Employment Contract, Training and End of Employment Contract, Modalities of Employment Contract, Rights and Duties of the Parties in the legal-labour relationship

What legislation regulates the Employment Contract?

Arts. 11 to 13 and 102 to 138 of the Labour Code (CT).

What is an employment contract?

An employment contract is one by which a natural person undertakes, in return for payment, to render his activity to another or other persons within the organisation and under their authority.

Does the employment contract have to be written?

As a rule, the contract of employment does not have to be in writing; it can be verbal. It only must be made in writing when this is required by law.

In which cases does the law require employment contracts to be in writing?

They are subject to written form, namely the following contracts:

- Employment contract with a foreign worker - art. 5 no. 1 of the CT (except if you are a national of a member state of the European Economic Area or of another state that consents to equal treatment than towards a national in matters of free exercise of professional activity - art. 5 no. 6);

- Employment contract with plurality of employers - art. 101 no. 2 of the CT.

- Work contract - art. 103 no. 1 of the CT.

- Fixed-term employment contract (commonly referred to as fixed-term contract) - art. 141 no. 1 of the CT.

- Part-time employment contract - art. 153, nr. 1, of the CT.

- Intermittent employment contract - art. 158 no. 1 of the CT;

- Employment contract in service commission - art. 162 no. 3 of the CT;

- Contract for the provision of teleworking - art. 166 no. 4 of the CT;

- Temporary employment contract - art. 181, nr. 1 of the CT.

- Indefinite duration employment contract for temporary assignment - art. 183 no. 1, of the CT.

Can one presume the existence of an employment contract?

Yes, it can, when in the relationship between the person providing one activity and another or others that benefit from it, some of the following characteristics can be found:

a) The activity is carried out in a place belonging to or determined by its beneficiary;

b) The work equipment and instruments used belong to the beneficiary of the activity;

c) The provider of the activity observes the start and end times of the service, determined by the beneficiary of the activity (working hours);

d) A certain amount is paid, with a certain frequency, to the provider of the activity in return for the activity (payment);

e) The activity provider performs managerial or managerial functions within the company's organizational structure.

Can a promise of an employment contract be made? How can it be done?

Yes, it can. The promise of an employment contract is subject to written form and must contain:

a) Identification, signatures and domicile or headquarters of the parties;

b) A clear statement of the will of the promissory party or parties to enter into such a contract;
c) Activity to be performed and corresponding retribution.

What is a membership contract?

A contract of employment is when the employee simply accepts, expressly or tacitly, the contractual conditions previously laid down by the employer, either in the company's internal regulations or in a general contract form. If the employee does not object in writing within 21 days from the beginning of the contract or from the disclosure of the regulations, if this is later, his/her adhesion is presumed.

Should the employer inform the employee about the content of the employment contract?

Yes, the employer must provide the employee with at least the following information concerning the employment contract:

a) The identification, namely, if it is a company, the existence of a corporate coalition, reciprocal participations, domain or group, as well as the registered office or domicile;

b) the place of work or, where there is no fixed or predominant place, an indication that the work is performed in several locations;

c) the category of worker or a summary description of the corresponding duties;

d) the date of conclusion of the contract and the date on which it takes effect;

e) the likely duration of the contract, if it is concluded for a fixed-term;

f) the duration of the leave or the criterion for determining it;

g) the periods of notice to be observed by the employer and the employee for the termination of the contract, or the criterion for determining it;

h) The value and periodicity of the remuneration;

i) The normal daily and weekly working period, specifying the cases in which it is defined in average terms;

j) the number of the work accident insurance policy and the identification of the insurance entity;

l) The applicable collective labour regulation instrument, if any;

m) The identification of the work compensation fund or equivalent mechanism, according to the specific legislation - for more information on the compensation fund, click here.

How should information concerning the employment contract be provided?

The information must be given in writing and may consist of one or more documents, which must be signed by the employer.

When the employment contract is in writing or a promissory contract of employment is concluded, the duty to provide information is considered to have been fulfilled, if the elements mentioned in the previous answer are included.

