

PORTUGAL

I. Legal notice - disclaimer

This sheet aims to provide a general overview of the main substantive rules concerning the terms and conditions of employment to be met by legislation transposing Directive 96/71/EC concerning the posting of workers in the framework of the provision of services (OJ L 18 of 21.1.1997). By its very nature, such a sheet can only summarise and does not necessarily contain all the relevant information in this context. In no way can it replace legislative, regulatory or administrative texts, or applicable collective agreements. The information below has been provided by the authorities of the Member States, which have made every effort to ensure its accuracy. Neither the Commission nor the Member States concerned can, however, guarantee that the information provided is always precise, complete, accurate and up to date.

Furthermore, publication on the portal of the European Commission does not imply in any way that the latter or its DGs and Services consider the rules presented in this way to be in conformity with Community law.

II. Instrument transposing Directive 96/71/EC

Official publication: Law N.º 9/2000 of 15 June repealed by entry into force of Law N.º 99/2003 of 27 August adopting the Labour Code and Law N.º 35/2004 of 29 July enacting it, and actually in Law N.º 7/2009 of 12 February.

These laws were published, respectively, in the *Diário da República*: (Law N.º 9/2000) 1st series-A, N.º 137 of 15 June 2000, pages 2638 and 2639; (Law N.º 99/2003) 1st series-A, N.º 197 of 27 August 2003, pages 5558 and 5656; (Law N.º 35/2004) 1st series-A, N.º 177 of 29 July 2004, pages 4810 and 4885; (Law N.º 7/2009) 1st series-A, N.º 30 of 12 February 2009, pages 996 and 1029.

III. Information on legislation applicable in accordance with the Directive

Information on legislation applicable to undertakings which, for a limited period of time, post workers to the territory of another Member State can be obtained at the following address:

Autoridade para as Condições do Trabalho (Working Conditions Authority)
Avenida Casal Ribeiro, n.º 18-A 1000-092 Lisbon

Tel: (+351) 213 308 700, Fax: (+351) 213 308 706

Telephone information service: (+351) 707 228 248

<http://www.act.gov.pt/>

IV. Failure to comply with the prescribed terms and conditions of employment

Cases of failure to comply with the prescribed terms and conditions of employment in Portugal and possible cases of illegal transnational activities can be reported to the following address:

Autoridade para as Condições do Trabalho (Working Conditions Authority)
Avenida Casal Ribeiro, n.º 18-A 1000-092 Lisbon

Tel: (+351) 213 308 700, Fax: (+351) 213 308 706

Telephone information service: (+351) 707 228 248

<http://www.act.gov.pt/>

V. Situations constituting a posting [Article 1 of the Directive]

The provisions relating to the posting of a worker to the Portuguese territory in order to provide a service under contract with an employer established in another Member State apply in the following situations:

- a) in execution of a contract concluded between the employer and the party receiving the services on the Portuguese territory, since the worker remains under the management of that employer;
- b) in an establishment or undertaking owned by the employer or the group;
- c) where the posting is carried out by a temporary employment undertaking or placement agency.

(Legislation applicable: Article 6 to 8 of the Labour Code)

VI. Posted workers [Article 2 of the Directive]

Directive 96/71/EC applies to workers who, for a limited period of time, carry out their work on the territory of a Member State other than the State in which they normally work.

The concept of "posted worker" is derived from the concept of posting. It involves a worker carrying out an activity on the Portuguese territory under the contract of an employer established in another Member State, in any of the three circumstances referred to in Article 6 to 8 of the Labour Code, as mentioned in the previous point.

Portuguese legislation considers a posted worker to be a subordinated worker who undertakes, against payment, to provide his services, under the authority and superintendence of an enterprise, as part of a service given temporarily by that enterprise to another whose workplace is hosted on the territory of another Member State. There is no definition in Portuguese legislation of 'worker', but of 'employment contract', which is where a person provides a service for another under the authority and direction of the latter and the former receives payment for this in return (Article 11 of the Labour Code).

