

Working Student, Temporary Work, Part-time Work, Child Work, Domestic Work, Private Placement Agencies

What is the legislation governing worker/student status?

Art. 89 no. 2, 90 no. 1, 2, 3, 6, 7, 8, 91 no. 1 b), 92 no. 2, 95 no. 3 and 4 of the TC and Art. 12 of Law no. 105/2009, of 14 September.

Who is considered a working student?

Anyone who pursues out an activity under the authority and direction of a third person and attends any level of school education, including post-graduate, master's or doctorate programmes at an educational institution, or professional training course or temporary youth employment program of six months or longer.

Does the working student regime apply to the legal relationship of public employment?

Yes, according to article 8 B of Law no. 59/2008.

How can one benefit from the working student status?

In order to benefit from the regime established by law, the worker/student must: Before the employer:

- Prove his/her student status;
- Inform the timetable of the educational activities that must be attended; and,
- At the end of each school year, prove his/her school performance.

Before the educational establishment, he/she must prove:

- His/her status as a worker, by any legally admissible means, such as proof of his/her social security registration, salary receipt;
- That he/she is self-employed, a student attending a vocational training pathway or a temporary youth employment programme, provided that its duration is of six months or more;

- That he/she is a working student and is in the meantime involuntarily unemployed, registered in an employment centre.

What are the main rights arising from the worker-student regime?

The working student enjoys a set of rights that give him/her special protection in relation to other workers, namely in the following matters - organization of working time, conditions of overtime work, holidays, absences and leave.

What rules should the working hours of the working student follow?

The working hours of the working student should, whenever possible, be adjusted to allow them to attend classes and travel to the educational establishment.

What if it is not possible to draw up an adjusted working schedule for the working student?

When it is not possible to apply an adjusted timetable, the working student has the right to a time off from work to attend classes, without loss of any rights, counting as effective service, if the his/her school timetable so requires. The working student is not obliged to work in an adaptable regime, time bank or concentrated timetable, when this coincides with the school timetable or with an evaluation test.

How is it determined the number of hours of time off for class attendance?

Time off for classes depends on the working student's normal weekly working period and may be used in a single or several times (according to his/her choice) as follows:

- Three hours a week of leave - whenever the normal weekly working period is 20 hours or more but inferior to 30 hours;
- Four hours a week of leave - whenever the normal weekly working time is 30 hours or more but inferior to 34 hours;

- Five hours a week of time off - whenever the normal weekly working time is thirty-four hours or more but inferior to thirty-eight hour;
- Six hours a week - whenever the normal weekly working time is thirty-eight hours or more.

Is the working student obliged to work overtime?

The working student is not obliged to work overtime, except for reasons of force majeure. In this case, in addition to the due wage, he/she is entitled to compensatory rest lasting half the number of hours worked.

What are the working student's rights regards assessment?

The working student can justifiably be absent up to two days for each assessment test, the first of them being the day of the test and the other the previous day, including weekly rest days and holidays.

What is considered assessment test?

An assessment test is considered to be the exam or other test, whether written or oral, or the presentation of a work, when it replaces or complements test and provided that it determines educational achievement.

Does the law limit the number of days of absence for assessment tests?

Yes. The days of absence should not exceed four days per subject in each school year and may only be taken in two school years for each subject.

The absences given per working student are also considered justified in the strict measure of the displacements necessary to provide an assessment test; up to 10 absences in each school year are paid, regardless of the number of subjects.

What are the working student's rights as regards booking holidays?

The working student has the right to schedule the holiday period according to his/her school needs, being able to take 15 days of interpolated holidays, as long as this is compatible with the imperative requirements of the company's functioning.

Is the working student entitled to any special leave?

In each calendar year, the working student is entitled, to unpaid leave of 10 consecutive or interpolated working days.

Is the maintenance of working student status conditioned by any circumstance?

Maintaining working student status depends on school performance in the previous school year.

How is working student status lost?

The right to adjusted working hours or time off for school attendance, the scheduling of holidays according to school needs or unpaid leave end whenever the working student is not successful in school in the year in which he/she benefits from this right.

The remaining rights granted to the worker/student cease when he/she fails in two consecutive years or three interpolated years.

Can the rights of the working student cease immediately?

The rights of the working student cease immediately in case of false statements concerning the facts on which the status is granted or of facts that entitle rights, as well as when these are used for other purposes.

When can the working student exercise his/her rights again if these are ended?

In the school year following that in which the rights ceased, the working student may be granted the exercise of these rights again, but this situation cannot occur more than twice.

Temporary Work

What legislation regulates this?