Does the duty to inform also apply to workers whose employment contract is governed by Portuguese law but who pursue their activity in the territory of another State?

In these circumstances, and if the activity is to be exercised abroad for a period of more than one month, the employer must provide the worker, in writing, and until his/her departure, with the following additional information:

- Predictable duration of the period of work to be done abroad;

- The currency and place of payment of the cash benefits;

- Conditions for repatriation;

- Access to health care.

If the information initially provided by the employer changes, does the employer have to report these changes?

Yes. If there is a change in any of the elements of information initially provided by the employer, the employer must inform the employee in writing within 30 days of the date on which the change takes effect. This will only be the case whenever the change is the result of the law, the applicable collective labour regulation instrument or company rules of procedure.

What legislation regulates the presumption of the existence of an Employment Contract?

Arts. 11 to 13 and 102 to 138 of the CT.

How is the worker's activity determined?

It is up to the parties to determine by agreement the activity for which the worker is hired. This can be done by reference to an instrument of collective labour regulation or internal company regulations.

If the exercise of a certain activity is conditioned by the possession of a professional title (such as professional card), what is the consequence of his/her absence?

Failure to do so renders the employment contract null and void.

What are the effects of nullity of the employment contract?

An employment contract declared null and void or annulled produces effects as valid in relation to the time it is performed.

What functions must the employee perform?

The employee must, in principle, perform functions corresponding to the activity for which he/she is hired, and the employer must assign him/her, within the scope of the said activity, the functions that are most appropriate to his/her aptitudes and professional qualification. The activity for which the worker is hired comprises those functions which are related or functionally linked to him/her, for which the worker has adequate qualification and which do not imply professional devaluation.

What is understood by functions that are related or functionally linked to the hired activity?

Related or functionally related functions are considered, namely, those included in the same group or professional career. Whenever the exercise of accessory functions requires special

qualification, the employee is entitled to professional training of not less than ten hours per year.

Can the worker be moved to a lower category than that for which he/she was hired?

The rule is that it is forbidden to move the worker to a lower category. However, exceptionally, the worker may change to a category inferior to that for which he/she was hired, by agreement, based on the pressing need of the company or the worker, and must be authorized by the Working Conditions Authority (ACT) in case of decrease in remuneration.

Can the employer charge the worker with functions not included in the contracted activity?

Yes, whenever the interest of the company so requires, the employer may commission the employee to temporarily perform functions not included in the contracted activity, as long as this does not imply a substantial change in the employee's position. This situation cannot imply a reduction in salary and the employee has the right to the most favourable working conditions.

Can an employment contract be signed using electronic means?

Yes. It is permissible for any employer to grant employment contracts (or make additions or amendments to those already in force) with his/her employees, using electronic means.

(Decree-Law no. 290-D/99, of 2 August, with last wording conferred by Decree-Law no. 88/2009, of 9 April - Legal Regime of Electronic Documents and Digital Signature - in articulation with the Civil Code regarding the means of evidence and their valuation)

What is the validity of an employment contract signed electronically (and any additions or amendments thereto)?

Any electronic document is legally equivalent to a written document whenever it contains a written statement. Whenever an employment contract is concluded in electronic form it is

necessary that it - like any other written contract - contains the signatures (in this case, electronic) of the parties, thus proving that there is an agreement of wills.

What is the validity, effectiveness and evidential value of the electronic signature and the employment contracts, their amendments or alterations containing such signature?

The effect of the electronic signature of the parties to an employment contract (also electronic) depends on the type of electronic signature that is added to the contract: digital electronic signature (also known as qualified electronic signature), advanced electronic signature or simple electronic signature. Each one corresponds to different legal effects.

Only the digital signature is legally equivalent to the autographic signature added on a paper document. The inscription on of the certified qualified electronic signature presumes the authorship of the document, which will now provide full proof of the statements attributed to its author if the signature has been certified by an accredited certification body.