According to the case law of the Court of Justice of the European Communities, the temporary nature of an activity carried out on the territory of a Member State in the context of free provision of services cannot be determined abstractly but should be judged on a case-by case basis, depending on the duration, frequency and periodicity or continuity.

It should be noted that if an occupational activity in Portugal can no longer be considered as being exercised temporarily, taking account of the above-mentioned criteria, but is stable and continuous, all the binding rules and regulations in force in Portugal apply.

VII. Work periods and rest periods [Article 3(1)(a) of the Directive]

The normal work period must not exceed 8 hours per day or 40 hours per week (Article 203(1) of the Labour Code).

Section 1.01 - A rest break of no less than 1 hour and no more than 2 hours must be taken during the working day so that workers do not work for more than 5 consecutive hours (Article 213 (1) of the Labour Code).

The worker is guaranteed a minimum rest period of 11 consecutive hours between two consecutive working days (Article 214 (1) of the Labour Code).

Several collective labour regulations refer to these issues, but it is not practical to indicate all the collective labour contracts and company agreements in Portugal, since there are in large number, which stems from the fact that collective regulations are issued by sector of activity, by company and by region.

However, in Portugal there are 32 Regional services of Labour Inspectorate, which make use of all applicable collective regulations in their jurisdiction and also provide an information service daily to citizens.

This information can also be consulted on the websites:

[www.act.gov.pt/\(pt-PT\)/Legislacao/ContratacaoColetiva/Paginas/ContratacaoColetiva.aspx](http://www.act.gov.pt/(pt-PT)/Legislacao/ContratacaoColetiva/Paginas/ContratacaoColetiva.aspx)

<http://www.dgert.mtss.gov.pt/>

<http://bte.gep.msess.gov.pt/>

(Legislation applicable: Articles 197 to 257 and 265 to 269 of Law N.º 7/2009)

VIII. Paid annual holidays [Article 3(1)(b) of the Directive]

The minimum period of annual leave is 22 working days.

For this purpose, working days are Monday to Friday, excluding public holidays (Article 238 of the Labour Code).

Payment during leave is equivalent to what the worker would receive if at work. In addition, the worker is also entitled to a holiday allowance which is equivalent to basic pay plus other benefits, depending on the specific nature of the employment (Article 264(1 and 2) of the Labour Code).

(Legislation applicable: Articles 238 to 247 and 264 of Law N.º 7/2009)

Specific rules are contained in the collective labour regulations for the sector of activity concerned. These may be consulted at:

[www.act.gov.pt/\(pt-PT\)/Legislacao/ContratacaoColetiva/Paginas/ContratacaoColetiva.aspx](http://www.act.gov.pt/(pt-PT)/Legislacao/ContratacaoColetiva/Paginas/ContratacaoColetiva.aspx)

<http://www.dgert.mtss.gov.pt/>

<http://bte.gep.msess.gov.pt/>

IX. Pay [Article 3(1)(c) of the Directive]

All workers are entitled to at least a guaranteed monthly minimum wage, laid down by law and updated annually (Articles 273 to 275 of the Labour Code). In addition, collective agreements regulate the minimum wages applicable in the various sectors of activity or undertakings.

Workers who work overtime on a normal working day are entitled to a 25% increase in pay for the first hour and 37,5% for subsequent hours or periods. Workers who work overtime during the compulsory or additional weekly rest period or on a public holiday are entitled to 50% increase in pay for each hour worked (Article 268 (1) of the Labour Code). However collective agreements can regulate other percentages.

X. Rules concerning hiring-out of workers and terms and conditions which apply to temporary workers [Articles 3(1)(d) and 3(9) of the Directive]

The Labour Code (Law N.º 7/2009 of 12 February), and Law N.º 260/2009 of 25 September, with the alterations given by Law N.º 5/2014 of 12 February, regulates the activity of temporary employment undertakings and their contractual relations with temporary workers and users.

