Global Employment Compass

Portugal

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1. Summary of applicable rights for different categories of workers

	Employees (part-time or full-time)	Independent contractors/ service providers	Volunteers
Employment laws and regulations	Yes	Only in specific situations**	No
Employees' compensation/ remuneration requirements	See below	No	No
Minimum wage requirements	Yes	No	No
Mandatory provident fund/retirement benefit fund contributions	Yes		
Immigration requirements including the right to work in your country		Yes	No***
Personal Data (Privacy) laws and regulations	Yes	Yes	Yes
Anti-discrimination laws and regulations	Yes	Yes	Yes

* Assumes a genuinely voluntary arrangement and the individual not being deemed to be an employee or worker, or under a contractual obligation to carry out any work. According to Law no. 71/98 (which regulates the legal framework of volunteering), volunteering is defined as a set of actions of social and community interest carried out in an altruistic manner by people, within the scope of projects, programs and other forms of intervention at the service of individuals, families and the community developed on a non-profit basis by public or private entities. The volunteer is the individual who freely, altruistically, and responsibly undertakes, according to their own abilities and in their free time, to carry out voluntary actions within the scope of a promoting organization. The volunteer's actions cannot, in any way, derive from a subordinate or autonomous work relationship or from any paid relationship with the promoting organization, without prejudice to special regimes contained in the law

** When the individual services provider is under economic dependency of the beneficiary of the activity, the collective bargaining regulation instruments (hereinafter "CBA") of the same sector of activity, professional and geographic will be applied to the individual services provider. Also, the legal rules concerning rights of personality, equality and non-discrimination, and safety and health at work are applicable

The situation of economic dependency is measured by the product of the activity developed by an individual through the direct provision of services and, as a rule, without the intervention of third parties to the same beneficiary from whom they obtain more than 50% of the total value of the self-employed employee's activity under the terms of Portuguese Contributions Code

The activity is considered to be provided to only one beneficiary whenever the individual services provider works for several beneficiary group companies or under relationship of reciprocal participations, dominance or which share common organizational structures

*** Some volunteers can benefit from a Voluntary Social Insurance scheme. Voluntary Social Insurance is an optional contributory scheme that gives access to benefits provided by Social Security. The Voluntary Social Insurance guarantees not only the protection of Social Security in the event of disability and retirement, but also in cases of occupational disease and death.

2. Legal requirements/rights/ practices for different categories of workers

a. Employees

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Definition of an employee

Portuguese Labor Law ("PLL") does not define "employee", it defines an "employment contract" as a contract by which a person undertakes, in return for payment, to provide work for one or more other persons, under the organization and authority of those persons.

1 Contracts of Employment

What types of employment contracts are available? E.g. fixed term, part time, zero hour contracts, other? Are there any specific employment contracts available for non-profit organizations?

PLL provides for two main types of employment contracts: (i) fixed-term employment contracts (temporary employment) and (ii) employment contracts for an indefinite term (permanent employment).

Part-time work is defined as work corresponding to a normal weekly working period lasting fewer hours than full-time work in a comparable situation. Working part-time does not constitute a separate employment regime but is rather treated as a reduction of the normal hours worked under an employment contract.

Portuguese law does not recognize zero hours contracts and these types of contracts are not used in Portugal.

Additionally, a range of atypical contracts exist. These include temporary agency worker employment, uncertain term contracts, service commission, etc.

What are the key terms of employment contracts?

Employers are obliged to provide employees with the following information in writing:

- complete identification of the employer (including its corporate group relationship, e.g. who owns or controls the company);
- place of work;
- job title or a brief description of the duties to perform;
- date of signing of the employment contract and the start date;
- the term stipulated or the foreseeable duration of the contract, in the case of a fixed-term or uncertain-term contract, respectively;
- annual leave entitlement, or the rules for calculating the leave;
- notice periods for termination of the employment agreement, or the rules for calculating those periods and the formal requirements to be observed by the employer and the employee for termination of the contract;
- employee pay (amount, regularity, the method of payment and identification of its constituent elements);
- regular weekly and daily working time schedule, specifying the cases in which it is defined in average terms under an adaptability of a bank of hours regime, the regime applicable in case of overtime work and shifts work;
- applicable collective bargaining agreement, if any and the designation of the entities that entered into the CBA;
- identification number of employer's accident insurance policy and insurance company;
- identification of the work compensation guarantee fund, provided for in specific legislation;
- identification of the user, in the case of temporary work;
- the duration and conditions of the trial period, if applicable;
- the individual's right to continuous training;
- the relevant information concerning intermittent work, if applicable;
- social protection regimes, including benefits which are complementary or substitutive to those provided under the general social security regime;
- the parameters, criteria, rules and instructions on which algorithms or other artificial intelligence systems affecting decision-making on access to and retention of employment, and working conditions, including profiling and job monitoring, are based.

Is it acceptable to have a probation period for employees? If yes, for how long?

Yes. Its length depends on the type of contract, its duration and the job position.

For permanent employment contracts:

- General probationary period - 90 days;
- Employees with duties that are technically complex, that require a high level of responsibility, or that require a particular qualification, employees in positions of trust, first job seekers (between 18 and 30 years old, except when they were previously employed under a

permanent employment contract) and long-term unemployed (unemployed for more than 12 months) - 180 days;

- Managers and senior executive management positions - 240 days.

For fixed-term or uncertain term (i.e., though temporary, with no specified expiry date, the duration of the contract being linked with the period of the temporary justification of the contract) employment contracts:

- Employment contract term of less than 6 months or uncertain term that is expected to last no more than 6 months - 15 days;
- Employment contract with a term of at least 6 months - 30 days.

Finally, as for employment contracts under services commission, a trial period is conditional to the agreement of the parties up to a maximum of 180 days.

The parties are free to reduce or forego the probationary period in the employment contract. However, this period cannot be extended.

Are fixed term employment contracts permissible? Are there any limitations on fixed term contracts? Are there any requirements to have a fixed term contract?

Fixed-term contracts are permissible. Fixed-term contracts may be entered into to meet the temporary needs of an employer and for the period strictly necessary to meet those needs, notably in the following situations:

a) Direct or indirect replacement of an employee who is temporarily unable to work;

b) Direct or indirect replacement of an employee who has been dismissed and whose dismissal is currently pending a court decision;

c) Direct or indirect replacement of an employee who is on leave;

d) Direct or indirect replacement of an employee who is temporarily working on a part-time basis;

e) Activities pursued exclusively at certain times of the year, or for which products can only be produced cyclically, due to the structure of its market, notably for the reason of supplying those goods;

f) Temporary or unusual increase in the company's business activity;

g) Performance of a specific task or providing a temporary and very particular service;

h) Execution of a work, project or other temporary activity, including the execution, management and inspection of construction activities, public works, setting up or repairs carried out in an industrial context for a specific work as well as the respective projects or other accessory activity of supervision and monitoring;

i) Starting a new activity of uncertain duration, or setting up a company's activity, a new branch or business unit, involving less than 250 employees;

j) Hiring long term unemployed persons (aged 45 or above and who have been registered as unemployed at the Institute of Employment and Professional Training - Instituto de Emprego e Formação Profissional for 25 months or more).

Uncertain term contracts may only be concluded in the circumstances outlined in subparagraphs a), to c), and e) to h) above.