The advanced electronic signature consists of any electronic signature, regardless of the technology, that meets four requirements: (i) the univocal identification of the holder of the signature as author of the document, (ii) the dependence of the affixation only on the will of the holder, (iii) the exclusive control of the holder over the creation of the signature, (iv) the possibility of detecting supervening alterations to the content of the document after the affixation of the signature.

The simple electronic signature shall be the one which does not fulfil all four of the stated requirements.

What is the probatory value of an electronically signed employment contract?

The contract to which a non-digital electronic signature is added may be is examined the general terms of law, i.e. to the judge is reserved the task of analysing the non-digital electronic signature by reference to the characteristics of the qualified electronic signature - quality, security, imodifiability and integrity - only when it has such distinctive features. Therefore, electronic documents (contracts) to which a non-digital electronic signature is added have an unqualified probative value.

The examination in general law terms is not put in crisis by the possibility of the parties stipulating, between themselves, in writing, or to the party to which the document is opposed, that any other non-digital electronic signature corresponds to the autographic signatures themselves.

The parties' agreement signed by the parties - and not the employment contracts/additions/modifications with unskilled electronic signatures - will be taken as a private document signed by its authors, and will now provide full proof of the statements attributed to its authors: in the case of the employment contract, it provides full evidence of the employer's and the workers' own signatures - without prejudice to the pleading and proof of the document's falsity and, also, the pleading of fault and wilful misconduct under the Civil Code.

Can workers be required to sign an employment contract electronically?

No. Employees should always be given the choice between concluding the contract electronically or by traditional means (paper).

Only when the parties agree on the use of electronic means is it admissible that all communications regarding the legal-labour relationship be transmitted e-mail, having full probatory value, if accompanied by a digital signature. If they have a simple electronic signature they will be assessed in the general terms of law, as already explained.

What legislation regulates the conclusion of an employment contract by electronic means?

Arts. 11 to 13 and 102 to 138 of the CT.

What is the trial period in employment contracts?

The trial period corresponds to the initial period of implementation of the contract, the duration of which being defined by law. During this period the parties must act in such a way as to make it possible to examine the interest in maintaining the contractual relationship.

What is the duration of the trial period in the case of open-ended contracts?

90 days for most of the employees;

180 days for those occupying positions of technical complexity, a high degree of responsibility or who are supposed to hold special qualification or for those performing functions of trust;

How long is the trial period in fixed-term contracts?

a) 30 days for contracts with a duration of 6 months or more;

b) 15 days for fixed-term contracts with a duration of less than 6 months and for fixed-term contracts whose duration is not expected to exceed that limit.

Does the length of the trial period count for the purposes of seniority?

Yes, it does.

Since when should trial period start being counted?

The trial period starts from the beginning of the worker's performance, comprising the training actions determined by the employer in the part not exceeding half the duration of the trial period.

Should days off work count towards the trial period?

The days of absence, even if justified, of leave and dismissal, as well as of suspension of the contract, do not count for the purposes of the trial period.

Can the parties end the employment contract during the trial period?

Yes, they can. Both the employer and the employee can terminate the employment contract without prior notice or just cause and without any compensation, unless there is a written agreement to the contrary.

Is there any case where the employer, during the trial period, must give prior notice to the employee of his/her intention to terminate the employment contract?

Yes, in the following cases:

- When the trial period has lasted more than 60 days, in order to terminate the employment contract, the employer must give the employee 7 days' notice;

- When the trial period has lasted more than 120 days to terminate the employment contract, the employer must give the employee 15 days' notice.

How long is the trial period in service commission contracts? In service commission contracts, the existence of a trial period depends on the agreement, although the trial period cannot exceed 180 days.

In service commission contracts, the existence of a trial period depends on the express statement in the agreement, although the trial period may not exceed 180 days.

Can the parties extend the trial period?

No.

Modalities of Employment Contract

What legislation regulates the fixed-term contract?

Articles 135, 139 and following of the CT and Articles 2, 3 and 5 of Law 3/2012, of 10 January.

What are fixed-term contracts?

