Legal Team Law, Subjects, Instruments of Collective Labour Regulation

Subjects

Employee Representatives

What legislation regulates it?

Articles 404 to 475 of the CT.

Which are the structures for the collective representation of workers?

Workers can be collectively represented by,

- Trade Union Associations - see "trade union associations";
- Workers' Committee and Workers' Sub-Committees - see "Workers' Committee";
- Workers' representative for safety and health at work - see "Workers' representative for safety and health at work";
- Other structures provided for by specific legislation, such as European Works Councils - see "European Works Councils",

What is the purpose of collective worker representation structures?

Organise and pursue collectively the defence of workers' rights and interests.

Are the structures for the collective representation of workers autonomous and independent from the State, political parties and religious institutions or other associations?

Yes, the structures of collective representation of workers are independent and autonomous from the state, political parties and religious institutions or other associations, e.g. employers' associations, and any interference by them in their organisation and management and in their reciprocal financing is prohibited.

Can the collective representation structures of workers be supported by the State?

Yes, the structures of collective representation of workers may be supported by the State as provided by law, and the State may not discriminate against them in relation to any other entities.

Can an agreement or other act be concluded to make the worker's employment subject to the condition of joining or not joining a trade union association or withdrawing from one?

No, the agreement or any act aimed at making the worker's employment subject to the condition of joining or not joining a trade union or of withdrawing from the association in which he is registered is prohibited and considered null and void.

Can an agreement or other act be concluded to dismiss, transfer or in any way injure an employee due to the exercise of rights relating to participation in collective representation structures or to his or her union membership or non-membership?

No, an agreement or any act aimed at dismissing, transferring or in any way harming a worker due to the exercise of rights relating to participation in collective representation structures or to his or her union membership or non-membership shall be prohibited and deemed null and void.

In short, discriminatory acts are prohibited and considered null and void.

What kind of responsibility is incurred by those who engage in acts of a discriminatory nature or who violate trade union autonomy and independence?

They may incur criminal liability:

- The entity that violates the autonomy or independence of the union or practices discriminatory act is punished with a fine of up to 120 days.

- The administrator, director, manager or other worker who occupies a management position that violates the autonomy or independence of the union or is responsible for a discriminatory act is punished with a prison sentence of up to 1 year.

- A union leader or delegate who is convicted of committing an act that violates union autonomy or independence or a discriminatory act loses the specific rights provided in the Labour Code.

Do the workers' representatives enjoy special protection?

Yes. On several levels:

- They benefit from time credit to perform the functions of employee representative.

- The absence of an employee motivated by the performance of the functions in a structure of collective representation of workers of which he is a member, in what exceeds the credit of hours, is considered justified and counts as effective time of service, except in relation to remuneration.

- In the event of a disciplinary procedure, the preventive suspension of a worker who is a member of a collective representation structure shall not prevent the worker from having access to places and performing activities that are included in the exercise of the corresponding functions.

- In the event of a lawsuit to establish disciplinary, civil or criminal liability on the grounds of abusive exercise of rights as a member of the collective representation structure of the workers, the worker concerned shall benefit from the same prerogatives as the one suspended preventively in the context of disciplinary proceedings, i.e., the pending of proceedings shall not prevent the worker from having access to places and performing activities that are included in the exercise of the corresponding functions.

- The dismissal of a worker who is a candidate for union bodies, as well as of one who has exercised or has exercised functions in the same bodies for less than three years, is presumed to have taken place without just cause.

- Such workers may not be transferred from their place of work without their agreement, except when the transfer is the result of a total or partial change in the establishment where they work, which requires prior communication to the structure to which they belong.

- An injunction to suspend the dismissal of an employee who is a member of a collective representation structure shall not be issued unless the court concludes that there is a serious likelihood that the just cause relied upon will be established.

Can the employer transfer the worker member of the collective representation structure from the workplace?

- It is forbidden for an employer to transfer an employee who is a member of a collective representation structure from his or her place of work without his or her agreement, except when this results from the extinction or total or partial change of the establishment where he or she works.

Which obligations does the employee member of the collective representation structure have regarding confidential information he has received in connection with the right to information?

An employee member of the collective representation structure shall be prevented from disclosing to employees or third party's information which he or she has received in the context of the right to information or consultation, with express reference to its confidentiality.

The duty of confidentiality shall continue after the termination of the term of office of a member of the collective representation structure.

