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Portugal: Working time flexibility

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Portugal

Phase:

Management

Type:

Working time flexibility

Last modified: 10 December, 2021

Native name:

Código do trabalho; Decreto-Lei 220/2006 de 3 Novembro

English name:

Labour code; Decree-Law 220/2006 of 3 November

Article

Labour code 298, 298-A, 300 (1 and 4), 301 (1, 3 and 4), and 305 (1); Decree-Law 220/2006 of 3 November articles 27, 33 and 60

Description

Turnover

From January 2020 the legislation introduces an excessive turnover fee. The fee will be applied when companies exceed the average number of fixed-term contracts in each sector.

The measures will immediately apply to any new labour contracts, including duration reduction of the fixed-term contracts, from three to two years. These contracts can be renewed up to three times, as long as the total duration of the renewals does not exceed that of the initial contract period. Fixed-term contracts for permanent needs will be allowed when hiring people who have been unemployed for more than 24 months. The possibility of hiring on a permanent basis when launching a new activity of uncertain duration, or when opening a new establishment, will be limited to companies with fewer than 250 employees. Moreover, temporary agency employment contracts will be allowed a maximum of six renewals.

Temporary reduction of working hours/suspension of employment contracts

The employer may temporarily reduce the normal working hours or suspend the employment contracts for market reasons, structural or technological shocks or other events that severely affected the normal activities of the company, provided that such action is crucial to ensure the viability of the company and maintenance of jobs.

To initiate the temporary layoff, the eligible company must notify the worker representatives with a notice period of 5 days, but the agreement of such representatives is no longer required.

The reduction may include:

- One or more normal daily or weekly working hours and may involve different groups of workers, alternatively.
- Reducing the number of employees corresponding to the daily or weekly working hours.

This scheme applies to cases in which such an action is applicable, i.e. when the company in question has been declared as facing economic difficulties or, with the necessary adaptations, the company is in the recovery process.

The reduction or suspension must have a predefined duration not exceeding six months. Only in the case of a catastrophe or other occurrence which has severely affected the normal activities of the company the reduction or suspension may have the duration of one year.

The initial six months may be extended for an additional six months as long as the employer notifies, in writing and in a substantiated manner, the worker representative and they do not oppose. If there is no worker representative, the employer must notify each worker covered by this scheme.

During the reduction or suspension of the contract, workers are entitled to receive a minimum amount equal to 2/3 of the gross salary (without discounts) that they would receive if they were working normally; this will never be lower than the national minimum wage (which stands at €665 in 2021) and with the maximum limit of three times the national minimum wage (€1,995 in 2021). The 30% of the compensatory payment attributed to each employee is borne by the employer and 70% by the social security institution.

During the suspension or reduction period, the employee is entitled to maintain all its social security benefits, which are calculated

considering their normal remuneration as well their rights relating to set vacation period and vacation and Christmas allowances, under the same conditions as if the same were rendering effective work. Regarding the Christmas allowance, 50% of the compensatory payment is borne by the social security institution and the remaining is directly paid by the employer.

The employer may only introduce a new reduction of the normal working hours or suspend the employment contracts once the previous period of suspension is over and at least half of the duration of that period has passed (e.g. if the initial suspension was for 6 months, a new one can only start three months after the last day of the 6 months period). This period could be shortened by agreement between the employer and the affected workers or their representative structures.

Partial unemployment

This is available to people who have applied for or are beneficiaries of unemployment benefits who start part-time work contracts or self-employed work. Those falling into these categories are eligible once the wage or the income generated by the part-time activity either as self-employed or employee is lower than the unemployment benefit.

The benefit allowance corresponds to the difference between the amount of the unemployment insurance benefit increased by 35%, and the number of earnings resulting from the activity as an employee. In the case of self-employed activity, the amount corresponds to the difference between the amount of the unemployment insurance benefit increased by 35%, and 1/12 of the annual taxable income resulting from this self-employed activity.

Partial unemployment benefit can be enhanced through compensation payments and pensions for occupational risks.

COVID-19 temporary measures

Under the scope of the Economic and Social Stabilisation Programme, the Decree-Law 46-A/2020 of 30 July creates extraordinary support for the progressive recovery of companies in a situation of business crisis, for the temporary reduction of the normal working period, with a view to maintaining employment. The extraordinary support applies to companies of the private sector and of the social sector, which are in a business crisis situation resulting from the COVID-19 pandemic. The diploma considers a business crisis (Article 3) when there is a break in invoicing equal to or greater than 40%, in the month immediately preceding the initial request for support or extension, compared with the same month of the previous year; or compared to the average of the two previous months. For those that started activity less than one year before, the break in invoicing compares to the average monthly between the beginning of the activity and the penultimate month before the initial request.

