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The International Comparative Legal Guide to:

Employment & Labour Law 2018

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A practical cross-border insight into employment and labour law

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General Chapter:

Country Question and Answer Chapters:

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the eighth edition of *The International Comparative Legal Guide to: Employment & Labour Law*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of labour and employment laws and regulations.

It is divided into two main sections:

One general chapter titled "Where Next for the Gig Economy?".

Country question and answer chapters. These provide a broad overview of common issues in labour and employment laws and regulations in 41 jurisdictions.

All chapters are written by leading labour and employment lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Stefan Martin and Jo Broadbent of Hogan Lovells International LLP for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The main sources of employment law are the Portuguese Constitution, European legislation, the Portuguese Employment Code (approved by Law No. 7/2009 of 12 February 2009), the Regulation of the Employment Code (Law No. 105/2009 of 14 September Code), collective bargaining agreements and individual agreements.

Within the Portuguese Employment Code, the vast majority of the rules are mandatory and, therefore, can only be modified by agreement of the parties and only if such amendment is intended to improve the position or rights of the employees.

Furthermore, Chapter III of the Portuguese Constitution sets forth a number of fundamental rights and principles regarding both employees and employers.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Every employee is protected under Portuguese employment law and the Portuguese Employment Code but some of its provisions only apply to certain types of employees (those holding management or managerial positions, for example).

Furthermore, some special employment situations also benefit from specific legal regimes (domestic work, entertainment professionals and sports practitioners, for example).

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

The general rule states that it is not mandatory that the employment agreement is entered into in writing, although this rule has some exceptions, namely with regards to fixed-term or foreign workers' employment agreements, for example.

Nevertheless, the Portuguese Employment Code obliges the employer to provide some essential information, in writing, to the employees. Specifically:

(i) identification of the employer;

(ii) the employee's workplace;

(iii) the employee's category or a concise description of the employee's duties;

(iv) date of conclusion of the contract and date of commencement of its effects;

(v) the employee's annual leave;

(vi) notice periods to be observed by the employer and the employee for termination of the employment contract or the criterion for their determination;

(vii) remuneration (amount and periodicity);

(viii) daily and weekly normal working hours;

(ix) applicable collective bargaining agreement, if any;

(x) the number of the occupational accident insurance policy and the identification of the insurance company; and

(xi) identification of the labour compensation fund, as well as of the labour compensation guarantee fund.

For a term employment agreement, the Portuguese Employment Code requires written information in the contract itself regarding the term, the reasons for concluding such contract and for the term's duration.

1.4 Are any terms implied into contracts of employment?

Yes, all mandatory legal provisions and all non-mandatory rules not modified or waived by agreement of both parties.

The parties' main duties are particularly relevant, namely, for the employer, the obligation to provide work and to pay for it and, for the employee, the duty to provide work and the duty of loyalty.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Yes, there are. The Portuguese Employment Code provides for minimum employment conditions and standards, in terms of holidays, maximum working hours, remuneration, etc. Collective agreements, when applicable, may also set down minimum conditions (minimum wages, for example).

In Portugal, the law sets a minimum guaranteed monthly remuneration.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

In the absence of a prohibitive legal rule, collective bargaining instruments can regulate virtually all aspects of an employment relationship, but to some extent, only if they offer more favourable terms for the employees.

Although industry or sector level collective bargaining agreements are more common, company agreements also exist.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Employees have a constitutional right to freedom of association which includes the right to set up trade unions, at all levels, to defend and promote their socio-professional interests.

A trade union is constituted and approved by the respective statutes by means of deliberation of the constituent assembly, which can be an assembly of representatives of associates, and acquires legal personality by the registration of those acts with the ministry responsible for the labour area.

Trade unions are governed by statutes and regulations approved by them, they freely and democratically elect the heads of their governing bodies and democratically organise their management and activity.

2.2 What rights do trade unions have?

With the purpose of defending and promoting the defence of the rights and interests of their represented employees, trade unions have a series of constitutional and legal rights, such as the rights to conclude collective bargaining agreements, to participate in the drafting of labour legislation, and to take part in a company restructuring processes.

2.3 Are there any rules governing a trade union's right to take industrial action?

The Portuguese Constitution and the Portuguese Employment Code guarantee employees the right to strike, providing that the correct procedures are followed. Trade unions must decide to strike.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

In Portugal, the establishment of a works council is not mandatory. However, employees have the right to create such councils in order to defend their interests and their rights. Such right is foreseen not only in the Portuguese Employment Code, but also in the Portuguese Constitution. Works council representatives must go through an election process.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

As a rule, in specific matters, works councils must only be consulted before management decisions are made or may participate the procedures for company restructuring, but their opinions or recommendations are not mandatory.

