

## 1. Employment contracts

### Types of employment contracts

Employment contracts can be written or verbal. However, the following contracts must be made in writing:

- Employment contracts for foreign employees (except in the case of employees who are national citizens of a member country of the European Economic Area or another State which adopts the principle of equality of treatment in the free exercise of professional activities)
- Employment contracts with several employers
- Promissory contracts
- Fixed-term employment contracts
- Part-time employment contracts
- Intermittent employment contracts
- Secondment contracts
- Telecommuting employment contracts
- Temporary employment contracts
- Employment contracts of unspecified duration for temporary transfers

It is presumed that an employment contract exists whenever:

- Services are provided in a location which belongs to or is determined by the beneficiary;
- The equipment and work tools used belong to the beneficiary of the activity;
- The service provider complies with a work schedule including a start hour and an end hour determined by the beneficiary (working hours);
- The service provider receives a fixed payment periodically as compensation for its service (salary);
- The service provider undertakes a management or leadership position in the organizational structure of the company.

It is up to both parties to determine by mutual agreement the services for which the employee is hired. This can be determined by referral to the category of instruments of collective labour regulation or internal company regulations.

If required, in view of the company's interests, the employer may instruct the employee to temporarily perform duties other than the hired service(s), provided that no substantial changes to the employee's position are implied. Under no circumstances may this imply a decrease in compensation, and the employee is entitled to the most favourable working conditions.

During the probationary period, either party may unilaterally terminate the contract without prior notice or need to invoke just cause. Unless expressly provided in the contract, there is no right of compensation for termination during that period.

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## **With respect to contracts with no fixed term, the probationary period is:**

- 90 days, as a general rule for all employees (standard statutory duration);
- 180 days for employees holding positions of a complex technical nature, with high degree of responsibility, or which require special qualifications, including employees in a position of trust;
- 240 days for employees holding senior management or executive positions.

## **For fixed-term contracts, the probationary period is:**

- 30 days for contracts with a duration of 6 months or more;
- 15 days for contracts with less than 6 months' duration and contracts of an unspecified period but for which the expected duration does not exceed that limit.

## **Successive fixed-term contracts may not exceed:**

- 18 months for employees seeking first employment;
- 2 years for employees hired on grounds of starting a new business with uncertain duration or beginning of operations in a company or establishment, and long-term unemployment;
- 3 years for all other cases, as a general rule.

Contracts signed based on the following temporary needs are permitted to have a duration of less than 6 months: direct or indirect replacement of an absent employee with a pending lawsuit concerning the legality of their dismissal, unpaid leave of absence, shifting from full-time work to part-time work, seasonal work or activity with irregular production cycle, exceptional increase in the activity of the company, and occasional work or specific and short-term service.

The duration of contracts with no fixed term is limited to a maximum of 6 years.

## **Termination of employment contract**

Any wrongful dismissals or dismissals for political and ideological reasons are prohibited.

Employment contracts may terminate due to:

- Expiration
- Revocation
- Dismissal for reasons imputable to the employee
- Collective dismissal
- Redundancy
- Unsuitability of the employee
- Resignation

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- Rightful termination by the employee
- Mutual agreement

## **Severance payment for termination not related to the employee:**

In the case of termination of an open-ended employment contract, compensation is due, corresponding to the equivalent of 12 days of the base salary plus seniority payment for each completed year of tenure.

In the case of termination of a variable-term employment contract (including temporary employment contracts of an unspecified or uncertain duration), compensation is due, corresponding to the equivalent of:

- 18 days of the base salary plus seniority payment for each completed year of employment, as regards the first 3 years of the contract;
- 12 days of base salary plus seniority payment for each completed year of employment, regarding subsequent years.

In the case of termination of a fixed-term employment contract (including temporary employment contracts with a specified expiry date), compensation is due and corresponds to the equivalent of 18 days of base salary plus seniority payment for each completed year of employment.

Compensation may not exceed 12 times the base salary, in addition to seniority payment, or 240 times the national minimum wage.

