

Fifth amendment to the Portuguese Labour Code: Reduction of compensations

The Fifth amendment to the Portuguese Labour Code was approved by the Law no. 69/2013, of 30 August, which proceeds to the adjustment of the value of the compensation for termination of employment contracts.

The changes now approved are a result of the commitment made by the Portuguese Government with the international institutions. In fact, the reduction of 8 to 12 days of the amount of the compensation was already foreseen in the memorandum of understanding.

As a reminder, the amount of compensation due by virtue of the termination of the employment contract was reduced to 20 days in 2012.

The new values of the compensation and the new way of calculation shall enter into force on October 1, 2013.

Compensation for the termination of an employment agreement

> Fixed-term employment contracts

In the case of the termination of fixed-term employment contracts, the employee is entitled to a compensation of 18 days of base salary and seniority bonus for each full year of seniority.

The amount of the compensation mentioned above is also applied in the case of a collective dismissal.

> Uncertain-term employment contracts

The employee is entitled to a compensation corresponding to the sum of the following values:

- 18 days of base salary and seniority bonus for each full year of seniority, regarding the first three years of the duration of the contract.
- 12 days of base salary and seniority bonus for each full year of seniority, in the following years.

The amount of the compensation mentioned above is also applied in the case of a collective dismissal.

> Employment contracts with an indefinite duration

The compensation due in case of termination of an employment contract with an indefinite duration (collective dismissal, extinction of the work post or dismissal by inadequacy) is reduced to 12 days of base salary and seniority bonus for each full year of seniority.

Transitional regime

As in the previous amendments to the Portuguese Labour Code, the Law foresees a transitional regime in the case of the termination of the employment contracts concluded before November 1, 2011 and until September 30, 2013.

> Employment contracts with an indefinite duration concluded before November 1, 2011

The compensation is calculated in three phases, *i.e.*, the amount of the compensation is different according with each period of the duration of the contract.

Thus, in relation to the period of duration of the contract up to 31 October 2012, the amount of the compensation corresponds to one month of base salary and seniority bonus for each full year of seniority.

Reduction of compensation

From November 1, 2012 and until September 30, 2013, the amount of the compensation corresponds to 20 days of base salary and seniority bonus calculated proportionally to the period of effective work.

Regarding the period of duration of the contract from October 1, 2013, the amount of compensation is the sum of the following values:

- a) 18 days of base salary and seniority bonus for each full year of seniority, with regard to the first three years of the duration of the contract.
- b) 12 days of base salary and seniority bonus for each full year of seniority, in the following years.

The provision of sub paragraph a) is only applicable when the employment contract, on October 1, 2013, has not reached the duration of three years. This means that the compensation in the amount of 18 days is only applicable to employment contracts entered after October 2010.

> Employment contracts with an indefinite duration concluded after November 1, 2011 and until September 30, 2013

The amount of the compensation is calculated with reference to two periods.

Until September 30, 2013, the amount of compensation corresponds to 20 days of base salary and seniority bonus for each full year of seniority.

From 1 October 2013 the compensation is calculated according with the same rules applicable to the employment contracts concluded before 1 November 2011.

> Fixed-term employment contracts and temporary contracts concluded before November 1, 2011

The compensation for the termination of fixed-term employment contracts and temporary contracts, concluded before 1 November 2011

are also calculated in three phases according with the duration of the contract.

Regarding the duration of the period of the contract until October 31, 2012 or until the date of extraordinary renewal, in the case it is prior to October 31, 2012, the amount of compensation corresponds to three or two days of basic salary and seniority for each month of duration, depending on the total duration of the contract, since it does not exceed or is greater than six months, respectively.

In relation to the period of duration of the contract from November 1, 2012 and until September 30, 2013, the amount of compensation corresponds to 20 days of base salary and seniority bonus calculated proportionally to the period of effective work.

Regarding the period of duration of the contract from October 1, 2013, the amount of the compensation corresponds to the sum of the following values:

- a) 18 days of base salary and seniority bonus for each full year of seniority, regarding to the first three years of the duration of the contract.
- b) 12 days of base salary and seniority for each full year of seniority, in subsequent years.

The provision of sub paragraph a) is only applicable when the employment contract, on October 1, 2013, has not reached the duration of three years.

> Fixed-term employment contracts and temporary contracts concluded after 1 November 2011

In the case of termination of fixed-term employment contracts and temporary contracts concluded after the November 1, 2011 and until September 30, 2013, the compensation is calculated on the same terms applicable to employment contracts with an indefinite duration for this period.

Reduction of compensation

The tables below summarise the main changes to the transitional regime previously described:

Compensation for the termination of employment contracts with an indefinite duration			
	Concluded before 1/11/2011	Concluded after 1/11/2011 and until 30/09/2013	Concluded after 1/10/2013
Until 31/10/2012	1 month*	20 days*	12 days*
From 1/11/2012 to 30/9/2013	20 days*		
From 1/10/2013	18 days*, for the first three years of duration of the contract** + 12 days*, for the following years	18 days*, for the first three years of duration of the con- tract** + 12 days*, for the following years	

Compensation for the termination of fixed-term employment contracts and temporary contracts			
	Concluded before 1/11/2011	Concluded after 1/11/2011 and until 30/09/2013	Concluded after 1/10/2013
Until 31/10/2012	3 or 2 days***	20 days*	18 days*
From 1/11/2012 to 30/9/2013	20 days*		
From 1/10/2013	18 days*, for the first three years of duration of the contract** + 12 days*, for the following years	18 days*, for the first three years of duration of the con- tract** + 12 days*, for the following years	

* Months/Days of basic salary and seniority bonus for each full year of seniority.

** Is only applicable when the employment contract, on October 1, 2013, has not reached the duration of three years.

*** Days of basic salary and seniority for each month of duration, depending on the total duration of the contract, since it does not exceed or is greater than six months, respectively.

Reduction of compensation

Limits to the compensation amounts

Similar to the transitional regime foreseen in the Third amendment to the Portuguese Labour Code, the limits to the compensation amounts remain unchanged – 12 times the employee's monthly base salary and seniority bonus or 240 times the guaranteed minimum monthly wage.

In the same way, remain applicable the provision that foresees a minimum amount of the compensation, which cannot be less than 3 months of base salary and seniority bonus.

Infraction

It is now considered a severe infraction the non-compliance with the new amounts of the compensations.

This provision dispels the doubts raised by the Third amendment to the Labour Code, namely, regarding the legal consequence for the employer that gives to the employee a compensation that exceeds the amounts required by law.

Holidays

Finally, it is foreseen that the elimination of the four holidays must necessarily be reviewed for a period not exceeding 5 years.

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