They are those whose duration is previously determined by the employer and/or employee according to an event or tern

Fixed-term contract: one in which the moment of termination is fixed in time by defining a term.

Contract for an uncertain term: the one in which the moment of end is dependent on an event whose date of end is uncertain or unknown in the beginning.

Under what terms can an employee be employed for a fixed-term?

A fixed-term employment contract, commonly referred to as a term contract, may only be entered into, as a rule, for the satisfaction of temporary needs of the company and for the period strictly necessary to satisfy them, or exceptionally according to specific legal provisions such as business risk reduction and/or measures to promote and create employment.

What are temporary business needs, business risk reduction measures and/or measures to promote and create employment?

Temporary needs are namely:

- The direct or indirect replacement of absent workers in the following situations:

- Temporarily unable to provide service;

- In relation to which a lawsuit is pending in a court of law to assess the legality of the dismissal;

- Situation of unpaid leave;

- Replacement of a full-time worker who starts working part-time indefinitely;

- Seasonal or other activities whose annual production cycle presents irregularities due to the structural nature of the respective market, including raw material supply...;

- Exceptional increase in the company's activity;

- Execution of an occasional task or a determined service precisely defined and not lasting;

- Execution of a work, project or other defined and temporary activity;

- These are measures to reduce the company's risks:

- Launch of a new activity of uncertain duration;

- Starting-up of a company or establishment;

- They are measures or instruments of promotion and job creation

- Hiring workers looking for their first job;

- Long-term unemployed.

Which written elements must be included in a fixed-term contract?

- Identification, signatures, domicile or seat of the contracting parties;

- Activity of the employee and compensation;

- Work start date;

- Indication of the established term and the its justification;

- Date of signature of the contract and, being for a fixed-term, of its end.

What is the consequence if the formalities and content of the fixed-term contracts are not fulfilled by the employer?

- If there is no (in) identification, signature, domicile and head office of the parties; indication of the term and supporting reason; date of conclusion and beginning of work the contract is considered to be without term.

- If absent: the date of commencement of work is considered to be the date of conclusion of the contract.

How should the term and duration be stated in the fixed-term contract?

The indication should be made with the express mention of the facts integrating it and also establish the relationship between the justification presented and the stated period in order to verify the reality and/or veracity of the alleged reason, not being enough, as a rule, to transcribe or identify the legal precepts.

Can certain fixed-term contracts be exempted of a written form?

Yes, contracts in seasonal agricultural activity or tourist event with a consecutive duration not exceeding 15 days and not exceeding 70 days per calendar year, the so-called contracts of very short duration, provided that they are sent through an electronic form to Social Security. However, in the case of non-compliance with the rules, contracts shall be deemed to last six months.

What is the maximum duration of a fixed-term contract (first time contract or renewed)?

- 18 months for workers looking for their first job.

- 2 years for workers hired on the basis of launching a new activity of an uncertain duration or starting up of work in a company or establishment, or long-term unemployment.

- 3 years for other workers (and reasons).

Article 140 no. 2 paragraph h) and no. 4 paragraphs a) and b) of the CT).

How is a contract that has undergone one or more renewals considered?

It is considered as a single employment contract.

Under what circumstances is a fixed-term contract usually renewed?

In the absence of a declaration by the parties to the contrary, the contract is renewed at the end of the agreed term for an equal period of not more than three times and for the maximum duration mentioned above for each of the reasons given. The renewal of the contract is subject to verification of the conditions of its conclusion, in particular those of form if a different period is stipulated. The only contract shall be one which is renewed. With the agreement of the parties, a fixed-term contract may not be subject to renewal.

Is it possible for the employer to have recourse to extraordinary renewals of fixed-term contracts, in addition to those provided for above?

Yes, it is possible to make up to two extraordinary renewals as long as they are cumulative/simultaneously:

- the contracts reach the maximum duration limits (already mentioned) until 30.6.2012;

- renewals reach a maximum of eighteen months;

- the duration of each renewal is not less than 1/6th of the maximum duration of the contract or its actual duration, whichever is the shorter;

- the duration of the renewed contracts does not extend beyond 31.12.2014.

