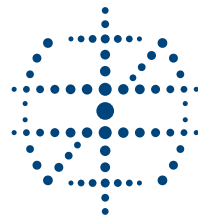
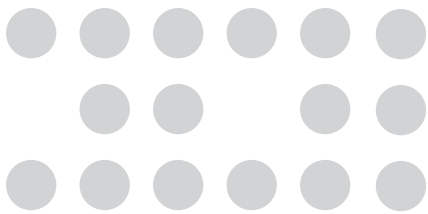
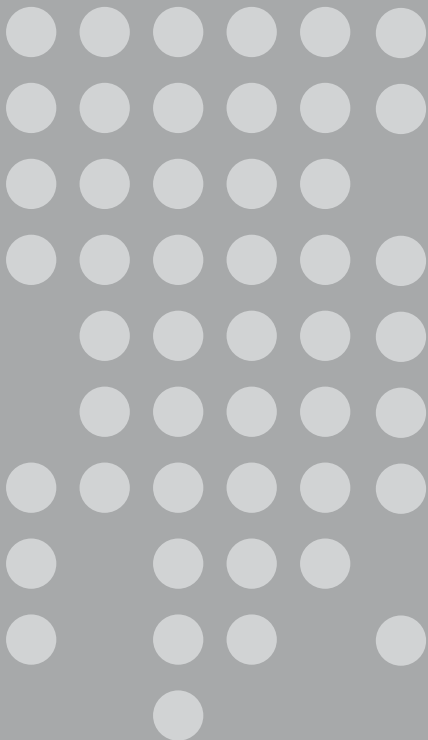


Madeira: Global Solutions for Wise Investments



International Business
Centre of Madeira



Labour Law Overview

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Labour Law Overview

The Portuguese Labour Code (Law 7/2009, of February 12) is applicable to all labour contracts concluded by companies licensed within Madeira's IBC.

Therefore, some aspects should be stressed, such as:

Labour contract / Trial period:

Concept: The labour contract is an agreement by which a person commits him or herself, upon remuneration, to provide to an entity his or her activity within the organization and under the authority thereof. This contract implies for the employer power of direction and for the worker a duty of obedience.

Labour contracts have no special requirements in order to be considered valid, except for short - term contracts and uncertain- term contracts, which require the written form. *(Article 141^o of the Labour Code [L.C.]*

The law allows that labour contracts be concluded for an indefinite period (permanent) or under a short or uncertain - term; but in those cases where a term is set the contract must be duly reasoned and have at least a 6 months duration, unless the law, exceptionally, enables a shorter duration of the contract. *(See Articles 135^o, 139^o, 140^o, 141^o of the L.C.)*

Short-term contracts may be renewable up to 3 times and for the following maximum periods: 18 months if the person (worker) is looking for his/her first job, 2 years in case a new activity is being launched or is just starting or if the company or its establishment have less than 750 employees, 3 years in other cases, except for uncertain-term contracts whose duration can go up to 6 years. *(See art. 148^o and 149^o of the L.C.)*

When the short or uncertain - term contracts validity requirements, such as written form, justification and duration, are not met, the contract becomes a permanent contract and therefore the worker is employed without term. *(See art. 147 of C.T)*

The employer may also make use of an alternative form of employment, the professional training program, regulated in the ordinance 129/2009 of January 30, according to which employers making use of it receive, as an incentive, a share of the trainee salary. The professional training cannot last more than 12 months, it's not renewable and, given the trainee's qualification, the salary must be paid according to the value fixed in the ordinance. Furthermore, the employer must pay, in addition, a meal allowance to the trainee.

In the specific case of seafarers, labour contracts shall comply with the provisions of ILO conventions ratified by Portugal, namely Conventions numbers 22, 109, 138 and 146 governing relevant subjects such as the conclusion of labour contract, salaries, work hours, minimum age for the professional activity and seafarers vacations.