Is the employer obliged to provide all information or to make all required enquiries?

No, the employer is not obliged to provide information or carry out consultations the nature of which is such as to be likely to damage or seriously affect the functioning of the undertaking or establishment, (Article 412CT).

The employer's refusal must be grounded in writing on the basis of objective criteria based on management requirements and may be challenged in court by the collective representation structure of the workers in question**.**

Does the normal operation of the undertaking constitute a limit to the exercise of rights or the performance of the functions of an employee who is a member of a collective representation structure?

Yes, the worker who is a member of a collective representation structure in the exercise of his rights or in the performance of his duties, may not hinder the normal functioning of the undertaking.

The abusive exercise of rights by a member of the workers' representative structure is liable to disciplinary, civil or criminal liability in general terms.

Trade Union Associations

May workers form trade union associations?

Yes, workers have the right to form trade union associations at all levels to defend and promote their socio-professional interests.

Trade union associations include trade unions, federations, unions and confederations.

What are the main rights of trade unions?

- To enter into collective bargaining agreements;

- Provide economic and social services to their members;

- To participate in the elaboration of labour legislation;

-To initiate and intervene in judicial proceedings and administrative procedures regarding the interests of its members, according to the law;

- Participate in the restructuring processes of the company, especially regarding training actions or when there are changes in working conditions;

- To establish relations or to join international trade union organizations;

- Participate in the company's restructuring processes.

Does the worker have freedom of choice of the union?

Yes. Workers are guaranteed, without any discrimination, the freedom to join a union that, in the area of their activity, represents the respective category.

The worker cannot be simultaneously affiliated to the same profession or activity in different trade unions.

The worker may withdraw at any time from the union in which he/she is affiliated, upon written notice sent at least 30 days in advance.

Can the non-payment of dues affect the issue of a document essential to the worker's professional activity?

No. The non-payment of dues may not affect the transfer of any documents essential to the worker's professional activity, when the issue of such documents is the responsibility of the trade unions.

What is the employer's obligation in the dues collection and delivery system?

The employer has the obligation to deduct the value of the union dues from the worker's salary, delivering this amount to the union in which he is registered by the 15th of the following month.

The system of collection and delivery of union dues may result from:

- An instrument of collective regulation of work being necessary a declaration of the worker authorizing such deduction;

- Express request of the worker addressed to the employer which constitutes an unequivocal manifestation of his will to have the union dues deducted from the retribution.

This system of collection and delivery of union dues shall remain in force if the worker does not revoke his declaration, sending a copy to the respective Union of the declaration of authorization or of the request and collection, as well as the respective revocation.

Where is the union activity carried out?

Workers and trade unions have the right to develop union activity within the company, namely through union delegates, union committees and inter-union committees.

How can the workers get together?

Workers may meet at the workplace, outside of working hours, by calling a third or 50 of the workers in their establishment, or the trade union or inter-union committee, without prejudice to normal operation, in the case of shift work or overtime.

They may meet during working hours up to a maximum period of 15 hours per year, which shall count as actual working time, if they ensure the operation of services of an urgent and essential nature.

When are employers obliged to grant facilities to trade union associations?

In companies or establishments with 150 or more employees, the employer is obliged to make available to the shop stewards, if they require this permanently, place situated within the company, or in its vicinity, and that it is appropriate for the performance of their duties.

In undertakings or establishments with less than 150 employees, the employer shall be obliged to make available to the shop stewards, whenever they so request, an appropriate place for the exercise of their functions.

What are the rights to display and trade union information?

Trade union delegates have the right to post, within the company and in an appropriate place, for the purpose reserved by the employer, texts, notices, communications or information concerning the trade union life and socio-professional interests of the workers, as well as to distribute them, but without prejudice, in any case, to the normal functioning of the company.

Trade union delegates shall have the right to information and consultation in relation to matters within their duties.

What's the credit for hours that shop stewards enjoy?

For the exercise of their duties, each union delegate has a credit of 5 hours per month or, in the case of a delegate who is part of the inter-union commission, a credit of 8 hours per month.

Trade Union Committees

In a company, how can workers organise to defend their rights and promote their interests?

In each company, employees may establish works councils to defend their interests and exercise the rights provided for by law.

In companies with geographically dispersed establishments, their employees may set up workers' sub-committees.