EXAMPLE 1

A concluded a fixed-term contract with company B for a period of one year on 2.6.2010, which was renewed for another year on 2.6.2011 up to 2.6.2012 and which will reach the maximum duration of three years on 1.6.2013, so that it is possible to renew extraordinarily once for the same period because the maximum renewal limit is reached before the deadline of 30.6.2012.

It could no longer be renewed for another year because it would exceed the maximum limit of the two 18-month renewals. However, two renewals of at least six months each would be allowed.

EXAMPLE 2

C has concluded a fixed-term contract with the entrepreneur D on 2.8.2010, for a period of up to 2.8.2011 and 2.8.2012, with a maximum duration of three years at 1.8.2013, so that it is not possible for the entrepreneur to engage in extraordinary renewal.

However, each renewal, if it takes place, would have a minimum duration of four months.

EXAMPLE 3

On 02.02.2010 the long-term unemployed worker E was hired by company F through a fixed-term contract with a duration of one year, based on this reason. As the parties did not agree on the renewal, at the end of the term, the contract was tacitly renewed for the same period so that the (normal) maximum duration limit was reached in 01.02.2012, i.e. before 30.06.2013, so that the contract can still be renewed extraordinarily twice with a duration of no more than eighteen months, each one of them not being less than four months.

After the termination of the contract is there any preference in the admission of this worker in the case of external recruitment?

Yes. Until 30 days after the end of the contract, the employee has equal conditions, preference in the signing of an open-ended contract whenever the employer performs external recruitment for the same functions as those for which he/she was hired. Failure to comply with this provision obliges the employer to compensate the employee in the amount corresponding to three months of basic salary.

What happens if the fixed-term contract exceeds the maximum duration or the number of renewals?

This contract is considered an open-ended one, counting the seniority of the employee since the beginning of the work.

If the employer does not renew a fixed-term contract with an employee, can he/she hire a new employee for the same job?

He/she may do so after a period equivalent to one third of the duration of the contract, including its renewals.

As well as when it concerns: the new absence of the replaced worker when the fixed-term contract has been signed for his/her replacement; exceptional additions to the activity of the company after the termination of the contract; seasonal activities; worker previously hired under the regime applicable to the hiring of workers looking for their first job (without prejudice to the limits for the maximum duration of fixed-term contracts).

What is the maximum duration of an uncertain term contract?

Up to six years.

When does the uncertain term contract become effective?

If the contract is:

- longer than six years;

If the employee is:

- in service 15 days after the communication of his/her term;

- or after verification of the term.

What information must be provided by the employer in the context of a fixed-term contract?

The employer must communicate the signing with the its legal grounds and the end of the fixed-term contract:

- within a maximum of five working days to the workers' committee and the trade union association if the worker is a member;

- in the single report (annually);

- within a maximum of five working days, to the entity responsible for equal opportunities between men and women the reason for the non-renewal of an employment contract whenever a pregnant worker, worker who has recently given birth or is breastfeeding is concerned.

And also, to post information on the existence of permanent jobs available in the company or establishment.

Rights and duties of the parties in the legal-labour relationship

What legislation regulates the Right and Duties of the Parties in the legal-labour relationship?

Art. 127 to 129 of the CT.

What are the main duties of the employer?

The employer must, namely:

a) Respect and treat the worker with urbanity and probity;

b) Pay punctually the remuneration, which must be fair and adequate to the work;

c) Provide good working conditions, both physically and morally;

d) To contribute to the increase of productivity and employability of the worker, namely by providing him/her with adequate professional training to the development of his/her qualification;

e) To respect the technical autonomy of the worker pursuing an activity whose regulation or professional deontology requires it;

f) To enable the exercise of positions in structures representing the workers;

g) To prevent occupational risks and diseases, considering the protection of the worker's security and health, and to compensate the worker for damages resulting from work accidents;

h) To adopt, regarding security and health at work, the measures that result from law or instrument of collective regulation of work;

i) Provide the worker with adequate information and training to prevent risks of accident or illness;

j) To keep up to date, in each establishment, the register of workers with the name, dates of birth and admission, type of contract, category, promotions, salaries, dates of beginning and end of holidays and absences implying loss of salaries or reduction of days of holidays;

- The employer must post on the company's facilities all information about the legislation regarding the right to parenting.

