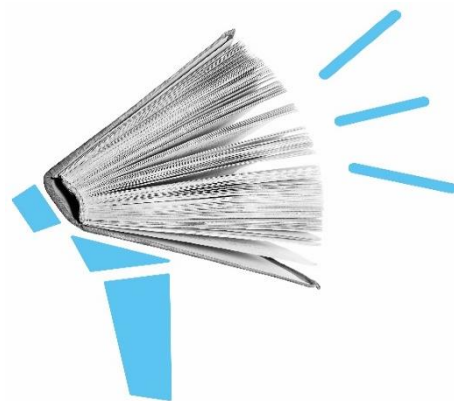


Newsletter

Employment News on a 12 pro rata basis

February 2024



We highlight below the recent law updates and court decisions on employment matters, for February 2024.

Legislation

Executive Order no. 33/2024, of 31 of January – Approves the monthly pay statement and respective instructions on how to complete it.

This regulation approves the latest model form for the monthly pay statement and the respective instructions for its fulfillment.

The purpose of the monthly pay statement is to declare personal income earned by employees residing in Portugal and the respective withholding taxes, amongst other elements related to this category of income, and must be submitted by the companies responsible for such income.

Given the introduction of the cryptoassets tax regime in the Personal Income Tax (PIT) Code, as well as the establishment of the compensation exempted from taxes and paid to the employee regarding additional expenses for teleworking, it was necessary to adjust the model form, as well as its filling instructions, effective as of 2024.

Therefore, Executive Order no. 307/2022, of 27 December, which approved the previous model form, is now revoked.

This legislation came into force on 1 January 2024.

Executive Order no. 39-A/2024, of 1 of February – Proceeds with the third amendment of Executive Order no. 38/2022, of 17 January, which created and regulated the Sustainable Employment Commitment measure.

The Sustainable Employment Commitment measure is part of the Recovery and Resilience Plan ("PRR") presented by the Portuguese Government to the European Commission, which reaffirms the importance of promoting the creation of permanent jobs and reducing the excessive segmentation in the labour market.

This measure aims at granting employers a financial support to sign temporary contracts with unemployed people registered with the Employment and Professional Training Public Department ("IEFP, I.P."), and is based on a financial support for hiring and for the payment of social security contributions.

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A minimum monthly salary is now defined as eligible to access to this measure, in order to implement the guidelines included in the Decent Work Agenda, namely valuing salaries and preventing instability.

Specifically, it is established that only employment contracts whose basic salary is equal to or greater than twice the value of the social support index ("IAS"), i.e. € 1,018.52 for 2024, are eligible.

This measure does not apply to employment contracts entered into (i) between an employer or an entity belonging to the same business group and an unemployed person who was linked to it by an employment contract immediately before unemployment, except when the unemployment situation occurred more than 12 months ago or when the employment contract was entered into under the scheme for young people on school holidays, provided for in the Social Security Code; (ii) with an unemployed person who has attended an internship supported by IEFP, I. P., in the same organisation or organisation belonging to the same business group in the previous 12 months.

Furthermore, this amendment clarifies that this measure could be supported in the future by other sources of UE support, in addition to the PRR.

This legislation came into force on 2 February 2024.

Law no. 20/2024, of 8 of February – Amendment to the Informal Carer Statute, approved in annex to Law no. 100/2019, of 6 September.

With this amendment, the Informal Carer's Statute also considers a non-principal informal carer those who has no family relationship with the assisted person, but who lives in the same household, providing with regular, but non-permanent care.

It is also established that parents with shared custody of the assisted person can both be considered non-principal informal carer.

This legislation came into force on 1 March 2024.

Regional Legislative Decree no. 3/2024/M, of 8 of February – Approves the minimum wage in Madeira.

This Regional Legislative Decree updated the minimum wage ("RMMG") in Madeira which is now € 850.00.

This update has several impacts, notably in the calculation of maximum limits of compensation for the termination of employment contracts by individual or collective redundancies, as well as the minimum amount of traineeship allowance.

This Decree came into force on 1 January 2024.

Executive Order no. 67-A/2024, of 22 of February - Regulates the scope, procedures and other specific conditions for making operational the bonus for enhancing qualifications in the labour market provided for in Decree-Law no. 134/2023, of 28 December ("Bonus").

