

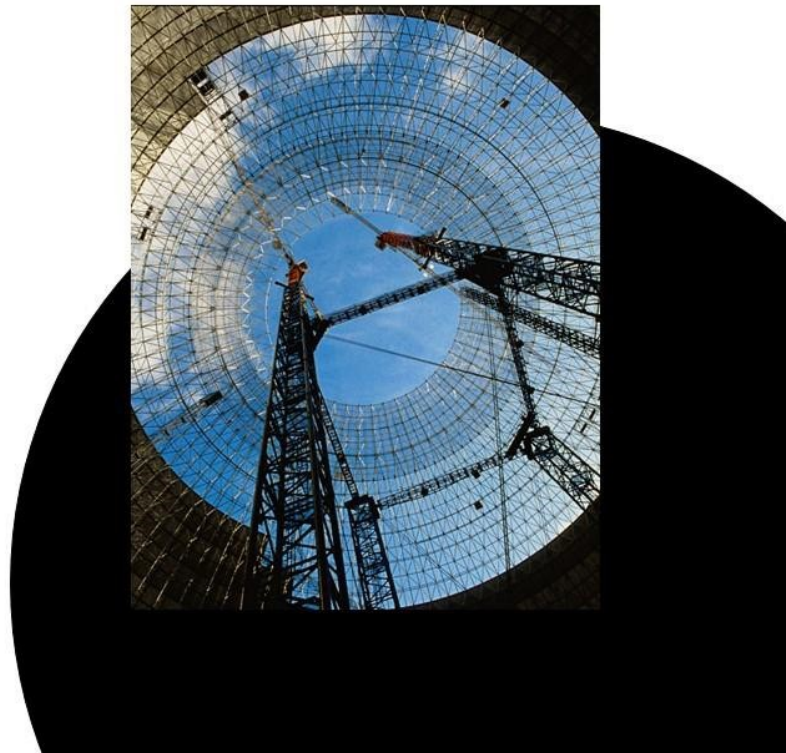
Newsletter

Labour

Amendments to Employment Law



About Law.
Around People.



FEBRUARY 2023

The changes to the labour legislation have finally been approved and will enter into force as early as April. From A to Z, there are significant changes that impact the lives of employees and the day-to-day management of companies. Highlighted in this newsletter are some of these changes.

I. Economic Dependence of Service Providers

The qualification of a service provider as 'economically dependent' for the purposes of applying certain labour rules is not new. What differs is that the Portuguese Labour Code now expressly clarifies what is meant by economic dependence and expressly mentions the Social Security Code.

Whenever the service provider is an individual who, directly and without a third party's intervention, renders an activity for the same beneficiary, and obtains more than 50% of his/her

income in the same calendar year, economic dependency is deemed to exist. However, this is only triggered if the annual income is equal to or greater than six times the value of the Social Support Index (currently, €2,882.58).

Additionally, economically dependent service providers are now covered by the beneficiary's collective bargaining agreement (if one applies). How this operates in practice is unclear.

Finally, a service provider wishing to benefit from the application of this regime must submit a declaration to the beneficiary of the activity, accompanied by proof that he/she meets the requirements of the situation of economic dependence.

II. Parental Rights

Parental rights have also been significantly changed: father's exclusive parental leave increases from 20 to 28 days, consecutively or

intermittently and, in the last case, such periods must have a minimum duration of 7 days. Additionally, the 5-day leave taken after the father's exclusive parental leave is increased to 7 days.

Also new is the absence up to 3 days due to gestational bereavement. This only takes place if leave for termination of pregnancy (14 days) is not applied.

The 3 days' leave also applies to the father, whether due to termination of pregnancy or to gestational mourning.

III. Probationary Period

The law now establishes the presumption of the probation period's exclusion if the employer does not inform the employee of the period's duration and conditions.

Also, the employer now only has 7 days following the start of the employment contract to provide the information, as opposed to the previous 60 days.

Another relevant aspect is the qualification of a contract termination as unlawful if it constitutes an "abuse of law". However, the abusive nature of the termination can only be declared by the judicial courts.

If recognized by a court decision, the employee shall be entitled to a compensation for all pecuniary and non-pecuniary damages suffered, as well as the right to be reinstated (the exclusion of which may be requested to the Court, when the company employs up to 10 employees or if the employee is a director or manager. The employee is also entitled to receive interim salaries (between the date of dismissal and the final court's decision).

IV. Information Duty

Eleven new pieces of information must now be provided by the employer, including the expected duration of a term employment contract for an unspecified duration, the salary payment method (including the breakdown of its components), or the parameters, criteria, rules and instructions on which algorithms or other artificial intelligence systems are based and that affect HR decision-making.

The deadline to observe this duty is significantly shortened: 7 or 30 days following the start date and depending on the type of information, as opposed to the previous 60.

V. Compensation for the termination

In the case of collective dismissal or individual redundancy, the statutory compensation for termination increased to 14 day's base remuneration (plus seniority subsidies) instead of the previous 12 days.

In practice, the calculation of statutory compensation will reflect both regimes (old and new)

On the other hand, compensation for term employment contracts is increased to 24 days of base salary and seniority allowance. This increase applies to contracts already in force.

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