What are the main duties of the employer within the organisation of the activity?

In organising the activity, the employer must observe the general principle of adapting work to the person, particularly with a view to alleviating monotonous or cadenced work depending on the type of activity, and to security and health requirements, namely with regard to breaks during working time. The employer must also provide the worker with working conditions that facilitate the reconciling of professional activity with family and personal life.

What are the worker's main duties?

Without prejudice to other obligations, the employee must:

a) Respect and treat the employer, hierarchical superiors, work colleagues and people related to the company, with urbanity and probity;

b) Attend the service with assiduity and punctuality;

c) Carry out the work with zeal and diligence;

d) Participate diligently in professional training activities provided by the employer;

e) Comply with the employer's orders and instructions regarding the execution or discipline of the work, as well as security and health at work, which are not contrary to their rights or guarantees;

f) To maintain loyalty to the employer, by not negotiating on their own account or on behalf of others in competition with them, nor by disclosing information relating to their organization, production methods or business;

g) to ensure the preservation and proper use of work-related assets entrusted to it by the employer;

h) To promote or carry out acts aimed at improving the company's productivity;

i) Cooperate for the improvement of safety and health at work, namely through the workers' representatives elected for this purpose;

j) Comply with the prescriptions on safety and health at work that derive from the law or collective work regulation instrument.

What are the worker's main guarantees?

The employer is prohibited:

a) To oppose, in any way, the employee exercising his/her rights, as well as dismissing him/her, imposing another sanction, or treating him/her unfavourably because of such exercise;

b) Unjustifiably obstruct the effective performance of the work;

c) Exercise pressure on the worker to act in order to influence unfavourably his/her or his/her fellow workers' working conditions;

e) To change the worker to a lower category, except in the cases provided for in the CT

f) To transfer the worker to another workplace, except in the cases foreseen in the CT

g) Transfer the worker to a third party, except in the cases provided for in the CT

h) To oblige the worker to acquire goods or services from himself/herself or the person indicated by him/her;

i) To operate, for profit purposes, a canteen, cafeteria, economy or other establishment directly related to the work, to supply goods or services to his/her employees;

j) To end the contract and reinstate the worker, even with his/her agreement, for the purpose of damaging him/her in a right or guarantee arising from his/her seniority.

End of Employment Contract

What legislation regulates this?

Arts. 338, 340, 343, 344 to 350 and 366 of the CT, Law no. 3/2012, of 10 January and art. 6 of Law no. 23/2012, of 25 June.

Can the employer dismiss an employee without just cause?

He cannot. Dismissals without just cause or for political and ideological reasons are prohibited.

What are the forms of termination of employment contract?

The employment contract can be terminated by:

> Expiration;

> Revocation;

> Dismissal for an act attributable to the employee;

> Collective dismissal;

> Dismissal for end of post;

> Dismissal for unsuitability;

> Rescission by the worker;

> Termination by the worker.

The causes of expiration of the employment contract are three:

> When it comes to the termination of the contract;

> In case of supervening, absolute and definitive impossibility for the worker to perform his/her work or for the employer to receive it;

> When the worker retires, due to old age or disability.

How is the expiry of the fixed term contract, including the one related in an extraordinary renewal, under the terms of the Law no. 3/2012, of 10 January or a temporary work contract? What about an uncertain term contract?

A fixed-term contract expires at the end of the term established, if the employer or the employee informs the other party of the intention to terminate it, respectively 15 or 8 days before the term expires, and in writing.

Do employment contracts expire upon the death of the sole proprietor?

In principle, yes. This will only be the case if the deceased's successor continues the activity for which the employee was hired or if there is a transfer of the company or establishment.

