

# CHANGES TO THE PORTUGUESE LABOR CODE: DECENT WORK AGENDA

*New changes to the Portuguese Labor Code will come into force in January 2023. Such changes include limiting the renewal of temporary work contracts and temporarily forbidding the use of outsourcing after collective dismissal or by termination of employment.*

Proposed Law no. 79/XXIII/2022, which amends the Labor Code, has been approved.

The Proposal, containing several measures, will be discussed and voted on in Parliament.

The main changes are:

- **Definition of "economic dependency"**

There is "economic dependency" when the work provider is a natural person who performs an activity for the same beneficiary directly and without the intervention of a third party and obtains more than 50% of the output of that activity from the beneficiary in a calendar year (article 10/2).

## CONTACTS

### GUILHERME DRAY

[GDRAY@MACEDOVITORINO.COM](mailto:GDRAY@MACEDOVITORINO.COM)

### JOANA FUZETA DA PONTE

[JFUZETADAPONTE@MACEDOVITORINO.COM](mailto:JFUZETADAPONTE@MACEDOVITORINO.COM)

- **Collective rights for the economically dependent**

The economically dependent are now entitled to: (i) representation of their socio-professional interests by trade union associations and by workers' committees, even if they cannot be members; (ii) negotiation of collective labor regulation instruments, specific to the self-employed, through trade union associations; (iii) application of existing negotiated collective labor regulation instruments applicable to workers (10-A).

- **Digital platforms - presumption of employment**

There is a new presumption of employment for work performed on digital platforms when certain requirements are met: the remuneration is fixed by the platform operator; the operator directs the form of action and presentation of the provider; the operator controls the activity provided, namely through electronic means; the operator restricts the autonomy of the provider with regard to the organization of the work, in particular the choice of working hours or periods of absence, the possibility of accepting or refusing tasks, the use of subcontractors or substitutes or through the application of penalties for the beneficiary operating on the platform; it restricts the possibility of choosing clients or providing activity to third parties via the platform; the work equipment and tools used belong to the digital platform operator. Presumption may be rebutted by the platform operator (Article 12-A).

*This information is provided for general purposes only and does not constitute professional advice.*

- **Fake receipts – new penalties**

There was a reinforcement of the accessory sanction for "false" service provision contracts, determining, in case of relapse: (i) the deprivation of the right to support, subsidies or benefits granted by a public entity or service, or from European funds; and (ii) the deprivation of the right to participate in public tenders or public procurement (12/3).

- **Algorithms and Artificial Intelligence**

On the use of algorithms, artificial intelligence and related matters, collective bargaining agreements cannot exclude legal provisions unless they are more favorable to workers (3/3).

Equality and non-discrimination also apply in the case of decision making based on algorithms or other artificial intelligence systems (24/3).

- **Broadening of the concept of “discriminatory behaviors”**

Discrimination in pay related to the attribution of attendance and productivity bonuses, as well as unfavorable allocations in terms of evaluation and career progress (25/6 and 7) are considered to be “discriminatory behaviors”.

- **Adoption and foster care leave**

Adoption processes and foster families are considered as justified absences from work that do not entail the loss of any rights and are considered as effective work, except for remuneration (65/1, k)).

- **Duty to inform the employee**

The employer must now inform the employee about new aspects: (i) identification of the user, for temporary workers; (ii) right to continuous training; (iii) in the case of intermittent work, the information provided for in the legally established framework; (iv) parameters, rules and instructions on which the algorithms or other artificial intelligence systems are based (106/3).

- **Trial period**

180-day trial period applicable to workers with a permanent contract who are looking for their first job and the long-term unemployed is reduced and/or excluded depending on whether the duration of the previous fixed-term employment contract, with a different employer, was 90 days or more (112/5).

The possibility of reducing the trial period according to whether the duration of the professional internship with positive evaluation, for the same activity and different employer, was equal to or greater than 90 days, in the last 12 months, was established (112/6).

The notice period for terminating the contract during the trial period, after more than 120 days, is now 30 days (114.º/3).

Duty to communicate to **CITE** (Commission for Equality in Employment) the termination of the contract during the probationary period extends to the caregiver worker (114/5).

It is mandatory to communicate to **ACT** (Authority for Working Conditions) the termination of the contract during the trial period applicable to open-ended contracts of first-time job seekers and long-term unemployed, within 15 days (114/6).

The new rules now state that although the termination does not depend on just cause, it cannot be abusive, according with article 334 of the Civil Code (114/7).

- **Fixed-term contracts**

Rules on the succession of fixed-term contracts were strengthened to prevent abuse of this form of contracting, namely by preventing the new admission or assignment of a worker under a contract (fixed-term, temporary or service provision) which is executed in the same job, for the same purpose or the same professional activity (143/1).

The obligation to communicate to CITE, with a minimum of five working days' notice, of the reason for non-renewal of a fixed-term employment contract, extends to the care worker (144/3).

Compensation for termination of a fixed-term employment contract (fixed or uncertain) was extended to 24 days per year (344/2).

- **Temporary work**

If the maximum duration of a contract for the use of temporary work has been reached, the succession in the same job of a temporary worker or of a worker employed for a fixed term, concluded with the same employer or company that has a group or control relationship with it, or maintains common organizational structures, is forbidden before a period equal to one third of the duration of the contract has elapsed, including renewals (179/1).

If a user contract is signed or renewed with an unlicensed temporary work company (**ETT**), the integration is done with an open-ended contract in the user company (180/5).

The duration of successive temporary work contracts in different users, concluded with the same employer or company that is in a dominating or group relationship with it, or maintains common organizational structures, may not exceed four years. Once this limit is exceeded, the contract is converted into an open-ended employment contract for temporary assignment (180/4 and 5).

- **Collective labor relations and collective bargaining**

Trade union activity is allowed in the company even when there are no unionized workers, subject to specific applicable conditions and as long as the normal functioning of the productive activity of the company is not affected (460/2).

The choice of collective agreement is not possible if the worker is already covered by an extension decree (497/5) and the issuing of the extension decree rules out the application of an agreement that may have been chosen (515/5).

In the event of termination of a collective agreement, the party to which it is addressed may request arbitration by the President of the Economic and Social Council for review of the grounds for the termination, which suspends its effects, preventing the agreement from coming into force (500-A).

© MACEDO VITORINO