The Constitution grants them the right to exercise management control in companies, but such control does not imply co-determination powers or co-management of the company.

2.6 How do the rights of trade unions and works councils interact?

The scopes of action of trade unions and works councils is different. For example, the right to declare a strike is the exclusive right of a trade union, as well as the right to conclude collective bargaining agreements.

In some specific labour procedures (collective dismissals, for example), the existence of a works council in a company waives the need for union representatives to participate.

2.7 Are employees entitled to representation at board level?

Employees of private sector companies are not entitled to representation at board level. In public business entities (which are corporate entities created by the State to carry out its purposes); however, the works council may promote the election of workers' representatives to the company's governing bodies.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

The Portuguese Employment Code has implemented the principle of equal treatment with regards to access to employment, vocation training, promotion and working conditions.

In view of this, any direct or indirect discrimination based on lineage, age, gender, sexual orientation, gender identity, marital status, family situation, education, social origin or condition, genetic heritage, reduced working capacity, disability, chronic illness, nationality, ethnic origin or race, language, religion or belief, political or ideological beliefs or trade union membership is strictly prohibited.

Moreover, the Portuguese Employment Code also foresees that harassment in the workplace is forbidden. Please note that according to the applicable legal regime, harassment includes a wide spectrum of offensive behaviours, including sexual harassment, emotional abuse (mobbing) and other discriminatory harassment. If a company has seven or more employees, the implementation of a code of conduct for preventing and combating workplace harassment is mandatory.

3.2 What types of discrimination are unlawful and in what circumstances?

The Portuguese Employment Code prohibits direct and indirect discrimination. Direct discrimination includes dismissing someone because of a protected characteristic (discrimination factor), deciding not to employ them, refusing to provide them with training, denying them a promotion, or giving them adverse terms and conditions all because of a protected characteristic. Indirect discrimination occurs when the employer's practices, policies or procedures have the effect of disadvantaging employees who share certain protected characteristics.

3.3 Are there any defences to a discrimination claim?

The employer may claim that the different treatment was objective and proportionately justified and that it was not based on any

discrimination factor, demonstrating, for example, that there were justifiable and determinant requirements for the pursuit of a specific occupation, by virtue of the nature of the activity in question or the context in which it is carried out.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Employees may resort to the courts or the Commission for Equality in Work and Employment (CITE). Both parties can settle claims at any time.

3.5 What remedies are available to employees in successful discrimination claims?

In general, compensation for both material and moral damages is available, as well as, in certain cases, reinstatement and compensation for the termination of the employment agreement.

An employer's retaliatory act that is detrimental to the employee because of rejection or submission to a discriminatory act is legally deemed invalid.

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

All employees are granted the same protection regarding discrimination. However, pregnant, puerperal or lactating employees, employees on parental leave and trade union representatives or members of employees' representative structures have special protection.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Working mothers and fathers are entitled to initial parental leave of 120 or 150 consecutive days per new born child, which may be shared between parents after the childbirth, without prejudice to the mother's exclusive parental leave of six weeks after childbirth.

This leave may be increased by an additional 30 days in the event that each of the parents takes, exclusively, a period of 30 consecutive days, or two periods of 15 consecutive days, after the mother's initial six weeks leave.

In the case of multiple births, the leave period is increased by 30 days for each twin besides the first child.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

Female employees are protected against the loss of any rights during maternity leave. The Portuguese Social Security provides for a compensation for the loss of salary.

4.3 What rights does a woman have upon her return to work from maternity leave?

A woman has the same rights as before the maternity leave but, during the breastfeeding or lactation period, the employee is entitled to daily time off work for such purposes, as well as special protection in case of dismissal.

4.4 Do fathers have the right to take paternity leave?

Yes, fathers have the right to take paternity leave. They are entitled to parental leave of 15 working days, within 30 days of the birth of the child, of which five consecutive days must be taken immediately following the birth of the child. After such leave, fathers then have the right to an additional 10 working days of leave, provided that they are taken simultaneously with the mother's initial leave.

4.5 Are there any other parental leave rights that employers have to observe?

Yes. A daily dispensation for breastfeeding or bottle-feeding may be taken, in two separate periods of up to one hour each, unless otherwise agreed with the employer, without loss of remuneration or privileges.

