

LABOUR LAW

RECENT AMENDMENTS IN PORTUGUESE LABOUR LAW

THE INTRODUCTION OF A NEW SYSTEM OF COMPENSATION FOR DIFFERENT TYPES OF TERMINATION OF EMPLOYMENT CONTRACTS.

THE INTRODUCTION OF AN EXTRAORDINARY RENEWAL, FOR THE ONGOING LABOUR CONTRACTS SUBJECT TO A FIXED TERM.

Although widely announced and discussed publicly until the beginning of the first quarter of this year 2012, only two changes to the Law 7/2009 were published - Law 53/2011 and Law 3/2012 -, there is a great expectation towards the announced changes, not yet published.

1 - Law 53/2011, October 14

Law 53/2011, which introduces the second amendment to the Labor Code, approved in annex to Law 7/2009, February 12, establishes a new system of compensation for different types of termination of employment contracts, applicable only to new contracts.

In this framework is added to the Labor Code article 366-A ("*Compensation for new employment contracts*"), which regime has some differences from the previous regime, still applicable to the contracts in force.

The new regime, maintaining salary and seniority bonus as the basis for calculation of compensation, introduces the reduction in the number of days to be taken in consideration and sets a maximum value of the salary to be taken in consideration and a maximum amount of the compensation value.

For new contracts the regime established by article 366-A foresees that:

(i) the amount of compensation is equal to 20 days of basic salary and seniority bonus for each full year of seniority or fraction thereof;

(ii) the amount of monthly basic salary and seniority bonus to be considered for the basis of calculation may not exceed 20 times the minimum guaranteed salary (currently € 485.00);

(iii) the total amount of compensation may not exceed 12 times the monthly basic payment and seniority bonus of the employee or, when the limit specified above is taken in consideration, 240 times the minimum guaranteed salary.

For the new contracts the law does not establish any longer a minimum limit for the compensation value.

The application of this law was adjusted to allow different timings:

RECENT AMENDMENTS IN PORTUGUESE LABOUR LAW

(CONTINUATION)

a) immediate application, after the entry into force on November 1, of some of the amendments to the existing regulations and of the new regulations to the new contracts, defined as those entered into after the entry into force of this law, ie all contracts concluded as from November 1;

b) application of certain amendments to the existing regulations only on the date of enactment of the legislation regulating the compensation fund for the work.

The law has determined further that the employer is obliged to adhere to the labour compensation fund and make contributions according to the regime which will be established, being liable for the full payment of the compensation determined by the application of article 366-A until the compensation fund is set up or until the employer has adhered to the same.

2 - Law 3/2012, January 10

The present law sets an extraordinary renewal for the ongoing labour contracts subject to a fixed term, which maximum duration would be until June 30, 2013.

Such contracts can now be subject to two extraordinary renewals, but the total of the renewals must not exceed 18 months.

The extraordinary length of each renewal can not be less than one sixth of the maximum contract term work or its actual length, whichever is inferior.

Out of this exceptional regime are the non fixed term contracts since the maximum six years began in 2009, with the result that it will only be reached in February 2015.

However, a labour contract subject to an extraordinary renewal can not exceed December 31, 2014.

As well as in the previous regime, if the maximum duration periods or the number of renewals is exceeded, the contract is considered a non term contract (ie permanent).

Concerning the right to severance payment due to the expiration of a fixed term contract by the employer, two different regimes are now established, one applicable to the duration of the contract until the first extraordinary renewal, the other from that renewal onwards.

Until the first extraordinary renewal, the amount of compensation is calculated according to the legal regime applicable to a term contract concluded on the date of effectiveness of the relevant contract.

From the first extraordinary renewal, the amount of compensation is calculated according to the legal regime (introduced by Law 53/2011) applicable to a term contract concluded at the time of the extraordinary renewal.

The amount of the compensation to be paid will be the result of the sum of these two components.

March 26, 2012

Margarida Mendes Calixto / Senior Associate
margarida.calixto@amsa.pt

The above information is gratuitous and is addressed to Abreu & Marques e Associados, Sociedade de Advogados, RL Clients, its distribution or copy are not allowed. The information made available, as well as the opinions expressed herein, have a general nature and shall not in any case substitute the appropriate legal counselling applicable to the resolution of specific cases. In case you wish to obtain any additional information regarding the matters analysed above, please do not hesitate to contact us.

Abreu & Marques e Associados, Sociedade de Advogados, RL
Rua Filipe Folque, 2 - 4.º andar, 1069-121 Lisboa - Portugal
Tel: +(351) 213307100 – Fax: +(351) 213147491
E-mail: amsa@amsa.pt – Website: www.amsa.pt

In Angola, in association with
Nilton Caetano, Advogados
Rua da Missão, nº 125 - R/C, Luanda
Tel: +(244) 926 157 045 – Mobile: +(244) 923 246 176
E-mail: nilton.caetano@ncadvogados.com