Provided that the temporary need is ongoing, fixed-term employment contracts can have a maximum duration of 2 years, including any renewals, and can be renewed up to a maximum of 3 times. Possible renewals cannot be lengthier than the initial duration of the contract. Employment contracts for an uncertain term can last for up to 4 years.

As a rule, successive fixed-term contracts for the same job position are not allowed, unless:

- the first contract was unilaterally terminated by the employee;
- the first contract was terminated by agreement;
- there is a gap between the two contracts corresponding to one third of the duration of the first contract. This limit does not apply to the need to replace an employee who has been absent before, to the need to deal with a temporary or unusual increase in the company's business activity or to cyclical activities.

Fixed-term contracts must be executed in writing and comply with the following requirements:

- Identification, signature and address of the parties;
- Employee's job description and salary;
- Workplace and working period;
- Commencement and end date; and
- the term stipulated or the foreseeable duration of the contract, in the case of a fixed-term or uncertain-term contract, respectively.

When term and renewal requirements are not met, the contract is converted into one for an indefinite term. This means that the employee is deemed to be employed for no fixed-term and seniority will be calculated from the date when the employee was first hired and the employee will enjoy the rights and protections against dismissal of a permanent employee. Employment contracts entered into for an uncertain term may also be converted into an employment contract for an indefinite term when an employee remains in the employer's service after the term of the employment contract or for more than 15 days after the employee replaced returns or after the activity, service, or project is concluded.

Failure to comply with the notice of termination will result in the employment contract being deemed to be renewed (if possible). Otherwise, the employment contract will be deemed to be a permanent employment contract.

Do employment contracts have to be in writing? Are there any signatory requirements for employment contracts? For example, could they be signed in-person or electronically, etc.)?

In general, the principle of freedom of form prevails. However, the following types of agreement must be in writing:

- a promise agreement (i.e. a unilateral binding offer of employment (by the employer) or a bilateral binding promise (from the employer and the employee) to enter into an employment contract (whether a permanent contract or a term contract);

- a fixed-term agreement;
- an uncertain term agreement (i.e. with no specified expiry date, the duration of the contract being linked with the period of the justification of the contract);
- teleworking;
- temporary agency worker agreements;
- pre-retirement employment agreements;
- as well as an employment agreement with foreign employee (although this requirement does not apply to employment agreements with EEA nationals or with nationals from a State recognizing equal treatment to Portuguese nationals in respect to freedom of choice of employment).

There are no legally required signatory requirements for employment contracts, and they can be signed in-person or electronically (provided the electronic signature is a qualified electronic signature). In the EU, electronic signatures are governed by the Electronic Identification and Trust Services (eIDAS) Regulation. The eIDAS platform establishes a comprehensive set of trust services as well a cross-border mutual recognition of electronic identification means (eID). One of the trust services established by the eIDAS is electronic signature. The eIDAS recognizes three types of electronic signature with different trust levels: simple, advanced and qualified, whereby only Qualified Electronic Signature (QES) are explicitly recognized to have the equivalent legal effect of hand-written signatures all over the EU.

Qualified certificates for electronic signatures are provided by (public and private) providers which have been granted a qualified status by a national competent authority as indicated in the national 'trusted lists' of the EU Member State can be viewed online at either: eIDAS - Map or eIDAS Dashboard (europa.eu).

Whenever a hand-written signature is required by law or agreement, as is the case of employment agreements, a QES issued by a TSP is necessary to ensure the validity and full effectiveness of the signature.

Portuguese approved TSPs are:

Multicert (https://www.multicert.com/pt/),

DigitalSign (https://www.digitalsign.pt/pt) or

ACIN iCloud Solutions (https://globaltrustedsign.com/),

and these are the ones that should be used to ensure that the TSP is able to issue a recognized and fully valid QES and also one that can recognize the legal capacity of a person in a Portuguese company (director or attorney).

Do employees have to be issued with a written employment contract before they start work?

In the situations where the employment contract has to be entered into in writing, yes.

Can you provide a simple template of the contracts mentioned above?

N/A

Is there an obligation for an employer to run a criminal record check to the extent that any individual they hire will be working with children or vulnerable people?

Yes. According to Law 113/2009, 17 September, In the recruitment for professions, jobs, functions or activities, public or private, even if unpaid, whose exercise involves regular contact with minors, the recruiting entity is obliged to ask the candidate to present a criminal record certificate.

Can employers request references from former employers for new hires?

Yes.

Is an employer required to set up any form of employee representative body? If so, what is the trigger for this?

Employees' representatives are only mandatory for health and safety matters.

There is no obligation on the employer's side to promote or instigate an election process or even to have employee representatives, such as trade unions, works council and union delegates.

Is it common to have collective agreements in your jurisdiction that apply to all employers in a particular region or sector?

Yes. CBAs can be entered into by and between an employer, a group of employers or an employers' association and a trade union.

2 Conditions of employment

What is the minimum age requirement for employment?

16 years.

What type of work may a child undertake? For example, are there any specific restrictions?

Only a child who (i) has reached the **minimum age for admission***; (ii) has completed **mandatory education**** or is **registered and attending secondary education**; and (iii) has the **physical and mental abilities** appropriate to the job, may be admitted to work.

A child under 16 years of age who has completed the mandatory education or is registered and attending the secondary level of education may perform light work consisting of simple and defined tasks which, by their nature, the physical or mental effort required or the specific conditions in which is performed, are not likely to prejudice their physical integrity, safety and health, school attendance, participation in guidance or training programs, ability to benefit from the instruction provided, or their physical, mental, moral, intellectual and cultural development. In this case, within the following 8 days after admission, the employer must notify the admission to the labor authorities.

In a family business, a child under 16 years of age must work under the supervision and direction of a member of their family who is of legal age.

A child under 16 years of age who has completed the mandatory education or is registered and attending the secondary level of education but does not have a professional qualification, or a child who is at least 16 years of age but has not completed the mandatory education, is not registered and attending the secondary level of education or does not have a professional qualification can only be admitted to work provided that they attend education or training that confers, as the case

may be, the mandatory education, professional qualification, or both. This is not applicable to a child who only works during school holidays.

The **employment contract** entered into by a child who is 16 years of age and has completed mandatory education or is registered and attending the secondary level of education is valid, unless there is written opposition from their legal representatives. The contract entered into by a child who has not completed 16 years of age, has not completed mandatory education or is not registered and attending the secondary level of education is only valid with the written authorization of their legal representatives.

The employer must submit the child to **health examinations**, in particular:

- a health examination to certify that they are physically and mentally capable of carrying out their duties, which must be undertaken before they start work, or within 15 days of their admission if this is urgent and with the consent of the child's legal representatives;
- Annual health check to ensure that the exercise of their professional activity does not prejudice their health or their physical and mental development.

The **regular work period** of a child may not exceed eight hours each day and forty hours each week. In the case of light work carried out by a child under 16 years of age, the regular work period may not exceed seven hours each day and thirty-five hours each week.

A child is exempted from working under a schedule organized in accordance with the adaptability regime, bank of hours or concentrated work hours when it may prejudice their health or safety at work.

In general, a child cannot perform **overtime work**, subject to certain exceptions.

Also, regarding night work:

- a child under 16 years of age cannot work between 8 p.m. one day and 7 a.m. the next day.
- a child aged 16 or over may not work between 10 p.m. one day and 7 a.m. the next day, without prejudice to certain exceptions.