Pregnant employees have the right to work leave for prenatal consultations. Fathers have the right to accompany the mother to such consultations on three occasions.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

In the case of a minor (under the age of one) with a disability or a chronic illness, parents may be entitled to a reduction of five hours of the normal working week, with the remaining hours being adjusted.

Employees with a child under 12 years of age or, irrespective of age, with a disability or a chronic illness, may be entitled to work part-time or on a flexible working schedule.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

Yes. In case of transfer of business, the Portuguese Employment Code foresees an automatic transfer of employees, whereby employees are transferred with all rights and obligations arising from their pre-existing employment relationship, without any need for employee consent (i.e., it is not a voluntary transfer).

Recent amendments to the labour law have been approved to grant employees, in certain circumstances, a right of opposition to the transfer of their employment contract to the transferee. This can be legally viable if the employee can prove that such transfer causes him/her serious damage with regards to negative cash-flow of the transferee, difficult financial impact or no confidence in the new employer work organisation. In such cases, the employee is entitled to terminate his/her contract with just cause and receive severance pay.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

On a business sale, employees will keep all the rights and obligations arising from their previous employment relationship.

Collective Bargaining Agreements ("CBA") applicable to the seller must be kept by the buyer until the expiration date of the CBA or, at least, for 12 months after the transfer date, unless a new CBA applies to the new employer. If, after this time frame, a new CBA is not applicable to the transferee, the employee will keep his/her previous rights regarding remuneration, job position, functions and social benefits.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

As a general rule, both the transferor and transferee need to inform the employees' representatives (or if there are none, the employees directly), in writing, of the date of the transfer, any effects that this transfer may have on the terms and conditions of employment, and the terms and conditions of the transfer contract entered into by the transferor and transferee, regardless of the confidentiality obligations if this information is communicated to the employees. In the case of large- and medium-size companies, this information must also be shared with the labour authorities.

According to Portuguese law, employees' representatives are the works councils, trade unions and trade union representatives.

Under the new legal frame, when facing a situation in which there are no employee representatives, the employees can directly name, among themselves and within a five-working-day-period, a representative delegation.

The transferor and transferee may also need to consult the employees' representatives (or if there are none, the employees directly) in order to try to reach an agreement regarding the measures that they intend to implement because of the transfer. In the event that no agreement is reached, the transfer may still occur and no prejudicial consequences should arise.

The timing for providing this information and consultation is as follows:

(i) the information needs to be supplied with reasonable notice prior to the transfer (no actual specific deadline is established);

(ii) if there is a need for consultation, the information mentioned above needs to be supplied at least 10 days prior to the consultation; and

(iii) as far as consultation is concerned, there is no minimum or maximum period established in law and it is up to the employer to establish a reasonable duration (and if no agreement can be reached, as mentioned, the transfer may still proceed).

According to Portuguese law, employees' representatives are the works councils, trade unions and trade union representatives.

5.4 Can employees be dismissed in connection with a business sale?

No, the employee cannot be dismissed as a direct consequence of the business sale. Notwithstanding the above, the business sale may provide the employer with structural, economical or technological grounds to start a redundancy procedure.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

No, the former employer's rights and obligations arising from an employment agreement existing on the date of the transfer, shall be, by reason of such transfer, transferred to the new employer. Nevertheless, the employee and the employer may agree on new terms and conditions, in the fullest extent permitted by law.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

As a rule, the Portuguese Employment Code does not permit termination by giving notice.

Nevertheless, it is mandatory to give prior notice to the employee:

i) in case of non-renewal of a fixed-term employment agreement; or

ii) if the employer decided to terminate the employment agreement during a trial period which lasted more than 60 days.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

The Portuguese Employment Code does not foresee a "garden leave" period. "Garden leave" is only possible upon agreement of both parties.

However, in case of termination of the employment agreement, the employer may oblige the employee to take any remaining holiday days during the notice period.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

The Portuguese Employment Code foresees the general regime applicable to the termination of employment agreements, stating that any dismissal must be grounded on objective reasons, whether they are related to the employee or to the company.

Concerning the motives related to employees, the dismissal might occur whenever there is a material reason that can be deemed as just cause, namely a breach of the employment agreement or of any other legal obligation by the employee that, due to its gravity and consequences, makes immediately and practically impossible the maintenance of the employment.

Besides dismissal with just cause, employers may also dismiss employees by means of an individual or collective redundancy procedure, providing that there are objective reasons (related to the company) to justify it.

