



NEWEFIN: Draft country report PORTUGAL

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This project is financed by the European Commission, Industrial Relations and Social Dialogue Programme (project reference VS/2018/0046)

Amsterdam, 30 November 2018

Mapping legal changes on labour relations

Fixed term contracts

2009 - Authorization to hire temporary workers when a **new activity starts of uncertain duration**, in businesses or workplaces but only when the company has less than **750 workers** (before there was not a threshold). Introduced by Law 7/2009, Article 140 paragraph 4 .a).

2018 – About to change, by lowering the threshold to workplaces with fewer than **250 workers**. Tripartite Agreement 2018/PS government project law 136/XIII – ongoing discussion.

2009 - Fixed term contracts allowed to employ workers **in search of a first job, long-term unemployed** or other persons in special employment policy programs (remained in place with Law 7/2009, article 140 paragraph 4 .b))

2018 – About to be eliminated and replaced by a formulation only allowing to recruit **very long-term unemployed** (have not had a job for 24 months or more) on this basis. Tripartite Agreement 2018/PS government project law 136/XIII – ongoing discussion

Reasons to hire on the basis of fixed term contracts (not directly related with temporary activities)

Fixed term contracts and TWA duration and renewals

2009 – Increased from 2 to 3 times the possibility of renewal of fixed term contracts, but **reduced their maximum duration from 6 to 3 years**; and set and a **maximum duration of 6 years for fixed-term contracts with an uncertain duration** (Law 7/2009, article 148)

2012 - 2013 – Increased the duration and the number of renewals. Fixed-term employment contracts **subjected to 2 additional renovations** and an **additional maximum duration of 18 months** (Law 3/2012 and again by Law 76/2013). (Amendments to the Labour Code 2009 – period of Troika MoU).

2018 – About to be replaced by a **reduction of the maximum duration of fixed term contracts to 2 years** and a reduction of fixed term contracts of uncertain duration to 4 years. In addition, TAW and services contracts with the same purpose will have also the maximum duration of 2 years Tripartite Agreement 2018/PS government project law 136/XIII – ongoing discussion (Tripartite Agreement 2018/PS government project law 136/XIII – ongoing discussion

Renewals and
duration of fixed
term, temporary
agency work and
service contracts

Very short-term contracts

2009 - Created a new type of contract, the **very short-term contract** (contrato de trabalho de muito curta duração), not subject to a written form - for casual work in **agricultural** seasonal activity or during a **tourist** event, with a **duration not exceeding one week** – with a total duration of contracts with the same employer not exceeding **60 working days per year** (Law 7/2009, article 142, paragraphs 1 and 2).

2012 – Increased the duration of very short-term contract – from one week to **15 days** and the annual limit with the same employer from **60 to 70 days** (Law 23/2012, article 142, paragraphs 1 and 2) * (Amendment to the Labour Code 2009 – period of Troika MoU).

2018 – About to be replaced by a formulation, whereby it can be **extended to any other activities** – to deal with exceptional and substantial increase of activity in companies whose annual business cycle presents irregularities arising from its market or structural nature that cannot be guaranteed by its permanent structure - and increase the **duration from 15 to 35 days**.

Tripartite Agreement 2018/government project law 136/XIII–article 142.

Ongoing discussion.

Casual work and very short duration contracts, conditions and sectors

Trial period

2009 - In the open-ended contract, the trial period lasts for: a) **90 days for the majority of workers**; b) 180 days for workers who hold positions of technical complexity, a high degree of responsibility or that require a special qualification, as well as those who perform functions of trust; c) 240 days for a worker who holds a management position or a senior management (these criteria continued with Law 7/2009, article 112, paragraph 1).

2018 - About to establish an increase of the trial period up to **180 days for the workers in search of a first job and the long-term unemployed** hired for open-ended contracts (when before their trial period was 90 days). Tripartite Agreement 2018/PS government project law 136/XIII – ongoing discussion

Trial period and vulnerable workers

Severance pay and fixed term and temporary contracts

2009 – Fixed term and fixed term of uncertain duration (articles 345 and 346) – 2 or 3 days per year of tenure depending of the duration of the contract below or above six months. Open ended contracts/collective dismissals - 30 days per year of tenure, payment of 3 months irrespective of tenure, no ceiling (article 366) (Law 7/2009).

2011 – 2013 - Law 53/2011, Law 23/2012 and eventually Law 69/2013 reduced successively severance pay, aligning payments of open-ended contracts with those of fixed-term contracts. The payment of 3 months irrespective of tenure was eliminated; and it was established a cap of 12 months and of 240 minimum wages while previously there was not a limit. For contracts established since 2013, for both permanent and non-permanent jobs, severance pay is now at 12 days per year. (Amendments to the Labour Code 2009 – period of Troika MoU).