Do employment contracts expire with the extinction of the employer?

In principle, yes. Unless there is a transfer of the company or establishment.

Do employment contracts expire with the extinction or closure of the company?

When the company ceases to exist, the contracts expire unless the company or establishment is transferred. Also, with the total and definitive closure of the company the employment contracts expire.

With the necessary adaptations, the procedure to be followed is the same as the collective dismissal.

This shall only be the case in the case of micro-companies, wherefrom, however, the employee must be informed of the end at least 15 days prior to the date of the termination, in the case of employees with a length of service in the company of less than one year; 30 days, in the case of employees with a length of service of one year or more and less than five years; 60 days, in the case of employees with a length of service of five years or more and less than 10 years and 75 days, in the case of employees with a length of service of 10 years or more. In the case of both spouses or cohabiting partners, the notification must be made with the minimum notice prescribed in the grade immediately above that which would apply if only one of them were to be included in the dismissal.

Will the worker be entitled to compensation?

Yes, he is entitled to compensation, for which the company's equity is liable.

See here the compensation simulator for termination of employment: http://www.act.gov.pt/(pt-PT)/CentroInformacao/Simulador/Paginas/default.aspx

In which cases is collective dismissal unlawful?

Collective dismissal is unlawful whenever the employer:

- Has not made the communications and promoted the negotiation legally prerequired;

- Has not observed the deadline for deciding dismissal;

- Has not made available to the dismissed worker, by the end of the notice period, the compensation to which the worker is entitled, as well as the credits overdue or payable as a result of the termination of the employment contract, and has not respected the minimum notice period for the payment of the compensation corresponding to that period.

Can the employee continue working after reaching old-age retirement or the age of 70?

Yes, he/she can. In this case, if the employee remains in service after 30 days of both parties' knowledge of his/her old-age retirement, or if he/she reaches the age of 70, without the retirement contract having expired, his/her contract becomes a fixed-term contract. This contract does not have to be put in writing and is in force for a period of 6 months, renewable for equal and successive periods without a maximum limit. In order to make it expire the employer must give 60 days of notice and the employee 15 days of notice. The expiration of this contract does not determine the payment of any compensation to the employee.

Can the worker and the employer terminate the employment contract by agreement between them?

Yes, they can. But this agreement must be contained in a document signed by both parties, of which each party keeps a copy, containing the date of its conclusion and the date of the beginning of its effects. Whenever, in the agreement, or jointly with it, the parties establish a pecuniary compensation of a global nature for the employee, it shall be presumed that the claims already overdue at the date of termination of the contract or payable as a result of such termination are already included and settled there.

What if the worker regrets of having made this agreement?

The employee may terminate the effects of the revocation agreement, if his signature on it is not recognized by a notary in person, until the seventh day following the date of its execution, by means of a written communication addressed to him. If it is not possible to ensure receipt of this communication, the employee must send it to the employer, by registered letter with acknowledgment of receipt, on the working day following the end of that period. If the employee has been paid pecuniary compensation in fulfilment of the agreement or as a result of the termination of the employment contract, the employee shall make this amount available to the employer, in its whole and in any form.

Does the employer have an obligation to deliver any document to the employee when the employment contract ends?

Yes, the employer is obliged to provide a work certificate indicating the dates of admission and departure, as well as the position(s) that the employee has held. This certificate may only contain other references at the worker's request. In addition to this certificate, the employer is also obliged to provide the worker with other documents intended for official purposes requested by the worker, such as those laid down for social security purposes (e.g.: Declaration of unemployment - Mod. RP 5044 - DGSS)

Is there any duty on the part of the employee when the employment contract ends?

Yes. The employee must immediately return to the employer the work instruments and other objects belonging to him/her. If he does not do so, he will be civilly liable for the damage caused.

In which case is there a unlawful dismissal?

