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150 QUESTIONS & ANSWERS: **DECENT WORK AGENDA**

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Introduction

This practical guide aggregates a total set of **150 questions and answers** regarding the Law no. 13/2023, of April 3rd (called "2023 Reform", with the Rectification Declaration no. 13/2023, of May 29th), which aims to correct and re-articulate to the main changes that occurred and entered into force last May 1st 2023. It should be noted that we have not exhausted all the issues and challenges created by the Decent Work Agenda ("DWA") as a whole, nor by the Green Paper on the Future of Work, or by Law no. 13/2023, of April 3rd. **This guide does not exhaust all the issues raised by the new labor and employment regimes**.

A. Application of law over time

1. What is the date of entry into force?

Most of the changes introduced by Law no. 13/2023, of April 3, came into force on **May 1st, 2023**. However, we must consider, namely, the following particularities:

a) The (new) increase on **compensation amounts due to collective dismissal and other applicable situations (see question 104 below)** is only applicable along the duration of the contractual relationship counted from the beginning of the effectiveness of Law no. 13/2023, of April 3rd, i.e., **01.05.2023**;

b) The provisions of **collective bargaining agreements (CBAs) that are contrary to the mandatory provisions** of the Labour Code must be amended in the first revision occurring within 12 (twelve) months after the entry into force of Law no. 13/2023 of April 3rd, i.e. as from **01.05.2023**, under penalty of nullity;

c) With regard to **overtime work**, the provisions of CBAs that are contrary to the new overtime work payment regime must also be amended until **01.01.2024**;

d) The (new) changes shall not apply to **fixed-term employment contracts**, with regard to their admissibility, renewal, and duration, and to the renewal of **temporary**

employment contracts, being both of which celebrated before the entry into force of Law no. 13/2023, of April 3rd, i.e., **01.05.2023**.

2. Does the new presumption of existence of an employment contract through platforms work apply to employment relationships in effect on May 1st of 2023 (onwards)?

As a rule, no. According to case law, the **qualification of the contract is governed by the law in force when the contract is concluded by the parties,** unless there are facts occurring after the new law comes into effect that substantially alter the relationship between the parties, and it is therefore necessary to ascertain whether this change corresponds to a modification of the nature of the existing bond between the parties. In this sense, the new presumption of employment applicable to work performed through platforms (see questions 11 et seq., below) only applies to contracts that entered into effect after May 1st of 2023, unless there is a substantial change that alters the legal nature of the preexisting bond.

B. Economically dependent self-employed worker (EDSEW)

3. What is meant by economic dependence?

There is economic dependency whenever (i) a natural person provides, directly and without the intervention of third parties, an activity to the same beneficiary and obtains from them, in the same calendar year, **more than 50% of the total value** of the self-employed activity, (ii) is subject to the obligation to contribute to the Social Security system, and (iii) earns an annual income from the provision of services equal to or greater than 6 (six) times the value of the Social Support Index (IAS) (in 2023, €480.43), that is, €2,882.58. Within the scope of the Social Security system, the beneficiary of the activity assumes the role of the **contracting entity**.

The question remains open as to what happens if the EDSEW has the obligation to contribute to the Social Security system, but for a different or autonomous activity than the one performed in

the provision of services to the beneficiary, for which they are not covered by the Social Security system.

4. What is the relevance of DWA in the labor organization?

The Decent Work Agenda ("DWA") imposes particular attention on entrepreneurs when deciding (i) whether to outsource a certain activity using legal or natural persons, (ii) whether to hire an employee, or (iii) whether to rely on service providers to carry out a new activity.

The concept of EDSEW is not new, however DWA **expanded its application to other individuals**, as well as **potentially applicable labor regulations**.

On the one hand, as mentioned above (see question 3., above), the concept of economic dependence now includes a quantitative definition, which is inherently easier to apply to specific cases.

On the other hand, in addition to the application of **legal provisions** regarding personality rights, equality and non-discrimination, and occupational health and safety, the applicability of collective labor agreements in force within the same sector of activity, profession, and geographic area is established. It also provides for rights to representation and collective bargaining, as an example.

An excessive expansion of labor law, which is intended for subordinate work and not independent and autonomous work, may give rise to competition (anti-trust) problems, such as local, regional, or sectoral price-coordination or price-fixing (e.g., wage-fixing), as well as constitutional compliance concerns by imposing labor rules on those who have lawfully chosen to assume the risks of their own activity or business model.

5. Does the EDSEW regime depend on any provider behavior?

Yes, the application of the EDSEW regime depends on a **declaration addressed by the labor provider to the beneficiary of the activity**, accompanied by proof (e.g., documental) that the requirements mentioned in question 3., above, are fulfilled.

6. Can EDSEW provide the activity through a third party?

Yes, in the context of parenting situations. Indeed, the **EDSEW can temporarily ensure the activity through third parties** in case of childbirth, adoption or assistance to a child or grandchild, breastfeeding, interruption of work due to voluntary termination or clinical risk during pregnancy, for the period corresponding to the leaves or exemptions provided for in the Labor Code.

This rule makes it clear that a EDSEW is not a subordinate worker since they cannot be replaced in the provision of the activity. However, some service provisions **may require specific qualities or qualifications from the service provider, as well as the obligation to ensure confidentiality and secrecy**. Therefore, the following questions remain open: 1) Is the new legal rule absolute and imperative in nature and does it prevent the contracting parties from reaching a different solution? (e.g., a regime of multiple providers or alternative subjects) 2) May the contracting parties agree on penalty clauses, or can the beneficiary of the activity demand the subscription of a liability insurance for the possibility of damages caused by the substitute service provider?

7. What happens if EDSEW provides the activity to two or more companies of a group of companies?

Whenever the EDSEW performs activities for multiple beneficiary companies, among which there is a **corporate of reciprocal shareholdings,** control, or group, or they have **common organizational structures, it is understood that the activity is provided to a single beneficiary**.

In other words, even if the threshold of 50% mentioned above is not reached in relation to each individual company (see question 3 above), if that threshold is reached when considering the group of companies as a whole, the aforementioned legal provisions apply (see question 4., above).

Therefore, it is important to conduct a comprehensive and coordinated analysis of service providers within the scope of company groups.

8. Will the CBA become applicable to the EDSEW?

Yes. In addition to the application of legal norms regarding personality rights, equality and non-discrimination, and occupational health and safety, economically dependent self-employed workers **are now (possibility) covered by CBAs.**

The question remains whether this extension of the scope of application depends on the specific provisions regarding economically dependent self-employed workers in currently effective CBAs.

It also remains to be seen whether CBAs can categorize or sectorize specific provisions applicable to economically dependent self-employed workers.

9. What are the employment and labor rights of the EDSEW?

Individuals in economically dependent situations have the right to:

a) Representation of their socio-professional interests by trade unions and workers' committees.

b) Negotiation of specific negotiated collective labor agreements for independent employees through trade unions.

c) Application of existing negotiated collective labor agreements applicable to employees, in accordance with their provisions.

d) Administrative extension of the provisions of a collective agreement or arbitral decision and the administrative establishment of minimum working conditions, applying to the issuance of these instruments.

10. Do these prerogatives come into force on May 1, 2023?

Not all of them. The right to collective representation of EDSEWs is defined in **specific legislation** that ensures:

a) Monitoring by workers' commission and by trade union association.

b) Negotiates collective labor agreements specifically negotiated for EDSEWs must comply with principles such as (i) the principle of the most favorable treatment, (ii) the written form, (iii) the limits of CBAs content, (iv) equality and non-discrimination, (v) publicity.

c) Negotiated collective labor agreements specifically negotiated for EDSEWs require prior consultation of the associations of self-employed workers representing the sector.

d) The application of already existing CBAs, to EDSEWs performing functions corresponding to the company's object for a period of more than 60 days, depends on choice, the right to choose an agreement of subordinate workers being applied with the necessary adaptations.

In accordance with the limits of CBA content, the new CBA model cannot:

a) Contradict mandatory legal norms.

b) Regulate economic activities, namely operation periods, tax regime, price formation and the exercise of the activity of temporary work companies, including the contract of use.

c) Give retroactive effect to any clause that is not of a pecuniary nature.

On the other hand, the CBAs can establish a complementary contractual regime that provides additional benefits to the Social Security Subsystem not covered by it, in accordance with the law.

This should be the minimum content of specific legislation because it will also have to regulate the negotiation process and the relationship with the civil, labor and competition (anti-trust) rules.

C. Employment Presumptions

11. Are there two presumptions of an employment relationship now?

Yes. In addition to the **presumption applicable to most cases**, a **special presumption** has been created for activities carried out within a **digital platform sectors**.

12. What are the requirements for the application of the special presumption?

It is presumed the existence of an employment contract when, in the relationship between the service provider and the digital platform, at least two of the following characteristics are present:

a) The digital platform sets the remuneration for the work performed on the platform or establishes maximum and minimum limits for it.

b) The digital platform exercises power to control and determines specific rules, particularly regarding the presentation of the service provider, their conduct towards the service user, or the provision of the service.

c) The digital platform controls and supervises the provision of the service, including in real-time, or assesses the quality of the activity provided, particularly through electronic means or algorithmic management.

d) The digital platform restricts the service provider's autonomy regarding work organization, especially concerning the choice of working hours or periods of absence, the possibility of accepting or refusing tasks, the use of subcontractors or substitutes, through the application of penalties, or the choice of clients or providing services to third parties via the platform.

e) The digital platform exercises labor-related powers over the service provider, including disciplinary power, including the exclusion of future activities on the platform by deactivating the account.

f) The equipment and working tools used belong to the digital platform or are operated by them through a leasing contract.

