



TEN TIPS FOR HIRING NEW EMPLOYEES



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Ten tips for hiring new employees.

Portuguese employment regulations are generally perceived as rigid but this is not entirely true. According to the World Bank's "Doing Business Report", Portugal is only one point behind Germany and is better ranked than many other countries, such as France, Luxembourg and Spain. This means that the level of rigidity of the Portuguese employment legislation is similar to that of most continental European countries although still behind the benchmark countries.

In general, hiring in Portugal is not a difficult process when you are conscious of the mandatory rules and statutory limits set out in the law, such as remuneration, working hours, vacation rights, duration of contracts or termination.

Here are a few tips for hiring new employees:

1. Define the job position and the job requirements clearly;
2. Establish a selection criteria that ensures that you are not discriminating on the basis of sex, age, race, origin, religion, physical disability, etc.;
3. Ensure that the employee's goals are defined in a written document. Assess and update employee objectives on a regular basis;
4. Opt for indefinite duration contracts unless you only need to fill a temporary function. If you are not sure the person will meet your expectations establish a probation period;
5. Set a balanced remuneration package that does not deviate from your company's policies and is adequate for the function, experience and expected performance;
6. Consider the tax and social security implications of the remuneration and fringe benefits;
7. Establish flexible working times and working schedules that can be adapted to changes to the business needs without increasing the cost of labour;
8. Draw up a list of all legal formalities required for the type of contract you are offering. Do not rely on what you did for your last hire. Review, update and adapt any previous list you may have used in the hiring of other employees. Each situation is different;
9. Adopt company policies and manuals adapted to your company's business, the country's culture and the legal requirements. Consider the implications of any changes in law; and
10. Always consider the legal and possible financial implications of your decisions regarding human resources issues.

In this article we provide practical advice to help employers throughout the hiring process and some aspects of the employment relation going forward.

Prepare the hiring process in advance.

Define the job position and the job requirements.

When defining the job position and the job requirements, be sure to include a wide definition of the employee's job position. The employment contract should also state that the employee will be obliged to perform other functions not specified in the employment contract. This should give you the flexibility to require the employee to perform new functions that you might not have envisaged at the time of the hire. Excessively detailed job descriptions undercut your possibility of adding or changing the functions during the life of the employment relationship.

Organise the process in a manner that fits your needs.

The selection process can be managed in-house or through a professional employment agency. Employment agencies can help you to identify and interview potential employees but they will not replace the employer's role in the selection process. You need to determine the job requirements, the personal qualities that you are looking for and that best fit your company's culture and needs.

The legal process of hiring may also be carried out in-house or by outside counsel. When this is the case, please be sure that your lawyer knows your employment terms and conditions, organisation chart, human resources regulations, policies and manuals. Consistency of all these documents will facilitate the hiring process and the way your human resources department will handle employee files.

Establish a selection criteria that ensures that you are not discriminating on the basis of sex, age, race, origin, religion, physical disability, etc.

The selection process must be driven by the key demands/requirements of the job function. In selecting new employees you must avoid any possible bias or discrimination on the basis of the candidate's sex, marital status, family status, sexual orientation, religion, age, disability or race, which are expressly forbidden by law. To do that you need to ensure that the people intervening in the process will not be biased. In some cases this may be involuntary, so you should ensure that you have more than one person involved in the evaluation and selection processes.

If you are hiring within the company consider the implications of the employee's existing obligations and if you can/should amend the existing contract.

In many cases, your most suitable candidate is within the company or working in one of its affiliates. When hiring within the company you should consider entering into a secondment agreement. Secondment agreements are used for the hiring of employees who will fill management positions or lower ranking positions that need them to be especially trustworthy because they will be handling or having access to confidential or sensitive information, as is the case with personal assistants. Under these agreements you may also move a person to another position with the possibility of demoting him/her to the former position.

Be clear about what you want.

Opt for indefinite duration contracts unless you only need to fill a temporary function.

If you need to fill a position temporarily because there is an exceptional increase of the company's activity or to replace an employee, you may enter into a term agreement. However, in many cases, term employment agreements are used by employers to have the option to dismiss the employee at the term of the agreement because they are uncertain about his/her performance. This should be avoided. It is preferable to enter into a permanent agreement setting out clearly the objectives you expect from the employee, which, if not attained, may justify his/her dismissal for ineptitude.

Fixed term contracts have their duration limited in time - generally six months - but may be shorter or longer, up to a maximum of three years. Unfixed term contracts are used to replace absent employees or when you need to complete a specific project or task with an unspecified duration provided that they do not take more than six years. Term employment contracts must be in writing or they will be deemed permanent.

The burden of proving the facts that justify the entry into a term employment agreement lies with the employer. If the justification is correct or inaccurate the contract will be considered permanent.

For higher responsibility positions, consider hiring your new employee under a service commission contract.

Service commission agreements can be terminated by either party by giving a 30 or 60 days prior notice, depending on whether the agreement has been in force for less or for more than two years, respectively.

Employees hired from within the company will be entitled to return to their former positions when the service commission is ended and to receive a severance compensation, unless they terminate the employment within 30 days following the employer's decision to end the service commission agreement.

If you are not sure the person will meet your expectations establish a probation period.

During the probation period either party may terminate the contract without the need to serve a reason or compensation. The termination with prior notice is required when the probation period takes more than 60 days. The limits of the probation period may range between 15 days to six months for term contracts and from 90 days to 240 days in permanent agreements depending on the nature of the functions and the level of responsibility of the employee.

Be clear about what you offer.

Set a balanced remuneration package that does not deviate from your company's policies and is adequate for the function, experience and expected performance.