**Severance payments
of short-term
contracts. Conditions
and entitlements**

Combating “bogus” self employment (I)

2009 – Combat to “bogus self-employment” is based on the presumption of the existence of the conditions defining an employment contract (Law 7/2009, articles 11 and 12). An employment contract is defined as an agreement in which a person for a certain period of time provides services upon remuneration for and under the direction of another person upon remuneration. The existence of an employment contract is presumed when, some of the following characteristics may occur:

The activity is carried out in a place belonging to or determined by the beneficiary;

The equipment and instruments of work used belong to the beneficiary of the activity;

The activity provider observes the start and end times of the service, determined by the beneficiary of the service;

A certain amount is paid to the activity provider, as a remuneration;

The activity provider performs management or leadership roles in the organizational structure.

Under Article 12 (2) it is considered a very serious misdemeanour to perform an activity with a formal appearance of a services agreement under the typical conditions of an employment contract, with damage to the employee or to the state.

Definition and presumption of employment contract

Legal subordination remains the main criterion distinguishing employment contracts from service agreements

Combating “bogus” self employment (II)

2013 - Law 63/2013 introduced a judicial procedure to assess the nature of contracts (of services and employment) and to requalify “**bogus self-employment**” as an employment contract, giving to the Authority for Working Conditions (ACT) the duty to act in these situations, without the worker having to confront the employer. The ACT notifies the employers and forwards the case to the Public Prosecutor's Office if the employer does not proceed to the immediate regularization.

(Project law resulted from an Initiative of citizens – Movement Precarious Workers – Precários Inflexíveis)

Extending the mechanisms of combat bogus self-employment

2017 – Law 55/2017 law improves the special legal regime governing the recognition of the existence of an employment contract, established by Law no. 63/2013 and extends the procedural mechanisms to combat ‘bogus self-employment’ to all forms of undeclared work, including **false internships and false volunteer work** (amending Law 107/2009 and the Labor Procedure Code/Decree-Law no. 480 / 99). This new law introduces a protection mechanism that prevents the dismissal if the employer attempts to dismiss the employee as soon as the ACT starts the process. Several other amendments reinforce the role of ACT and the Public Prosecutor's Office.

Widens the scope and mechanisms of action to recognize employment contracts

Platform work

Platform work in transport sector

2018 - Law 45/2018, of 10 August 2018 establishes the legal framework for the activity of individual and remunerated passenger transport in vehicles organized through electronic platforms ('Transport in Vehicles De-characterized through Electronic Platforms') that is carried out by legal persons and is subject to a license.

Drivers shall be registered by an electronic platform and shall conclude a written contract signed by both parties, that could be qualified as an employment contract, especially through the application of the assumption of an employment relationship defined by the Article 12 of the Labour Code.

For the purposes of this assumption, it is considered that the equipment and instruments of work are all those belonging to the beneficiary or exploited by the beneficiary or any other type of lease. The driver will follow the working time regime for employees involved in mobile transport activities (Decree Law 237/2007) or the working time regime for independent drivers (Decree Law 117/2012), depending on the type of contract in force between the parties. This new regime will entered into force on 01 November 2018. (EC Flash Reports, August 2018)

Mapping legal changes on social protection

Access to social protection: self-employed

(Perista and Baptista, 2017)

	On her/his own account	With employees (self-employed employer)	Dependent on single client	Dependent on contractual relationship with client	Liberal professions (e.g. doctor, notary, lawyer) ⁵
Healthcare - cash benefits and benefits in kind	Full	Full	Full	Full	
Sickness - cash benefits and benefits in kind ¹	Partial	Partial	Partial	Partial	
Maternity/paternity - cash benefits and benefits in kind	Full	Full	Full	Full	
Old age pensions (preretirement benefits and pensions)	Full	Full	Full	Full	
Survivors pensions and death grants	Full	Full	Full	Full	
Unemployment benefits	None	Full	Full	n.a. ⁴	
Social assistance benefits	Full	Full	Full	Full	
Long-term care benefits ²	Partial	Partial	Partial	Partial	
Invalidity benefits	Full	Full	Full	Full	
Accidents at work and occupational injuries benefits	Full	Full	Full	Full	
Family benefits ³	Partial	Partial	Partial	Partial	

Access to social protection: contractual employment

(Perista and Baptista, 2017)