13. What is meant by digital platform?

A digital platform is understood as a **legal person** that provides or offers **services remotely through electronic means**, including websites or computer applications (e.g., apps and software), at the request of users, which involve, as a necessary and essential component, the organization of work provided by individuals in exchange for payment, regardless of whether such work is performed online or at a specific location, under the terms and conditions of a business model and a specific brand.

14. Is the designation given to the contract by the parties relevant?

No. **The name given by the parties to the contract does not, in itself, remove the application of the special presumption of employment** in the context of the digital platform.

However, unless other consensual opinion is reached, the name given by the parties to the contract, together with other contractual provisions and the method of providing the activity may contribute to the interpretation and application of that presumption (under general contractual law theory).

15. How can the presumption be overturned?

The presumption can be defeated (or surpassed) under general terms, particularly if the **digital platform** provides evidence that the activity provider works with **effective autonomy**, without being subject to the control, direction, and disciplinary power of the contracting party.

On the other hand, the **digital platform** may invoke that the activity is provided to a natural or legal person acting as an **intermediary of the digital platform** to make the services available through its employees.

16. What happens if the platform claims that the activity is provided to an intermediary or the activity provider claims to be a subordinate employee of the intermediary?

The **special presumption in the context of a digital platform** applies to the determination of the employer, and it is up to the court to determine this.

The question remains open as to what happens if, in a specific case, it is found that the employment relationship was established with more than one employer, who may be located in different countries.

17. Is the special presumption applicable to transportation in a non-identified vehicle through an electronic platform ("TVDE")?

Yes. The special presumption applies to activities carried out through **digital platforms**, particularly those regulated by **specific legislation** concerning individual and paid transportation of passengers in non-identified vehicles through electronic platforms.

18. May the digital platform establish different access rules for direct service providers and intermediaries?

No, the digital platform **cannot** establish terms and conditions of access to service provision, including algorithmic management, that are more unfavorable or discriminatory in nature for **service providers** who have a direct relationship with the platform compared to the rules and conditions defined for individuals or entities acting as **intermediaries of the digital platform** to provide services through their workers.

Apparently, equal, or less favorable conditions may be established for intermediaries, taking into account, for example, different degrees of risk distribution. On the other hand, it remains open to the possibility of harmonizing access conditions, regardless of whether it is a direct or indirect relationship with the digital platform.

19. Are the digital platform and the intermediary jointly liable for labor and employment claims?

Yes. The **digital platform** and the natural or legal person acting as an **intermediary of the digital platform** to provide the services through their employees, as well as their **managers, administrators, or directors**, and any companies in which they **have reciprocal shareholdings, control, or group relations**, are jointly liable for the worker's claims arising from an employment contract, its violation or termination, entered into between the worker and the individual or entity acting as an intermediary of the digital platform, including the corresponding social security contributions and the payment of fines for labor offenses committed within the last three years.

20. What is the labor regime applicable in cases where the special presumption applies?

In cases where the existence of an employment contract is considered, **the provisions of the current Labor Code that are compatible with the nature of the activity performed shall apply**, including those related to workplace accidents, contract termination, prohibition of unjustified dismissal, minimum wage, vacations, limits on normal working hours, equality, and non-discrimination.

Therefore, it is not an integral application of the labor regime. Consequently, the specific applicable rules are determined on a case-by-case basis. The challenges in this regard are significant.

21. Under what circumstances can the digital platform and the intermediary be subject to administrative offenses?

It is considered a **very serious** administrative fine attributable to the **employer**, whether it is the **digital platform** or the natural or legal person acting as **an intermediary of the digital platform** to provide services through their workers, to contract the provision of activity in conditions that

resemble an employment contract, apparently autonomous, which may **cause harm to the employee or the state.**

22. Has the penalty for recurrence been increased for both presumptions of employment?

Yes. In case of **recurrence**, the following ancillary penalties are imposed on the employer:

a) **Deprivation** of the right to support, subsidy, or benefit granted by a public entity or service, particularly of a fiscal or contributory nature or from European funds, for a period of up to two years; and
b) **Deprivation** of the right to participate in auctions or public tenders for a period of up to two years.

23. Is there any inspection action by the Authority for Working Conditions planned?

Yes, it is foreseen that within the scope of the amendments and additions to the Labor Code, concerning work through digital platform, the AWC develops, in the first year of the validity of the present law (**until 01.05.2024**), an **extraordinary and specific inspection campaign for this sector**, on which a **report** is drafted to be submitted to the Portuguese Parliament. This is directly provided by law.

Although not expressly provided for, these inspections may result in administrative offence proceedings, in addition to the aforementioned report.

This campaign, although focused on the issue of inspection and compliance with the labor rules of contracts (whether the presumption is well applied), may have inspection reflexes in other labor areas (for example, registration of working hours and overtime work, vacation schedules, among others).

This is a new area and raises many questions, particularly given the new presumption of an employment contract under the digital platform (see questions 12 and following above).

D. Algorithms, artificial intelligence, and related subjects

24. What has changed in terms of employment access?

Workers or job seekers have the right to **equal opportunities and equal treatment when it comes to accessing employment, professional training, promotion, career development, and working conditions**. They cannot be favored, benefited, prejudiced, deprived of any rights, or exempted from any duties based on factors such as ancestry, age, gender, sexual orientation, gender identity, marital status, family situation, economic situation, education, origin, social status, genetic heritage, reduced work capacity, disability, chronic illness, nationality, ethnic origin, race, territory of origin, language, religion, political or ideological beliefs, or union affiliation. The state is responsible for promoting equal access to these rights.

It is important to note that these rules also apply when decisions are made based on algorithms or other artificial intelligence systems. This provision aligns with the prohibition of "blind" or "insensitive" algorithms and the opposition to automated decision-making outlined in the GDPR.

25. What more has changed in employment access?

With regard to access to employment, the employee is protected in general terms in the event of discriminatory action taken by decisions based on algorithms or other artificial intelligence systems and is entitled to compensation.

Concerning the provision of information by the employer to the workers council, the workers council is now also **entitled to know the parameters or rules on which algorithms or other artificial intelligence systems** that affect decision-making on access to and retention of employment are based.

Furthermore, the employer should provide each admitted worker with **information regarding the parameters, rules and instructions on which algorithms or other systems of artificial intelligence** affect decisions on access to and retention of employment, as well as working conditions, including profiling and job monitoring.

This last change may be relevant, namely, when the jobs require contact with "apps", softwares, among other computer systems (for example, platforms and databases). This aspect will be particularly relevant, also, regarding other obligations that were already in force, namely regarding the recording of working time and overtime through apps, software or platforms. It is important to assess these new obligations together with the previous ones and to adapt the structure or organization to the newer technologies.

The use of technologies, such as algorithms or artificial intelligence systems, must comply with equality and non-discrimination requirements. This is a matter that deserves special attention, because the "fault" of the algorithm may ultimately be attributable to the employer.

26. What is the scope of collective bargaining?

The legal rules governing employment contracts concerning the use of algorithms, artificial intelligence, and related matters, namely in the scope of work on digital platforms, may **only** be set aside by an IRCT that, without opposition to those rules, provides a **more favorable sense to workers.**

27. Does the workers' council have the right to information on the use of algorithms or other artificial intelligence systems?

Yes, the **workers' council has the right to information about parameters, criteria, rules, and instructions** on which algorithms or other artificial intelligence systems are based that affect

decision-making on access to and retention of workers, as well as working conditions, including profiling and job monitoring.

However, it remains to be seen to what extent it will be possible to classify information as confidential and thereby prevent access to certain sensitive information (e.g., trade secrets, algorithms, formulas, and computer codes).

28. Does the union delegate have the right to information on the use of algorithms or other artificial intelligence systems?

Yes, the trade union delegates are entitled to a **right to information and consultation about the parameters, criteria, rules, and instructions** on which algorithms or other artificial intelligence systems are based that affect decision-making on access to and maintenance of employment, as well as working conditions, including profiling and monitoring of work activity.

E. Parenting and Conciliation

29. Is it possible to cumulate days of initial parental leave with part-time work?

Yes. In case of the option for initial parental leave with a duration exceeding 120 days, after 120 consecutive days have been taken, the parents **may cumulate**, on each day, the remaining leave days with part-time work.

For this purpose, (i) the daily periods of leave are computed as half-days and are added up for determining the maximum duration of the leave, (ii) the period of leave may be taken by both parents, simultaneously or sequentially and (iii) part-time work corresponds to a normal daily working period equal to half of that of full-time work in a comparable situation.

A breach of the rules set out in the previous question constitutes a very serious administrative offense punishable by a fine and, possibly, accessory penalties (e.g., advertising).

30. Has the mandatory period for the mother's exclusive parental leave changed?

No. Previously, it was foreseen that the mother would take **6 (six) weeks of leave** following childbirth. Now, a period of **42 (forty-two) consecutive days** is established. We admit that this change is related to the necessary approximation between the labor matter and the social security regime that grants the respective allowance.

31. Has the mandatory period for the father's exclusive parental leave changed?

No. Previously, it was provided that the father would take **20 (twenty) working days**, consecutive or interspersed, in the 6 (six) weeks following the birth of the child, 5 (five) of which would be taken consecutively immediately afterward. Now, the father's exclusive parental leave period is **28 (twenty-eight) days**, consecutive or interspersed of at least 7 (seven) days, in the 42 (forty-two) days following the birth of the child, 7 (seven) of which must be taken consecutively immediately thereafter.

On the other hand, the father was previously entitled to **5 (five) additional working days** of leave, consecutive or interspersed, provided they were taken at the same time as the mother's initial parental leave. With the new wording, **7 (seven) days** of leave (working or not) are now foreseen.