The working time reduction lasts for one month, but may be extended monthly while the Decree Law is in force (article 4).

Companies are allowed to reduce the working time depending of the level of business crisis and of the time of year (Article 5):

- by 50% in August and September and by 40% in the last quarter 2020 - when the break in invoicing is equal to or greater than 40%;
- and by 70% and 60% in the same periods of the year - when there is a break in invoicing equal to or greater than 60%.

During the reduction of the normal period of working time, the worker has the right to the wage corresponding to the hours worked and to a compensation for the hours not worked (Article 6). This compensation can be up to three times the statutory minimum wage (RMMG), in the amount of: two thirds of normal gross wage, in the months of August and September 2020 and four-fifths in the last quarter of 2020. If the value of these provisions is lower than the RMMG value, the compensation is increased to ensure it. The compensation is calculated in proportion of gross remuneration including: basic remuneration; monthly premiums; regular monthly allowances, bonus for shift work and night work; and meal allowance. The estimation of the compensation has into account the compliance with the statutory minimum wage.

The employer is entitled to financial support exclusively for the purpose of paying the compensation to workers. Social security supports 70% of the compensation, the employers are responsible for ensuring the remaining 30% (Article 7). The amount paid by Social Security is financed by the State Budget of the State. The support provided is subject to European funding the respective provisions of national law and the European Union being applicable to them (Article 17).

The measures provided for in this decree-law are subject to regular assessment by the social partners Standing Committee for Social Concertation (Article 18).

The following updates to this measure have been made after it came into effect:

- Decree Law 90/2020 of 19 October amends the extraordinary support for the gradual resumption of activity in companies in a situation of business crisis with a reduction of the normal working period: If the employer has a fall in turnover of 40% or more, the working time reduction can be as much as 50%; if the employer has a fall in turnover of 60% or more, the working time reduction can be as much as 70%. In situations where the working time reduction is higher than 60%, the employee's wage compensation is adjusted to ensure that he/she receives 88% of his/her gross salary. Employers with a fall in turnover of 75% or more can now reduce the working time in 100%. For these employers, the financial support provided by social security for the payment of employee compensation is 100% of the employee's salary.
- Decree-Law 101-A/2020, of 27 November added to Decree-Law no. 46 -A/2020 of July 30, the Article 3-A which concerns 'Business crisis situation due to limitation of activity by government decision'. It applies to companies that already benefited from the support to temporary reduction of working time; but also to companies that did not, when their activity is limited by government decision. Basically, it gives companies more scope to reduce the level of the normal period of working time, having into account the level of fall in turnover. Companies can ask for support to the maximum limit of reduction of working time corresponding to the turnover fall which is a step above their actual turnover fall. For instance, for a company which turnover fall was equal or above 40% that only allowed working time reduction by 50%, working time reduction can be as much as 70%.
- On 15 January 2021, following the declaration of the state of emergency the regime was upgraded and prolonged by more six months (Decree Law 6-C/2021). The following provisions changed the previous measure:
 - Level of reduction of working time - in the case of a decrease of turnover equal to or greater than 25%, working time can be reduced by a maximum of 33%; when the decrease of turnover is equal to or greater than 40%, the reduction of working time can be a maximum of 40%; when the decrease of turnover is equal to or greater than 60%, the reduction of working time can be a maximum of

60%; when the decrease of turnover is equal to or greater 75%, the reduction of working time can be: up to 100% in the months of January, February, March and April 2021; and 75% in the months of May and June 2021.

- In relation to employees compensation it represents four fifths of normal gross remuneration corresponding to hours not worked; but if it results in a monthly level lower than the employee's normal gross remuneration, the level of compensation is increased to the extent necessary to ensure normal gross remuneration, up to a cap of three times the minimum wage.
- Decree Law 23-A/2021 of 24 March extends the access to the provisions of Law 6-E/2021 of 15 January also to companies, whose activity has been total or partially (above 40%) suspended in the month prior to the request, when considerably affected by the disruption of global supply chains or by the suspension or cancellation of orders, in the situations in which more than half of their billing in the previous year related with payments made to activities or sectors currently suspended or closed by legislative or administrative order. In addition, it extends the option for the simplified lay off scheme also to members of statutory bodies exercising management functions.
- Decree Law 32/2021 of 12 May established that given the current pandemic context and the epidemiological reality experienced in Portugal, companies with a billing break equal to or greater than 75% can continue to reduce the normal working time of their workers up to a maximum of 100%, during the months of May and June 2021. However, in June, the referred reduction is limited to up to 75% of the workers working for the employer, unless their activity falls within the sectors of bars, nightclubs, recreational parks and events. Alternatively, the reduction of the normal working time may, in the month of June, be a maximum of 75% when it covers up to all employees working for the employer

