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Portugal: Wage guarantee in case of insolvency

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Portugal

Phase:

Management

Type:

Wage guarantee in case of insolvency

Last modified: 17 February, 2021

Native name:

Código do Trabalho; Lei 71/2018 de 31 de Dezembro; Lei 210/2015 de 25 de Setembro

English name:

Labour code; Law 71/2018 of 31 December; Law 210/2015 of 25 September

Article

Labour code, article 336; Law 210/2015 of 25 September, articles 1 and 12; Law 71/2018 of 31 December, articles 1, 2 (4, 6, 8 and 9), 3 and 14

Description

The labour code in its article 336 determines the Wage Guarantee Fund (Fundo de Garantia Salarial - FGS). A new system for the FGS was approved in 2015: the fund ensures the financial protection of employees in case of the employer's insolvency (defined as a debtor's inability to meet his commitments as they fall due - article 3 of [CIRE](#)) or of the employer's coverage by the revitalisation special process or by a procedure for extrajudicial recovery (in order to recover companies which are in a difficult economical situation or in imminent insolvency, but not in a current insolvency situation, a special revitalisation procedure has been created which allows the company to establish negotiations with its creditors to reach agreement on the recovery of the company. During this period, any pending judicial proceedings will be suspended). The fund guarantees the payment of wages, holidays, Christmas and food allowances and redundancy payments.

The fund ensures the payment of labour credits due to workers since the six months preceding the start of the insolvency procedure, of the Extrajudicial Recovery Procedure (Regime Extrajudicial de Recuperação de Empresas - RERE), or the submission of the application to Special Revitalisation Process (Processo Especial de Revitalização - PER).

The payment of the claims referred to above is subject to a double limitation:

- one of a temporal nature, since the worker is requested to file the application for the payment of outstanding labour credits at district centres or local social security services within one year from the day following the day on which the employment contract ended; and
- another of a pecuniary nature, as the fund simply ensures the payment of claims arising from the employment contract for at maximum of six months, and with the maximum monthly amount up to three times the minimum guaranteed monthly wage (€635 in 2020).

Under the new regime, the fund now also covers employees who work or have habitually worked within the national territory for an employer with activities in the territories of at least two EU Member States, even if the employer is declared insolvent by a tribunal or competent authority of another Member State of the European Union or of the European Economic Area.

In 2013, two other national compensation funds were established. The Work Compensation Fund (Fundo de Compensação do Trabalho - FCT) and the Guarantee Fund for Work Compensation (Fundo de Garantia de Compensação do Trabalho - FGCT).

The FCT and FGCT funds aim to ensure the workers' right to receive half of the compensation due in case of termination of the employment contracts.

The FCT is an individual capitalisation fund that seeks to ensure the payment up to half of the payment of the due compensation for labour contract ceasing and repays up to the limit of the delivered amounts by the employer and eventual positive valorisation.

The FGCT is a mutual fund that seeks to ensure the necessary value to the covering of half of the compensation value due to labour contract ceasing, subtracted from the amount already paid by the employer to the worker. The FGCT adhesion comes automatically with the employer's FCT membership. The employee may address the FGCT whenever the employer does not perform, totally or partially, the due payment, receiving the necessary value to cover half of the due compensation value, subtracted of the amount already paid by the employer to the worker.

The employers are obliged to adhere to the funds. Employers are required to contribute 1% of pay (0.925% to FCT, 0.075% to FGCT) for employees hired after 1 October 2013.

This amount is calculated according to article 366 of the labour code which establishes that

- the amount of compensation is equal to 20 days of basic salary and seniority bonus for each full year of seniority or fraction thereof;
- the amount of monthly basic salary and seniority bonus to be considered for the basis of calculation may not exceed 20 times the minimum guaranteed wage (€ 665, in 2021);
- the total amount of compensation may not exceed 12 times the monthly basic payment and seniority bonus of employee or, when the limit specified above is taken in consideration, 240 times the minimum guaranteed salary.

FCT and FGCT are now obliged to inform the Authority for Working Conditions of any non-compliance by the employer within 30 days.

Since September 2015, labour relationships derived from work contracts of a duration up to two months are excluded from the application scope of the rules governing FCT and FGCT.

The Wage Guarantee Fund (Fundo de Garantia Salarial - FGS) is ensured by the national government. The Work Compensation Fund (Fundo de Compensação do Trabalho - FCT) and the Guarantee Fund for Work Compensation (Fundo de Garantia de Compensação do Trabalho - FGCT) are financed by companies.

Comments

The AC & Associados, a Portuguese law firm, [denounced](#) that access to the Wage Guarantee Funds takes up to a year or more, while the legislation establishes that the decision must be taken within 30 days following the formalisation of the request.

According to the [media](#), in 2018 the FGS transferred to the workers €80 million, 21% less than in 2017. The number of requests registered a decrease of 86% in 2018 compared with 2015, representing a decrease of 4,000 requests in 2018, compared with 20,000 in 2015.

According to CGTP-IN, in an interview to the [media](#), the fund 'has to be rejuvenated and strengthened in order to extend not only the number of months to which workers are entitled to the compensation, but also the amounts, in particular the limit on minimum wages allocated'.

Cost covered by

Companies
National government

Involved actors other than national government

Other

Involvement others

Institute of Financial Management of the Social Security (Instituto de Gestão Financeira da Segurança Social - IGFSS); Institute of Management of Capitalisation Funds of the Social Security (Instituto de Gestão de Fundos de Capitalização da Segurança Social, I. P. - IGFCCS)

Thresholds

No, applicable in all circumstances

Sources

- 📖 [Law 210/2015 of 25 September](#)
- 📖 [Labour code \(Law 7/2009, of 12 February\) – updated version](#)
- 📖 [Law 71/2018 of 31 December](#)
- 📖 [ERM database on restructuring support instruments](#)
- 📖 Deutsch, A., 2011, Europäische Beispiele für die Insolvenzentgeltsicherung, Federal Ministry of Labour, Social Affairs and Consumer Protection/IEF
- 📖 Eurofound, 2010, [Restructuring: Support measures for affected workers](#), Dublin
- 📖 Sargent, M., 2007, Implementation Report Directive 80/987 EEC amended by Directive 2002/74/EC [protection of employees in the event of the insolvency of their employer], Human European Consultancy/Middlesex University Business School
- 📖 FGS Media (2018), 'Payments from the Wage Guarantee Fund fall 21% in 2018 to 80 million.'
- 📖 CGTP-IN media

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