In other words, the period of leave was previously counted in working days, but with the new wording, it is now counted in consecutive days. We admit that this change is also related to the necessary approximation between the labor matter and the social security regime that grants the respective subsidy.

32. Does the father's exclusive parental leave suspend if the child is admitted to the hospital?

Yes, if the child is admitted to the hospital during the period after childbirth, **the leave is suspended** at the father's request for the duration of the hospitalization.

33. Does the adoptive applicant have the right to exclusive parental leave from the father?

Yes, in case of adoption of a **child under 15 (fifteen) years old**. In the case of multiple adoptions, the leave period is also increased by 2 (two) days for each adoption beyond the first. The initial parental leave was – and still is – applicable to adoption.

34. In the event of multiple adoptions, is the leave period extended?

Yes, in the case of the initial parental leave, **30 (thirty) days are added** for each adoption beyond the first. In the case of exclusive parental leave of the father, 2 (two) days are added for each adoption beyond the first.

35. Can the period of exclusive parental leave of the father applicable to the prospective adopter be extended in the transition and follow-up period?

Yes, the prospective adopter may take **up to 30 (thirty) days of initial parental leave** during the transition and monitoring period. For this purpose, he/she must inform the employer of this purpose and present a document that proves the transition and monitoring period, providing this information 10 days in advance or, in the case of proven urgency, as soon as possible.

36. Does the adoption leave apply to foster families?

Yes. The adoption leave regime applies **to foster families with the necessary adaptations**. Therefore, it is up to each individual case to determine the necessary changes. Further clarification may be warranted to reduce the degree of uncertainty in the application of the regime.

37. What happens if the employer does not observe the adoption leave regime?

The violation of the regime foreseen in the previous questions constitutes a very serious administrative offense punishable with a fine and, possibly, accessory penalties (e.g., advertising).

38. Is there any time off work in the context of adoption and foster care processes?

Yes. Previously, in order to carry out evaluation for adoption, employees were entitled to 3 (three) days off work to travel to social security services or to receive technicians at their homes. With the new wording, employees who are candidates for adoption or foster care **are entitled to time off work to carry out the evaluation or to comply with the obligations and procedures provided by law for the respective processes.**

The duty to present the respective justification to the employer was maintained, without prejudice to the duty to communicate this absence in advance.

39. Does this dismissal imply a loss of rights?

No. The dismissal in the scope of adoption and foster care processes do not determine loss of rights and are considered an effective provision of work. However, they imply a loss of pay.

40. Has the initial parental leave been extended?

Yes, namely to the adopter, the guardian, the person to whom judicial or administrative trust of the child has been granted, as well as the spouse or the person in a civil partnership with any of those persons or with the parent, as long as they live communion of table and house as the child.

41. Has a complementary parental leave modality been created?

Yes, for caring for a child or adopted child up to 6 (six) years of age, the father and mother are now **entitled to complementary parental leave**, in the form of **part-time work** for 3 (three) months, with a normal work period equal to half of the full time, provided that the leave is exercised in full by each parent.

This modality is in addition to the other modalities, namely: (i) extended parental leave for 3 (three) months, (ii) part-time work for 12 (twelve) months, with a normal work period equal to half of the full-time, (iii) interspersed periods of extended parental leave and part-time work in which the total duration of absence and reduction of work time is equal to the normal work periods of three months and (iv) interpolated absences from work with a duration equal to the normal work periods of three months, provided that foreseen in the collective labor regulation instruments.

42. Can the employer postpone the enjoyment of complementary parental leave?

Yes, but the postponement **must meet certain requirements**: the employer may postpone the enjoyment of the leave of one parent until the end of the period of enjoyment of the leave of the other parent, provided that (i) both intend to take the leave simultaneously and (ii) are employed by the same employer.

43. Was a justification of absence due to gestational bereavement created?

Yes. In addition to leave for interruption of pregnancy (between 14 and 30 days), justified absence for gestational bereavement was created, which applies, except in the best of cases, when the aforementioned leave for interruption of pregnancy is not applicable and allows the employee to be absent from work for up to 3 (three) consecutive days). Apparently, it will have a **residual scope**, since it aims to cover situations (which, for whatever reason, may be) excluded from the scope of application of the leave for interruption of pregnancy.

44. Does this absence justification apply to the father?

Yes, as long as he takes the leave due to interruption of pregnancy or absence due to gestational bereavement. In this sense, **justified absence due to gestational bereavement may have, in the abstract, a wider scope for the father**, since it is applicable in the situation of the mother taking leave due to interruption of pregnancy and not only in the residual cases of justified absence of the employee due to gestational bereavement.

45. Does this justification of absence require proof?

Yes. In case of leave due to interruption of pregnancy, the employee **informs** the employer and presents, as soon as possible, a **medical certificate** indicating the period of leave. On the other hand, justified absence due to gestational bereavement imposes the following procedure: the employee and the employee inform their respective employers, presenting, as soon as possible, **proof of the fact invoked**, through a declaration from a hospital or health centre, or even a medical certificate.

The question may arise as to how paternity will be proven or acknowledged in these situations of gestational bereavement. On the other hand, the father will apparently have to prove that he has taken leave due to interruption of pregnancy (and not only interruption of pregnancy) or justified absence due to gestational bereavement.

This remains unanswered the question as to what happens in the case where the father is an employee, but the mother is, for example, a service provider or is unemployed.

46. Does this justified absence imply a loss of any rights?

No. Absence due to gestational bereavement does not determine loss of any rights and is considered effective work, including in matters of remuneration.

F. Caregiver worker

47. What is meant by caregiver worker?

A care worker is a person who has been **recognized as an informal non-main caregiver,** upon presentation of the respective proof.

The spouse or unmarried partner, relative or kin up to the 4th degree of the direct or collateral line of the person being cared for, who accompanies and cares for the person being cared for on a regular but not permanent basis, may or may not be remunerated for their professional activity or for the care they provide to the person being cared for.

The status of the informal caregiver was approved by Law n.º 100/2019, September 6th and implemented by the Regulatory Decree n.º 1/2022 of January 10th Regulatory Decree n.º 1/2022, January 10th.

48. What are the rights of the caregiver employee?

The caregiver worker has the right to:

a) Annual leave of five 5 (five) working days, which must be taken consecutively.
b) Justified absences for unpostponable and indispensable assistance, up to 15 (fifteen) days per year.
c) Work part-time, consecutively or interpolated, for a maximum period of 4 (four) years.
d) To work flexible hours, consecutively or interpolated, as long as the need for assistance persists.
e) Obtain a prior opinion from the Commission for Equality in Labor and Employment (CITE) to the dismissal decision, under penalty of it being considered as dismissal without just cause.
f) Communicate the termination of the employment contract by the employer to the CITE.

g) Communication of the non-renewal of a fixed-term employment contract must be communicated by the employer to CITE.

h) Exemption from overtime work for as long as the need for assistance persists.

49. Are the rights arising from the care employee status cumulative with the parental rights over the person cared for?

No. The caregiver worker who holds parental rights with respect to the person being cared for **cannot cumulate** those rights with those provided for the care employee status.

Although lacking express clarification, nothing seems to prevent the worker's choice when he/she meets the conditions to request: (i) either the caregiver status, (ii) or the general parenthood status.

50. What is the procedure that must be observed to obtain annual leave?

The caregiver worker must **inform** the employer, in writing, ten (10) working days prior to its start, indicating the days on which he/she intends to take the leave.

This communication must be accompanied by a **statement** from the caregiver worker for that other member of the household of the worker or person being cared for, if they work, are not on the same leave for the same period or are unable to provide care.

By the end of the leave, the caregiver worker is **entitled to resume** regular professional activity.

51. During the annual leave, can the worker have another activity?

Yes, as long as it's a **match**. Therefore, it cannot carry out activities incompatible with the purpose of the annual leave, namely subordinated work, or continued provision of services outside its habitual residence.

52. Does this leave imply a loss of rights?

The enjoyment of the annual leave does **not** determine loss of any rights and is considered an effective provision of work, except for remuneration.

53. Can this license be suspended?

The annual leave of the informal caregiver **is suspended** due to the worker's illness, provided that (i) the latter informs the employer and (ii) presents a medical certificate. The annual leave is resumed with the cessation of the impediment by illness. For its part, the leave cannot be suspended at the convenience of the employer.

54. Is the informal non-primary caregiver entitled to excused absences to provide urgent and essential assistance?

Yes. The caregiver worker who is recognized as an informal non-primary caregiver **may miss work up to 15 days a year** to provide urgent and essential assistance in case of illness or accident of the person cared for, under the terms defined in the applicable legislation.

55. What can the employer require from the worker for justification of absence?

The employer may require **proof of the urgent and essential nature of the assistance**. Although it is not directly foreseen for this case, the employee must **communicate** the absence to the employer, when foreseeable, at least 5 (five) days in advance or, when unpredictable, as soon as possible.

56. What is the part-time work regime?

Unless otherwise agreed, the normal period of part-time work shall be half that of full-time work in a comparable situation and, as requested by the caregiver, shall be provided daily, morning or afternoon, or on three 3 (three) days a week.

The provision of part-time work ceases at the end of the maximum period for which it was granted, the caregiver returning to full-time work.

57. During the period of part-time work, can the worker have another activity?

Yes, as long as it's a **match**. Therefore, it cannot carry out activities incompatible with the purpose of the annual leave, namely subordinated work, or continued provision of services outside its habitual residence.

58. Can the caregiver worker have a differentiated treatment in matters of evaluation and career progression?

Yes, the caregiver employee who chooses to work on a part-time basis or on a flexible schedule may have a differentiated treatment if it does not translate into his penalty in terms of evaluation and career progression.