They may also set up coordinating committees.

How many workers can be members of the works council?

The number of works council members may not exceed the following:

- Companies with less than 50 employees - 2 members
- Companies with 50 or more employees and less than 200 - 3 members
- Companies with 201 to 500 employees - 3 to 5 members
- Companies with 501 to 1000 employees - 5 to 7 members
- Companies with more than 1000 employees - 7 to 11 members

How many workers can be coordinating committee members?

The number of coordinating committee members may not exceed the number of works committees it coordinates, nor the maximum of 11 members.

How long is the term of office of a member of the workers' committee, coordinating committee or workers' sub-committee?

The term of office of a member of a workers' committee, coordinating committee or workers' sub-committee may not exceed four years, and successive terms of office are permitted.

Can the works council call general meetings?

Yes, the works council can call a general meeting of workers to be held in the workplace.

How should the meetings be scheduled?

They should be scheduled at workplaces outside working hours observed by most workers and without prejudice to the normal execution of the activity in the case of shift work or overtime.

General meetings of workers may also be held in the workplace during working hours observed by most workers for a maximum of 15 hours/year, provided that urgent and essential services are ensured.

The committee must give at least 48 hours' notice to the employer of the date, time, expected number of participants and the place where it intends the meeting to take place. It shall also post the notice of the meeting;

If the meeting is to be held during working hours, the committee must submit a proposal to provide services of an urgent and essential nature.

In this case, what rights do workers' committees have?

The works council shall have the right to adequate facilities, material and technical means necessary for the performance of its duties and to distribute information relating to the interests of employees and to display such information in an appropriate place.

What monthly credit hours do commission members have?

Subcommittee member - eight hours;

Committee member - twenty-five hours;

Coordinating committee member - twenty hours.

In the case of a micro-enterprise, the hour credit referred to is reduced by half.

Can an employee who is a member of more than one representative structure accumulate the corresponding time credits?

No, workers who are members of more than one representative structure may not cumulate the corresponding time credits.

Do the committee and the subcommittee have the right to know information, to be consulted and to participate in the company's activity?

Yes, the committee and the subcommittee have the right to the information necessary for the exercise of their function, such as, for example, to know the general plans of the activity and budget; the organization of production; the fiscal and parafiscal charges of the company; the forecast, volume and sales administration; etc.

The employer must request the commission's opinion on:

- Modification of job classification and promotion criteria for workers;

- Change of place of activity of the company or establishment;

- Any measure that results or may result in a decrease in the number of workers, worsening of working conditions or changes in the organization;

- Dissolution or request for declaration of insolvency of the company.

The committee participates in the management control of the company by assessing and issuing opinions on the company's budget; promoting the appropriate use of resources;

making suggestions, recommendations or criticisms aimed at the qualification of workers and improving working conditions.

Employers' Associations

How can employers defend and promote their business interests?

Employers have the right to form associations to defend and promote their business interests.

In exercising the right of association, employers are guaranteed, without any discrimination, the freedom to join an association of employers who, in the area of their activity, may represent them.

Employers' associations include federations, unions and confederations.

What are the main rights of employers' associations?

To conclude collective labour agreements

- Provide services to its associates

- Participate in the drafting of labour legislation

- Initiate and intervene in judicial proceedings and administrative procedures regarding the interests of its associates, in accordance with the law

- Establish relationships or affiliate with international employers' organizations.

Employers' associations may not engage in the production or marketing of goods or services or in any way intervene in the market, except to provide services to their members.

What is considered employment legislation?

It is labour law which regulates the rights and obligations of workers and employers as such and their organisations. Legislation regulating the following matters is considered labour legislation:

- Employment contract;

- Collective labour law;

- Safety, hygiene and health at work;

- Accidents at work and occupational diseases;

- Professional training;

- Work process;

- Approval process for ratification of International Labour Organisation conventions.

Single Report

What legislation regulates it?

Article 32 of Law No. 105/2009, of 14 September and Ordinance no. 55/2010, of 21 January, amended by Ordinance 108-A. of 14 March 14 2011.

Who is covered by the obligation to submit the single report?

Employers covered by the Labour Code and specific legislation deriving from it.

How should the single report be delivered?

The single report should be delivered through an electronic form, to be completed on the website available for this purpose.

See the most frequently asked questions about the single report at http://www.gep.msess.gov.pt/index.php.