The temporary employment contract is a triangular employment contract where the contractual position of the entity employer is shared between the temporary work company that contracts, remunerates and exerts the power to discipline and the user company that receives in its plants a worker who

is not part of its staff, and exerts towards that worker employer's authority and direction powers by delegation from the temporary work company.

Temporary employment contracts can only be concluded where provided for in the relevant contract, for example to replace absent workers, to deal with a temporary or exceptional increase in activity or to cover intermittent manpower needs - Article 175 and 180 of the Labour Code.

Temporary employment contracts are always concluded in written form, with obligatory reference to Article 177 (1 and 2) elements.

Temporary workers have the right to earn the minimum wage established by the user company, for the professional category corresponding to the functions that they perform (Article 185 (5) of the Labour Code).

They also have the right, in relation to the duration of the contract, to holiday and Christmas pay and to other regular and periodic subsidies paid to workers for identical work - Article 185 (6) of the Labour Code.

The occasional cession of workers consists of the possibility of an employer, temporarily, placing at the disposal of another entity, (which will have superintendence powers), workers that belong, and continue to belong, to the personnel of the employer -Article 288 of the Labour Code.

The occasional cession must be referred to in a written document signed by both parties and must contain the identification of the assigned worker, his agreement, the activity that he will exert, the date of commencement of work and the duration - Article 290 of the Labour Code. The assigned worker has the right to earn the minimum wage established by law and to the holiday and Christmas pay in relation the duration of the cession (Article 291 (5) of the Labour Code).

All the relevant information can be consulted on the following site:
<http://www.act.gov.pt>

XI. Health, safety and hygiene at work [Article 3(1)(e) of the Directive]

The Labour Code (Articles 281 to 284) and Law N.º 102/2009 of 10 September, with the alterations given by Law N.º 3/2014 of 28 January, regulate safety, hygiene and health at work.

The Labour Code confers upon workers the right to be given up-to-date information on health and safety risks, as well as on the measures and instructions to be implemented in the event of a serious risk, and lists the cases in which such information must be guaranteed to the worker.

In addition to information, it also ensures adequate training in the field of safety, hygiene and health at work, taking into account the employee's duties and the post occupied (Article 281 of the Labour Code).

Article 282 of the Code lays down that the employer must ensure that activities relating to safety, hygiene and health at work are organised and developed with the participation of workers so that all the obligations can be met. In order to achieve this, it is necessary for workers or their representatives to be consulted on the following: hygiene and safety measures before these are put into practice; measures whose impact or technology will affect health and safety at work; and the training programme and the organisation of training in the field of safety, hygiene and health at work.

In addition to the Labour Code and Law N.º 102/2009 of 10 September, there are many laws regulating safety, hygiene and health conditions at work. Specific laws and regulations may be consulted at:

<http://www.act.gov.pt/>

[http://www.act.gov.pt/\(ptPT\)/Legislacao/LegislacaoNacional/Paginas/default.aspx](http://www.act.gov.pt/(ptPT)/Legislacao/LegislacaoNacional/Paginas/default.aspx)

XII. Rules concerning the terms and conditions of employment of pregnant women and women who have recently given birth [Article 3(1)(f) of the Directive]

The national legislation (Labour Code – Articles 33 to 65, and Law N.º 91/2009 of 9 April, with the alterations given by Law n.º 120/2015 of 1 September) establishes a maternity and paternity protection system and confers a set of rights, among which:

The parental leave has a duration of 120 or 150 days. It can go up to 180 days if 30 of those days are taken exclusively by one of the parents. However, the leave can be exclusive or shared and can be taken simultaneously by both parents. – article 40 of the Labour Code

Unless communicated by the worker to the employer until 7 days after the birth, it is assumed that the leave will be taken by the mother for 120 days only, and the right to full wage - *Article 40 of the Labour Code and Article 12 and 30 of Law N.º 91/2009 of 9 April.*

Workers opting for 150 days only have the right to 80% of the wage during maternity leave, or 100% in case of shared leave and one of the parents has a 30 days continued leave.