Decree-Law 27-B/2020 of 19 June extends the extraordinary support for the maintenance of employment contracts in a business crisis situation until September 2021 and the respective transitional regime in line with the Resolution of the Council of Ministers no. 41/2020, of 6 June.

Additionally, the Decree-Law 79-A/2020 of 1 October establishes an exceptional and transitory regime of reorganisation of work, in order to avoid gatherings of people performing presential work. This measure applies to businesses with work places with 50 or more workers, in the territorial areas where the epidemiological situation justifies the application of such a measure - areas to be defined by the Government (article 2). The employer may change working times up to the maximum limit of one hour, unless this causes serious harm to the worker (article 4). It is considered as serious harm notably: the lack of public transports with adequate operating schedules; and the need to provide immediate and necessary assistance to the family. This change in working times must remain stable for at least one week. This cannot imply the change of the maximum daily or weekly working hours, nor the change from day work to night work or vice-versa. Some groups of workers are exempted of working according to the new working schedules defined by the employer: workers who are pregnant, have recently given birth or are breastfeeding; minor workers; workers with reduced working capacity, with a disability or chronic disease; and workers caring for children under 12 years old or, regardless of age, with a disability or chronic disease. Decree-Law 25-A/2021, of 30 March, extends the rules for reorganisation provided in the Decree-Law 79-A/2020 of 1 October until 31 December 2021, without prejudice to the possibility of extension after consultation with the social partners.

Comments

The temporary reduction of working hours and the suspension of employment contracts imply the agreement of the worker and employer representatives.

In 2020, 18,973 workers were affected by a reduction of working time while 31,609 workers were affected by temporary layoffs measures. During the same period, 2,038 employers used temporary layoff.

In 2018, 150 companies and 3,520 workers were involved in these measures (11 companies and 257 employees less than in 2017): 1,062 workers with a suspension of employment contracts and 2,458 with a temporary reduction of working hours.

Regarding the COVID-19 temporary measures: The quantitative information 'Indicadores COVID-19' published by the Strategy Planning Office of the Ministry of Labour, Solidarity and Social Security (GEP/MTSSS) refers to the number of workers employed by the companies that applied for the scheme, but not to the actual number of workers that benefited from the scheme. The information published on 12 February 2021 (accumulated data since 1 August 2020 when the measure entered into force until the end of January 2021) reported that 19,121 companies employing 197,048 workers requested this support. Around one month later, on 11 March 2021, 29,475 companies employing 299,369 workers requested this support (accumulated data on 2 March 2021). According to information published on May 2021, 39,411 companies employing 387,180 workers requested this support (accumulated data on 27 April 2021). In terms of sectors 24.8% of the companies are from Accommodation and Food Services; 22.3% from Wholesale and retail; and 10.1% from Manufacturing industry.

Cost covered by

Employee
Employer
National government

Involved actors other than national government









Trade union
Works council

Thresholds

No, applicable in all circumstances

Sources

- 📖 Labour code (Law 7/2009, of 12 February) – updated version
- 📖 Decree-Law 220/2006 of 3 November

-  [ERM database on restructuring support instruments: Temporary reduction of working hours/suspension of employment contract](#)
-  [ERM database on restructuring support instruments: Partial unemployment benefit](#)
-  [Redução de horário de trabalho e suspensão de contratos de trabalho pelas empresas \(layoff\)](#)
-  [Social security statistics 2019-2020](#)
-  [Social security statistics 2018](#)
-  ['Indicadores COVID-19'](#)
-  [Eurofound \(2020\), Exceptional and temporary measure on layoffs to protect jobs in the context of the COVID-19 pandemic, case PT-2020-13/297 \(measures in Portugal\), COVID-19 EU PolicyWatch, Dublin](#)
-  [Eurofound \(2020\), Staggered working times - exceptional and transitory regime, case PT-2020-40/1273 \(measures in Portugal\), COVID-19 EU PolicyWatch,](#)

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