Instruments for collective labour regulation

Can the regime of the legally established fixed-term contract be removed by virtue of the collective labour regulation instrument (collective labour agreement, adhesion agreement, arbitration decision in voluntary arbitration process, collective contract, collective agreement and, company agreement)?

As a rule, it is true, but it cannot occur:

- the admissibility of the fixed-term contractor to seek the 1st job, in a situation of long-term unemployment or other situation foreseen in employment legislation.

- the maximum duration of the fixed-term contract.

- maximum duration of indefinite fixed-term contract.

EXAMPLE

The Collective Bargaining Agreement (CCT) between the Association of Construction and Public Works and Services Companies (AECOPS) and the Union of Construction, Public Works and Services (SETACCOP) (published in the Bulletin of Labour and Employment (BTE) 17/2010, of 8/5, clause), accepts the possibility that the fixed-term contract is justified only with the indication of the execution, direction and supervision of civil construction works and public works (and therefore does not materialize the concrete facts inherent to the celebration) as long as the employee does not remain in the same work for more than eight consecutive months.

What is the legislation that regulates the Collective Bargaining Instruments?

Art. 476 to 503 of the CT

Where can I consult the collective regulation instruments?

At http://www.dgert.mtss.gov.pt/Trabalho/pesquisa/menu_convencoes.php

Which matters should be regulated by collective agreements?

Collective agreements should regulate in particular:

-the relations between the parties to the agreement, in particular with regard to the verification of compliance with the agreement and the means of resolving conflicts arising from its application and revision;

-professional training actions, bearing in mind the needs of the worker and the employer;

-the working conditions related to safety, hygiene and health;

-the temporal scope, namely survival and the period of denunciation;

-the reciprocal rights and duties of the workers and employers;

-the procedures for resolving disputes arising from employment contracts, establishing mechanisms for conciliation, mediation and arbitration;

-the definition of minimum services and the means necessary to ensure them in the event of a strike;

- the effects of the agreement in the event of termination with regard to the workers covered until the entry into force of a new IRCT.

When can the IRCT be removed by employment contract?

The provisions of collective bargaining instruments can only be removed by an individual employment contract that establishes more favourable conditions for the employee and if the provisions do not result to the contrary.

How are the instruments of collective labour regulation advertised?

The employer must post the applicable collective bargaining agreements in the company in an appropriate place.

When do the instruments of collective labour regulation come into force?

Collective labour regulation instruments, as well as revocation, are published in the Bulletin of Labour and Employment and come into force, after their publication, in the same terms as the laws.

The regulations of extension and ordinance of working conditions are published in the Official Gazette, on which its entry into force depends.

What is the temporal validity of the collective bargaining agreement?

The collective agreement is in force for as long as it is in force and is renewed for as long as it is in force.

If no time limit is set, it shall be deemed to be in force for a period of one year.

Can the collective agreement be denounced by either party?

The collective agreement may be terminated by either party by written communication addressed to the other party, provided it is accompanied by a negotiating proposal.

If a new convention emerges on the same subject, which one will apply?

The subsequent convention repeals the previous convention in its entirety, except in matters expressly reserved by the parties. The mere succession of collective agreements cannot be invoked to lower the overall level of protection of workers. The rights deriving from a collective agreement may only be reduced by a new agreement whose text contains, in express terms, its most favourable overall character. In this case, the new convention shall prejudice the rights deriving from a previous convention, unless the parties expressly provide for them in the new convention.

Who is bound by the collective bargaining agreement?

The collective labour agreement obliges the employers who sign it and those registered with the signatory employers' associations, as well as the workers at their service who are members of the granting trade union associations.

It also covers workers and employers who are affiliated to the signatory associations at the time the negotiation process begins, as well as those who are affiliated to them during the period of validity of the same conventions.

If workers, employers or their associations, or grantees, join a collective agreement, this applies:

-until the end of the period expressly stated in the collective agreement, or

-until the new amendment enters into force or,

-in the event that the collective agreement is not in force for at least one year.

Is it possible to extend the scope of a collective agreement?

The scope of application defined in collective agreements or arbitration awards may be extended, after its entry into force, by extension regulations.

It is up to the ministry responsible for the labour area to issue extension regulations.

The competence to issue extension regulations shall be joint with that of the minister responsible for the sector of activity concerned when the opposition is based on economic grounds.

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