

## Changes to Labour Code and Contributory Code

On the 4th of September, 2019, law n.º 93/2019 was published in the Diário da República, which amends the Labour Code, its regulations, and the Code of the Contributory Regimes of the Social Security Welfare System.

On the same day, law n.º 90/2019 was also published in the Diário da República, which amends the Labour Code on protection of parenting, as well as Decree-Law n.º 91/2009 of April 9<sup>th</sup>, in the protection in parenting within the social security system and the solidarity subsystem.

Among the various modifications, the following stand out:

- **Term Employment Contract:**

The range of justifications for fixed-term employment is limited and the possibility of full-term employment seeking a first job or long-term unemployed is no longer allowed, but only for the very long-term unemployed, that is to say, individuals aged 45 or above who have been registered as unemployed in IEFP, IP for 25 months or more. On the other hand, fixed-term employment motivated by the launch of a new activity of uncertain duration as well as the commencement of business or establishment is now limited to companies with less than 250 employees within two years of any of these facts.

The maximum duration of fixed-term employment contracts reduces from 3 years to 2 years and of the uncertain fixed-term employment contracts decreases from 6 to 4 years.

- **Experimental Period:**

For employment contracts with a worker seeking a first job or a long-term unemployed person, the probationary period may be 180 days, to offset the prohibition on the use of this justification for employment term.

The duration of the professional internship carried out under the same activity contracted under the employment contract shall be considered for the purposes of accounting for the duration of the probationary period.

The regime of fixed-term contracts can no longer be removed by an instrument of collective labour regulation.

It is foreseen to pay compensation for termination of term contract even if the contract has provided for its non-renewal.

- **Temporary Employment:**

The temporary fixed-term employment contract is now limited to six renewals, except in cases where they are justified by replacement of absent worker without its being attributable to the employer (namely in cases of sickness, accident, parental leave or other similar situations).

The motivation justifying the conclusion of the temporary employment contract must now be substantiated on the basis of the justification of the user for the temporary employment.

The liability arising from the failure to enter into a temporary employment contract or an indefinite employment contract for temporary assignment is the responsibility of the user company, which is obligated to integrate the temporary worker under a permanent contract.

- **Bank of Hours:**

The possibility of concluding a bank of hours by individual agreement between the worker and the employer is eliminated, but the respective regime is maintained for a period of 1 year for the agreements in force at the date of the entry into force of the amendments.

The hour bank regime established by a collective labour regulation instrument is maintained and a new hour bank regime to be fixed by a group agreements concluded upon approval by referendum by the workers of the team, section or unit to be covered. Such scheme depends on the approval by at least 65% of the workers to be covered.

- **Choice of Applicable Convention:**

The possibility of choosing the collective labour regulation instrument in case of more than one, and in case of non-affiliation of the worker in a trade union association, is limited to a period of 3 months from the entry into force of the instrument chosen or the beginning of the performance of the employment contract, if any later. The collective labour regulation instrument chosen by the worker shall apply for a maximum of 15 months, with the employee's right to choose only once while the employee is employed by the same employer.

- **Vocational Training:**

The minimum number of hours of continuing training is increased from 35 hours to 40 hours per year.

- **Workers with Cancer Disease:**

The chronic illness workers scheme now covers workers with active cancer disease undergoing treatment.

- **Additional Contribution for Excessive Turnover:**

The Code of Contributory Regimes now provides for an additional contribution applicable to employers that have an anual weight of resolute hiring higher than the respective anual sectoral indicator in force, which will be defined in a regulatory decree.

- **Additional Contribution for Excessive Turnover:**

The Code of Contributory Regimes now provides for an additional contribution applicable to employers who have an annual weight of resolutive hiring greater than the relevant annual sectoral indicator in force, which will be defined in a regulatory decree.

The rate is progressively applied based on the difference between the annual weight of fixed-term contracts and the sector average, up to a maximum of 2%, given that the progression is also defined in a regulatory decree.

For the purpose of this additional contribution, the following situations will not be considered: (i) fixed-term employment entered into to replace a worker on parental leave; (ii) replacement of worker with temporary incapacity due to illness for a period of 30 days or more; (iii) very short term employment contracts; (iv) contracts entered into with fixed-term due to legal imposition, or due to the constraints inherent to the type of work or the situation of the worker, that is, in situations where, by the type of work or the situation of the worker, the contract has to be entered into at a resolutive term.

- **Entry into Force:**

These alterations will enter into force on 1<sup>st</sup> October 2019, except for the additional contribution regime which will only apply from 1<sup>st</sup> January 2020.

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- **Parental Leave when traveling to a hospital unit located off the island residence.**

A travel leave is now foreseen when, due to unavailability of technical and human resources on the island of residence, the delivery needs to be in a hospital unit located off the island of residence, as well as an absence regime to accompany the pregnant woman who travels to a hospital unit located off the island of residence. Added to the list of justified absences are now the absences motivated by the accompaniment of a pregnant woman who travels to a hospital unit located outside

the island of residence for delivery, which determine the loss of remuneration when exceed 30 days a year.

- **Initial Parental Leave in the event of hospitalization.**

In case of hospitalization of the child due to the need for special care, to the initial parental leave is added the period of hospitalization, up to a limit of 30 days, which will not be applied in cases where the delivery occurs by 33 weeks. In these cases, the initial parental leave will be increased by 30 days.

- **Waivers for medically assisted procreation consultation:**

The worker is entitled to leave work for consultations on each cycle of medically assisted procreation treatments (MAP), under the same terms as for the remaining pregnancy situations, in other words, is entitled to 3 work waivers, which do not determine the loss of any rights and are considered to be effective work.

- **Father's Exclusive Parental Leave:**

The father's exclusive parental leave is now of 20 consecutive or interpolated working days within 6 weeks of the child's birth, 5 of which shall be taken consecutively immediately after the child's birth.

After such leave, the father's right to leave shall be 5 working days of leave, consecutive or interpolated, provided that they are taken at the same time as the mother's initial parental leave.

- **Child Care Leave:**

Child care leaves for care of children with chronic illness now cover cases of children with cancer. The duration of this leave remains 4 years and may be extended up to 6 years, in situations of need for extended care, confirmed by a medical certificate. This limit does not apply to children with long-term terminal illness confirmed by a medical certificate.

- **Grants:**

The changes to the parenting regime were followed by the respective welfare regime. Is now foreseen a travel allowance for trips to the hospital unit located outside the pregnant woman's island of residence for the delivery of the child, child care allowance for children with cancer, the exclusive initial parental allowance of the father, etc.

### Entry into force

Waiver matters for medically assisted procreation consultations, initial parental leave in the event of hospitalization, father's exclusive parental leave and allowances, shall enter into force with the State Budget following its publication, thus shall be 1<sup>st</sup> January 2020.

With regard to child care leave and parenting when traveling to hospital unit located off the island of residence, these will apply from 4<sup>th</sup> October 2019.

### CONTACTS

Inês Albuquerque e Castro | Partner | [ic@fcblegal.com](mailto:ic@fcblegal.com)