The means of employment termination must be motivated by objective factors, such as the closing-down of one or more departments/sections of the company or the need to reduce the number of employees as a result of a change in the market, or structural or technological reasons related to the company (e.g. the reduction of the company's activity due to a decrease in the demand of goods or services, economic and financial imbalance).

However, these procedures are usually quite complex and burdensome, and there are several mandatory steps that must be followed. Nevertheless, the employer does not need the consent of a third party (e.g. Portuguese Labour Authorities) before the dismissal of an employee.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

Employees' representatives and employees during pregnancy, maternity leave, and during the breastfeeding period, as well as those on parental leave, have special protection against dismissal.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

1) The existence of just cause for dismissal also depends on the relevant consequences that an employee's behaviour has on the employee/employer relationship. "Just cause" can only result from behaviour that, because of its gravity and because of the consequences to the employer, makes unacceptable the continuation of the employment agreement. The relevant Portuguese legislation foresees various situations that, in principle, are considered just cause. These are as follows:

- Unreasonable disobedience of orders given by a superior.
- Disrespect of other employees' rights.
- Continuous creation of conflicts with other employees.
- Continuous indifference to carrying out, with due diligence, duties inherent to the job.
- Damage to relevant financial or fiduciary interests of the employer.
- False declaration in relation to the justification of an absence.
- Unjustifiable absence from work that results in serious damage or risk to the employer or, independently from risk or damage, five continued days of absence or 10 interspersed days of absence in a year.
- Conscious breach of safety and hygiene rules.
- Injuries, verbal insults or other offences against other employees, members of the corporate bodies of the employer or its representatives.
- Kidnapping and in general other crimes against personal freedom of the persons referred to in the previous paragraph.
- Breach or opposition to compliance with court decisions or other decisions from public authorities.
- Abnormal reduction of the employee's productiveness.

In case of dismissal for just cause, the employee is not entitled to receive any financial compensation.

2) Redundancy must be due and justified by the closing-down of one or more departments/sections of the company or a reduction of employees caused by market, structural or technological grounds. In this case, the employer would be obliged to grant the employee compensation. Such compensation should be calculated as follows:

- One month's salary per year of service for services rendered until 31 October 2012;
- 20 days' salary per year of service for services rendered between 1 November 2012 and 30 September 2013; and
- 12 days of salary per year of service for services rendered after 1 October 2013.

If compensation calculated until 31 October 2012 is equal to or greater than 12× Reference Base Salary (RBS) or 240× Guaranteed Minimum Remuneration (GMR) (currently set at €580), the employee will be entitled to the full amount (including excess), but no additional compensation will be accrued for service after 31 October 2012.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

The dismissal of an employee requires not only the existence of "just cause" but also compliance with procedural requirements as set out in the relevant legislation. The main compulsory steps to be followed are:

(i) The disciplinary procedure must be initiated within 60 days of the fault being identified. The disciplinary procedure begins with a written communication to the employee, which must state that the procedure has been initiated in order to dismiss the employee ("Communication"). A full description of all of the facts allegedly executed by the employee ("Report") should be attached to the Communication. If the employee is a union representative, a copy of the Communication and of the Report should be sent to them.

(ii) The employee, within 10 working days of receiving the Communication and Report, must present their written defence. He may also attach documents and request the production of evidence, *inter alia*, oral testimony of witnesses.

(iii) The employer, directly or through an instructor, should hear all the witnesses presented by the employee, up to a maximum of three per each fact argued and 10 in total.

(iv) Once the production of evidence is over, the employer has 30 days to issue the final decision ("Decision"). Such decision must be presented in writing.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

The causes of unfair dismissal are: a) nonexistence or invalidity of the disciplinary proceeding; b) dismissal based on political, ideological or religious reasons; and c) the absence of valid reasons in relation to the dismissal of the employee.

If the court considers the dismissal to have been unfair, the employer will have to pay the employee any moral damages awarded by the court, as well as the wages the employee did not receive (the company is only liable to pay up to 12 months of salary). Moreover, because of an unfair dismissal, the employee has the right to be reinstated.

However, the employee may opt for compensation instead of reinstatement. Such compensation will correspond to an amount of between 15 and 45 days' (which may be increased to 30 and 60 days in case the employer formally objects to reinstatement, which it may do in the case of direction and management employees) pay for each year of service or fraction thereof, with a minimum of three months' pay. For these purposes, the length of service continues to be calculated until the date of the court's decision.