59. What is the procedure to be observed by the caregiver worker?

The caregiver employee wishing to provide his activity on a **part-time or flexible working hours basis must request it from the employer in writing,** 30 (thirty) days prior to its beginning.

This request shall be accompanied by the following:

a) Proof of recognition of informal non-primary caregiver status.
b) Indication of the expected time limit, within the applicable limit.
c) In part-time work:

i. A declaration stating that the maximum duration is not exhausted.
ii. A statement stating that other members of the family household of the caregiver worker or the person cared for, if they are engaged in work, are not at the same time in part-time work, or are unable to provide assistance.
iii. Indication of the desired type of part-time work organization.

At the end of the period authorized or deemed accepted, the caregiver employee shall return to the work he previously performed.

60. Can the employer object?

Yes, albeit strictly: the employer may only refuse the application for part-time or flexible working on the grounds (i) of compelling business requirements or (ii) the inability to replace the worker if this is indispensable.

61. What is the applicable procedure?

Within 20 (twenty) days, counted from the receipt of the request for part-time or flexible hours work, **the employer shall communicate its decision in writing** to the worker.

If the employer **wishes to refuse the application,** he shall indicate in the communication the grounds for the refusal. Within five (5) days, counted from the receipt of the communication from the employer, the worker may submit his assessment in writing.

Within five (5) days, counted from the end of the deadline for the worker's consideration, the **employer sends the file for consideration by CITE,** with a copy of the request, the basis of the intention to refuse it, and the worker's appreciation.

Within thirty (30) days, **CITE notifies the employer and the worker** of its opinion, which is considered favorable to the intention of the employer if it is not issued within that period.

If the **opinion is favorable,** the employer may refuse the application. If the **opinion is unfavorable,** the employer may refuse the request only after a decision by the court recognizing the existence of a justification.

62. Should the employer take special care in observing these deadlines?

Yes. Indeed**, the employer shall be deemed to accept** the application for part-time or flexible working hours in accordance with its precise terms in the following cases:

a) If the refusal is not communicated within 20 (twenty) days of receipt of the request.
b) If, having communicated the intention to refuse the application, do not inform the employee of the decision about it in the following 5 (five) days the notification of CITE or, in the absence of CITE, the end of the 30 (thirty) days period for the pronunciation of CITE.
c) If the file is not submitted to the CITE within 5 (five) days after the end of the period for consideration by the employee.

63. What happens if the circumstances change?

If there is a subsequent change in the circumstances giving rise to the application for part-time or flexible working hours before the expiry of the period authorized or deemed accepted**, the worker shall inform the employer** within 5 (five) days and, with the agreement of the employer, returns to the work regime that previously practiced.

64. What is the procedure that must be observed in case of dismissal?

It is up to the employer to **prove** that he has sought the opinion of CITE. To this end, the employer shall refer a copy of the file to CITE at the following **times**:

a) Dismissal due to fact attributable to the employee: after completion of the investigation.
b) Collective redundancy: after the completion of the information and negotiation phase.
c) Dismissal for termination of employment and dismissal for inadequacy: after completion of the consultation phase.

Within 30 (thirty) days from the receipt of the file, **CITE shall communicate its opinion to the employer and the worker,** who considers himself in favor of dismissal if not issued within that period.

If **the opinion is unfavorable,** the employer may only make the dismissal after a court decision recognizing the existence of justification, and the action must be brought within 30 (thirty) days following notification of the opinion.

The **judicial suspension of dismissal** is not decreed only if the opinion is in favor of dismissal and the court considers that there is a serious probability of verifying the just cause.

If the **dismissal** is **declared unlawful,** the employer cannot oppose the reintegration of the worker, having this right, as an alternative to reintegration, to compensation in the amount of 30 (thirty) to 60 (sixty) days of basic retribution and diuturnities for each full year or fraction of seniority.

G. Duty of Information

65. Has the content of the employer's duty of information been changed?

Apparently, yes. In addition to the other cases previously foreseen, the following **content of the employer's duty of information** to the worker has been identified:

a) The expiry date in the case of a fixed-term employment contract or the foreseeable duration in the case of an uncertain fixed-term employment contract.

This duty of information is in line with the mandatory content of the fixed-term employment contract.

b) The formal requirements to be met by the employer and the worker for the termination of the employment contract.

c) The method of payment of the consideration, including a breakdown of its constituent elements.

d) The arrangements applicable in the case of additional work and shift organization.

e) The name of the entities entering into the CBA.

f) The identification of the General Workers Compensation Funds (FGCT), which remains in force for the time being (but admission and payment to funds is suspended).

However, the reference to the Worker Compensation Funds (FCT) is also questioned due to the suspension of the obligation to contribute.

g) The identification of the user in the case of a temporary worker.

h) The duration and conditions of the trial period, if applicable (see questions 85 and following below).

i) The individual right to further training.

j) In the case of intermittent work:

i. An indication of the annual number of working hours, or the annual number of full-time working days.

ii. The duration of the work, in a consecutive or interpolated manner, as well as the beginning and end of each period of work, or the advance with which the employer must inform the employee of the beginning of that period.

iii. The provision of work shall not be less than five full-time months per year of which at least three months shall be consecutive.

iv. In the event of failure by the employer, the employee is not obliged to provide work and cannot be harmed for that reason.

v. During the period of inactivity, the employee is entitled to compensation, to pay by the employer at intervals equal to that of the remuneration, in value established in CBA or, in its absence, 20 % of the basic consideration.

k) Social protection schemes, including benefits complementary or substitutive to those provided by the general social security scheme.

l) The parameters, criteria, rules, and instructions on which algorithms or other artificial intelligence systems are based which affect decision-making on access to and maintenance of employment, as well as working conditions, including profiling and monitoring of professional activity.

66. Can the employer fulfill the duty of information by referring to the provisions of the law, CBA or the company's internal regulations?

Yes, except for matters relating to the agreement of the parties, namely:

a) The expiry date in the case of a fixed-term employment contract or the foreseeable duration in the case of an uncertain fixed-term employment contract.

b) The name of the respective contracting entities.

c) The identification of the Labor Compensation Guarantee Fund (FGCT), provided for in specific legislation.

d) In the case of a temporary worker, the identification of the user.

e) In the case of intermittent work:

i. An indication of the annual number of working hours, or the annual number of full-time working days.

ii. The duration of the work, in a consecutive or interpolated manner, as well as the beginning and end of each period of work, or the advance with which the employer must inform the worker of the beginning of that period.

iii. The provision of work shall not be less than five full-time months per year of which at least three months shall be consecutive.

iv. In the event of failure by the employer, the worker is not obliged to provide work and cannot be harmed for that reason.

v. During the period of inactivity, the employee is entitled to compensation, to pay by the employer at intervals equal to that of the remuneration, in value established in IRCT or, in its absence, 20 % of the basic consideration.

f) The parameters, criteria, rules and instructions on which algorithms or other artificial intelligence systems are based which affect decision-making on access to and maintenance of employment, as well as working conditions, including profiling and monitoring of professional activity.

The question arises as to whether paragraph f) could not be set out in (or under) the company rules.

67. Does the information have to be in writing?

Yes, it may be contained **in one or more documents** (for example, circulars, regulations, and host or onboarding manuals), signed by the employer. However, where information is provided through more than one document, one document shall contain at least the following elements, or follow the legally prescribed rules:

a) The term stipulated, in the case of a fixed-term employment contract, or the foreseeable duration, in the case of an uncertain fixed-term employment contract.

b) The method of payment of the consideration, including a breakdown of its constituent elements.

c) The arrangements applicable in the case of additional work and shift organization.

d) The duration and conditions of the trial period, if applicable;.

e) In the case of intermittent work:

i. An indication of the annual number of working hours, or the annual number of full-time working days.

ii. The duration of the work, in a consecutive or interpolated manner, as well as the beginning and end of each period of work, or the advance with which the employer must inform the worker of the beginning of that period.

iii. The provision of work shall not be less than five full-time months per year of which at least three months shall be consecutive.

iv. In the event of failure by the employer, the worker is not obliged to provide work and cannot be harmed for that reason.

v. During the period of inactivity, the worker is entitled to compensation, to pay by the employer at intervals equal to that of the remuneration, in value established in CBA or, in its absence, 20 % of the basic consideration.

68. Can the duty of information be fulfilled by entering into an employment contract or a promissory contract of employment?

Yes, provided that the contract is **reduced in writing** and communicated to the worker, in paper or electronic form.

The information referred to in question 67 above shall be provided by the seventh day following the commencement of the performance of the contract. The other information must be provided within one (1) month from the beginning of the execution of the contract. Nothing prevents the information from being contained in a single document: the employment contract.

69. Must the employer keep proof of the transmission or receipt of information?

Yes, the employer **shall keep proof of the transmission or receipt** of the information contained in the abovementioned documents.

70. What has changed in the employer's duty to inform about working abroad?

If the worker whose employment contract is governed by Portuguese law carries out his activity in the territory of another State for a **period exceeding 1 (one) month**, the employer shall provide him, in writing and until his departure, with the following additional information:

a) Identification of the State or States where the work is to be performed and the foreseeable duration of the period of work to be provided.
b) Currency and place of payment of cash benefits and, if applicable, benefits in kind.
c) Possibility of repatriation and conditions.
d) Access to health care.
e) Retribution to which he is entitled under the law applicable in the host State in situations of secondment.
f) Allowances for the secondment and reimbursement of travel, accommodation, and food expenses, where applicable.
g) Official website of the host State established in accordance with the specific legislation applicable to the posting.