*The minimum age for admission to work is 16 years old.

**Today, mandatory education goes up to the 12th grade or the age of 18. Mandatory education ends when the child obtains a diploma in a course leading to a secondary level of education or, regardless of whether the child obtains a diploma in any cycle or level of education, when the child reaches the age of 18.

Wages

What is the minimum wage requirement for employees? Are there any exceptions in minimum wages for young persons or people with disabilities?

As from 1 January 2023, the minimum wage applicable to full time employment in Continent is €760.00 per month. These amounts are reviewed annually since 2014, although there are no mandatory review periods.

Minimum wages can be reduced in certain situations.

Are there any conditions which warrant a pay raise or extra pay? If yes, what are they?

No, only if agreed as part of the contract or in case a given applicable CBA establishes higher minimum salaries.

When are wages due? For example, is there any obligation to pay wages weekly, or monthly?

Remuneration falls due in fixed and equal periods, which, unless otherwise agreed or customary, are the week, fortnight, or calendar month. It must be paid on a working day, during working hours and must be available to the worker on the due date or the preceding working day. In Portugal it is standard that salary is paid on a monthly basis by the end of the respective month.

Are employers obliged to provide employees with paid leave on public holidays?

Yes. Public holidays* are paid by the employer and are paid as a normal working day.

* Mandatory public holidays: 1 January; Good Friday; Easter Sunday; 25 April; 1 May; Corpus Christi; 10 June; 15 August; 5 October; 1 November; 1 December; 8 December; 25 December. Local bank holidays also have to be taken into account.

Are employers obliged to provide employees with annual leave?

Employees have a statutory right to twenty-two (22) business days of annual paid holiday leave.

Are employees entitled to receive their usual salary during their annual leave?

Yes.

Is there a requirement to pay overtime? How is overtime compensated?

Overtime work is defined as working beyond normal working periods or scheduled hours. Employees must work overtime except when they expressly request to be exempted from said work on justifiable grounds. According to the PLL, the applicable limit for overtime varies between 150 and 175 hours per year, depending on the company's size.

The foregoing limits are also subject to the following rules:

- No more than 2 hours of overtime worked per regular working day;
- The employee may not work longer on mandatory or supplementary weekly rest days or on public holidays than they would on a regular working day; and
- Employees may work half a regular working day for each half-day of supplementary rest given.

Overtime work entitles employees to additional pay, paid as follows:

- Until 100 hours per year:
  - 25% for the first hour or fraction/part of an hour (for example, if an employee carries out 50 minutes of overtime, they are entitled to one hour of overtime pay) and 37.5% per each subsequent hour or fraction of an hour, in business days
  - 50% per each hour or fraction of an hour, in mandatory or complementary weekly rest day or in public holidays.
- Over 100 hours per year
  - 50% for the first hour or fraction of an hour and 75% per each subsequent hour or fraction, in business days;
  - 100% per each hour or fraction of an hour, in mandatory or complementary weekly rest days or in public holidays.

- Also, overtime work entitles employees to a compensatory rest day as follows:
  - Employees who work on a mandatory weekly rest day are entitled to a compensatory rest day to be taken on one of the following three working days.
  - Employees who carry out overtime work that does not allow them to take the daily rest are entitled to compensatory rest equivalent to the rest hours missed, to be taken on one of the following three working days.

Are there any extraordinary circumstances that could be relied on to temporarily cease paying employees for the hours worked?

No.

Are employees entitled to an end-of-year payment?

No, unless contractually agreed or established by a given applicable CBA (which is not common).

Are employees entitled to payments when their employment contract is terminated, such as notice or notice pay, accrued or untaken holiday and/or statutory severance?

1. **Notice:**

Under Portuguese law, termination by the employer by simply serving notice is not allowed for permanent contracts.

However, notice of termination is provided for in certain situations, such as for fixed/uncertain term contracts, trial period and redundancies, as follows:

- Fixed-term contracts (with an expiry date expressly set out in the contract), in respect of their termination on expiry:
  - By the employee: 8 days
  - By the employer: 15 days
- Uncertain term contracts (with no specified expiry date, the duration of the contract being the period necessary to perform the particular task or activity) by the employer:
  - If the employee's length of service is less than 6 months: 7 days;
  - If the employee's length of service is between 6 months and 2 years: 30 days;
  - If the employee's length of service is more than 2 years: 60 days.
- Fixed/Uncertain term by the employee, at any time, i.e. prior to the stated end date/terminating event:
  - If the employee's length of service is less than 6 months: 15 days;
  - If the employee's length of service is more than 6 months: 30 days.
- Permanent contracts by the employee, at any time:
  - If the employee's length of service is less than 2 years: 30 days.
  - If the employee's length of service is more than 2 years: 60 days;

- During trial period, by the employer:
  - If the employee's length of service is between 60 and 120 days: 7 days;
  - If the employee's length of service is more than 120 days: 30 days.
- Individual and collective redundancies:
  - If the employee's length of service is less than 1 year: 15 days;
  - If the employee's length of service is between 1 and less than 5 years: 30 days;
  - If the employee's length of service is between 5 and 10 years: 60 days;
  - If the employee's length of service is more than 10 years: 75 days.

In case of termination by the employer on grounds of the employee's misconduct, the employer must follow a formal disciplinary procedure and the decision to dismiss is communicated to the employee upon completion of the steps of the procedure, as required by law. The dismissal then becomes effective on the date of its notification to the employee and no notice period applies.

In case of termination on grounds of permanent incapacity of the employee, such dismissal also does not require a notice period. However, the qualification of "permanent incapacity", in terms of enabling the termination of the contract, is quite demanding by law, as, besides permanent, such incapacity must be definitive, so that it is prospectively impossible to allocate the employee to any other position.

2. Severance:

Except if during the trial period or in case of termination by the employer based on the employee's misconduct, termination of the contract by the company entitles the employee to compensation corresponding to:

- 24 days of base salary plus seniorities (the payment employees are entitled to based on their seniority - if established by the applicable CBA or contract) per each full year of length of service - in case of the expiry of a fixed or uncertain term contract.
- 14 days of base salary plus seniorities (if applicable) per each full year of length of service - in case of individual and collective redundancies.

As a general rule, compensation is not due if the contract is terminated by the employee.

In the case of termination by agreement, the parties are free to decide the amount of compensation, if any.

3. Labor Credits:

Nevertheless, the employee is entitled to statutory labor credits due in any case of termination (e.g., unused holidays, holidays and Christmas allowances, credit of hours for professional training not provided).

Working hours

What is considered a full time working week? If the employee is contractually required to work less than this amount are they considered a part time employee?

Part-time work is defined as work corresponding to a normal weekly working period lasting fewer hours than full-time work in a comparable situation. Working part-time does not constitute a separate employment regime but is rather treated as a reduction of the normal hours worked under an employment contract.

According to the PLL, the regular work period cannot exceed eight (8) hours per day or forty hours (40) per week.

Therefore, an employee will be deemed to be a part-time employee if the weekly working period is less than that provided by a full-time employee in a comparable situation (e.g. 40 hours/week).

Are there fixed public/statutory holidays each year? Can employees be required to work on public/statutory holidays? Are employees entitled to any other type of leave besides public/statutory holidays?