## **Rightful dismissal of the employee**

Whenever an employee's misconduct, given the severity and consequences thereof, makes it immediately and practically impossible to continue the employment relationship, there is fair reason (or "just cause") for dismissal by the employer. Among others, the following issues are stated as rightful grounds for dismissal ("termination with just cause"):

- Unlawful disobedience to orders given by management;
- Violation of rights and guarantees of company employees;
- Repeated incitement of conflicts with company employees;
- Repeated disinterest in fulfilling duties that are intrinsic to his/her job or position;
- Serious damage to company property or interests;
- False statements concerning the justification of absences;
- Unjustified absences directly causing losses or serious risks for the company, or in the event of 5 consecutive days or 10 intercalated days of unjustified absence in any one calendar year, regardless of any losses or risks;
- Deliberate non-compliance with occupational hygiene and safety rules;
- Acts of physical violence in the company, as well as slander or other violent offences punished by law, crime against the freedom of company employees, board members or the employer, including his or her delegates or representatives;
- Failure or refusal to comply with a judicial or administrative decision;
- Abnormal declines in productivity.

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## **Dismissal based on the extinction of the position (individual redundancy)**

The employer may terminate the employment contract on grounds of the extinction of the position, when this is due to economic, structural or technological reasons related to the company.

In the case of several positions with similar duties in the same department or office, in order to decide which position to eliminate, it is incumbent upon the employer to define, in reference to the employees affected, relevant and non-discriminatory criteria in view of the reasons behind this extinction.

Compensation identical to that described in “**Severance payment for termination not related to the employee**” is due to employees dismissed on grounds of individual redundancy.

## **Dismissal based on unsuitability**

An employer may terminate an employment contract on the ground of the employee’s unsuitability for the position.

Unsuitability occurs when, based on the employee’s performance, continued employment is made virtually impossible in any of the following situations:

- Continued reduction in the employee’s productivity or quality of work;
- Repeated damages to the equipment allocated to the job;
- Risks to the employee’s own health and safety or to that of other employees and third parties.

In addition, unsuitability occurs in the context of high-level technical or managerial positions when the employee fails to reach the goals previously set in writing and, based on his/her performance, continued employment is made virtually impossible.

These situations do not affect the protection granted to employees with physical impairment, disability or chronic disease.

Cases of unsuitability shall not be caused by lack of safety and health conditions at work attributable to the employer.

For employees dismissed on grounds of unsuitability, a compensation is due identical to that described in “**Severance payment for termination not related to the employee**”.

Terminating an employment contract due to the unsuitability of the employee cannot result in a decreased number of jobs in the company. The same number of jobs must be secured within 90 days after terminating the contract, either by admitting an employee or by transferring an employee, implying the extinction of the latter’s position.

Source: ACT – *Autoridade para as Condições de Trabalho*

(Working Conditions Authority in Portugal)

## **2. Social Security**

### **Notification of admission of employees**

Employers are required to notify the relevant Social Security services on the admission of employees within:

- 24 hours preceding the start of activities specified in the employment contract; or

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- 24 hours following the start of activities, whenever such notice could not be completed within the above deadline due to exceptional reasons (only for short-term contracts, e.g. seasonal and agricultural work, tourism events or shift work)

Employers must also deliver a statement to employees or a copy of the notification of admission, stating the respective Social Security Identification Number (NISS), Taxpayer Identification Number (NIF) and date of admission.

## **Notification of changes to the employment contract**

Employers must notify Social Security services about the following:

- Termination or suspension of the employment contract and the corresponding reason until the 10th day of the month following its occurrence;
- Change in the type of employment contract until the 10th day of the month following its occurrence.

## **Contributions**

In general, the amount of contributions are calculated by applying a contribution rate to the gross pay, due for work done, corresponding to 23.75% paid by the employer and 11% by the worker.

## **Temporary exemption from paying Social Security contributions**

Companies may be exempt from paying the applicable contributions for a period of 36 months maximum, when signing employment contracts with young individuals seeking their first job, long-term unemployed individuals or persons in an open prison scheme.

‘Young individuals seeking their first job’ refers to 16 to 30 year old individuals who, as at the date of the contract, have never undertaken a professional activity under an employment contract.

‘Long-term unemployed individuals’ refers to unemployed individuals who, as at the date of the contract, are available for the job and enrolled in Agencies for Qualification and Employment for more than 12 months, even if, during this period, they have signed employment contracts for periods of less than 6 months and for which the total cumulative duration does not exceed 12 months.

Source: *Segurança Social*

(Social Security)

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