71. Can the employer fulfill the duty of information regarding the provision of work abroad by referring to the provisions of the law, the IRCT or the company's internal regulations?

Yes, but only regarding:

a) Currency and place of payment of cash benefits and, if applicable, benefits in kind.
b) Possibility of repatriation and conditions.
c) Consideration to which you are entitled under the law applicable in the host State in posting situations.

72. What is the deadline for informing the worker about the updated information?

Previously, there was a duty to inform the worker of any change in the information in writing within 30 days. With the new wording, the update of the information shall be communicated **at the latest by the date on which it begins to take effect**.

H. Trial Period

73. What is the consequence of not complying with the duty of communication regarding the duration and conditions of the trial period until the seventh day of execution of the employment contract?

In this case, it is presumed that the parties **have excluded the trial period**. However, this is a **rebuttable (it is possible to surpasse) presumption**. On the other hand, the legislator did not change the rule that the exclusion of the trial period depends on a **written agreement**.

It should be noted that the exclusion, if it exists under the presumption, is **bilateral**, that is, the employer and the worker cannot promote the termination of the employment contract during the trial period.

74. Since the exclusion of the trial period is bilateral, the employer cannot, as a rule, terminate the employment contract, and the worker is obliged to serve a notice period?

The admissibility of **termination of the employment contract** - that is, termination of the employment contract without just cause - **by the employer** has a restricted scope (for example, in the trial period and in the termination of the employment contract on a service commission basis). In the first case, when the trial period lasts more than sixty (60) days, the employer is obliged to observe a notice period of seven (seven) or thirty (30) days, depending on the case. In the second case, both parties must observe a notice period of 30 (thirty) or 60 (sixty) days, as appropriate. With

the exclusion of the trial period, the field of action of the employer, but also of the worker, is reduced.

Indeed, during the **trial period, the worker can promote the termination of the employment contract without meeting any notice period**. With the exclusion of the trial period, the **worker is obliged to comply with a notice period** of 15 (fifteen) or 30 (thirty) days in the case of a fixed-term employment contract, and **a notice period** of 30 (thirty) or 60 (sixty) days in the case of an indefinite employment contract.

75. May the trial period be reduced taking into account the length of a previous contract with the same employer?

Until now, the trial or probation period has been reduced or excluded, depending on the duration of the previous fixed-term contract for the same activity, from a temporary employment contract executed at the same job, from a service contract for the same object, or even professional training for the same activity, has been less than or greater than the duration of that activity, provided that in any case they are concluded by the same employer.

With the new wording, the t**rial period is also reduced according to the duration of the professional internship with positive evaluation**, for the same activity and different employer, having been equal or superior to 90 days, in the last 12 months.

76. Is there a specific reason for reducing or excluding the probationary period for employees seeking their first job or long-term unemployed individuals?

Yes, when the duration of a previous fixed-term employment contract, entered into with a different employer, was equal to or longer than 90 days, the probationary period of up to 180 days, which applies in theory to workers seeking their first job or long-term unemployed individuals, is reduced or excluded, depending on the specific case. For example, if a previous fixed-term employment contract had a duration of at least 180 days, the probationary period is excluded. If

the duration of the previous contract was 90 days, the maximum probationary period for the new contract is reduced from 180 to 90 days.

The following questions remain open:

a) Is this rule applicable regardless of the contracted activity?
b) What happens if a temporary employment contract was concluded instead of a fixed-term employment contract?
c) What information must the employee provide before entering into a new employment contract?
d) Should the employer request this information?
e) What evidence can the employer request?
f) Can the new employer directly contact the previous employer to confirm the information, even without theworker's authorization or consent?

77. Has the notice period for termination by the employer been extended?

In general, during the trial period, unless otherwise agreed in writing, either party can terminate the contract without prior notice or justification, and without the right to compensation.

When the trial period exceeds 60 (sixty) days, the employer must observe a notice period of 7 (seven) days.

The change occurs when the **probationary period exceeds 120 (one hundred and twenty) days**: the notice period increases from 15 to **30 days**.

78. Do caregiver employees have special protection during the probationary period?

Yes. In addition to cases involving pregnant, postpartum, or breastfeeding workers or workers on parental leave, the termination of an employment contract with a caregiver worker must be

communicated by the employer to CITE (Commission for Equality in Labor and Employment) within 5 (five) business days from the date of termination.

79. Do employees seeking their first job and long-term unemployed individuals also have special protection during the probationary period?

Yes. **The employer must notify ACT (Authority for Working Conditions),** by an electronic form, of the termination of an employment contract during the trial period for workers seeking their first job and long-term unemployed individuals within 15 (fifteen) days following the termination of the contract.

80. Has abusive termination of the employment contract during the trial period become unlawful?

This **rule has already derived from general principles of law** and, therefore, it is not a novelty. Nevertheless, the legislator chose to expressly establish that termination constituting an abuse of rights is unlawful and should be assessed "according to general terms."

81. What are the consequences of abusive termination?

The legislator reserves the declaration of the abusive nature of the termination and its resulting unlawfulness for the courts, and the following consequences apply:

a) **The dismissal is considered unlawful,** and as such, the employer is required (i) to compensate the worker for all damages incurred, both material and non-material, and (ii) to **reintegrate** the worker in the same establishment of the company, without prejudice to their job position and seniority, except in cases where an indemnity replaces reinstatement at the request of either the worker or the employer.

b) The worker is entitled to **receive the remuneration they would have earned** from the date of dismissal until the final decision of the court declaring the dismissal unlawful ("procedural wages"), subject to legally allowed deductions.

c) The worker is entitled to **compensation in place of reinstatement**, at their request, ranging from 15 to 45 days of base pay and seniority premiums for each full year or fraction thereof of seniority.

d) The worker is entitled to **compensation in place of reinstatement**, at the employer's request, in the amount of 30 (thirty) to 60 (sixty) days of base remuneration and seniority for each complete year or fraction of seniority.

I. Equality and Non-Discrimination

82. Has the burden of proof rule been expanded?

As a general rule, **it is up to the party alleging discrimination** to indicate the worker or workers in relation to whom discrimination is claimed, and it is the **employer's responsibility** to prove that the difference in treatment is not based on any discriminatory factor.

This burden of proof rule now applies in cases of any discriminatory practice in access to employment, vocational training, or working conditions, particularly due to the exercise of rights related to parenthood, other rights within the scope of reconciling professional and family/personal life, and rights for caregiver workers.

Therefore, it is extended to all situations involving the exercise of parental rights (instead of a partial exemplary list), the reconciliation of professional and family/personal life, and the new figure of caregiver employees.

83. What is considered discriminatory practices for this purpose?

For the purposes mentioned in the previous question, discriminatory practices include, in particular, **discriminatory remuneration** related to the awarding of attendance and productivity bonuses, as well as unfavorable assessments and career progression.

84. Can bonuses and incentives plans/ agreements be deemed discriminatory?

For this purpose, the law now expressly states that awarding bonuses and incentives (discriminatory remuneration in the granting of attendance and productivity bonuses) may be subject to a rule of equality and non-discrimination.

However, the law did not revoke the general provisions excluding discriminatory conduct, namely when it constitutes a justifiable and determinative requirement for the exercise of the professional activity, due to the nature of the activity in question or the context of its execution, provided that the objective is legitimate, and the requirement is proportional.

J. Fixed-Term Employment Contract

85. Has the mandatory minimum content of the fixed-term employment contract been changed?

Yes, but only seemingly. In a fixed-term employment contract, the **stipulated term and the respective reason must be stated**. In a fixed-term employment contract without a specified term, the foreseeable duration of the contract and the respective reason must be stated. In my opinion, this was already a common practice, considering the duty to expressly mention the facts that constitute the justifying reason, establishing a relationship between the invoked justification and the stipulated term.

86. Has the prohibition of the succession of fixed-term employment contracts been expanded?

Yes. Previously, the termination of a fixed-term employment contract, for a reason not attributable to the worker, prevented the rehiring or assignment of a worker through another fixed-term employment contract or temporary work contract that would be carried out in the same position, or a service contract for the same purpose, concluded with the same employer or a company that is in a relationship of control or group, or maintains common organizational structures, before a period of time equivalent to one-third of the duration of the contract has elapsed, including renewals.

With the new wording, the termination of a fixed-term employment contract, for a reason not attributable to the worker, also **prevents the hiring or assignment** of a worker through a fixed-term employment contract or temporary work contract that would be carried out in the **same professional activity (not only the same position)**.

Moreover, it also prevents the conclusion of a **service contract for the same activity**.

Companies must exercise additional caution between the decision to terminate a fixed-term employment contract or temporary work contract and the decision to enter into a new employment contract or service contract.

87. Does a caregiver employee have special protection in the event of termination of a fixed-term employment contract?

Yes. In addition to cases involving pregnant, postpartum, or breastfeeding workers or workers on parental leave, the non-renewal of a fixed-term employment contract for a caregiver worker must be **notified by the employer to the CITE (Commission for Equality in Labor and Employment)** at least 5 (five) business days in advance, starting from the date of the prior notice.

88. Has a fixed-term employment contract been created for students during school vacation periods or breaks?

Yes. This **new employment contract** entered into with a student during school vacation periods or breaks is not subject to written formality and does not depend on the condition of being a working student.

However, the conclusion of this contract must be reported to Social Security through an electronic form.

The conclusion of a fixed-term employment contract and a temporary work contract is subject to the admissibility requirements of these contractual modalities. The stipulated term and the respective justifying reason must be communicated in the aforementioned form, with specific mention of the facts that constitute them.

89. Does this type of employment contract exclude the special rules regarding the participation of minors in shows, cultural, artistic, or advertising activities?