1. **Public Holidays:**

Mandatory public holidays: 1 January; Good Friday; Easter Sunday; 25 April; 1 May; Corpus Christi; 10 June; 15 August; 5 October; 1 November; 1 December; 8 December; 25 December;

Voluntary public holidays: Carnival Tuesday and the local municipal holiday may be designated as public holidays, by means of collective bargaining agreement or employment contract.

2. **Work on Public holidays:**

In some sectors companies are not obliged to suspend their operations during the week (usually called continuous labor companies).

In these cases, employees can be required to work on public holidays and are entitled to compensatory rest of half the number of hours worked or an increase of 50% of the corresponding remuneration, and the employer has the right to choose.

3. **Holidays:**

Employees have a statutory right to twenty-two (22) business days of annual paid holiday leave.

Do part time employees receive any particular protection on the basis of their part-time status?

Yes. Part-time employees have the same rights as full-time employees with regard to access to facilities/training.

Part-time employees are entitled to:

- Base salary and other benefits as established by law or collective bargaining agreement or as those received by a full-time employee in a comparable situation, if more favorable, in proportion to the number of hours of work rendered;
- A meal allowance in the amount established by the collective bargaining agreement or the one paid by the employer to its employees, if more favorable, except when the normal daily working time is less than 5 hours - in which case this allowance is paid in proportion to the work rendered.

Do part-time employees receive the same pro-rated terms to full time employees, e.g. in relation to pay and benefits?

Yes.

Social security

What social security contributions are employers obliged to pay? Presumably, pro-rated contributions are required for part time employees?

Social security is a mandatory scheme, funded by the contributions of both the employer and the employee, calculated over the salary at the general rates of 23.75% and 11%, respectively.

Contributions to the Social Security system are calculated by reference to the gross remuneration paid to the employee.

Protection by social insurance includes the payment of sickness allowance, parental allowances, unemployment benefit and retirement pension.

Are employers obliged to provide health insurance to their employees?

No, unless contractually agreed or established by a given applicable CBA (which is not common).

Are employees entitled to unemployment insurance/benefits following the end of employment?

Yes, however this is dependent on the verification of 5 requirements, namely that the employee:

- Resides in national territory;
- Is involuntarily unemployed (having become unemployed for reasons unrelated to their intention)
- Has the capacity and availability to provide labor;
- Is registered for job searches in the employment center of the area of residence;
- Has been working as an employee and has paid Social Security contributions for at least 360 days in the 24 months immediately preceding the date of becoming unemployed.

Are employers obliged to provide sick leave? If yes, for how long? How many days have to be paid by employers? Is it possible to have unpaid sick leave?

Employees who are temporarily incapacitated to provide work due to illness are entitled to sick leave and sick pay.

As of the 4th day, sick pay shall be granted by the Social Security, for a period of up to 3 years, and is calculated based on a percentage of the employee's reference salary, depending on the nature of the illness and the duration of sick leave, as follows:

Duration of the sick leave	Sick pay
Up to 30 days	55% of the reference remuneration
Between 31 and 90 days	60% of the reference remuneration
Between 91 and 365 days	70% of the reference remuneration

Sick pay cannot be less than €4.80 (current amount) per day or the daily net reference salary (if less).

CBAs may establish the obligation of employers to pay the difference between social security sick pay and the employee's full salary.

Additionally, some CBAs establish that employers must pay the employee's salary from the first day of illness, being eventually reimbursed by the employee when they receive their sick pay from social security.

Are employers obliged to provide maternity leave for employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid maternity leave?

1. **Maternity leave:** Under Portuguese law, there is no maternity leave per se but only parental leave.

   Nevertheless, there is an exclusive maternity leave to be enjoyed by the mother and an initial parental leave in the event of impairment, as follows.

   Exclusive maternity leave:

   The mother must take 42 consecutive days' initial parental leave immediately after giving birth. However, the mother may also take 30 days' non-compulsory initial parental leave before the birth.

   Initial parental leave in the event of impairment

   The mother is entitled to the total duration of the initial parental leave or its remaining duration in the following cases: (i) physical or psychological impairment of the father while such impairment persists; (ii) death of the father.

   The mother is only entitled to enjoy the total duration of the 30-day extension to the initial parental leave in the event that the entitlement conditions are met at the date of the facts mentioned in (i) and (ii) above.

   For information on pay during parental leave please see the response in respect of parental leave.

2. **Paternity leave:** Under Portuguese law, there is no paternity leave per se but only parental leave.

   Nevertheless, there is an exclusive paternity leave to be enjoyed by the father and an initial parental leave in case of impairment, as follows:

   Exclusive paternity leave:

   Parental leave exclusive to the father is equivalent to 28 calendar days. The leave must be taken within the 42 days after the birth (7 of which immediately after) in consecutive or alternated minimum periods of 7 days. After such leave, the father's right to leave shall be 7 calendar days of leave in a row or non-consecutive, provided that it is taken at the same time as the other parent's enjoyment of the initial parental leave. In the event of more than one child being born at a time, the father's leave period is increased by 2 days for each additional child.

   Initial parental leave in the event of impairment:

The father is entitled to the total duration of the initial parental leave or its remaining duration in the following cases: (i) physical or psychological impairment of the mother while such impairment persists; (ii) death of the mother.

The parent is only entitled to enjoy the total duration of the 30-day extension to the initial parental leave period in the event that the entitlement conditions are met at the date of the facts mentioned in (i) and (ii) above.

In the event of the mother's death or physical or psychological impairment, the father is entitled to initial parental leave with a minimum duration of 30 days. In the event of a non-working mother's death or physical or psychological impairment during the 120 days following the birth, the father is entitled to parental leave or to this initial parental leave in the event of impairment.

For information on pay during parental leave please see the response in respect of parental leave.

3. **Parental leave:** The initial parental leave may vary as follows:

Types of leave	Days of leave
Regular	120
Extended	150
Regular and shared after the mother's mandatory leave	120 + 30 (these 30 days are sometimes referred to as the "sharing bonus")
Extended and shared after the mother's mandatory leave	150 days + 30

Parental leave can last up to 180 days in case each parent exclusively enjoys a period of 30 consecutive days or two periods of 15 consecutive days after the mandatory enjoyment period by the mother of 42 consecutive days after the birth.

In the event of more than one child being born at a time, the leave period is increased by 30 days for each additional child.

Fathers can take any part except the initial parental leave reserved to the mother/exclusive maternity leave. This exclusive maternity leave can last up to 30 days before birth (voluntary/optional) and 42 consecutive days after birth (mandatory). Exclusive maternity leave is part of the initial parental leave.

Mother and father may share the leave between them as long as they take their respective exclusive leave.

In cases where parents take an initial parental leave of 120 or 150 days, they are also entitled, after 120 consecutive days, to jointly cumulate each of the remaining days of leave under a part-time schedule.

Leave pay is paid by the social security and determined based on the "average daily income". Average daily income is calculated by R/180, where R represents the mother's salary for the six months prior to the two months before the birth (vacation and Christmas allowances not included).

(i) If the leave is 120 days payment is 100% of their daily reference pay (as determined);

(ii) If the leave is 150 days then only 80% of the employee's daily reference pay is paid over the period;

(iii) If the leave is 120 days with the extra 30 days (complementary leave described above), payment is 100% of their daily reference pay;

(iv) If the leave is 150 days with the extra 30 days (complementary leave described above) payment is 83% of their daily reference pay.

