

2018: A Year in Review – Employment Perspective

Introductory Remark

2018 was marked by an apparent growth of both the economy and investment, which was reflected in the labour market. Portugal has thus been on a steady path of recovery in the labour market, deserving prominence by the International Labour Office as a solid example of rapid and successful economic and labour recovery, which has not compromised the rights of the employees.

Still, the stagnation in terms of labour legislation continues, despite the expectations generated in 2017. However, the commitment made with the social partners has been consolidated and amendments to the Labour Code were approved by the Council of Ministers.

Despite the apparent increase in the number of permanent employment contracts, this has not yet been enough to change the segmentation levels accumulated in the market, and the so-called precarious forms of employment continue to lead the hiring processes.

In the following chapters we will summarize the legislative changes that took place over the last year, as well as highlight some of the decisions issued by our courts.

Perspectives for 2019

2019 will surely be marked by amendments to the Labour Code, which are expected to be approved and published soon.

Envisaging a balance between the rights of employees and the freedom of management of employers, several measures have been proposed with the aim of responding to the precariousness and the development of permanent employment, which result in changes on the duration of the trial period. Promoting collective bargaining and the “bank of hours” regime are also reflected in these legislative changes.

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By 2019, several measures are proposed that aim to respond to the precariousness and the development of permanent employment.

As such, the Government proposes, among other measures, to reduce the maximum duration of fixed-term contracts from 3 to 2 years, also reducing the maximum duration of uncertain term contracts from the current 6 to 4 years, and creating an additional contribution to the Social Security for companies that have excessive turnover of their staff and an excessive volume of fixed-term employment, compared to sectoral indicators previously defined.

The extension of the trial period from 90 to 180 days for permanent contracts with employees looking for the first job and the long-term unemployed is also an expected measure.

The subject of collective bargaining will again be a topic for discussion and debate, aiming at increasing the core of issues that could be eliminated by more favourable collective regulations, as well as the elimination of the possibility of the fixed-term contract regime being excluded by collective bargaining.

On the other hand, the elimination of the bank of hours is foreseen and changes to the scope of the regime of the group hours' bank.

Publication of such changes is expected at any time and preparation for these changes is relevant.

Legislation

Decree-Law No. 2/2018, of 9 January 2018, amended the contribution scheme of self-employed employees.

Executive Order No. 14/2018, of 11 January 2018, approved a new model for industrial accidents formal communication by employers (including "public employers that have transferred the responsibility for the compensation of occupational accidents") and by self-employed employees.

Law No. 14/2018, of 19 March 2018, amended the legal regime applicable to the transfer of undertakings and reinforcing employee rights.

Executive Order No. 182/2018, of 22 June 2018, established the working conditions of administrative employees not covered by a specific collective regulation, revoking Executive Order No. 736/2006, of 26 July 2006.

Decree-Law No. 53/2018, of 2 July 2018, amended several aspects of the legal regime of social protection in the event of illness, unemployment and parenthood, aimed at strengthening the social protection of self-employed employees.

Law No. 45/2018, of 10 August 2018, established the legal regimes for the activity of individual and remunerated passenger transportation in de-characterized vehicles

from electronic platform ("TVDE"), and the electronic platforms that organize and make it available to interested parties (the so called "Uber Law").

Law No. 60/2018, of 21 August 2018, approved measures to promote equal pay for equal work or for work of equal value for women and men.

Decree-Law No. 117/2018, of 27 December 2018, updated the amount of the minimum guaranteed monthly salary for the year 2019, to € 600.00 (six hundred euros).

Decree-Law No. 119/2018, of 27 December 2018, created a new system of flexibility for the age of access to old-age pension.

Court Decisions

Decision of the Porto Court of Appeal, dated 05.03.2018, Proc. No 1119/13

Video Surveillance | Pictures | Use as evidence | Lawfulness and admissibility

The court deemed images captured by video surveillance as acceptable evidence in a disciplinary proceeding and in the subsequent judicial proceedings in which the disciplinary sanction applied is discussed, provided that "*the assumptions that derived from data protection legislation*" and "*the purpose of its placement was not solely to control the employees' professional performance*", concluding that there was just cause for dismissal.

(Click [here](#) for the entire ruling – Portuguese version)

Decision of the Évora Court of Appeal of 08.03.2018, Proc. No 296/17

Freedom of speech | Just cause for dismissal

The court concluded that the dismissal of the employee was unlawful, considering there was no just cause, since "*the distribution by three employees (two of them union leaders) of a communication approved in plenary*", which stated that "*the hotel is increasing exploitation and pushing us towards poverty*", that "*repression has been increasing*", that "*salaries have not increased over the past eight years, there was no extra work payment and precariousness has increased*", indicating also the respective foundations "*are considered not false*", represents "*the right to criticism, sharp and incisive*", which, despite going "*beyond what would be admissible*", did not assume, "*in the context in which it was produced*" ("*and in which other employees who were not subject to disciplinary proceedings were involved*"), such "*severity that makes immediate and practically impossible to maintain the employment relationship*".

(Click [here](#) for the entire ruling – Portuguese version)

Decision of the Porto Court of Appeal of 10.09.2018, Proc. No 1829/17

Verbal Dismissal | Tacit dismissal | Express Declaration

The Court considered that *"it is essential to, unequivocally, conclude from the behaviour of the employer that it was his intention to terminate the employment relationship"*, and that in this case, the conduct of the employer does not constitute *"tacit dismissal"* who *"in a context of mutual exaltation sends the employee home and tells him that they would talk later, though on the very same day a disciplinary proceeding was instated"*.

(Click [here](#) for the entire ruling – Portuguese version)

Decision of the Lisbon Court of Appeal of 12.09.2018, Proc. No 25940/17

Labour credits | Statute of limitations | Error

The court considered that the claims covered by the limitation period defined in Article 337 (1) of the Labour Code are only those *"arising directly from the employment contract or those resulting from its violation or termination"* and clarifies that, in the case of a credit which *"originates from an act other than the employment contract or termination"*, that rule does not apply. Thus, since the reference to *"an error-defect in the conclusion of the termination agreement"*, which might lead to its nullity, Article 337(1) of the Labour Code *"has no application"*, since it is not a labour credit, *"which the employee knows, and can activate immediately after the termination of the relationship with the employer"*. It is rather a fact-based right (the *"wrongdoing"*) which term (expiration) is governed by Article 287(1) of the Civil Code and is counted from the date of actual knowledge of the facts by whomever they may concern. In this case, since the employee became aware of the error months after the termination of the employment contract, the period was not yet over when the action was brought.

(Click [here](#) for the entire ruling – Portuguese version)

CONTACTS

Inês Albuquerque e Castro
Partner
ic@fcblegal.com