Paternity leave is for 15 working days - Article 43 of the Labour Code.

The pregnant worker has the right to stop work when attending prenatal consultation, as necessary and justified, including preparation for the birth - Article 46 of the Labour Code.

Leave for breastfeeding and nursing is guaranteed for mothers who duly inform the employer, 10 days prior to the leave; they have the right to two working hours per day, without loss of wage – Articles 47 and 48 of the Labour Code.

Leave from night services is guaranteed up to 112 days before and after childbirth, during the remaining period of the pregnancy and during

breastfeeding, provided the worker presents a medical attestation to substantiate this - Article 60 of the Labour Code.

Overtime is not compulsory for pregnant workers or workers with infants less than 12 months old – Article 59 of the Labour Code.

The pregnant or nursing worker has the right to special health and safety conditions at the workplace, in order to prevent risks to her health and safety. The law refers to a set of conditional and forbidden activities for these workers – Article 62 of the Labour Code and Articles 50 to 60 of Law N.º 102/2009 of 10 September.

The protection against dismissal granted to the pregnant or nursing worker is based on the assumption that dismissal is without just cause. Dismissal always requires prior assessment from the Commission for Equality in Work and Employment – CITE - before the final decision - Article 63 of the Labour Code.

All the relevant information on this issue can be consulted on the following sites:

<http://www.act.gov.pt> and <http://cite.gov.pt>

XIII. Rules concerning the terms and conditions of employment of children and young people [Article 3(1)(f) of the Directive]

The employment of minors is regulated by the Labour Code (Articles 66 to 83), Law N.º 105/2009 of 14 September (Articles 2 to 11), and of Law N.º 102/2009 of 10 September (Articles 61 to 72).

Attention is drawn to the following points:

The employer must provide minors with working conditions appropriate to their respective age in order to protect their safety, health, physical, mental and moral development, education and training, and to prevent any risks which might arise owing to inexperience, unawareness of existing or potential risks or the minor's level of development. In particular, the

employer must assess work-related risks before the minor starts work and always after any substantial changes to working conditions; minors also have to undergo medical examinations to ensure safety and health.

- Normal working hours, including under working time adaptation arrangements, must not exceed 8 hours a day and 40 hours a week.
- Minors may not be given night work or overtime.
- The daily work period must be interrupted by a rest break of between one and two hours, so that the minor works no more than four consecutive hours if under 16 years of age, or no more than four and a half hours if aged 16 and above.
- Minors aged 16 years and above must be given a minimum daily rest period of 12 consecutive hours between work periods on two successive days.
- Minors are entitled to a rest period of two consecutive days, where possible, in each seven-day period, unless, in the case of minors aged 16 years or above, a weekly rest period of 36 consecutive hours is justified for technical or work organisation reasons specified in the collective employment regulations.

XIV. Equality and non-discrimination [Article 3(1)(g) of the Directive] Equality and non-discrimination are provided for in the Labour Code (Articles 23 to 32).

Article 24 provides for the right to equal access to employment and an occupation.

Paragraph (1) sets out the positive: *"All workers have the right to equal opportunity and treatment as regards access to employment, vocational training and promotion and working conditions. No worker or jobseeker shall be privileged or favoured or discriminated against or deprived of any right or exempted from any duty by reason of ancestry, age, gender, sexual orientation, gender identity, civil status, family situation, genetic heritage, reduced working capacity, disability, chronic disease, nationality, ethnic origin, religion, political or ideological beliefs and trade union membership."*

The cases of discrimination are given as examples, which means that the legislation is applicable to other factors which might constitute discrimination.

Consequently, employers may not practice any type of direct or indirect discrimination on any of the grounds provided for in Article 24. Article 23 defines the concepts of direct and indirect discrimination, which are essential for the distribution of the burden of proof (Article 25). Under Article 25(2) of the Labour Code, behaviour based on a factor which is in principle discriminatory does not constitute discrimination if, by reason of the nature of the occupational activities in question or the context in which they are carried out, such a factor constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is proportionate.