4. **Adoption leave:** In case of adoption of children under 15 years old, the adoptive parents are entitled to an initial parental leave of 120 or 150 consecutive days, the enjoyment of which they can share, or enjoy simultaneously. The leave shall be increased by 30 days in the event that each parent exclusively enjoys 30 consecutive days or two 15 consecutive days after the mother's compulsory period. In case of multiple adoptions, the leave will be increased by 30 days for each additional adoption. Moreover, during adoption's transition and monitoring period, the candidate to adoption may take a parental leave of up to 30 days.

   The adoption leave regime is also applicable to foster families.

   In either case of adoption and foster care families, employees are entitled to unlimited time off, aimed to carry out evaluation tests and to comply with the obligations and procedures required. These absences from work do not determine the loss of any rights and are deemed (except for remuneration) as effective provision of work.

   Leave pay is determined based on the "average daily income". Average daily income is calculated by R/180, where R represents the salary for the six months prior to the two months before the birth (vacation and Christmas allowances not included).

   (i) If the leave is 120 days payment is 100% of their daily reference pay (as determined)

   (ii) If the leave is 150 days, then only 80% of the employee's daily reference pay is paid over the period.

   (iii) If the leave is 120 days with the extra 30 days (complementary leave described above), payment is 100% of their daily reference pay;

   (iv) If the leave is 150 days with the extra 30 days (complementary leave described above) payment is 83% of their daily reference pay.

5. **Other leaves and absences related to maternity and paternity rights**:

   - **Miscarriage or stillbirth cases**: In case of miscarriage the employee has the right to a leave of absence of between 14 and 30 days. In case of a stillbirth, the employee has the right to an initial parental leave of 120 days.

- **Pregnancy loss**: In the cases where the miscarriage leave does not apply, the employee is entitled to paid time off, up to three consecutive days off, which are deemed as effective provision of work. When the employee benefits from the miscarriage leave or from the pregnancy loss leave, the father is entitled to up to three consecutive days of time off.
- **Leave in cases of clinical risk during pregnancy**: In the event of a clinical risk due to pregnancy, or to their unborn child, that prevents the employee from working, irrespective of the reason, and whether or not it is related to the conditions under which the work is carried out, if the employer does not offer them an activity suitable to their condition and professional category, the employee shall be entitled to leave for the period of time that is deemed necessary by medical certificate to prevent the risk, without prejudice to the initial parental leave.
- **Leave of absence for pre-birth appointments**: A pregnant employee is entitled to time off from work for pre-birth consultations whenever necessary and for the respective period of time. The employee must, whenever possible, attend the pre-birth appointments out of working hours. For this purpose, preparation for childbirth is deemed as pre-birth appointments. A father is entitled to 3 days off work to attend pre-birth appointments with the mother.
- **Leave of absence for medical assisted procreation appointments**: An employee is entitled to 3 days off work for appointments during each cycle of medical assisted procreation (PMA) treatment.
- **Leave of absence for breastfeeding or bottle-feeding**: A mother who breastfeeds their child is entitled to time off work for that purpose for as long as the breastfeeding takes place. If breastfeeding does not occur and both parents are working, one or both of them, by joint decision, are entitled to time off for breastfeeding until the child is one year old. Daily leave for breastfeeding or bottle-feeding shall be taken in two separate periods with a maximum duration of one hour each, unless another arrangement is agreed upon with the employer.

In the case of multiple births, the leave shall be increased by 30 minutes for each additional baby. If either parent is working on a part-time basis, the daily leave for breastfeeding or bottle-feeding is reduced in proportion to the respective normal working hours and cannot be less than 30 minutes. In this situation, the daily leave shall be taken in a period not exceeding one hour and, where applicable, in a second period of the remaining duration, unless another arrangement is agreed with the employer.

Is paternity leave available to employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid paternity leave?

Please see above.

Are employers liable for absence due to work-place injuries?

Absence due to work-place injuries only result in loss of pay if the employee is entitled to any benefit or insurance.

Are employees entitled to retirement benefits from the employer? If yes, what benefits?

Yes, but only in certain situations. Employers can choose to implement a private pension plan. In addition, CBAs may require employers to provide an additional pension plan for the benefit of employees. These private pension plans are aimed at providing employees with additional pension beyond the state pension, to be funded by the employer and, in some cases, also by the employee, (although this type of benefit is becoming an exception in CBAs).

Private pension plans are generally optional and their provisions will depend on the type of plan chosen by the employer. They are not a replacement for the state pension, but they can provide an additional benefit for employees. Private pension schemes are governed by specific provisions, currently contained in Law n. 27/2020 of July 23.

Pensions plans aim to provide a benefit upon the occurrence of certain events. Private pension plans are funded by contributions from the employer (known as "non-contributory plans") or from both the employer and employee (known as "contributory plans"). They may guarantee a predefined benefit or a predefined contribution, payable as a pension or a lump sum.

Pension plans can also be open (i.e. available to any company) or closed (i.e. restricted to a company or group of companies).

The most common scenario is for an employer to implement a closed, non-contributory, defined contribution pension plan. In those circumstances, benefits may be paid when the individual reaches a certain age or suffers a disability, or on the death of the individual. The amount of benefit paid will be based on the contributions made by the employer.

Where a contributory plan is implemented, the contributions made by the employee will be payable as a lump sum or pension and may guarantee other events such as unemployment.

Are employers obliged to introduce reporting channels and legal safeguards for whistleblowers?

There is an obligation on companies with more than 50 employees to have internal whistleblowing channels under the terms defined in Law 93/2021.

Internal whistleblowing channels must allow for the secure submission and follow-up of complaints, in order to guarantee the completeness, integrity and preservation of the complaint, the confidentiality of the identity or anonymity of the complainants and the confidentiality of the identity of third parties mentioned in the complaint, and to prevent access by unauthorized persons.

Internal whistleblowing channels must allow employees to submit written or verbal complaints, either anonymously or with the identification of the whistleblower.

3 Safe and supportive work environment

Broadly what measures have to be in place to ensure employers uphold health and safety? (such as fire or earthquake drills)

Employers must inform and update employees and their representatives for health and safety on the following:

- Risks to health and safety, as well as the protection and prevention measures that are being applied regarding such risks;
- Measures and instructions to adopt in case of serious and imminent risks;

- Emergency, first aid, evacuation and firefighting measures as well as the employees responsible for putting such measures into practice - should it be necessary.

Information should also be provided to employees and their representatives on the following matters:

- Substances and dangerous mixtures, working equipment as well as any material at the workplace that may represent a risk;
- Results of any risks evaluation made;
- Identification of any employees exposed to risks.

This information should also be made available to the labor doctor and the public entity responsible for the health surveillance of employees.

The employer shall provide the information referred to in point iv. and v. to self-employed employees and to companies which, on the same premises, conduct business on any terms simultaneously with their employees.

The publication must be made at the workplace, in a visible place.

Is there a requirement for an employer to issue any form of non-discrimination policies? (such as gender equality policies, equal employment opportunities, diversity, and inclusion policies, etc.)

The company should make public all information regarding the employees' rights and duties on equality of gender and non-discrimination.

Is there a requirement to provide employees with training designed to combat discrimination and harassment?