Performance-based agreements may offer a better deal for employers and employees, as they allow employers to reward the best performers and can help motivating employees. Performance-based compensation schemes are used to reward high achievers and weed out weaker performers.

The law does not set specific limitations the use of performance-based remuneration schemes provided they are not used as a way to unilaterally reduce the remuneration, except in those cases where this is expressly allowed by law, labour regulations or collective agreements.

Set clear, achievable and measurable objectives for the employee that justify the performance incentives you are willing to give.

As a rule, the performance objectives should not be laid out in the employment agreement but in a separate document which can be reviewed and updated regularly. Performance-based schemes should be linked to clearly defined and measurable objectives which are mainly dependant on the performance of the employee. Otherwise you risk the incentive bonus will be deemed part of the base salary. You may, however, condition the payment of bonuses to the fulfilment of departmental objectives or the overall performance of the company.

Introduce greater flexibility in working times without increasing costs.

In Portugal, working hours are flexible subject to certain maximum limits: up to 2 extra hours to the normal working day and up to a total of 50 weekly work hours if the employment agreement so provides. Employees may also be exempted from the work schedule in certain conditions; this avoids the payment of "overtime working hours", which generally must be paid for work carried out outside the normal working day.

Consider the tax and social security cost implications of the remuneration and fringe benefits.

You may consider giving certain fringe benefits, like the use of a company car, mobile phone, health insurance, pension plans, etc. Most benefits are usually considered part of the remuneration package and taxed accordingly. There are, however, some exceptions such as lunch allowances and the use of a company car which, subject to certain requirements, may not be subject to income tax.

Identify the benefits you can expect to lower the taxable remuneration. For instance, certain credits are allowed in addition to the specific deductions concerning each category of income, including a percentage of the expenses incurred on health and education. Also, some items may not entail the payment of social security contributions, such as non-regular performance bonuses, profit sharing schemes, tuition for children and allowances for health expenses.

Comply with all legal formalities.

Draw up a list of all legal formalities required for the type of contract you are offering. Do not rely on what you did for your last hire. Review, update and adapt any previous list you may have used in the hiring of other employees.

Not all employment contracts need to be in writing, but this is generally advisable because it ensures certainty on the exact agreed terms. In addition, it is mandatory for the employer to provide certain information in writing, such as the full identification of the employer, the description of the job position, the place of work and the employer's work accidents policy number.

Term contracts must be made in writing and contain a justification of the hiring. Otherwise the agreement will be deemed permanent.

Notify the social security and labour authority.

You must notify the Portuguese social security authorities of the commencement of the employment; failure to do so will entail fines. The notification must be filed prior to the commencement of the employment.

Employers must also notify the Labour Conditions Authority (*Autoridade para as Condições de Trabalho*) of the execution of any term contracts or of the hiring of foreign employees.

Check if you can apply for any Government employment incentives.

The Government grants financial subsidies and exempts or reduces employers from social security contributions to encourage the employment of first-time job-seekers, employees with disabilities or the long-term unemployed. Usually it is required that the new employees must be hired under a permanent contract or, in case of term agreements, for a minimum period of time. The incentives may last for up to 18 months.

Adopt company policies and manuals adapted to your company's business, the country's culture and the legal requirements. Consider the implications of any changes in law.

Employers may draw up internal regulations setting forth its work organization and disciplinary rules. The provisions set forth in such manuals are mandatory for all employees of the company and are a strong and adequate way to discipline work, so consider drawing up such regulations as they are a good form of defining in a specific manner the functions to be performed (and how to perform them), rather than laying them down on each employment contract. For instance it is advisable to regulate the use of the internet and email to avoid misunderstandings regarding the violation of privacy rules. Internal regulations must be updated regularly and communicated to all employees.

Going forward...

Set clear, achievable and measurable objectives for the employee.

Ensure that the employee's goals are defined in a written document. These goals need to be assessed and updated on a regular basis and can serve to determine if the employee is entitled to receive his/her bonus. When the goals are not attained there may be grounds to dismiss the employee. If the objectives that must be individually attained by the employee have not been clearly described there will be room for disputes regarding the payment of bonuses and in the event of a dismissal for ineptitude.

Conduct periodic reviews. Be objective in your evaluations.

Employees should be periodically evaluated to confirm that they are attaining their objectives. You may consider different forms of evaluating employees, including self-evaluation or a 360° degree feedback evaluation.

Do not allow discriminatory practices.

The law protects employees against discrimination at work, such as pay and benefits, promotion and transfer opportunities, training, recruitment and redundancy. Different cultures may have different manners of dealing with these issues, but you need to be aware that no cultural reason justifies such practices. Discrimination is not only morally wrong but also leads to potential legal claims and unrest at the work place.

Communicate with your employees on a regular basis. Do not create false expectations.

Employers should communicate regularly with workers. Communication reinforces employees' understanding of their position in the company, the company's culture and their duties, obligations, rights and objectives. Communication improves morale and performance but may also create legal expectations that later may lead to disputes.

Before you make any announcement and promises you should make sure you comply with the law, do not create wrong expectations and take into account the changes to the applicable legislation.

Always consider the legal and possible financial implications of your decisions regarding human resources issues.

Most human resources policies and decisions have legal and financial implications.

To avoid future issues, you should evaluate the impact of your decisions regarding employment matters and carry out audits on human resources policies on a regular basis to assess potential liabilities and their impact on your company's finances and working environment.



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IFLR 1000 ranked Macedo Vitorino & Associados in all of its league tables for Portugal, including project finance, corporate finance and mergers & acquisitions. Chambers and Partners mentions us in banking, corporate and dispute resolution among other areas.

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