

## Revision of the Portuguese Labour Code

The Portuguese Parliament has recently approved a revision to the Labour Code pursuant to the memorandum of understanding concluded between the EU, IMF and the Portuguese government. The changes affect a wide range of employment issues, the key ones being:

- The calculation of **severance pay** for permanent contracts entered into prior to November 1<sup>st</sup> 2011 will be equivalent to 20 days' base remuneration plus seniority subsidies (*diuturnidades*), per complete year of service, subject to certain caps.

The new rules will reduce the current statutory compensation criteria which correspond to one month's base remuneration plus seniority subsidies, if applicable, per complete year of service, a fraction of a year being pro-rated, and subject to a minimum of three months' base remuneration.

The caps are as follows:

- Remuneration and seniority subsidy, for the purposes of calculating severance compensation, are subject to a maximum cap of 20 times the statutory minimum wage (currently EUR 485).
- The total compensatory amount is subject to a maximum cap of 12 times the employee's monthly base remuneration plus seniority subsidies if applicable or, when the limit referred to above applies, to a maximum cap of 240 times the amount of the statutory minimum wage.
- The daily base remuneration and seniority subsidy is the result of the division of the monthly base remuneration plus seniority subsidy by 30.
- In the case of a fraction of a year, compensation is calculated on a pro-rata basis.

To ensure employees' expectations are maintained, the current and proposed new regimes will apply as follows:

- For the period of employment until October 31<sup>st</sup> 2012, compensation is equal to one month's base remuneration plus seniority subsidy, if applicable.
- For the period of employment following October 31<sup>st</sup> 2012, compensation is calculated on the new basis.

Specific provisions will however apply so as to ensure caps/limits are observed.

The total compensatory amount is subject to a minimum of three months' base remuneration.

For contracts entered into after November 1<sup>st</sup> 2012, the rule is the same and is already in force.

- In relation to **termination of employment**, dismissal is now possible for unsuitability or failure to adapt irrespective of the modification to the employee's position where there is a continuous reduction of productivity on their part. In the case of **individual redundancy as a result of termination of the job position**, mandatory selection criteria will no longer apply. The employer merely needs to identify objective, non-discriminatory criteria in order to choose between employees.
- There are also significant changes to the **suspension or reduction of work** in the event of 'company crisis'.
- Changes are made in relation to **working time** including the introduction of an individual 'hours bank' subject to agreement between the employer and employee, which will allow an extra two hours of daily work with weekly and yearly limits and to a group "hours bank" (where the hours bank is already foreseen in a collective labour agreement). Measures to reduce the costs of overtime work eliminate compensatory rest periods and a 50% reduction on the current overtime rates. Additionally, four public holidays have been suspended.

The revision is awaiting promulgation and publication.

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