The employer must adopt internal regulations to prevent and combat harassment at work, whenever the company has 7 or more employees, and initiate disciplinary proceedings whenever it has knowledge of alleged situations of harassment at work.

Is there a requirement to have a data protection policy?

No, however when collecting personal data, the Law no. 58/2019 of 8 August 2019 ("Portuguese Data Protection Law") which adapts Portuguese law to the GDPR, must be complied with.

Is it mandatory for employers to have a Child Protection Policy (CPP)? Are employees obliged to provide training on CPP to its employees?

No.

4 Tax

Which taxes are mandatory for employers to pay and deduct on behalf of their employees?

The salary of an employee is subject to IRS - tax levied on the income of individual persons. It is a tax with progressive application, which means that the higher the income, the higher the amount of tax payable.

When salary is paid, the company is obliged to make what is called withholding tax ("Retenção na Fonte"). This is a mechanism in the Portuguese tax system whereby the State directly collects the employees' salary, so that instead of the employees transferring the taxable part of their salary to the State, the employer does so.

The withholding tax is levied directly and monthly on the salary and is defined annually through the so-called Withholding Tax Tables ("Tabelas de Retenção na Fonte"). The withholding tax rate depends on several factors such as: (i) the amount of income the employee earns; (ii) the family situation of the employee (married or single/with or without children/number of dependants); (iii) the disability situation; (iv) the place where the employee resides (income in the Mainland and in the Autonomous Regions do not have the same withholding tax).

Therefore, each month the employer must make the withholding tax on the employee's salary, as well as the payment of contributions to the SS, as explained above.

Are all employee taxes deducted from the salary that the employer pays or is there a requirement for employees to pay certain taxes directly?

All taxes related to the employee's income are deducted from the salary by the employer (including social security contributions).

5 Remote work

Are employers required to have a registered legal entity in the jurisdiction in order to employ employees in the jurisdiction?

Regardless of the country, a non-resident entity, without a permanent establishment, that wishes to hire employees, on a dependent labor basis, to provide work in Portugal may do so without having to adopt any investment structure/vehicle to hire employees in Portugal.

However, it is required that, prior to hiring, several obligations are fulfilled regarding the registration of the entity with the National Registry of Legal Persons, Tax Authority and Social Security.

Are employers required to provide any form of physical working space for employees working in your country?

Employees may work from the company location and/or from a remote location. It must be ensured that, whatever the work location, employers ensure the health and safety of their employees. Also, as a rule, the employer is responsible for providing the employee with the equipment and systems necessary for carrying out the work and for the employee-employer interaction.

Please provide general instructions for employers on what to check if the employer has remote employees, including concerning employee tax liabilities.

- Teleworking must be agreed in writing and the contract must include mandatory requirements.
- A teleworking agreement may be entered into for a fixed-term or for an indefinite term.
  - In the first case, the initial duration cannot exceed 6 months, being automatically renewed for equal periods if none of the parties declares, in writing, up to 15 days prior to its expiry, that they do not intend its renewal.

  - If the agreement is entered into for an indefinite duration, either party may terminate it by written notice to the other party, which shall become effective on the 60th day following the date of receipt of such notice.
  - In either case, the agreement may be terminated by either party during the first 30 days of its execution.
- As a rule, the employer is responsible for providing the employee with the equipment and systems necessary for carrying out the work and for the employee-employer interaction. The teleworking clause / agreement must specify if such equipment and systems are directly granted by the employer or if they are acquired by the employee with the employer's agreement on the equipment's features and prices.
- If work equipment is purchased by the employee (with the employer's agreement on its features and price), the employer must compensate the employee for the expenses incurred.
- The employer is also responsible for the expenses related to the installation and maintenance/repair of the equipment/systems.
- According to the labor code, any additional expenses borne by the employee as a result of the acquisition and use of the equipment and informatic systems in the performance of teleworking, including the increase of expenses related to electricity and internet connectivity as well as expenses with maintenance of the same equipment and systems, provided that duly evidenced, have to be reimbursed by the employer.
  - The employer and the employee can agree on a fixed amount of the compensation for additional expenses. In the absence of agreement on a fixed amount, the compensation shall be calculated by reference to the employee's expenses in the previous month to the start of the teleworking schedule.
  - The compensation is not considered as income of the employee up to the exemption limit on Personal Income Tax ("IRS") (to be defined in specific regulation).
- The employer must respect the employee's privacy and their rest periods and rest times of their family, as well as provide them good physical and mental conditions of work.

In the event that employees are working remotely from another jurisdiction, an employer will need to assess the tax obligations that will arise in the country in which the employee is working. Whilst each jurisdiction will have different obligations in terms of the payment and deduction of taxes, the following factors are likely to be relevant: where is the employee living and working, does the employee split their time working in different jurisdictions? What nationality is the employee? Where do they have tax residence? Where is the company for which they are working based?

6 What to do when things go wrong

Dispute resolution

Do employees (including volunteers) need to go through any form of dispute resolution before bringing a claim to a court or tribunal?

No.

Resignation

What grounds do employees have for resignation?

Employees can immediately terminate their employment without notice if the employer has committed a serious breach of the employment contract.

The law also sets forth a few examples of what may constitute just cause for termination, including but not limited to (i) failure to pay the employee or (ii) application of an abusive disciplinary sanction, or even (iii) lack of health and safety conditions at work.

Termination of the employment contract with fair cause by an employee entitles the employee to a compensation to be determined between 15 and 45 days of base salary plus seniorities per each full year of length of service, taking into account the value of the remuneration and the degree of unlawfulness of the employer's behavior, and may not be less than three months of base salary plus seniorities.

However, it is important to note that proper formalities will have to be carried out in order for the employee to terminate the employment contract with fair cause.

Termination

What grounds do employers have for the termination of employment contracts?

Termination without cause is only possible during the trial period. After that, the employer may only dismiss an employee when there are objective or subjective reasons, related to the company or to the employee, respectively.

How do employers have to document the termination of an employment contract?

In order to terminate the contract with cause a disciplinary procedure must be followed in order to terminate the contract. The final decision of the disciplinary procedure will act as a notice of termination.

What is the responsibility of employers for damages incurred by an employee's actions within his/her work?

Employers can be held liable for acts carried out by an employee in the course of their employment.

b. Independent contractors/consultants*

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Definition of an independent contractor/consultant

A natural person who carries out a professional activity without being subject to an employment contract or a legally equivalent contract, or who undertakes to provide the result of their activity to others, and who is not covered by the general Social Security regime for employees on behalf of another. Portuguese Civil Law ("PLL") defines "independent contractor/consultant agreements" as a contract by which one of the parties undertakes to provide the other with a certain result of their intellectual or manual labor, with or without remuneration.

* The term consultant will be used to also refer to independent contractors, or any other term that would mean a person that provides goods or services under a written contract or a verbal agreement but does not work to meet the definition of employee.

**The term consultant will be used to also refer to independent contractors, or any other term that would mean a natural person that provides goods or services under a written contract or a verbal agreement but does not work to meet the definition of employee.*

1 Contracts

What types of independent contractor/consultant agreements are available? Are there any specific agreements available to NGOs?

We can highlight three types of service contracts:

- **Mandate** - a contract by which one of the parties undertakes to carry out one or more legal acts on behalf of the other.
- **Deposit** - a contract by which one of the parties gives the other a thing, movable or immovable, to keep and return when required.
- **Contracting agreement -** a contract by which one party undertakes to carry out certain work for the other for a price.