6.8 Can employers settle claims before or after they are initiated?

Yes, employers can settle claims before or after they are initiated.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

Yes. Collective redundancy occurs when, within a three-month period, an employer dismisses at least two employees if the employer has 50 or fewer employees, or five employees if the employer has more than 50 employees.

Collective redundancy must be justified by the closing down of one or more departments/sections of the company or a reduction of employees caused by market, structural or technological grounds:

- *Market reasons* – For this purpose, market reasons are either the reduction of the company's activity due to the reduction in the demand for goods or services, or the legal or practical impossibility of selling these goods or services in the market.
- *Structural reasons* – For this purpose, structural reasons are the economic and financial imbalance, the change of activity, the restructuring of the production organisation or change of dominant products.
- *Technological reasons* – For this purpose, technological reasons are alterations which have occurred in the production techniques, processes, or the automation of the production equipment, control or transport of weights, as well as the computerisation of services and the automation of communication systems.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Dismissed employees can appeal to the court by way of an interlocutory injunction in order to suspend the dismissal within five working days and/or through a definitive action that must be brought within a period of six months after the date of termination.

As previous mentioned in the answer to question 6.7, if the dismissal is unfair, the employer will have to pay the employee any moral damages awarded by the court, as well as the wages the employee did not receive in the interim period (the company is only liable to pay up to 12 months' worth of salary). Moreover, because of an unfair dismissal, the employee has the right to be reinstated.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Permanence and non-competition agreements are recognised as restrictive covenants.

7.2 When are restrictive covenants enforceable and for what period?

A clause limiting the activity of the employee for no more than two years (or three years for those employees whose activity involves a relationship of trust or access to particularly sensitive information concerning competition) after termination of the employment agreement is lawful, if all of the following conditions are met:

(a) such clause is stated in writing in the employment agreement or in the termination agreement;

(b) it is an activity the performance of which can effectively cause damage to the employer; or

(c) the employee is given compensation during the period in which the activity is restricted, which may be fairly reduced when the employer has spent a substantial amount of money in the professional training of the employee.

7.3 Do employees have to be provided with financial compensation in return for covenants?

In Portugal, non-competition during the agreement does not require any payment but if it is to apply after termination such payment is mandatory. The law does not establish any minimum or maximum amount and the parties may freely agree to it. The amount of compensation for non-competition should be a reasonable amount to ensure the employee's livelihood together with a non-related activity or unemployment benefit.

Regarding the permanence covenant, the employee is obliged not to terminate her/his employment agreement, for a period not exceeding three years, as compensation for extraordinary expenses made by the employer during the employee's training.

7.4 How are restrictive covenants enforced?

Restrictive covenants are enforced by means of a legal action.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

The employment agreement itself is a legal ground for the processing of employees' personal data, meaning that the data subjects do not have to consent it. However, employers can only process data that is strictly necessary for the execution of the employment agreement and fulfilment of legal obligations, such as for purposes of salary payment, contributions to tax authority and social security, or insurances against accidents at work. Personal data processed for other purposes, such as company marketing, health insurance or other benefits require the employees' explicit consent.

In any case, employers are obliged to provide employees with information on how personal data is processed by the company, for instance the identification and contacts of the controller and the data protection officer, rights of the data subjects and ways of exercising it or the period for which it will be stored.

Regarding the transfer of employees' data in particular, if it is between EU countries, there are no boundaries. It is just required that employers inform the data subjects about the recipients or categories of recipients of their personal data. If the transfer is to a non-EU country, employers must inform the data subjects of the intention to transfer personal data to a third country or international organisation. In addition, data subjects must be informed of the existence or absence of an adequacy decision by the Commission, or, if not, reference to the appropriate or suitable safeguards and the means by which to obtain a copy of them or where they have been made available.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Employees, as data subjects, have the right to obtain from their employer confirmation as to which personal data concerning them is being processed, where it is being used and for what purpose. Further, if required, employers provide a copy of the employees' personal data, free of charge, in electronic format.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

The general provision establishes that the employer cannot run, directly or through a third party, a background check on applicants

regarding private personal information. Nonetheless, it is possible to do so if such information is strictly necessary to assess the employees' capacity to perform their duties and there is a written request justifying the need for such information. The applicant can also allow background checks to be conducted.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

Yes, if a very strict set of requirements is met. It depends on a careful preparation in advance of the framework in which such monitoring may exceptionally occur, on informing the employees on the conditions of use of the company's equipment, the forms of control and its purposes, etc., and on prior communication with the Portuguese Data Protection Authority ("CNPD").