In general, whenever:

- It has been made for political, ideological, ethnic or religious reasons, even if for a different reason;

- The reason for the dismissal is dismissed;

- It is not preceded by the corresponding procedure;

- In the case of a pregnant worker, a worker who has recently given birth or is breastfeeding, or a worker while on initial parental leave, in any of its forms, if the prior opinion of the authority responsible for equal opportunities between men and women is not sought.

And all the cases already mentioned.

Can the worker request a suspension of dismissal?

Yes, through an injunction the employee may request the preventive suspension of the dismissal. He/she must do so within 5 working days from the date of receipt of the notice of dismissal.

How can the worker challenge the dismissal?

The regularity and legality of the dismissal can only be examined by a court in a form filed by the employee.

The employee may oppose to the dismissal, by submitting an application in a proper form, to the competent court, within 60 days, counting from the reception of the dismissal communication or from the date of termination of the contract, if later, except in an action to contest the collective dismissal which must be filed within six months counting from the date of termination of the contract.

In the examining judicial procedure of the dismissal, the employer may only invoke facts and grounds contained in a dismissal decision communicated to the employee.

In cases of judicial review of dismissal for facts imputable to the employee, without prejudice to the assessment of formal defects, the court shall always pronounce on the verification and validity of the grounds invoked for dismissal.

What happens if the court declares the dismissal unlawful?

In this case the employer is ordered to compensate the employee for all damages caused, both pecuniary and non-pecuniary, and to reinstate him/her in his/her job, without prejudice to his/her category and seniority.

In the case of a mere irregularity based on a procedural deficiency due to failure to take the probative steps required by the dismissed worker, if the supporting reasons invoked for the dismissal are declared acceptable, the worker is only entitled to compensation corresponding to half of the amount determined by law in the case of compensation in exchange for reintegration upon request of the worker.

Is the worker entitled to any compensation?

In addition to compensation for all damages caused, both pecuniary and non-pecuniary, the worker is entitled to receive the compensation he has ceased to receive since the dismissal until the court declares the dismissal as unlawful by force of res judicata.

The above-mentioned remunerations shall be deducted from the above mentioned remunerations:

- The amounts that the employee will receive upon termination of the contract and that he would not have received if it had not been for the dismissal;

- The remuneration for the period from dismissal to 30 days before the lawsuit proposition, if this is not proposed within 30 days after the dismissal.

What happens when the employee has received unemployment benefit?

The amount of unemployment benefit received by the employee is deducted from the compensation, and the employer must pay this amount to the social security.

Is reinstatement compulsory?

No. In place of the reintegration, the worker may choose to receive a compensation, until the end of the discussion in a final hearing, and the court will determine the amount, between 15 and 45 days of basic pay and seniority payment for each full year or fraction of seniority, taking

into account the amount of the pay and the degree of illegality resulting from the established order/ratio.

Can the employer oppose to the worker's reintegration?

In certain cases, yes. In the case of a micro-company or an employee who holds an administrative or managerial position, the employer may request the court to exclude the reintegration, based on facts and circumstances that make the employee's return seriously prejudicial and disruptive to the company's operation. This does not apply whenever the unlawful dismissal is based on political, ideological, ethnic or religious grounds, even on different grounds, or whenever the grounds for opposing to the reintegration are culpably created by the employer.

If the court excludes the reinstatement, the employee has the right to a compensation, determined by the court between 30 and 60 days of basic salary and seniority payments for each full year or fraction of seniority, taking into account the amount of the salary and the degree of illegality resulting from the established order/foundation, which may not be less than the amount corresponding to six months of basic salary and seniority payments.

What if the fired worker has a fixed-term contract?

The general rules on contract termination apply to a fixed-term employment contract, with the following amendments; if the dismissal is declared unlawful, the employer is sentenced to:

- The payment of compensation for pecuniary and non-pecuniary damages, which shall not be less than the remuneration that the employee ceased to earn from the dismissal until the fixed or uncertain term of the contract, or until the judicial decision acquires the force of res judicata, if that term occurs later;

- If the term occurs after the judicial decision as a res judicata, to the reinstatement of the employee, without prejudice to his/her category and seniority.

Helpful link: http://www.act.gov.pt