No. Indeed, the special provisions regarding the participation of minors in shows or other cultural, artistic, or advertising activities still apply.

90. Has the compensation for the expiration of fixed-term employment contracts been increased?

Yes. In a **fixed-term employment contract**, the compensation has been increased from **18 (eighteen) to 24 (twenty-four) days** of base remuneration and seniority per full year of service.

In the case of **an employment contract for an uncertain term**, the compensation used to consist of the following components: (i) 18 (eighteen) days of base remuneration and seniority per full year of service for the first three years of the contract's duration, and (ii) 12 (twelve) days of base remuneration and seniority per full year of service for subsequent years. With the new wording, the

compensation has been **increased to 24 (twenty-four) days** of base remuneration and seniority per full year of service.

K. Temporary Employment Contract

91. What is the consequence of entering into a contract with a temporary employment company that does not hold a license to engage in such activity?

The temporary work utilization contract, temporary employment contract, or open-ended contract for temporary assignment entered into with a temporary employment company that does not hold a license to engage in such activity is void. The law considers that the **work is provided to the user** (instead of, as previously, to the temporary employment company) under a **permanent employment contract**.

92. Has the prohibition of the succession of temporary employment contracts been expanded?

Yes. Previously, once the maximum duration of a temporary work utilization contract had been completed, it was prohibited to succeed a temporary worker or a worker under a fixed-term contract in the same position before a period equivalent to one-third of the contract's duration, including renewals.

With the new wording, it is now also prohibited **to succeed in the same professional activity** a temporary worker or a worker under a fixed-term contract, as well as in a **service contract for the same purpose or activity**, entered into with the same employer or a company that is in a **dominant or group relationship or maintains common organizational structures.**

Companies must exercise additional caution in managing fixed-term or temporary employment contracts, as well as service contracts.

93. What is the consequence of violating the prohibition of succession rule?

In addition to constituting a serious offense, **the contract entered into between the employee and the user is deemed to be of indefinite duration,** and all the time worked for the user under successive contracts counts towards the worker's seniority.

94. Has the limit for renewals of fixed-term temporary employment contracts been reduced?

Yes. The fixed-term temporary employment contract can now be renewed **up to (only) 4 (four) times,** instead of the previous limit of 6 (six) times.

95. Has any limit been set on the duration of successive temporary employment contracts with different users?

Yes. The duration of successive temporary employment contracts with different users, entered into with the same employer or a company that is in a relationship of control or group or maintains common organizational structures, **cannot exceed 4 (four) years**.

96. What is the consequence of exceeding the duration limit?

The contract is converted into a **permanent contract to temporary provision of employees** the temporary employment contract that exceeds the aforementioned limit.

L. Licensing of Temporary Employment Activity

97. Has the requirement of integrity for obtaining a license to engage in temporary employment activity been changed?

Yes. The company or its partner, manager, director, or administrator, as applicable, **must not have been convicted** or be part of a legal entity that has been convicted as a partner, manager, director, or administrator, or, in the case of an individual person, the sole trader, who has not been convicted:

a) By a final judgment for the commission of crimes (i) of assisting illegal immigration, (ii) of illegal labor recruitment, (iii) of employing foreigners in illegal situations, (iv) of slavery, or (v) of human trafficking.
b) By a final judgment for labor, contributory, or tax crimes in the last 5 (five) years.
c) For committing very serious labor offenses in the last 2 (two) years.

98. Has the requirement of an appropriate organizational structure for obtaining a license to engage in temporary employment activity been changed?

Yes. The **requirement of an appropriate organizational structure** is considered fulfilled when the company meets the following requirements:

a) **Existência de trabalhadores contratados pela empresa em número suficiente e com as competências adequadas** para o desenvolvimento da sua atividade, que prestem as suas funções diariamente na empresa, com os seguintes requisitos mínimos:

i. For the exercise of the activity, a **minimum percentage of workers with open-ended contracts for temporary assignment**, determined based on the number of temporary workers in the last 12 months, which must be maintained during the company's activity, including the workers referred to in the following subparagraphs, according to terms and criteria to be established by regulatory decree;.
ii. A **full-time technical director** with a higher education qualification and adequate professional experience in the field of human resources.
iii. **Daily face-to-face customer service** with at least one full-time employee.

iv. A **qualified worker** to handle the financial and administrative area, including accounting organized according to the applicable legislation, unless the company uses external services.

b) The existence of **specific facilities suitable for the exercise of the activity and properly equipped**, with the following minimum characteristics:

i. Workspaces and face-to-face customer service, as measured by a prior visit to the premises.

ii. Identification of the temporary agency, opening hours and face-to-face customer service, visible from the outside.

99. What is meant by the minimum percentage of employees with open-ended contracts for temporary assignment?

Apparently, it should be based on the **number of temporary workers in the last 12 (twelve) months**. However, we have to wait for the terms and criteria to be established by regulatory decree. There are many doubts about the applicability of this requirement, which may or may not be resolved with the publication of the regulatory decree, which has not yet been issued.

100. What is meant by higher education qualification and adequate professional experience in the field of human resources?

The **higher education levels** of the National and European Qualifications Framework range from levels 5 (five) to 8 (eight), namely: (i) post-secondary non-higher education with credits for higher education studies; (ii) bachelor's degree; (iii) master's degree; and (iv) doctorate.

It remains open to interpretation whether the change applies only to bachelor's, master's, and doctoral degrees or also includes Technological Specialization Courses (CET) or Apprenticeship+ Courses. The legislator could have used the levels of the National and European Qualifications Framework to avoid interpretative doubts.

As for **adequate professional experience** for the role of technical director, it is considered to be 2 (two) years of experience in the field of human resources management.

101. Has the deposit for the exercise of temporary work activity been increased?

Yes, the applicant constitutes, in favor of the public employment service, **a deposit for the exercise of temporary work activity**, with the following amounts (**months of the minimum monthly salary guaranteed**, plus the amount of the single global social contribution tax applied on that value):

	Before	**Now**
Up to **100 workers**	100	150
101 to **200 workers**	150	200
201 to **300 workers**	200	250
301 to **1000 workers**	250	300
1001 to **2000 workers**	250	400
From **2001 workers**	250	500

M. Intermittent Employment Contract

102. Does the violation of the specific duty of information regarding the intermittent employment contract generate any particular consequences?

Yes, the parties establish the length of the work period, consecutively or interpolated, as well as the beginning and end of each work period, or the advance notice with which the employer must inform the worker of the beginning of such period.

The provision of work cannot be less than five months full-time per year, of which at least three months must be consecutive.

In turn, the advance notice with which the employer must inform the worker of the start of each work period cannot be less than 30 (thirty) days, when the worker has another activity during the inactivity period in the situation of paragraph 1 of the following article, and 20 days in other cases.

However, in the event of non-compliance by the employer, the **worker is not obliged to work, nor can he be punished as a result**. The serious administrative offence remains.

See questions 65 to 67.

N. Teleworking

103. Has the right to telework been extended?

Yes, **workers with children, regardless of age, with disabilities, chronic illnesses or oncological illnesses who live under the same roof as the worker,** are entitled to telecommute when this is compatible with the activity performed and the employer has the resources and means to do so.

104. How is the amount of compensation due to the worker for the additional expenses determined?

The amount of compensation due to the worker for additional expenses **must be established by agreement,** namely in the employment contract or respective amendment.

In the **absence of an agreement on a fixed amount,** additional expenses are considered to be those corresponding to the acquisition of goods and or services that the worker did not have before the telework agreement was entered into, as well as those determined by comparison with the homologous expenses of the worker in the last month of face-to-face work. This residual solution may be difficult to apply in practice.

105. Is the amount of compensation owed to the worker for additional expenses exempt from personal income tax and social security contributions and dues?

The change introduced by the DWA points to the **exemption** of the amount of the compensation owed to the worker for additional expenses in terms of personal income, tax, and social security contributions and contributions. However, it is pending the publication of an **ordinance by the members of the Government responsible for the areas of tax affairs and social security**, which will define the scope of the exemption.

O. Restrictions on outsourcing

106. Has outsourcing been banned?

The "externalization of services" or "outsourcing" has been **restricted**. For example, it is not allowed to use the **acquisition of external services** from a third party entity to **satisfy needs** that were assured by a **worker whose contract was terminated in the previous 12 (twelve) months** due to collective dismissal or redundancy, under penalty of a very serious administrative infraction attributable to the beneficiary of the acquisition of services.

By way of mere exemples, the following questions remain open:

a) Does the twelve 12 (twelve) month period begin to run on the date of termination of the contract or at the time of the communication of the intention to proceed with collective dismissal or redundancy by the termination of employment?
b) What happens if the acquisition of external services occurs before the dismissal or on the day before the communication of the intention to proceed with the collective dismissal or termination of employment?
c) What if the acquisition of external services occurred more than 3 (three) months ago?

d) Should a collective dismissal or termination of employment procedure based on the economic rationality of outsourcing services to a specialized company be allowed, when such outsourcing is forbidden?

e) Do the new rules lead to the nullity of the service provision contract underlying the outsourcing?

f) What is meant by acquisition of external services from a third party? Isn't this redundant?

g) Should the satisfaction of needs that have been assured by a worker be total or merely partial? If partial, should it be assessed qualitatively or quantitatively?

h) If the service provider provides activities previously performed by the dismissed worker associated with other essential or complementary services, is there a partial nullity or a reduction?

i) How does this prohibition relate to the regime of transfer of undertakings?