As to labour contracts with foreigners, they can be freely concluded as long as, in addition to the above mentioned general requirements, the contract complies with other requirements specifically provided for in Article 5º of the L.C., such as reference to the work permit or residence in Portuguese territory. However, these special requirements are not applicable neither to labour contracts set with European Economic Area national citizens, nor to labour contracts set with national citizens of a state that enshrines equal treatment for Portuguese national citizens regarding the free exercise of professional activity (Brazil, Angola, Mozambique, Cape Verde, Sao Tome and Principe and Guinea).

Trial Period:

Unless the labour contract expressly excludes it, all employees hired will be subject to a trial period, during which both parties can appreciate the interest of maintaining the contract, freely terminating it when that interest is not met, regardless of just cause and without notice. However, if the trial period has lasted more than 60 or 120 days, a notice period of 7 or 15, respectively, is required if the employer wishes to dismiss the employee. In this case, if the notice period requirement is not fulfilled, the employer will be obliged to pay a compensation corresponding to the missing notice period. *(See art. 111 to 114 of L.C.)*

The trial period will have the following duration:

- For permanent contracts:

- 90 days for most workers;
- 180 days for workers who perform functions with technical complexity, functions that require a high level of responsibility or a particular qualification, as well as workers who carry out functions of trust;

- 240 days for managers and executive senior managers.
- For short and uncertain - term contracts:
- 30 days if the contract lasts or is expected to last 6 months;
 - 15 days in other cases.

Workplace and mobility:

The workplace contractually defined can, under article 194^o of the L.C., be subject to geographical mobility, which allows a temporary or permanent transfer of the workplace. In such cases, if the transfer implies additional or new costs for the worker (transportation, accommodation, residence), the company is responsible for them.

Unlike the permanent transfer, a temporary transfer cannot last more than 6 months. Nevertheless, if and when a permanent transfer involves serious harm to the employee, he/she may evoke it as just cause for termination of the contract.

Functional mobility / Flexibility:

In general terms, the employee must exercise the functions of the activity that he/she was hired for without prejudice of exercising similar or related functions for which he is appropriately qualified, as long as they do not involve a professional devaluation of the worker.

When the interest of the company so requires, the employer may instruct the employee, under the functional flexibility figure, to temporarily undertake functions not included in the labour contract, provided that this does not involve a substantial change of position of the employee. Moreover, the exercise of the new tasks requested, will not, by itself, modify the employee's professional category, that is, neither he will change to a lower professional category, neither he will acquire a higher category. It cannot, furthermore, imply a salary reduction due to the performance of new functions.

(See art. 118 to 120 of the L.C.)

Work hours / Overtime:

Both daytime and nighttime work must be undertaken according to the company's operational period.

The employer must organize and place, in a clear, visible space, a work schedule that includes all employees' working hours.

A working week, be it daytime or nighttime, cannot exceed 8 working hours daily and 40 weekly, unless these limits are increased either by a collective labour regulation or by an agreement between the employer and the employee. Indeed, under a labour collective regulation, a bank of hours can be created and therefore the normal work hour's period can be enlarged up to 4 hours daily and 60 weekly. The same may occur by an agreement between the employer and employee, under which the work hours period can be enlarged up to 4 hours daily, thus shortening the labour supply to 4 days. *(See art. 200º, 203º, 208 º, 209º, 211 º and 212 º of L.C.)*

Overtime:

The provision of work outside the normal work hour period shall be considered overtime, which must be remunerated or compensated by days of rest. *(See art. 226 to 231 of the L.C.)*

Overtime is payable as follows: *(See art. 229 º and 268 º of CT)*

- If provided in a workday, 125% for the first hour or fraction thereof and 137,5% for the subsequent hours;
- If provided in the weekly compulsory rest day or in a public holiday, 150%.

