their child with. Whereas under the terms of the previous employment code the age of a child to whom parents could request days off work was up to 10 year of age, under the new law, the age of the child has been increased to 12.

Parents now have the option of taking an extra period of 30 days off work, in addition to the 120 or 150 days of parental leave, in the case of shared parental leave, if at least 30 days subsequent or 2 periods of 15 subsequent days are taken off by each of the parents after the mandatory 6 weeks period of exclusive maternity leave.

These new measures will only enter into force with the regulations to be produced for social security protection of parental rights.



Probationary Period

The probationary period is the period of time during which either part may terminate the contract without the need for giving fair reason or a notice period (articles 111 and 114). That said, there are two exceptions to this rule, one is that in which the probationary period exceeds 60 days and the other 120, in these cases, the employer must give 7 and 15 days notice respectively.

During the probationary period, termination of the contract does not give rise to the right to compensation unless, the redundancy has been based on ideological, religious reasons or any other reasons of a discriminatory nature. Compensation is attributed in these cases based on the violation of the constitutional principle of equal treatment.

After the controversial decision to increase the general probationary period from 90 to 180 days, the Government has reverted to the original 90 day period. This happened due to the request to the Constitutional Court which was meant to verify whether the increase of probationary period would be acceptable according to Portuguese Constitution.

The Constitutional Court decided that this rule violates a number of principles, namely the principle of proportionality and job security. Job security would be jeopardised as the 180 day period would be excessive, and mean that a number of contracts would not run the full 180 days.

The general probationary period has kept the 90 days unless a different number is established in the contract.

Still within the long term contracts are those for company directors and any other such positions, this probationary period is of 240 days.

With regards to fixed term contracts, the general rule is 30 days for contracts equal to or greater than 6 months, and 15 days for contracts no greater than 6 months.

Any one of the above periods may be reduced or excluded, by collective agreement or with



written agreement between both parties.

Fixed term contracts

Another mayor change has been to the maximum length of fixed term contracts. The general rule is that 3 renewals are admitted as long as they do not exceed **3** years duration, as opposed to the current possible length of 6 years. In certain cases, such as those of first employment seekers and start of activity by the company, the maximum duration is of 18 months and 2 years respectively. In cases where a company commences activity, the law establishes a new limit for employers with up to 750 employees to hire on fixed term under those grounds.

Equally important is the fact that, under the terms of article 148 no.5, the 3 year duration period takes into account all contracts, either of employment on fixed term, temporary work or rendering services, for the same or different employees, occupying the same position.

Working Hours

A number of changes have been introduced in this respect. The general rule is that of 8 hours per day, with a maximum of 40 hours per week.

Adaptability by Group Agreement

A novelty is the concept of adaptability of hours achieved by group agreement (article 206). This rule is a result of the pressure imposed on the legislator by the Commission known as the “*Comissão do Livro Branco*”. For this to be applied there are a few requirements, namely, that it must be agreed by collective agreement, and applied to a minimum of 60% of the employees in the same department, and finally, that of those employees within the same department the agreement must be accepted by at least 75%. One of the criticisms made in respect of this rule is that if the consensus is not reached, then the individual agreement can still be followed.

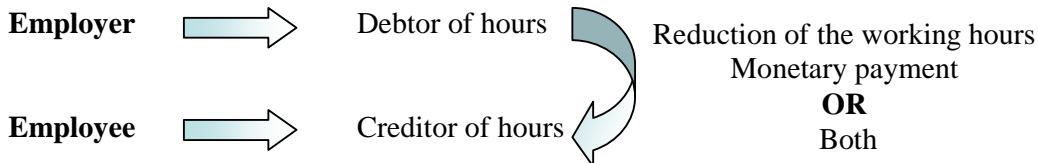
Banco de Horas

This is a new concept introduced to the Portuguese employment Code.



The main implication of this mechanism is that by collective agreement (only) the number of hours can be increased from 4 per day, 60 per week but with a limit of 200 days per year.

This notion of debit and credit of hours can be summarised in the following diagram:



The collective agreement must make specific reference to a number of different aspects that includes amongst others, the type of compensation to be awarded to the employee and when the employee can make use of the hours in his favour, and details that will be negotiated.

Though the law makes no reference, in practice it is possible for the inverse situation to occur, namely the employer being the creditor and the employee debtor of hours.

Filing claims for unfair dismissal

Employees will continue to have the right to present a case for unfair dismissal; however the timeframe for doing so has been reduced to 60 days.

The employee will not need to have legal representation to do so. The new rules for said procedures have still to be approved with the revision of the Procedural Employment Code.

Disciplinary Procedures

It will no longer be possible to re-open the process in case of irregularities, and the employer may refuse it at the stage known as the *Instrução*.

In case of nullities of the process, the judge will still have to decide on the matter under discussion of the fairness or unfairness of the dismissal.

Those new rules will only enter into force once the new Procedural Employment Code is reviewed.



Trabalho Intermitente

In case of non continuous activity, both parties can establish a special way of performing the work through the concept known as *trabalho intermitente*.

The minimum period is of 6 months work in a full year of which 4 months must be consecutive.

During the period of inactivity, the employee is entitled to earn remuneration of a minimum of 20% of the basic salary.

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