107. Does this prohibition make the dismissal unlawful?

Considering that (i) these rules appear in the section on "general provisions on termination of employment" and systematically between the prohibition of dismissals without just cause and the imperativeness of the regime of termination of the employment contract, (ii) these rules do not appear in the section on "unlawfulness of dismissal", (iii) the prohibition is accompanied by a misdemeanor penalty and (iv) the prohibition does not concern dismissal, but rather the use of outsourcing, it could be argued that, at the outset, the prohibition does not determine the unlawfulness of dismissal. However, **employers should take extra care in the processes of externalization of services or outsourcing**.

108. In the case of outsourcing that does not constitute a transfer of economic unit, is the service provider covered by the CBA that binds the beneficiary of the activity?

In the event of transfer, for any reason whatsoever, of the ownership of a company or establishment or part of a company or establishment that constitutes an economic unit, the CBA

that binds the transferor is applicable to the acquirer until the end of the respective term of validity or for at least 12 months as from the transfer, unless, in the meantime, another negotiating CBA becomes applicable to the acquirer.

On the other hand, 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 CBA that binds the beneficiary of the activity is applicable to the service provider, when more favorable**.

For this purpose, the **service provider** is understood to be the natural person who provides the activities that are the object of the service contract, whether it is the counterparty of the acquiring company or another legal person with whom it maintains a contractual relationship, and regardless of the nature of the contract.

109. Is the application of the CBA immediate and unlimited?

The CBA only applies after **60 (sixty) days** of rendering of activities for the benefit of the acquiring company; prior to this period, the service provider is entitled to the minimum salary foreseen in the CBA that binds the beneficiary of the activity that corresponds to his/her functions, or to that practiced by the latter for equal work or work of equal value, whichever is more favorable.

Unlike in the case of the transfer of an economic unit, there is no time limitation for the application of CBA.

The question remains open as to what happens if the services are provided by a natural or legal person residing in another member state under the freedom to provide services.

110. Should the outsourcing services contract have any special provisions?

Yes. The service provision contract must determine which **entity is responsible for ensuring compliance with the obligations foreseen in the CBA** that bind the beneficiary of the activity.

P. Workplace

111. What is the consequence of violating the procedure in case of a workplace transfer?

Without prejudice to other consequences, violation of the procedure in case of transfer constitutes a serious misdemeanor in case of permanent transfer, and a minor one in case of temporary transfer.

Q. Working Time

112. Has the exclusion of group adaptability and group time bank schemes been extended?

Yes, namely (i) to the employee with a child, regardless of age, with a disability or chronic illness, unless he/she expresses his/her agreement in writing and (ii) to the employee with a child between 3 (three) and 6 (six) years old, who presents a declaration that the other parent has a professional activity and is unable to provide assistance.

113. What has changed about absences due to death of spouse, relative or kinship?

Until now, workers could be absent with good reason: (i) up to 20 (twenty) consecutive days, due to the death of a descendant or relative in the first degree of the direct line (children, adopted children, stepchildren, sons-in-law and daughters-in-law); and (ii) up to 5 (five) consecutive days, due to the death of a spouse not legally separated from people and property or of a relative or relative in the first degree of the direct line (parents and parents-in-law). This second case was applicable in the event of death of a person living in a de facto union or common economy with the worker, under the terms foreseen in specific legislation.

With the alteration, the worker may be absent with justification: (i) **up to 20 (twenty) consecutive days**, due to the death of a spouse not legally separated or equivalent, a child or stepchild; and (ii) **up to 5 (five) consecutive days**, due to the death of a relative or relative in the 1st degree in the direct line not foreseen in the previous case (sons-in-law and daughters-in-law).

114. Can the justification of sick leave for periods of up to 3 (three) days be done through the digital service of the National Health Service, or the digital service of the regional health services of the Autonomous Regions?

Yes, the declaration from the digital services of the National Health Service or the regional health services of the Autonomous Regions **is issued upon the worker's self-declaration of illness, under oath**.

This declaration can only be issued when the worker's illness does not exceed three (3) consecutive days, up to a limit of two (2) times a year.

The worker must give the employer the access code to the declaration that they received via SMS (cellphone message) or email.

115. Are these justified absences paid?

As a rule, they **are not paid** by the employer nor give rise to payment of sick pay. However, some collective labor agreements provide for payment for up to 3 (three) days of sick leave.

116. What happens if the illness lasts more than 3 (three) days?

The worker must obtain a **temporary incapacity certificate**, i.e., the document issued by the doctor certifying the illness or inability to work for a certain period.

117. May the employer oppose the replacement of lost wages due to absence?

No. The loss of wages due to absences may be replaced: (i) by waiving an equal number of vacation days, in the part exceeding 20 (twenty) working days, by means of an express declaration by the employee communicated to the employer or (ii) by performing work in addition to the normal period, within the limits of up to 4 (four) hours per day, and the normal weekly work period may not exceed 60 (sixty) hours, when CBA allows it.

With the change, it is stipulated that the employer cannot oppose the worker's request, under penalty of committing a serious administrative offense.

118. What has changed in the payment of overtime work (additional work)?

Overtime work provided **up to 100 hours per year** is paid at the hourly rate with the following increases: (i) 25% for the first hour or fraction thereof and 37.5% for each subsequent hour or fraction thereof on a working day; and (ii) 50% for each hour or fraction thereof on a mandatory or complementary weekly rest day or public holiday.

For the portion **exceeding 100 hours per year**, overtime work is paid at the hourly rate with the following increases: (i) 50% for the first hour or fraction thereof and 75% for each subsequent hour or fraction thereof on a workday; and (ii) 100% for each hour or fraction thereof on a mandatory or complementary weekly rest day or public holiday.

R. Compensation Funds

119. Has the duty to communicate to ACT membership in the labor compensation fund or equivalent mechanism been repealed?

Yes, the duty of the employer to communicate to ACT the adhesion to the work compensation fund or equivalent mechanism, foreseen in specific legislation, was expressly revoked.

It should be noted, however, that the duty to inform about funds has not disappeared from the list of information to be provided to workers. Even though the obligations of communication, admission and payment have been suspended, the duty to inform remains partially suspended.

120. Are the obligations related to the Labor Compensation Fund (FCT) and the Labor Compensation Guarantee Fund (FGCT) suspended?

Yes. During the term of the medium-term agreement for the improvement of income, wages and competitiveness (2023-2026), in the case of FGCT, and until the entry into force of the amendments to the labor compensation fund legal regimes, in the case of FCT, the obligations regarding FGCT and FCT are suspended, namely with regard to admission communications and the payment of contributions.

In the beginning, the FCT will be converted into a closed fund for all workers at the company, and individual accounts per worker will no longer exist. In this eventuality, the FCT may have, for example, the following purposes:

a) Financing the qualification and certified training of workers.
b) Support the costs and investments with workers' housing; and/or...
c) Pay up to 50% of the compensation due for termination of the employment contract of workers covered by the FCT.

S. Termination of the employment contract

121. Has the compensation for collective dismissal been increased?

Yes. In the case of collective dismissal, the compensation was **increased from 12 (twelve) to 14 (fourteen) days of base pay and seniority for each full year of seniority**.

See question 90.

122. To which situations does this increase in collective dismissal compensation apply?

The increase in this compensation **applies to** (i) dismissal due to the extinction of a job, (ii) dismissal due to unsuitability, (iii) termination of an employment contract on commission, (iv) termination of an employment contract by the worker in the event of permanent transfer of the workplace which causes serious harm, (v) termination due to the death of the employer or the extinction of a legal entity or closure of the company, (v) termination of the contract on the initiative of the insolvency administrator.

123. Are waivers of rights, concerning of employment claims, prohibited?

Yes, the worker's credit arising from an employment contract, its violation or termination **is not susceptible to extinction by means of abdicative remission, except through judicial transaction**.

At the outset, the employer's claim is liable to be extinguished by an out-of-court waiver. However, the legislative change has made it very unlikely that the employer will declare that he has nothing further from the employee, without the worker also releasing the employer.

This is a solution that requires extra care when terminating the employment contract and may even promote the use of court proceedings only to obtain the respective homologation of the abdicative remission.

124. What is the relationship between this prohibition and the establishment of lump-sum cash compensation in the employment termination agreement?

This will be a controversial issue and **will require particular care in drafting the agreement**. Ultimately, it will always require proof to the contrary. The question is whether there is a waiver or payment of all labor claims through a lump-sum cash settlement.

125. Is an employee, who is a victim of domestic violence, exempt from the notice period on termination of employment?

Yes, workers who have been recognised as victims of domestic violence **are exempt from having to give prior notice**. In this case, the worker is not obliged to pay the employer compensation equal to the basic salary and seniority corresponding to the missing period, without prejudice to compensation for damages caused by non-compliance with the prior notice period or by an obligation assumed in a stand-by pact.

Once the complaint of the crime of domestic violence has been filed, and if there is no strong evidence that the complaint is unfounded, the judicial authorities or the competent criminal police bodies will grant the victim the status of victim for all legal purposes. In that act, the victim is given a document proving the referred status, which comprises her rights and duties, as well as a copy of the respective official report or complaint.

T. Clauses restricting freedom of work

126. Were exclusivity clauses prohibited?

No. However, **the employer cannot prevent the worker from exercising another professional activity**, except on objective grounds, such as health and safety (OHS) or professional secrecy. On the other hand, it cannot treat him unfavorably because of that exercise.

127. Is the duty of loyalty to the employer affected?

No. The restriction of exclusivity clauses **does not exempt the worker from the duty of loyalty to the employer**, nor from the duty to observe special rules regarding impediments and incompatibilities.

128. Can a employee who is a victim of domestic violence leave a stand-by pact without having to observe the notice period or pay compensation?

Apparently yes. In fact, when this status is granted, the worker is not obliged to observe any period of notice, nor to pay compensation for damages caused by non-compliance with the period of notice or the obligation assumed in a stand-by pact.