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This Executive Order establishes that the Bonus covers all young employees who fulfil the following requirements (subject to verification by the Tax or the Higher Education Authorities):

- a) hold a bachelor's or master's degree, or a foreign academic degree recognised at the same level, obtained after 2023;
- b) are up to and including 35 years old in the year in which the Bonus is awarded and in the year in which it is paid;
- c) are resident in Portugal, under the terms and for the purposes of article 19 of the General Tax Law;
- d) have earned income as employees (category A) or self-employment (category B) under the terms of the Personal Income Tax (PIT) Code;
- e) have submitted, within the deadline, the respective income tax return for PIT purposes for the tax year in which they fulfil the other requirements;
- f) have their tax and social security situation regularised before the tax authority and the social security authorities.

The annual amounts of the Bonus defined in Decree-Law no. 134/2023 of 28 December correspond to:

- Bachelor's Degree: € 697,00;
- Master's Degree: € 1.500,00 ou
- Integrated Master's Degree: € 697.00 for the period corresponding to the bachelor's degree and € 1,500.00 for the period corresponding to the master's degree.

The Bonus is paid on an annual basis and lasts for the number of years it takes to complete a bachelor's or master's degree.

The payment of the Bonus depends on young employees completing an electronic form on the ePortugal Portal by the end of May of the year following verification of the above requirements, with the exception of those relating to paragraphs e) and f).

The Executive Order also states that the Bonus may be awarded to young employees who completed an academic degree in a year prior to 2023, provided that the number of years that have passed since the academic degree was obtained is less than the number of years expected to complete the bachelor's or master's degree. In this situation, young people can receive the Bonus for the number of years remaining to complete the corresponding period of studies.

This legislation came into force on 23 February 2024.

Case law

Court Decision (Lisbon Labour Court) | Case Law no. 29354/23.9T8LSB | LAWSUIT TO RECOGNISE THE EXISTENCE OF AN EMPLOYMENT CONTRACT | DIGITAL PLATFORMS | UBER EATS DELIVERY

The Lisbon Labour Court ("Court") has recognised, for the first time in Portugal, the labour relationship of a delivery driver from a digital platform, in particular from Uber Eats Portugal Unipessoal, Lda ("Uber Eats").

In this particular case, the Court considered that the requirements for the qualification of an employment relationship had been met. Such decision was based on the following grounds:

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- the digital platform unilaterally sets the amount to be paid to the delivery driver for deliveries, and the delivery driver has no power to negotiate these amounts;
 - the digital platform exercises power of direction and determines specific rules for the work of the delivery driver, in particular with regard to the way he presents himself, his behaviour towards the user of the service or the provision of the activity, determining the procedures that the delivery driver must follow when collecting and delivering the products;
 - the digital platform controls and supervises the provision of the delivery service, including in real time, or verifies the amount of the service provided, in particular by electronic means or algorithmic management, since: (i) the delivery driver and the establishment that prepares the order insert data into the application so that each collection, transport and delivery can be monitored; (ii) end-user customers are invited to give feedback on how the delivery driver has carried out his work, and they can also report problems with delivery orders in the event of violations of the terms and conditions; (iii) from the moment the delivery driver logs in the application, the platform knows their location via a geolocalisation system, which is essential for carrying out the activity and assigning customer orders;
 - the digital platform restricts the delivery driver's autonomy with regard to the organisation of work, especially with regard to the use of subcontractors or substitutes, since: (i) the digital platform does not allow the credentials associated with the account to be shared, and (ii) the delivery driver must not allow third parties to use the respective account and must keep confidential login details;
 - the digital platform may exclude future activities on the platform through the deactivation of the delivery driver's account, since the platform can temporarily restrict access to the application, or even deactivate the account permanently, in the event of a suspected breach of the obligations assumed by the delivery driver, in particular due to a security complaint or failure to comply with good practice.

Although this is a pioneer decision on this matter, it should be noted that the facts deemed proved result from the fact that Uber Eats did not present its statement of defense, which was justified by an alleged error in the notification of the digital platform. Therefore, this did not allow the defendant to present its arguments nor the parties to prove by evidences the relevant facts, leading to an assessment of the facts only based on the facts alleged by the delivery driver.

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