

The New Employment Laws

There are two decisive technical instruments which will determine the imminent future of Portuguese Employment Law and are, therefore, essential elements for any company in the upcoming years, which are the Memorandum of Understanding from Troika (MoU) and the State Budget for 2012 (SB2012).

Signed earlier this year in May, the MoU outlines the general Employment profile to be approached by the legislators during the following three years, whereby a profound Employment Law restructuring is expected, as goals and targets are set out to be reached in each forthcoming quarter.

The SB2012 will determine new strategies for both the private and public sectors of Portugal, implementing various measures that confirm the already long awaited and feared austerity within the country. Notwithstanding the SB2012 will not only bare effects for 2012, as it also foresees immediate alterations for the upcoming years, enforcing a new Portuguese economic posture for the future.

The measures to be adopted by Employment Law can be essentially divided in three categories, namely exceptional situations, situations in which the forthcoming measures are merely temporary, and therefore implemented as interim solutions for the overall problem, and situations in which the measures are of a more permanent character, some of which have already been implemented during the course of 2011.

➤ **Exceptional Measures:**

Exceptional Tax

To be enforced exclusively in 2011, this Tax was announced in June this year and was the first of various measures to be implemented by the Government.



Employees will feel the immediate effects of this measure at the end of 2011, as 50% of the Christmas Bonus above the national minimum salary will be held back by the employers and paid directly to the State. Furthermore, in 2012, when handing in the tax declarations, a surtax will be calculated in accordance to the global income and number of dependants the person may have, and a further amount may be due or reimbursed.

Independent workers will equally be affected by this Exceptional Tax, but will only have to pay in 2012, upon handing in the tax declarations for 2011. In similar terms to the employees, the tax will only fall upon the income above the national wage, therefore it will be necessary to calculate the global income minus 14 time the minimum national wage and calculate the tax over said result.

It is to be noted that the value of the tax to be paid by pensioners, both from the private and public sector, will be calculated in very similar terms of those of the employees although the amounts to be deducted vary.

➤ **Interim Measures:**

Holiday and Christmas Bonuses to be Cut

This measure will only affect state employees, pensioners from the public and private sectors with salaries and pensions above a € 1100 per month.

Notwithstanding, those who earn between € 600 and the € 1100 will equally be affected by this measure, although the reduction of the bonuses will be progressive, in accordance to a table to be issued by the Government.

Salary Cuts to be Maintained

Further affecting the state employees will be the cut of the salaries practiced during 2011, as well as the careers' freeze, both in terms of promotions and career progressions.



Working Hours to be Extended

The sequels of the SB2012 will not only be felt by the state employees, but the private sector will equally have to adapt to the new measures that will be implemented.

One of the most debated measures, and whose form of implementation is definitely the most awaited, is the extension of the daily working hours by 30 minutes, a measure which will be implemented to substitute the reduction of the Contributions to Social Security.

Announced by the prime Minister in October, this measure is possibly the one which will offer the largest resistance to implement, due to the complexity inherent to Portuguese Employment law.

Regardless of the application method, a legislative alteration will be inevitable for the implementation of this measure, although the various formulas already in discussion are themselves creating more problems due to the various incompatibilities with fundamental employment principles.

If this measure is simply applicable to new employment contracts, it will raise an issue from the equal treatment principle perspective between employees of the same company, as some employees, of a certain seniority, will have the “right” to work less time than new employees, thus breaching the fundamental principle of equality.

However, if to avoid this problem, the new legislation establishes the application to all employment contracts, including those already signed, a new implementation mechanism will necessarily have to be created, as the imposition of additional work without pay cannot be enforced unilaterally by altering the terms and conditions of an existing contract. Thus considered, the application instrument for this measure is the most vital element for a cohesive implementation of this measure in Portugal.

Although it is not yet a proposal submitted by the Government, it is discussed that the solution for the implementation is the “*Banco de Horas*”, by individual agreement.

Fixed Term Contracts to be Extended

It has equally been proposed by the Government that there is to be a temporary alteration within the employment law, exceptionally allowing for another two renewals (up to 18 months) of fixed term contracts which were to terminate by 2013.



➤ **Definitive Measures:**

The number of definitive measures is more extensive, and, in their majority, arise from the MoU's initiative. Furthermore, in this category it is necessary to subdivide the measures between those which have been implemented, and those which application is still only foreseen.

Implemented Measures

Alterations to the Compensation Calculation

Arising from the MoU recommendations, Law 53/201 passed in October this year implemented a new set of compensation calculation rules applicable to all new contracts regarding licit dismissals, more precisely regarding collective dismissals, inadaptability dismissals and individual redundancies. In the present cases, the compensation corresponds to 20 days' basic salary and *diuturnidades* of compensation per year of service with the limit for calculation of basic salary of 20 minimum national wages and for the calculation of the global compensation amount of 12 basic salary and *diuturnidades* or 240 minimum national wages for those which basic salary is higher than 20 minimum national wages.