However, this solution must be assessed on a case-by-case basis, particularly in the light of **proportionality criteria**.

U. Union activity

129. Are there special rules for convening and holding a employee's meeting using information and communication technologies?

As a rule, the worker's committee may call general meetings of employees to be held in the workplace: (i) outside the working hours of the majority of the employees, without prejudice to the normal functioning of shifts or overtime work; or (ii) during the working hours of the majority of the employees up to a maximum period of fifteen hours per year, which counts as effective working time, provided that the functioning of services of an urgent and essential nature is ensured.

For this purpose, the works council must notify the employer, at least forty-eight (48) hours in advance, of the date, time, foreseeable number of participants and place where the meeting is to take place and post the respective notice.

In the case of a meeting to be held during working hours, the worker's committee must submit a proposal aimed at ensuring the functioning of services of an urgent and essential nature.

After receiving the communication on the scheduling of the meeting and, where appropriate, the proposal of the works council, the employer must make available to the promoting entity, provided

that it so requests, a location within the company or in its proximity that is suitable for holding the meeting, taking into account the elements of the communication and the proposal, as well as the need to respect (i) the normal functioning of shifts or overtime work or (ii) the functioning of services of an urgent and essential nature.

The DWA has determined that these rules apply to the convening and holding of meetings **using information and communication technologies**.

130. Can there be trade union activity in a company where there are no workers affiliated to trade unions?

Yes. Employees and trade unions **are entitled to develop trade union activity in the company**, namely through (i) meeting workers at the workplace, (ii) the right to facilities, and (iii) posting and distribution of trade union information, with the necessary adaptations.

131. Can the employer oppose the development of union activities in a company where there are no workers who are members of union associations?

No. The employer who unjustifiably prevents the exercise of the above-mentioned rights commits a **very serious administrative offense** punishable with a fine and, possibly, accessory sanctions (e.g., publicity or advertisement).

132. Can the union delegate call a employee's meeting at the workplace?

Yes, in companies with less than 50 (fifty) unionized workers, the **union delegate may call** a employee's meeting at the workplace.

V. Collective bargaining

133. Are there any new incentives for collective bargaining?

Yes. The State provides for **incentives for collective bargaining** within the scope of its specific policies, namely through measures that favor companies that have recently concluded or revised collective agreements, within the framework of access to public support or financing, including European funds, public procurement procedures, and tax incentives.

For this purpose, a recently concluded or revised agreement is considered to be one that has been signed or renewed within a period of up to 3 (three) years.

134. Has the right of the employee to choose the collective labour agreement been restricted?

Yes, the choice of the collective agreement cannot occur if the worker is already covered by an **ordinance extending a collective agreement** applicable in the same sector of activity, professional and geographical scope.

135. Must reasons be given for the termination of a collective agreement?

Yes, the termination of a collective agreement **must be accompanied by a statement of reasons** with regard to economic or structural reasons or to the inadequacies of the regime of the agreement terminated.

136. May the termination of a collective agreement be subject to arbitration?

Yes. In the case of denunciation of a collective agreement, the party to whom the denunciation is addressed may request arbitration from the President of the Economic and Social Council for **appraisal of the grounds invoked by the party who made the denunciation**.

The request for arbitration must be presented within 10 (ten) days from the date of receipt by the party to whom the denunciation communication is addressed.

137. Does the request for arbitration suspend the effects of the termination of the collective agreement?

Yes, the request for arbitration **suspends the effects** of the denunciation, preventing the agreement from coming into force.

A declaration by the arbitral tribunal that the grounds for the denunciation are unfounded determines that the denunciation has no effect.

138. Does the expiry of a collective bargaining agreement depend on an express declaration?

Yes. The expiry of the collective labour agreement **takes effect** (i) on the day following the **publication** by the Directorate-General for Employment and Labor Relations (DGERT) in the Bulletin of Labor and Employment (BTE) of a **notice** of the date of suspension and termination of the collective agreement or (ii) **after 90 (ninety) days** of the communication to the ministry responsible for the employment area and the other party of the termination of the negotiation process without an agreement, in which case the employer must publicize the fact in an appropriate place in the company and inform DGERT of the date of such publication.

139. Has the arbitration for the suspension of the period of oversight and mediation changed?

Yes. Any of the **parties may immediately request the necessary arbitration** (i) if the negotiation is not referred to mediation and (ii) in situations in which there is mediation, but this is concluded without agreement as to the total or partial revision of the collective agreement.

140. Have new cases of termination of a collective agreement been provided for?

Yes. Until now, the collective agreement could terminate, in whole or in part, (i) by revocation by agreement of the parties and (ii) by expiry following denunciation or due to the termination of the signatory union or employers' association.

With the legislative amendment, **the collective agreement can be terminated, in whole or in part,** (i) by final court decision, (ii) under the terms of an express agreement clause on the termination of its validity, (iii) as a result of the expiry of the period set for the application of the CBA following the transfer of an economic unit, (iv) as a result of an act or fact that determines the legal extinction of the employer that signed the company or collective agreement.

141. Must cases of termination of a collective agreement be communicated to DGERT?

Yes. **Situations of termination must be communicated to DGERT**: (i) by the **court,** when determined by a final court decision, (ii) by the **parties,** when the termination results from an express contractual clause on the cessation of validity or the end of the term foreseen for the application of the IRCT following the transfer of the economic unit and (iii) through an **exchange of information** in relation to entities subject to commercial registration, under the terms to be defined by a protocol to be signed with the Institute of Registration and Notary Affairs, I. P., when it results from an act or fact that determines the legal extinction of an employer that has signed a company or collective agreement.

142. In what circumstances must DGERT promote publication in the BTE of notice of the date of suspension and termination of a collective agreement?

DGERT must publish notice in the BTE (Portuguese Bulletin of Employment)of the date of suspension and termination of a collective agreement (i) in the event of expiry due to termination of the collective agreement, (ii) after notification of termination of a trade union or employers' association and (iii) after notification of a final court decision, the end of the term provided for in an express clause of the collective agreement, the end of the term provided for in the CBA following

the transfer of an economic unit or an act or fact that determines the legal extinction of an employer that has signed a company or collective agreement.

143. Has the time limit for opposition to the issue of the extension ordinance been reduced?

Yes, any natural or legal person that may be, even indirectly, affected by the extension may lodge a reasoned opposition, in writing, within 10 (ten) days following publication of the draft. Previously, the period was 15 (fifteen) days.

X. Domestic service

144. Has the regime of the trial period changed?

Yes, previously, the trial period was 90 (ninety) days, unless there was a written agreement to eliminate or reduce it.

With the alteration, the regime established in the Labor Code now applies, in which we would like to highlight the particularities mentioned above (see questions 73 to 81), as well as the **apparent possibility that the trial period may be up to 180 (one hundred and eighty) days, in an employment contract of indefinite duration**, since the position is one of trust.

145. Has the christmas and holiday allowance regime been amended?

The rules provided that domestic service employees were entitled to a Christmas subsidy of no less than 50% of the monetary portion of the salary corresponding to one month, which must be paid on or before December 22 of each year, and 100% upon reaching three (3) years of seniority, were repealed. In this sense, **the application of the regime foreseen in the Labor Code became clear**.

Likewise, the rule that established that domestic service workers were entitled to receive, until the start of the holidays, a cash subsidy equal to the value of the remuneration corresponding to the holiday period was revoked, **with the regime set forth in the Labor Code being applicable**.

146. Have the rules on leave entitlement, absences and prolonged absences been amended?

The legislator repealed the special rules concerning holidays (the rules on holidays not taken due to termination of the employment contract, taking, and booking of holidays, violation of holiday entitlement, unwaivable holiday entitlement), absences and prolonged absences from work, whereby **the rules set out in the Labor Code are applicable**.

147. Has the regime of the termination of the domestic service contract been altered?

Yes, **namely** in situations of **termination on grounds of expiry**, by reason of (i) manifest economic insufficiency of the employer, supervening the conclusion of the contract, or (ii) a substantial change in the circumstances of the employer's family life, which makes it immediately and practically impossible to maintain the employment relationship, namely when the need for assistance for which the employee was contracted has ceased, **the employer must give the employee notice, indicating the reasons on which the termination is based, with a minimum prior notice of**:

a) 7 (seven) days, if the contract has lasted up to 6 months.
b) 15 (fifteen) days, if the contract has lasted from 6 months to 2 years.
c) 30 (thirty) days, if the contract has lasted for more than 2 years.

The regime of **work abandonment has also been revoked**, and **therefore the regime set out in the Labor Code applies**.

Z. The role of the ACT

148. Can a labor inspector intervene in the dismissal decision?

In the case where an inspector verifies the illegality of dismissal for formal or discriminatory reasons, he/she must draw up a report and notify the employer to correct the situation. If no correction is made, the inspector must within 5 days send a report to the Public Prosecutor's Office containing the facts that he/she has found out. In turn, the Public Prosecutor's Office shall have 20 days to instigate a precautionary procedure to suspend the dismissal.

149. Does the ACT have more effective means for controlling the legality of the signing of fixed-term contracts?

From the 1st of May, the ACT will be able to use the procedure to be adopted in the case of the inadequacy of the bond that stipulates the provision of activity under conditions corresponding to those of an employment contract in situations where it considers that there is a violation of nos. 1 and 2 of the Labor Code.

150. Can companies that decide to appeal administrative decisions of the ACT continue to present a bank guarantee to guarantee the suspensive effects of the proceedings?

With the recent legislative changes, it is no longer possible for the employer to present a bank guarantee to suspend the effects of the process. Therefore, it must deposit the amount of the fine, which will be returned after the acquittal.

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