Moreover, according to the size of the company, overtime work cannot exceed certain limits. *(See art.228 of L.C.)*

Weekly compulsory rest day:

The law stipulates that the employee is entitled to benefit from a rest day during the week. Usually Sunday is the rest day by excellence, but, given certain circumstances, the law allows it to be in a different weekday. *(See art.232 of L.C.)*

Public Holidays:

In addition to the mandatory national public holidays specified in Article 234 of the L.C., there are in Madeira 2 additional mandatory public holidays, as shown in the table below: *(See Article 7 of the Regional Legislative Decree N. º 3/2004/M, of March 18)*

Mandatory Public Holidays	
National Mandatory Public Holidays	Madeira's Mandatory Public Holidays
1 st January	1 st January
Good Friday	Good Friday
Easter Sunday	Easter Sunday
25 th April	25 th April
1 st May	1 st May
10 th June	10 th June
15 th August	15 th August
8 th and 25 th December	8 th and 25 th December
-----	1 st July
-----	26 th December

Besides these mandatory public holidays, there are, also, the following municipal holidays:

Municipality	Municipal Holiday Day
Calheta	24 th June
Câmara de Lobos	16 th October
Funchal	21 st August
Machico	9 th October
Santana	25 th May
São Vicente	22 nd January
Santa Cruz	15 th January
Ribeira Brava	29 th June
Ponta do Sol	8 th September
Porto Moniz	22 nd July
Porto Santo	24 th June

Absences:

The employee's nonattendance to his workplace in a normal working period is considered a work absence. Some absences are, by, law, considered to be justified, however others must be duly justified, or they will be considered unjustified, therefore implying a loss of remuneration. Absences, when not justified may, under certain conditions provided by law, lead to dismissal for just cause. *(See art. ° 248° to 257° of L.C.)*

Maternity and paternity leave:

By birth of a child, parents are entitled to a parental leave of 120 or 150 days (4 or 5 months), which they can share after birth, without prejudice of it being compulsory for a mother to take a 6-weeks maternity leave right after birth and for a father to take a 10-workdays paternity leave, consecutive or not, which he can take within the 30 days after the birth of the child, in addition to 10 days of paternity leave consecutive or not, taken together with the mother. *(See art. 39°, 40°, 41° and 43° of the L.C.)*

This license can be increased in 30 days when, after the mother's compulsory maternity leave period, each of the parents benefit, in separate, from a 30 consecutive days period, or two periods of 15 consecutive days.

In the case of multiple births the above-mentioned parental leave period is increased in 30 days for each twin other than the first.

The adoption of a child aged less than 15 years old gives the adopter the right to benefit from a 120 or 150 days parental leave.

Parents are also entitled to an additional license to take care of children younger than 6 years old, by one of the following ways: extended parental leave for 3 months, working part time for 12 months or non-consecutive work absences during 3 months. *(See art. 51)*

The mother is entitled, throughout pregnancy, to take some time off for prenatal appointments, when these cannot be scheduled outside her working hours. The father, in turn, will only be entitled to go along with the mother to 3 pre-natal appointments. *(See art. 46 of L.C.)*

Vacations:

The employee is entitled to 22 remunerated working days of vacation per year. *(See art. 237º and 238º of L.C)*

In the year of recruitment, the employee is entitled to 2 vacation days per each month of contract length, up to 20 days, which he can only enjoy after six months of full completion of the contract. *(See art.239º of L.C.)* However, although being entitled to the 22 days of vacation, if a new calendar year in the meanwhile supervenes, the employee cannot enjoy, in the same calendar year, more than 30 working days of vacation.

During the holiday period the employee is entitled to receive, in addition to the normal salary, a vacation bonus equal to his salary, to be paid in full before vacation, or proportionally paid, if the employee chooses to take vacation in more than one period. *(See art. 264º of the L.C.)*

In the event of labour contract termination, the employee is entitled to receive a compensation for the vacation not engaged and the correspondent vacation bonus in proportion to the work provided in the year of termination.

Christmas bonus:

The employee is entitled to a Christmas bonus of an equal amount of the salary, which must be paid annually before the 15th December.