There is no legally required agreement format for NGOs.

What are the main elements of consultant agreements?

Consultancy agreements will typically include provisions around the term of the engagement, duties and obligations, fees, expenses, data protection, intellectual property, insurance and liability, termination, status, notices, third party rights, governing law and jurisdiction.

Is it possible to have probation periods for independent contractors/consultants? If yes, for how long?

It is legally possible to have probation periods for independent contractors/ consultants. However, this is not recommended as it could be considered to be inconsistent with the nature of an independent contractor/consultant relationship, particularly since such provision would indicate a level of control of obligation.

Is it possible to have a fixed term consultation/independent contractor agreement? Are there any restrictions around fixed term consultant/independent contractor agreements?

Yes, is it possible to have a fixed-term consultation/independent contractor agreement. Although there are no restrictions around the length of the term, most usually this would be for the term of a particular project, as the nature of a consultant/independent contractor arrangement is often that the arrangement ends when the work is completed.

Do independent contractor/consultant agreements have to be in writing? Are there any signatory requirements? For example, could they be signed in-person or electronically, etc.)?

There is generally no legal requirement for the consultant/independent contractor agreement to be in writing, although this is often considered best practice. The agreement can be signed in person or electronically.

Do all types of independent contractors/consultants have to be under contract in order to be able to work?

The contract will set out the terms on which the work will be carried out, but there is no legal obligation for this to be in any particular format, and it can be a verbal or written agreement.

Can you provide a simple template of the agreements mentioned above?

There is no universal template in Portugal. The agreement should be prepared based on the circumstances of the appointment.

Is there an obligation to run a criminal record check to the extent that any independent contractor will be working with children or vulnerable people?

Yes. According to Law 113/2009, 17 September, where recruiting for professions, jobs, functions or activities, public or private, even if unpaid, that involve regular contact with minors, the recruiting entity is obliged to ask the candidate to present a criminal record certificate.

2 Conditions of work for consultants

Are there any minimum age requirements for an individual to work under a consultant/independent contractor agreement?

Yes. Minors under the age of 16 may not be hired unless they have completed mandatory education or are registered and attending secondary education and are engaged in light work. The general rules laid down in the Civil Code shall apply to contracts entered into with minors under the

age of 16. Minors who carry out activities independently shall be subject to the limitations established for employment contracts with minors.

Does a consultant/independent contractor need to obtain a license or any other permission in order to work?

Before starting to work, it is necessary to notify the Tax Authority of the beginning of activity and only once the activity is approved by the Tax Authority the consultant/independent contractor may carry out their activity. This is a simple procedure in which the consultant/independent contractor submits a declaration of beginning activity to the Tax Authority.

Payment

Are there any minimum pay requirements for consultants/independent contractors?

No, assuming that the consultant/independent contractor is not deemed to be an employee, they will not be entitled to receive the National Minimum Wage.

Are there any exceptions in minimum wages for young persons or people with disabilities?

No.

Is there any requirement to provide statutory/paid leave to consultants for statutory holidays?

No, assuming that the consultant/independent contractor is not deemed to be an employee, they will not be entitled to receive statutory/paid leave.

Is there any requirement to pay annual leave to consultant/independent contractors? If so, how is this compensated, if at all?

No, assuming that the consultant/independent contractor is not deemed to be an employee, they will not be entitled to receive paid annual leave.

Is there an obligation to provide consultant/independent contractors with overtime? How is this compensated if required?

There is no legal right to an end-of-year payment, unless provided for under the terms of the contract.

Are consultants entitled to an end-of-year payment?

There is no legal right to an end-of-year payment, unless provided for under the terms of the contract.

Are consultants entitled to a final payment when the contract is terminated?

There is no legal right to a final payment on termination, unless provided for under the terms of the contract.

Working hours

Are consultants entitled to any type of leave, whether paid or unpaid?

There is no legal right to any type of leave, unless provided for under the terms of the contract.

Social security

Does the end user engager need to make any social security contributions on behalf of a consultant/independent contractor? Are independent contractors entitled to health insurance from the end user engager?

Consultant/independent contractors have to declare their income to Social Security and pay the corresponding contribution, thereby guaranteeing protection in old age, illness, unemployment or parenthood.

There is no legal right to health insurance from the end user engager, unless provided for under the terms of the contract.

Are independent contractors/consultants entitled to unemployment insurance/ benefits after termination of their independent contractor/consultancy agreement from the end user engager?

Independent contractors/consultants may be entitled to unemployment insurance/benefits paid by Social Security. However, this is dependent on the verification of certain requirements.

Nevertheless, please note that from the end user engager there is no legal right to unemployment insurance unless provided for under the terms of the contract.

Are independent contractors/consultants entitled to sick leave from the end user engager? If yes, for how long? How many days have to be paid?

Independent contractors/consultants who are temporarily incapacitated to provide work due to illness are entitled to sick leave and sick pay paid by Social Security.

As of the 11th day, sick pay shall be granted by Social Security, for a period of up to 1 year, and this is calculated based on a percentage of the "reference remuneration", (reference remuneration is calculated by R/180, where R represents the total registered remuneration for the six months prior to the two months before the sick leave - vacation and Christmas allowances not included), depending on the nature of the illness and the duration of sick leave, as follows:

Duration of the sick leave	Sick pay
Up to 30 days	55% of the reference remuneration
Between 31 and 90 days	60% of the reference remuneration
Between 91 and 365 days	70% of the reference remuneration
Until 365 days	75% of the reference remuneration

Sick pay cannot be less than €4.80 (current amount) per day or the daily net reference remuneration (if less).

Nevertheless, please note that from the end user engager there is no legal right to sick leave unless provided for under the terms of the contract.

Are independent contractors/consultants entitled to maternity leave from the end user engager? If yes, for how long? How many days/months have to be paid?

From the end user engager there is no legal right to maternity leave unless provided for under the terms of the contract.

Independent contractors/consultants are entitled to initial parental leave; (ii) exclusive maternity leave and (iii) exclusive paternity leave according to the terms mentioned above for employees.

Also, they are entitled to a parental allowance paid by the Social Security, according to the terms mentioned above for employees.

Are independent contractors/consultants entitled to paternity leave from the end user engager? If yes, for how long? How many days/months should be paid?

Please see above.

Are employers obliged to cover work-place injuries for independent contractors/consultants?

No.

Are independent contractors/consultants entitled to retirement benefits from the end user? If yes, what benefits?

There is no legal right to retirement benefits from the end user engager, unless provided for under the terms of the contract.

3 Safe and supportive work environment

Are there any differences in terms of the regime that applies to employees?

Employers are responsible for ensuring the health and safety of their employees and those that are affected by their activities (which would include independent contractors/consultants).

4 Remote work

Are end user engagers required to have a registered legal entity in the jurisdiction in order to hire independent contractors/consultants there?

Regardless of the country, a non-resident entity, without a permanent establishment, that wishes to hire independent contractors/consultants, on an independent basis, to provide services in Portugal may do so without having to adopt any investment structure/vehicle to hire independent contractors/consultants in Portugal.

However, it is required that, prior to hiring, several obligations are fulfilled regarding the registration of the entity with the National Registry of Legal Persons, Tax Authority and Social Security.

