

APRIL 28TH, 2023

CHANGES TO THE LABOR LEGISLATION

On April 3rd, Law 13/2023 was published, amending the Labor Code and related legislation, as part of the so-called decent work agenda.

Among the many changes and innovations introduced by this diploma, which goes into effect next Monday, May 1st, 2023, we highlight the following, in comparison to the regime in effect until April 30th, 2023:

Article	Labor Code - current regime	Article	Labor Code - new regime
5.º/5	Mandatory communication of the admission of a foreign worker to the Working Conditions Authority ¹ and the respective termination of the contract (except in the case of a national of the European Economic Area or of another state that grants equal treatment with Portuguese citizens in matters of free exercise of professional activity).		The employer does not have to make this communication, which will now be made by the social security to WCA whenever it is informed of such facts.
10.º	The legal norms regarding personality rights, equality and non-discrimination, and safety and health at work are applicable to situations in which work is provided by one person to another, without legal subordination, whenever the provider of the work is to be considered economically dependent on the beneficiary of the activity.	10.º	It adds the applicability of collective labor regulation instruments in force in the same sector of activity, professional and geographic. Economic dependence is considered to exist whenever the labor provider is a natural person who directly and without the intervention of a third party, provides an activity for the same beneficiary, and derives more than 50% of the total of his or her activity from him or her. Authorizes the activity provider to be replaced by a third party in the event of birth, adoption or care of a child or grandchild, breastfeeding and breastfeeding, voluntary interruption or clinical risk during pregnancy, for the duration of the corresponding licenses or dispensations provided for in the Labor Code.
		10.º A	It introduces several principles of collective representation of interests of service providers in a situation of economic dependence, namely, the possibility of administrative extension of collective labor regulation instruments, in general terms.

¹ Hereinafter "WCA".

		10.º B	The application of the self-employed worker protection regime depends on a declaration by the provider of the activity to the beneficiary of the activity, accompanied by documents proving the situation of economic dependence.
106.º	The employer must inform the employee about various aspects of the employment relationship.	106.º	Densification of the content of the duty of information, namely as to: (i) the retribution and its constitutive elements; (ii) the trial period which, if not expressly provided for in the contract, is presumed to have been excluded by the parties; (iii) the individual right to vocational training; and (iv) the parameters, criteria, rules and instructions on which algorithms or other artificial intelligence systems that affect decision-making about access to and retention of employment, as well as working conditions, including profiling and job monitoring, are based.
	Exclusivity could be freely agreed upon by the parties, although some courts held that such a limitation of activity was only admissible under certain circumstances, given the duties performed by the employee.	129.º	The employer may not prevent the employee from having another professional activity, except on objective grounds, namely occupational safety and health or professional secrecy, which in practice limits the possibility of agreeing to work on an exclusive basis. In any case, the employee maintains the duty of loyalty to the employer.
168.º	The obligation to compensate for additional expenses incurred by the worker due to telecommuting was dependent on proof of these expenses on the part of the worker.	168.º	The possibility of the employer or the collective labor regulation instruments providing for compensation to meet the increased costs incurred by telecommuting, which is considered, for tax purposes, a cost for the employer and does not constitute income for the employee up to the limit of the amount defined by ordinance.
268.º	Overtime work is paid in the following increments: a) 25% for the 1st hour or fraction thereof and 37.5% per hour or fraction thereafter, on a business day; b) 50% for each hour or fraction thereof, on a mandatory or complementary weekly rest day or on a public holiday.	268.º	Overtime work in excess of 100 hours per year is now paid in the following increments: a) 50% for the 1st hour or fraction thereof and 75% per hour or fraction thereafter, on a business day; b) 100% for each hour or fraction thereof, on a mandatory or complementary weekly rest day or on a public holiday.
		337.º	An employee's claim cannot be extinguished by waiver, except through a court settlement, which means that the usual declarations of waiver of claims after termination of employment cease to have effect.
344.º and 345.º	Compensation for the termination of fixed-term employment contracts is 18 days for each year of work, with the fraction of a year calculated proportionally. In contracts for an uncertain term, as of the 3rd year of duration, the	344.º and 345.º	Compensation for the termination of fixed-term employment contracts is 24 days for each year of work, with the fraction of a year calculated proportionally.

	compensation is reduced to 12 days.		
366.º	The compensation for termination of the employment contract due to collective dismissal and other forms of termination that refer to such compensation is 12 days of base pay and seniority for each full year of seniority, the fraction of a year being calculated proportionally.	366.º	The compensation for termination of the employment contract due to collective dismissal and other forms of termination that refer to such compensation is 14 days of base pay and seniority for each full year of seniority, the fraction of a year being calculated proportionally.
		101.º A to 101.º H	Creation of the status of caregiver worker, with a regime similar to that of parental protection, attributed to the worker to whom the status of non-main informal caregiver has been recognized, under the terms of the applicable legislation.
		338.º A	Prohibition on resorting to the acquisition of external services from a third-party entity to meet the needs of an employee whose contract has been terminated in the previous 12 months due to collective dismissal or redundancy, under penalty of a very serious administrative infraction on the part of the beneficiary of these services.
		498.º A	In the case of acquisition of external services from a third-party entity for the performance of activities corresponding to the corporate purpose of the acquiring company, the collective labor regulation instruments that binds the beneficiary of the activity is applicable to the service provider, when more favorable to it.
Article	Professional internships - current regime (DL 66/2011, of June 1st)	Article	Professional internships - new regime (DL 66/2011, of June 1st)
8.º/1	The minimum value of the internship allowance is 1 IAS.	8.º/1	The minimum value of the internship subsidy is now 80% of the minimum monthly salary guaranteed.
9.º/4	The promoter is obliged to take out, for the benefit of the trainee, a personal accident insurance that covers the risks of eventualities that may occur during and because of the activities performed by the trainee during the traineeship, as well as in the displacements between home and the traineeship location.	9.º/4	The insurance to be taken out is now Accidents at Work Insurance
10.º	The internship allowance is not subject to social security contributions; the intern may contribute to social security under the voluntary social insurance scheme.	10.º	The internship allowance becomes subject to social security contributions because the internship relationship is now comparable, for social security purposes, with salaried work.

As mentioned, Law 13/2023, of 03 April, amends several diplomas, namely the general regime of labor and social security administrative offenses (which, for example, now allows

notifications in the scope of social security administrative offenses to be made through the single digital address) and the legal regime of the domestic service employment contract, among others, which, given their dimension and sometimes detail, are not the object of analysis in this Newsletter.

It should also be noted that, under the terms of article 28 of Law 3/2023 of 03 April, private entities, including companies under any legal form and private non-profit institutions, beneficiaries of European funds worth more than €25.000 per application, are subject to specific verification of compliance with labor legislation, which involves confirmation of compliance with labor legislation by the WCA, at the request of the auditing entity competent for the control action, through appropriate sampling.

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