However, either in the year of the employee admission, or in the year of termination of the contract year, or in cases of suspension of the contract due to the employee, this bonus will be proportionally paid, according to the effective work provided in that year.

Payment:

All employees have the right to be compensated in return for their work. They are, therefore, entitled to earn a salary, which must be settled, monthly, in cash and be available at the contractually settled date or at the previous working day. *(See art. 258 °, 259 °, 276 and 278 of the L.C.)*

The law determines annually a minimum monthly salary, which for the year 2013 was set in 485 euros, in mainland Portugal and 494,70 euros in Madeira.

The latest available data on the average monthly salaries paid in the Autonomous Region of Madeira, date from 2009 and are shown, in accordance with the type of activity and the level of qualification, in a table prepared by the Directorate of Statistics of the Autonomous Region of Madeira.

According to this table, the average monthly salary and must be understood as the amount paid in cash in return for the work provided, before taxes, including situations of percentage and compensation in kind.

Upon the employee's salary, the following legal deductions have to be made:

- The company must withhold, in the payment of salary and other payments due, the Income Tax on Individuals (IRS), whose rate is variable, according to salary level and the worker's household;
- The company must, also, make the deductions for social security purposes, according to the following rates: *(See DL 199/99 of June, 8)*

Social Security Contributions			
Type of employee	For the employer	For the employee	Total
Most of the employees	23,75%	11%	34,75%
Directors and managing partners	21,25%	10%	31,25%

- The employer may also collect and deliver, when so requested by the employee, his labour union fees, which will, in such cases be deducted from their salary and delivered to the Union until the 15th of the following month. *(See art. Article 458^o of the L.C)*

It should be noted that the salary earned by non-resident directors and managing partners of companies operating within Madeira's IBC is considered an income obtained in Portuguese territory, therefore, subject to all the above-mentioned deductions, namely in terms of income tax on individuals (IRS) and social security contributions.

It should be noted that Ordinance 130/2009, of January 30 provides special measures to support employment. They involve a reduction of the employer's social security contributions or, in some cases, it's exemption, provided that the employer fulfil certain requirements, such as the maintenance of employees contracts during the calendar year and provided that companies are normally established and registered and employers have no debts to social security.

Labour contract termination:

The termination of the labour contract is governed by article 338^o to article 403^o of the Labour Code, that highlight several ways by which the contract may be terminated, such as:

- A) Termination due to end of short or uncertain- term;
- B) Termination by agreement;
- C) Dismissal due to the employee (with just cause);
- D) Collective Dismissal;
- E) Dismissal by extinction of the job;
- F) Dismissal for inadequacy;
- G) Resolution by the employee, and
- H) Termination by the employee.

Upon ceasing the labour contract, the employer must give the employee the following documents:

- A certificate of employment, indicating the dates of admission and termination of the contract and the functions undertaken;
- Other documents for official purposes, including those needed for the worker to apply for unemployment benefit, if entitled to it.

Additional information:

- The worker's right to strike is a constitutionally guaranteed right, which cannot be prevented. When and if going on strike, the employee cannot be coerced, harmed or discriminated for having made use of that right.

- Lock-out is absolutely forbidden! It is considered as a total or partial halt of the company activity, a prohibition of access to all or to some employees to their work places, or, yet, a refusal to provide working conditions and tools avoiding, therefore, employees to undertake their activities. Lock-out, when occurring, will not only be punished with a fine but also, as a crime provided in the Criminal Code, with a prison penalty up to 2 years or a fine penalty up to 240 days.

- It may happen that, given the specific activity of the company, the affiliation of employees to a union as well as the affiliation of employers to an association, there is a collective labour agreement applicable to the labour relationship established. In such cases, clauses over subjects such as salaries, work hours, among other matters, will be set according to the collective labour agreement, unless it is contrary to the law or less favourable than the clauses contractually stipulated.

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