The aforementioned compensation calculations are equally applicable to all new fixed term contracts.

A further obligation arising from the MoU, and for which the Government is required to present a law proposal, is the ultimate alignment of the compensations received by the employees who signed a contract in the above terms, and those who signed the contract prior to the new law, although, this must be carried out without disturbing the employees acquired rights. Thus considered, it is debated that for the older contracts there may exist a double calculation method to reach the final compensation value by using one formula up to the date of enforce of the Law, and the new formula thereon.



Alterations to the Daily Remuneration Calculation for Compensation Effects

Subsequent to the aforementioned measure, Law 53/2011 has equally implemented an alteration to calculate the basic daily remuneration value and *diuturnidades* for the purposes of compensation in licit dismissals. Thus considered the daily rate is now the result of the division of the basic monthly remuneration and *diuturnidades* by 30, opposed to the old legal formula for hourly rate [salary x 12] : 52 x 40.

With this measure, the calculation of the hourly basic rate is no longer applied.

Creation of a Compensation Fund

This measure was brought forward by the MoU and should be, in fact, located between the two categories, as the measure itself has been approved, although it still lacks official publication and regulation.

Notwithstanding, the defining lines of the Fund are already known in the employment market and the Fund, financed by both employers and employees, will partially pay the compensations that are owed to the employees upon a dismissal.

In terms of future consequences, every time a new contract is signed, it will accrue to the employers' obligations to inform the employee, as well as the Employment Authorities, of the Fund to which the company is bound to.

Foreseen Measures

Calendar Adjustments

It is discussed that four bank holidays will be removed – two civil holidays and two religious holidays – as is an adjustment to the remaining bank holidays whereby employees will have the day off on a working day subsequent to the weekend.



In the Government plans we can also foresee the removal of the traditional long weekend over Carnival, in which it has been a long standing practice to be granted the days off work.

These measures envisage avoiding the various employment stops the Portuguese have during the year, due to the high number of bank holidays and long weekends brought on by these.

New Retirement Rules

From 2012 early retirement will not be allowed before an employee has reached 57 years of age, as opposed to the current law which allows for early retirement at 55. Furthermore, early retirement will only be possible if said the employee has contributed for at least 32 years to Social Security system.

Alterations to the Individual Dismissal Regimes

Dealing with two essential points of fair dismissal– employee’s inadaptability and redundancies – the MoU is designed to combat the Employment market segmentation and increase the use of long term contracts by restructuring the process of fair dismissal.

In the cases of a dismissal due to inadaptability it has been foreseen that more justifiable causes may be added to the list already in force, namely the inclusion of the cases in which there has been an agreement between the employer and employee to reach certain goals and these are not accomplished, by no fault of the employer.

For dismissals due to redundancies, the dismissals will no longer have to follow the rule of “last in, first out”, thus allowing employers to terminate contracts with employees of a certain degree of seniority over a more junior employee.

The MoU further adds that the employers should not be forced by law to transfer the employee to another available working position or more appropriate job within the company, as the present legislation so indicates. Notwithstanding, if there are available positions and these are compatible with the employee’s qualifications, the employer should seek to fill the vacancies, avoiding any dismissals, but this should not be a legal imposition.



Reduction of the Remuneration for Overtime Work

The Government is responsible for presenting a Law Proposal overlooking the regimes regarding the working times', namely reassessing the special remuneration for all overtime work carried out.

As there is only a compromise to present a proposal, there is very little information on this matter to date, and therefore the percentage that will in fact be reduced is merely a speculation, although the MoU points to a reduction to a maximum of 50%, as well as a cut of 25% of the time off given as compensation for the work carried out under these conditions.

Implementing many of the guidelines established by the MoU, the SB2012 has been generally approved on 11th November 2011, and will now have to be analyzed, discussed and voted by the various specialized parliamentary commissions. The aforementioned measures will all be discussed within the Social Security and Employment Commission.

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Employment Department

Neville de Rougemont & Associados, R.L.

LISBON

Av. Praia da Vitória, Nº 5, 1º - 1000-245 Lisboa Portugal
Tel: 213 191 290 Fax: 213 527 619 E-mail: n.derougemont@ndr.pt

UNITED KINGDOM

Greentree, Ascot Road, Holyport, Berks SL6 2JB, United Kingdom
Tel: +44 (0) 1628778566 Fax: +44 (0) 1628778399 E-mail: ndr@nevillederougemont.com

ALGARVE

Av. José dos Santos Farias, n.º 137 - A, 8135-167 Almancil, Portugal
Tel: +351 289 895 420 Fax: +351 289895429 E-mail: algarve@ndr.pt

CAPE VERDE

Po Box 138, Ed. Garantia, 1º F, Av. Amílcar Cabral, Santa Maria, Sal, Cabo Verde
Tel: +238 2422061 Fax: +238 2421262 E-mail: capeverde@ndr.pt