	Full-time employee	Part-time employee	Fixed-term employee	Temporary agency worker	Casual and seasonal workers ¹	On-call workers	Zero-hour workers	Apprentices	Paid trainees	(Other) persons in vocational/ professional training ²
Healthcare - cash benefits and benefits in kind	Full	Full	Full	Full	Full	----	----	----	Full	
Sickness - cash benefits and benefits in kind	Full	Full	Full	Full	Full	----	----	----	Full	
Maternity/paternity - cash benefits and benefits in kind	Full	Full	Full	Full	Full	----	----	----	Full	
Old age pensions (preretirement benefits and pensions)	Full	Full	Full	Full	Full	----	----	----	Full	
Survivors pensions and death grants	Full	Full	Full	Full	Full	----	----	----	Full	
Unemployment benefits	Full	Full	Full	Full	Full	----	----	----	Full	
Social assistance benefits	Full	Full	Full	Full	Full	----	----	----	Full	
Long-term care benefits	Full	Full	Full	Full	Full	----	----	----	Full	
Invalidity benefits	Full	Full	Full	Full	Full	----	----	----	Full	
Accidents at work and occupational injuries benefits	Full	Full	Full	Full	Full	----	----	----	Full	
Family benefits	Full	Full	Full	Full	Full	----	----	----	Full	

Self-employed and social protection (I)



2009 - Until 2012 protection against unemployment risks did not apply to them, but only to employees. Another significant difference between self-employed persons and employees has been related to healthcare and sickness cash benefits. In general, the period of absence for conceding sickness benefits to the self-employed has been 30 days, while for employees it has been 3 days; furthermore, the maximum period for getting this allowance has been 365 days, while for employees it has been 1,095 days (Cabrita et al, 2009; Perista and Baptista, 2017).

Limited right to sickness benefits
Not entitled to unemployment benefits'

2010 - Law 55A /2010 – Legal persons or entities with a business activity, regardless of their nature and purposes that in the same calendar year benefit from at least 80% of the total value of the activity of the self-employed person, are defined as contracting entities.

First definition of contracting entities - **economically dependent self-employed workers**

2012 – Law 65/2012 – Gives access to unemployment benefits to self-employed workers, but only to those who are **economically dependent - perform 80% of their yearly activity for the same entity** - when they have completed a record of contributions of 720 days in the previous 48 months compared to the record of 360 days in the previous 24 months applicable to most employees. While the amount and duration of unemployment benefit were reduced by Law 64/2012 affecting both contractual . Both measures (Perista and Baptista, 2016; Campos Lima and Abrantes, 2016). Troika...

Entitlement to unemployment benefits with limitations

Self-employed social protection (II)

2018 – Decree- Law 2/2018 defines new rules for Social Security contributions made by self-employed workers and entities that hire self-employed workers. It redefines the conditions of economically dependent work - **perform 50% of their yearly activity for the same entity**; it lowers the workers contributions to social security from 29,6% to 21,4% while employers contributions will vary from 7% to 10% (previously 5%).

All self-employed workers will pay a fix contribution of 20 euros per month to maintain the continuity of their integration in social security and benefit from all correspondent provisions. Personal taxes will be calculated on the basis of real income.

Decree Law 53/2018 – reduced the period of absence for conceding sickness benefits to self-employed workers from 30 to 10 days (closer to the regime of contractual work); and extended to them maternity and paternity cash benefits for children assistance. As to the regime of unemployment benefit for the self-employed economically dependent the record of contributions will be equal to the one of contractual workers - 360 days in the previous 24 months.

Widening the scope of rights of self-employed and of the category of economically dependent self-employed

Convergence with standard employment regarding unemployment benefits

Convergence sickness benefits/children benefits

Labour market effects of the reforms

Overview - macroeconomic performance

- The global financial and economic crisis and the Eurozone debt crisis impacted strongly on Portugal. The GDP declined abruptly between 2008 and 2014, falling by EUR 12 billion (-6%)
- The growth rate only turned positive in 2014. Recovery in Portugal started accelerating from 2016
- In sum, 'Portugal went through many economic difficulties during the past decade, but it is now bouncing back with surprising vigour.' (ILO, 2018: 12)