“Anyone claiming to have been the target of discrimination must substantiate their claim, indicating the worker or workers who feel that they have been discriminated against; the employer has the duty to prove that the differences in working conditions are not based on any of the factors referred to” (Article 25(5)). This therefore leads to an inversion of the burden of proof, since the employer has the duty to prove that the differences are not based on any of the factors referred to in Article 24(1).

Article 24 extends application of inversion of the burden of proof to access to employment, vocational training and promotion, and not only to working conditions.

The Labour Code provides for the first time that harassment, including sexual harassment, is a form of discrimination and is therefore unlawful. It defines harassment as being all undesirable conduct related to any of the factors referred to in Article 24 that takes place in the context of access to employment or in employment, work or vocational training, with the purpose or effect of violating the dignity of a person or of creating an intimidating, hostile, degrading, humiliating or destabilizing environment

(Article 29(1)). The Code in particular defines as harassment any undesirable behavior of a sexual nature, either verbal, non-verbal or physical, with the above-mentioned purpose (Article 29(2)).

The Labour Code (Article 28) specifically provides for a worker or job-seeker's right to payment of compensation for non-financial (moral) damages in the event of discrimination, without prejudice to the right to compensation for financial and non-financial damages in general terms.

XV. Terms and conditions of employment concerning other matters [Article 3(10) of the Directive]

XVI. Procedural and administrative requirements

See section X

XVII Mediation mechanisms in case of conflict

In a conflict situation, it is possible to appeal to the Labour General Inspectorate information service, to the Department of Public Prosecution at the Labour Courts and to Labor Mediation System.

Labour inspection

This entity has the responsibility to inform and control the working conditions of all workers.

<http://www.act.gov.pt/>

District Attorney

Inside the Labour Court, there is a public employee (a District Attorney) that has the obligation of representing "pro bono" workers or their families (for example in case of a working accident) in defense of their rights of social character.

<http://www.ministeriopublico.pt/>

Labor Mediation System (LMS)

The LMS is a service sponsored by the Ministry of Justice, which allows the settlement of labor disputes, outside the courts of law.

The LMS is competent to mediate all disputes that occurs in consequence of the existence of an employment relation, when the matters don't concerned inalienable rights, and when is not the result of an accident at work, in particular, the following matters:

- Payment of labor credits resulting from the cease of the employment contract;
- Promotions;
- Change in the workplace;
- End (in case of rescission) of the employment contract;
- Holiday planning;
- Disciplinary Procedures;
- Legal nature of the employment contract.

Relevant information on this subject can be found at:

<http://www.dgpj.mj.pt/sections/gral/mediacao-publica/sistema-de-mediacao5560>

it is also possible to appeal to several Institutions/Entities whose assignment is to assure support, in various matters, to posted workers, in particular:

The Bar Association (In Portugal - Ordem dos Advogados)

Office of Legal Consultation

This office provides information and legal advice on various delegations of the Order, to individuals who don't have economics and financial capability to access to a lawyer.

As an example:

http://www.oa.pt/cd/Conteudos/Artigos/detalhe_artigo.aspx?sidc=32580&idc=32583&ida=105086

Legal Protection of Social Security

Legal protection is a right of individuals who don't have economics and financial capability to access the Courts of Law and other instances of public entities.

http://www4.seg-social.pt/documents/10152/15011/proteccao_juridica

CNAI / CLAI

The National Immigrant Centre Support and Local Immigrant Support as the goal to provide the needs posed to immigrant citizens in several areas, including labour issues.

<http://www.acm.gov.pt/-/cnai-centro-nacional-de-apoio-ao-imigrante>

Unions / NGOs / Associations

Provide support and counseling to either Portuguese workers moving abroad, and to all kind of workers posted in Portugal.

XVIII Information on judicial enforcement procedures

Information on possible judicial remedies in Portugal and relevant information on this subject can be found at: <http://www.redecivil.mj.pt/>