Arts. 172 to 192 of the TC; Decree-Law no. 260/2009, of 25 September.

What is temporary work?

A triangular work relationship in which an employer (temporary work company) hires, remunerates and exercises disciplinary power over a worker (temporary worker), placing him/her to perform his/her activity in another entity (user) that receives him/her and exercises, by delegation, the powers of authority and direction.

What is a Temporary Work Company (ETT)?

A natural or legal person whose activity is the temporary assignment to users of the activity of workers who, for that purpose, admits and rewards them.

Who is a Temporary Worker (TT)?

Person who signs with a TTE a temporary employment contract or an of indefinite duration employment contract for temporary assignment.

What is a user?

Natural or legal person, with or without profit, who occupies, under his/her authority and direction, workers assigned by an ETT.

What is a Temporary Employment Contract (CTT)?

Temporary employment contract signed between an ETT and a worker, whereby the latter undertakes, in return for remuneration from the ETT, to provide his/her activity to users, while remaining bound to the ETT.

What is meant by an employment contract of indefinite duration for temporary assignment (CTTI)?

Indefinite term employment contract signed between an ETT and an employee, whereby the latter undertakes, in return for remuneration from the ETT, to temporarily render his/her activity to users, while remaining bound to the ETT.

What is meant by a Temporary Employment Contract (CUTT)?

Contract for the provision of services for a fixed term between a user and an ETT, whereby the ETT is obliged, in return for payment, to assign one or more temporary workers to the ETT.

What is necessary for the exercise of the activity of temporary assignment of workers?

It is necessary to have a license included in a numbered permit, the attribution of which depends cumulatively on the suitability, adequate organizational structure, regularized situation before the tax administration and the social security, the lodge of a deposit and the name of the natural or legal person with the designation "temporary work".

How to obtain the licence for the exercise of the temporary assignment of workers?

The interested party applies for a licence to exercise the temporary assignment of workers for occupation by users, namely by electronic means, in any organisational unit of the public employment service (IEFP), which should analyse it.

What deposit must be lodged by the person concerned in order to exercise the activity of temporary transfer of workers?

The interested party must constitute, in favour of the State Employment Service (IEFP), a deposit for the exercise of the temporary employment activity, in the amount corresponding to 200 months of the minimum monthly wage guaranteed, plus the amount of the single social tax levied on that amount.

This deposit must be updated annually by reference to the amount of the minimum monthly guaranteed salary established for each year, up to 31 January of each year or up to 30 days after publication of the diploma revising the minimum monthly guaranteed salary.

What are the benefits guaranteed by the deposit for the exercise of the temporary work activity?

It guarantees the payment of:

- Credit of the temporary worker for payment, indemnity or compensation due by the employer at the end of the employment contract and other cash benefits, in arrears for a period of more than 15 days;
- Social security contributions, in arrears for a period exceeding 30 days.

Compulsory communications from the ETT:

> To the IEFP (through the competent local organisational unit)

i) Deadline: until 15 January and 15 July (by electronic means)

The complete list of workers, both national and foreign, assigned in the previous semester, with name, gender, age, ID number or passport, social security number, beginning and duration of the contract, place of work, contracted activity, basic salary and classification of the user's economic activity (CAE) and postal code;

> The department responsible for consular affairs and Portuguese communities of the Ministry responsible for foreign affairs (DGACCP);

Deadline: until 15 January and 15 July (by electronic means)

The list of workers assigned to render services abroad, in the previous semester, with name, gender, age, social security number, beginning and duration of the contract, place of work, work activity, contracted activity, basic salary, departure and entry dates in national territory, identification and classification of the economic activity (CAE) and location and country of the contract's execution;

> To the Authority for Working Conditions (ACT)

Deadline: five days in advance

The identity of the workers to be transferred abroad, the user, the place of work, the previewed beginning and end of the displacement, as well as the constitution of the specific deposit and the guarantee of medical, medicine and hospital services and the repatriation of the workers.

To what obligations is a TTE subject to when it signs contracts for the use of workers abroad?

- A specific deposit in favour of the State Employment Service of 10% of the wages corresponding to 2 months of wages or the value of wages for the previewed duration of the contracts and at least, if the contract endures less than 2 months, plus the cost of repatriation trips;
- To guarantee the workers medical, pharmaceutical and hospital services whenever they do not receive the same services in the host country, through insurance that guarantees the payment of expenses of at least six months' salary;
- To ensure the repatriation of the workers, at the end of the work that is the object of the contract, after the end of the employment contract or, in the case of lack of punctual payment of the salary.

What contracts must exist for temporary work?

