



AMBITIOUS LABOUR REFORM INJECTS SECURITY AND PERMANENCE INTO THE MARKET

MV Conversations with Guilherme Machado Dray

With a goal of tackling precarious temporary working conditions, increasing job security and boosting permanent hirings, the recent reform to Portugal's Labour Code goes a step further with measures to rebalance segmentation in the labour market.

For Guilherme Machado Dray, this is the most ambitious reform in Portugal's democracy, strengthening the country's so-called 'decent work' agenda and setting a precedent, in particular, for the treatment of Portugal's emigrating young talent.

"The whole idea behind the reform is the belief that precariousness and non-permanent working conditions hinder career progression, increase the risk of poverty, decrease growth, undermine competitiveness of corporations and affect the sustainability of our country's social security system," he says. "The essence of this reform is that by tackling these working conditions, as well as promoting and ensuring a higher level of job security – be it for young people, the unemployed or by reinforcing maternity and paternity rights – the reform will ultimately redress an imbalance in our labour market."

Portugal's Labour Code was overhauled in 2009, with a review in 2012 during the crisis under the European Troika Programme. This new regime is the long-awaited result of a framework agreement tackling the precariousness of the labour market that was agreed between the Portuguese Government and its social partners, employment associations and trade unions, explains Guilherme Machado Dray. "Social partners approved this agreement at a social consultation, and it is important to stress that this reform is something that has been backed not only by the unions, but also by the country's corporations."

Fixed-term: Contracts only for a reason

At the heart of the reform is a crackdown on the use of temporary and fixed-term contracts for permanent positions, introducing limits and thresholds as well as a new additional social security contribution applied to companies using an excessive amount of temporary or fixed-term contracts.

Why this focus? At the end of a fixed term, the contract naturally comes to an end and you can legally dismiss without fair justification or reason, therefore the use of temporary or fixed-term contracts is a way that companies have historically been using to get around Portugal's dismissals rules. "We do not apply the doctrine of employment at will in Portugal, i.e. where an employer can terminate the contract with a good reason, a bad reason or even for no reason at all," explains Guilherme Machado Dray. "Our system is based on the principle of job security set out in Article 53 of the Portuguese Constitution, whereby you can only dismiss an employee with just cause, i.e. for a fact attributable to the employee, for economic reasons, or for ineptitude. So companies found a way around this by using fixed-term contracts for both temporary and permanent positions."

The average percentage for use of fixed-term contracts in the EU is at around 18%, while Portugal is at about 22%, so above average, says Guilherme Machado Dray, as well as the fact that of new contracts concluded over the past years, over 80% were made using fixed-term contracts. "That is why the reform is so focused on curbing the use of temporary and fixed-term solutions for permanent positions,



particularly for the long-term unemployed and the young workforce, where the use of fixed term contracts as a form of long probation period was commonplace.”

By law, fixed-term contracts can only be used in order to satisfy the temporary needs of a company, we call them ‘reason contracts’, says Guilherme Machado Dray. “But the law contradicted itself as there was an exception whereby companies could hire the young or long-term unemployed for permanent jobs even without there being a temporary motive. And of course companies took advantage of that.”

While unemployment rates have dramatically improved over the past four years hitting a low of close to 6%, he adds, the majority are youngsters so the idea is to help them to have access to permanent jobs in order to get them on their first step to securing future in the Portuguese labour market.

Therefore, as of 1 October 2019, first-time jobseekers or the long-term unemployed can no longer be hired on a fixed-term contract for permanent positions.

Limits on use and abuse

While you can still use fixed-term contracts for truly temporary needs, the reform bring in new thresholds and limits. There is a reduction in the duration of fixed-term contracts, for example, with the maximum duration going down from three to two years, subject to a first-time limit of three renewals, and the duration of any renewals cannot exceed their initial periods, outlines Guilherme Machado Dray.

But one of the most notable additions to the regime is the creation of an additional social security surcharge that will be applied to companies that make use of an excessive amount of fixed term or temporary contracts. This will be an annual social security payment coming into effect as of 1 January 2021, calculated as a percentage of the total of a company’s permanent contracts basic remuneration - a measure introduced to ensure that companies will take much more care in how they use, or abuse, fixed term contracts.

In terms of how “excessive use” will be defined, Guilherme Machado Dray explains that this will be based on labour market research conducted by the Ministry of Employment. In 2020, the Ministry will analyse the use of fixed-term contracts across all of the sectors in Portugal to calculate an average figure for fixed-term contract use per sector, so as to reflect the realities of the economy. He adds that certain sectors will by their nature have a higher rate of use than others, for example the tourism sector in comparison to another more administrative sector.

Therefore as of 2021, if companies exceed the limits within their sector they will be hit with this annual social security surcharge. “Something that should be enough to make them think twice before violating that threshold,” says Guilherme Machado Dray.

It is worth noting that the reform also addresses other social concerns that were identified, for example adjusting working time schedules to avoid certain workers, such as those who suffer from cancer, having to take shift or night work, as well as the promotion of parental rights.

The reform brings in a significant amendments to the Labour Code, creating new rights that are applicable to both parents, explains Guilherme Machado Dray. “These include the right to attend medical procreation assistance consultations, applicable to both parents, and also a new norm prohibiting any discrimination based on maternity, namely regarding equal pay.”



In essence, this long-awaited reform does what it set out to do. Fixed-term contracts are put rightfully back in their 'temporary' place, job security is being prioritised benefiting both worker and employer in the long-run, steps have been taken to equalise unbalanced working conditions, and a precedent is being set for the treatment of Portugal's young talent. "For some time in Portugal we have been facing the immigration of our highly skilled and well-educated young workforce," says Guilherme Machado Dray. "I believe this reform will not only provide the security and first step on the career-ladder that these young workers have been missing, but also be strategically beneficial for companies in the long-term. This reform allows youngsters to enter into the labour market through the main entrance, instead of having to keep using the back door."

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