Demographic trends and labour market

- The impact of the crisis and of the austerity policies on employment and incomes was dramatic in Portugal:
 - ✓ More than 600,000 jobs were lost
 - ✓ The increase in unemployment, youth unemployment and labour underutilisation was abrupt
 - ✓ This was accompanied by massive outmigration
- Since 2014, economic growth has regained momentum, unemployment has declined significantly, and living standards in 2017 were back to the level they were in 2008
- Unemployment rate rose from 8.8% in 2008 to a peak of 16.4% in 2013; it declined since then, reaching 9% in 2017.
- There remain gaps in the labour market and concerns with the quality of jobs, especially for youth. Remuneration has remained stagnant and low relative to EU averages. Labour market segmentation is widespread, with large number of temporary jobs. Moreover, non-standard forms of labour contract and new forms of employment have been showing significant developments in Portugal in the past decade

(Temporary and) Very short-term contracts (1)

- The incidence of temporary contracts has oscillated around 22 %
(compared with 14% in the EU28)
- Since 2014, overall still more permanent jobs were created; though temporary jobs increased much more rapidly in relative terms: in 2015, 46.7% of the new contracts were temporary contracts
- Contractual segmentation manifests in some key features:
 - Temporary contracts have a high presence across most sectors of activity, and it equally concerns male and female workers (LFS)
 - Temporary contracts are overrepresented among young workers (59 per cent in 2017), but are also relatively wide spread across the prime-age population (16 per cent of workers aged 25-55 years in 2017) (Eurostat)
 - **Temporary contracts have a strong involuntary aspect: 84% of all temporary workers in 2014 (LFS)**
 - Transitions between contractual statuses are low (Eurostat)
 - Temporary jobs fare worse than regular jobs along the whole range of working conditions, especially regarding earnings (EWCS 2015)

(Temporary and) Very short-term contracts (2)

- Short temporary contracts have been rising (LFS):
 - 2008: 2.45% of all temporary contracts had a duration lower than 1 month; 5.58% of all temporary contracts had a duration between 1 and 3 months
 - 2017: 6.25% of all temporary contracts had a duration lower than 1 month; 8.48% of all temporary contracts had a duration between 1 and 3 months
- Very short temporary contracts with a duration up to 15 days – in seasonal activity in the agriculture or in touristic events - have been also increasing: from 1,108 in September 2011 to 1,786 in September 2015 (Instituto de Informática, IP, MTSSS)

Temporary agency work

- Temporary agency work has a residual expression in the Portuguese labour market, covering 0.1% of all employees in 2014 (QP)
- Temporary agency workers, as a percentage of all temporary contracts, have been declining, from 9.9% (7.7% for men and 2.3% for women) in 2010 to 3% (2% for men and 1% for women) in 2016 (QP)
- The number of temporary work agencies increased from 197 in 2014 to 212 in 2015; then declined to 198 in 2016 (IEFP)
- The number of workers covered by temporary agency work has though been increasing: 144,853 in 2014; 162,298 in 2015; and 166,519 in 2016 (IEFP)
- The number of contracts celebrated has increased even more, as it did the ratio contracts/workers: 3.21 in 2014; 3.34 in 2015; and 3.58 in 2016 (IEFP)

Dependent and bogus self-employment

- The share of total employment that is self-employment used to be higher in Portugal but in 2015 it was similar in Portugal and in the EU28, around 10% (LFS)
- Self-employment has registered a steady drop over time, having declined by 25 per cent in the period 2011-2017 (LFS)
- **34% of workers (compared to 20% in EU28) are self-employed because there were no other alternatives for work (EWCS 2015)**
- **Dependent self-employment** represents (EWCS 2015):
 - 9% of all employment
 - **41% of all self-employment**
- Bogus self-employment (as identified by the Labour Inspectorate, from 1 September 2013, when Law 63/2013 came into force, to 2015):
 - 2,488 bogus self-employed identified; 798 situations regularised voluntarily by employers; 502 participations to the Public Prosecutor's Office (ACT)

Digital platform workers

- Eurobarometer 438, 2016:
 - ✓ 23% of respondents (compared with 32% in the EU28) has ever provided services on collaborative platforms
- The COLLEEM pilot survey, 2017 (a 14 countries sample):
 - ✓ Nearly 11% of the entire adult population in Portugal (compared with nearly 10% in the total sample) has ever provided labour services via platforms
 - ✓ 7.1% (compared with 7.7% in the total sample) are “relatively frequent” (at least once a month) platform workers
 - ✓ 6% (compared with 5.6% in the total sample) dedicate at least 10 hours per week to the work carried out via platforms
 - ✓ 4.2% (compared with 6% in the total sample) make at least 25% of their monthly income via platforms; and 1.6% (compared with 2.3% in the total sample) make at least 50% of their monthly income via platforms, i.e. platform work remains extremely low as a main source of employment or main source of income

- Thanks for the attention!
- **MUITO OBRIGADA!**