8.5 Can an employer control an employee's use of social media in or outside the workplace?

On this particular matter, the issues arising from the employees' right to privacy are even more pressing but, in very exceptional situations, such control may be permissible (for example, in cases concerning the company's reputation and image), although this possibility always requires a careful analysis in relation to each individual case.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

In Portugal, the employment-related complaints are decided by the Labor Court (first instance level), formed of only one judge. Following this, three judges would decide whether or not the party that has been defeated at first instance may appeal for a second instance, the '*Tribunal da Relação*' and subsequent appeal. If applicable, depending on the nature of the complaint or the amounts involved, there can be a new appeal for the Supreme Court of Justice ('*Supremo Tribunal de Justiça*'), or even, if a matter of unconstitutionally is raised during the process, the Constitutional Court may also overrule a lower court decision with a collective of 13 judges. The Supreme Court will hear cases either in a formation of three judges, or, in some cases, in a formation of eight judges.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

The procedure for employment-related complaints differs depending on the type of complaint. It is not mandatory to complete the conciliation procedure before a complaint can proceed. Nevertheless, during the judicial procedure conciliation sessions take place.

In order to submit a claim, an employee must pay a court fee, except if the employee is exempted from this payment due to their financial situation or if he/she is represented by the public prosecutor's office.

9.3 How long do employment-related complaints typically take to be decided?

For urgent matters, like work accident complaints or unfair dismissal, court decisions are made within a maximum period of 12 months. For non-urgent matters, employment related complaints typically take between a year-and-a-half and two years to be decided at first instance court.

9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

Yes, it is. On average, the appeal takes one year to be decided by second instance court. The possibility to appeal against a decision of the first instance level depends on the value of the complaint (generally above €5,000). However, in certain circumstances it is possible to appeal against a first instance decision regardless of the amount involved. Namely in matters involving work accidents, employees' dismissals, validity of employment agreements, definition of the employees' categories, *inter alia*.

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- Graduated in Law from the Faculty of Law of the University of Lisbon (1999).
- Intensive post-graduate degree in Banking Law from the Institute of Banking Law of the Faculty of Law of the University of Lisbon (2000).
- Intensive post-graduate degree on the new Labour Code by the Labour Institute of the Faculty of Law of the University of Lisbon (2004).
- Post-graduate degree in Arbitration at the Faculty of Law of Lisbon's Universidade Nova (2010).
- Post-graduate degree in Public Employment Law at the Law and Regulation Study Centre of the Coimbra University Law School (2013).
- Partner (founder in 2010) and lawyer at BAS – Sociedade de Advogados, SP, RL.
- EELA Member – European Employment Lawyers Association.
- Participation in opinion articles in the areas of Labour Law and Public Services Law.
- Trainer in training courses in the areas of Labour Law and Public Services Law. Dália has lectured in training in Angola regarding Angola's Employment law. Experience in international litigation associated with the judicial actions regarding CPLP.
- Assistance to clients in the definition and implementation of their human resources policies and practices, and prevent the occurrence of labour disputes or ensure their swift and effective resolution.
- Deep Knowledge on consultancy and training services concerning Employment and Social Security law in the public and private institutions in different subject areas of the Countries that belong to the CPLP (Community of Portuguese Speaking), such as corporate restructures, definition of remuneration policies and contractual models and disciplinary action and due diligence.
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- Master in Law from the Faculdade de Direito da Universidade de Lisboa (2002).
- In 2008, attended the Master in "Relaciones Laborales/Labor Relations" in IE Business School – Instituto de Empresa, in Madrid.
- Lawyer since November 1998. Joined BAS – Sociedade de Advogados, SP, RL (2015).
- Legal consultant at the Portuguese Government Commission for Citizenship and Gender Equality from April 1997 until September 2003.
- EELA Member – European Employment Lawyers Association since 2003.
- Deep knowledge on employment and social security matters.
- Active in companies' restructuring processes, including collective dismissals, downsizing processes and severance agreements.
- Assistance to international clients on implementation of their international policies and practices in Portugal.
- Strong knowledge on the Iberian market.
- Larger experience in negotiations representing unions and works councils.
- Long-time opinion article collaborator with the main business newspapers, legal magazines, and regular speaker at conferences and seminars.
- Alexandra is recommended by *Chambers & Partners* (Tier 3).

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BAS law firm was founded in 2010 and has a team of 24 lawyers, with about 30 professionals. In addition to the Lisbon and Oporto offices, BAS has an international presence through its partnerships and partners in Angola, Brazil and Mozambique.

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