5 What to do when things go wrong

Resignation

Do consultants/independent contractors need a reason to terminate the contract or can they terminate it for any reason in accordance with the terms of the contract?

There are no legally specified grounds for resignation, although the reasons for termination (and the impact of that reason on other terms such as notice and severance payments or benefits) will often be set out in the contract.

Termination of agreement

What grounds do end user engagers have for the termination of consultant agreements?

There are no legally specified grounds for the termination of consultant agreements. Termination grounds will depend on the terms of the contract.

What is the responsibility of the end user engagers for damages incurred by a consultant's actions within his/her work?

End user engagers can be held liable for acts carried out by a consultant in the course of their work.

c. Volunteers

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Definition of a volunteer

Under the terms of Law No. 71/98 of 3 November, Article 3 a volunteer is defined as an "individual who freely, altruistically and responsibly undertakes, according to their own abilities and in their free time, to carry out voluntary actions within the scope of a promoting organization".

1 Contracts

Are organizations required to sign any form of agreement with volunteers?

A volunteer program must be agreed between the promoting organization and the volunteer, which may include, among other things:

- The definition of the scope of voluntary work according to the volunteer's profile and the areas of activity previously defined by the promoting organization;
- The criteria for participation in the activities promoted by the promoting organization, the definition of the duties arising from them, its duration and the forms of termination;
- The conditions of access to the places where the voluntary work is to be carried out;
- Periodic evaluation of the results of the volunteer work;
- The coverage of the risks to which the volunteer is subject and the damage they may cause to third parties in the exercise of their activity, taking into account the applicable rules on civil liability.

Although there is no legal requirement to enter into a written agreement with volunteers, from a practical perspective, confirming the arrangement in writing is advisable to clarify expectations.

2 Conditions of employment

Is there a minimum age requirement for volunteers?

No.

What type of volunteering work may a child undertake? Are there any restrictions around this?

Children should not be involved in volunteering activities that may be harmful to their health, well-being or education. It should be noted that insurance restrictions often place limits on the minimum age of volunteers and/or the activities they may undertake.

Payments and reimbursement

Are organizations allowed to pay stipends to volunteers?

No.

Are organizations allowed to reimburse volunteers? If yes, for what expenses (such as transportation, food, etc.).

Yes, volunteers have the right to be reimbursed for sums spent on an activity planned by the promoting organization, provided that it is unavoidable and duly justified, within the limits set by the organization.

It should be noted however that any payments that go beyond reasonable expenses actually incurred arising from the volunteering activities could risk the arrangement being deemed to be an employment relationship, with consequent entitlement to certain employment rights, including the payment of the National Minimum Wage for all hours worked.

Working hours

Are there any obligations around how many hours volunteers can work?

No.

Are volunteers entitled to any type of leave?

No.

Social security

Are organizations obliged to pay any social security contributions on behalf of their volunteers?

Some volunteers can benefit from a Voluntary Social Insurance scheme.

As this is an optional contributory scheme, it is only in cases where volunteers choose this scheme that organizations are obliged to pay social security contributions on behalf of their volunteers.

Are organizations obliged to provide health insurance to volunteers?

No.

Are organizations liable for absences of volunteers due to work-place injuries?

The volunteer's protection in the event of an accident or illness suffered or contracted as a direct and specific result of carrying out voluntary work is guaranteed by the promoting organization, through insurance to be taken out with the bodies legally authorized to carry it out.

3 Safe and supportive work environment

Are there any differences in terms of the regime that applies to employees?

Employers are responsible for ensuring the health and safety of their employees and those that are affected by their activities (which would include volunteers).

4 Tax

Are organizations obliged to pay taxes if they pay their volunteers stipends? If yes, what types of taxes are mandatory to pay?

Organizations are not allowed to pay stipends to their volunteers. In these cases, companies run the risk of these amounts being considered employment income, in which case the company may have to pay taxes and social security contributions, as explained in the section above on employees.

5 What to do when things go wrong

What grounds do organizations have for the termination of volunteer agreements/arrangements?

Under the terms of Article 10 of Law 71/98, organizations may dismiss the volunteer's collaboration on a temporary or definitive basis whenever justified by changes in institutional objectives or practices and in the event of serious and repeated non-compliance by the volunteer with the volunteer program.

What is the responsibility of organizations for damages incurred by a volunteer's actions within his/her work?

Organizations can be held liable for acts carried out by volunteers in the course of their work.

Please note that according to the Volunteering Law organizations must take out civil liability insurance to cover damage caused by volunteers in the course of their duties. This coverage is mandatory and aims to protect both the organization and the volunteers.

d. Non-citizen employees and consultants, including refugees and others forcibly displaced

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1 Status and the right to work

Are employers obliged to secure legal status for their employees or consultants if they are non-citizens? (such as refugee status, humanitarian visas, visas for trafficking survivors, other recognized protection statuses, etc.)

No, although employers are obliged to ensure that their employees have the right to work in Portugal.

Any employer who employs a foreign national who does not have a work visa or a residence permit authorizing the exercise of a subordinate professional activity shall be subject to fines of between €2,000 and €90,000 depending on the number of employees illegally employed.

Are employers obliged to secure work permits for their employees or consultants?

No, although employers are obliged to ensure that their employees have the right to work in Portugal.

Any employer who employs a foreign national who does not have a work visa or a residence permit authorizing the exercise of a subordinate professional activity shall be subject to fines of between €2,000 and €90,000 depending on the number of employees illegally employed.

Is it always necessary to obtain a work permit?

As a general rule, any non-EU/EEA citizen who wants to come to Portugal to work must have a work visa and the type of visa varies according to the type of activity that the (future) employee is coming to carry out.

Can asylum-seekers and other persons forcibly displaced access the right to work if they do not have refugee status or other recognized protection statuses?

No.

2 Contracts

Are employment contracts or consultant agreements for non-citizens different to those for citizens?

Yes.

With the exception of the employment of a citizen of a member country of the European Economic Area* or of another State that establishes equal treatment with a national citizen in terms of the free exercise of professional activity, an employment contract entered into with a foreign employee must be in written form and must contain, among other indications, a reference to the work visa or authorization for the employee to live or remain in Portuguese territory. Also, the employee must attach to the contract the identity and address of the person or persons benefiting from a pension in the event of a death resulting from a workplace accident or occupational disease. The employment contract must be drawn up in duplicate and the employer must provide the employee with a copy.

* In addition to the 28 Member States of the European Union, Iceland, Liechtenstein and Norway.

3 Conditions of employment

Does national law regulate the quotas for the number of non-citizens within one organization?

No.

Are employers obliged to report about employed non-citizens?

No.

Are there any other differences in conditions of employment for non-citizens and citizens?

No.

Are there any specific employment terms that apply to citizens but not apply to non-citizens?

No.

4 Safe and supportive work environment

Are there any differences in a safe and supportive work environment approach for non-citizens? If yes, please elaborate here.

No.

Does the employer have additional obligations for non-citizens?

No.

5 What to do when things go wrong?

Is the process of termination of an employment contract for non-citizens different than for citizens? If yes, please explain here.

No.

Is the process of resignation for non-citizens different than for citizens? If yes, please explain here.

No.

Are non-citizens entitled to the equal protection of employment laws in the event of employment-related disputes?

Yes.

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