- Temporary work contracts with the user, which must be signed for a fixed or uncertain term;
- Temporary employment contract with the temporary worker, which must be signed for a fixed or uncertain term;

- Indefinite term contract of employment for temporary assignment.

How should these contracts be signed?

In writing, in duplicate, signed by the parties, one of the copies of the contract being given to the employee.

Under what circumstances can CUTT be signed?

- Direct or indirect replacement of a worker who is absent in the following situations: for any reason, he or she is temporarily prevented from working; on whom a procedure on his/her the dismissal legality is pending in court; in a situation of unpaid leave and replacement of a full-time worker who starts working part-time for a certain period;
- Seasonal or other activities whose annual production cycle is irregular, due to the structural nature of the its market, including the supply of raw materials;
- Exceptional increase in the company's activity;
- Execution of a precisely defined, non-durable, one-time task or service determined;
- Job vacancy when the recruitment process is underway to fill it;
- For intermittent labour needs:
determined by fluctuation of the activity during days or parts of the day, provided that the use does not exceed weekly half of the normal working period practiced in the user and for the provision of direct family support, of social character, during days or parts of the day;
- Carrying out a temporary project, such as setting up or restructuring a company or establishment, assembly or industrial repair.

What are the mandatory elements that must be included in a CUTT?

- Identification, signatures, domicile or head office of the parties, their tax and social security numbers, as well as, for the ETT, the number and date of its licence;

- Justification of the user's recourse to temporary work;
- Characterisation of the job to be filled, of the its occupational risks and, if applicable, of the high risks or related to a particularly dangerous job, the professional qualification required, as well as the modality adopted by the user for the occupational security and health services and the their contact;
- Work place and normal working period;
- The employee's salary for the user who performs the same duties;
- Payment due by the user to ETT;
- Beginning and duration, certain or uncertain, of the contract;
- Date of conclusion of the contract.

What are the consequences if the contract for use does not contain the elements listed in the previous answer?

If the contract is not in writing and does not state the reason for the use of temporary work, the contract is considered to be open-ended and binding on the user. However, the employee may, within 30 days after beginning the activity, choose to pay a compensation under the general terms of the Labour Code.

What must the user demand from the ETT at the moment of signing the CUTT?

The user must demand that a copy of the work accident insurance policy that covers the temporary worker and the activity to be performed by him be attached to the contract of use of temporary work.

What is the maximum duration of a CUTT?

As a rule, the duration of the contract, including renewals, may not exceed the duration of the justifiable cause or the limit of 2 years. In cases of filling vacant positions while the recruitment

process is underway, it cannot exceed 6 months; in cases of exceptional addition of the company's activity, it cannot exceed 12 months.

What happens if the CUTT ceases and the temporary worker continues at the user's service?

After 10 days have elapsed since the termination of the CUTT, the work is considered as being provided to the user based on an employment contract of indefinite duration.

Once the maximum duration of CUTT has been reached, can the user sign new contracts for the same job?

No. The use of temporary workers or the employment of fixed-term workers may only take place after a period equal to one third of the duration of the said contract, including renewals.

Exceptions:

- New absence of the replaced worker when the CUTT has been concluded for his replacement and,
- Exceptional increase in the need for seasonal labour.

Under what circumstances may CTT be concluded for a term (certain or uncertain)?

Only in the situations foreseen for the conclusion of the contract of use.

What are the mandatory elements of a fixed term CTT (certain or uncertain)?

- Identification, signatures, domicile or registered office of the parties, number and date of the licence of the ETT;
- Indication of the reasons that justify the conclusion of the contract, with concrete mention of the facts that integrate them;
- Activity contracted;
- Place and normal period of work;

- Retribution;
- Starting date of the work;
- Term of the contract;
- Date of signing.

What are the consequences if the CTT does not contain the compulsory elements?

If the contract is not reduced to writing and in case of omission or insufficiency of indication of the reason justifying the conclusion of the contract, the work is considered as being provided by the employee to the ETT under a permanent contract of employment. However, the employee may, within 30 days after the beginning of the activity, opt for compensation under the general terms of the Labour Code.

If the term of the contract is not mentioned, it is considered as being signed for a period of one month and its renewal is not allowed.

What is the maximum duration of a CTT for a fixed and uncertain term?

The duration of the CTT cannot exceed that of the contract of use.

As a rule, the duration of the CTT for a fixed term lasts for the time agreed, while the CTT for an uncertain term lasts for the time necessary to satisfy the user's temporary needs, which may not exceed 2 years, including renewals. In cases of vacant positions while the recruitment process is underway, they may not exceed 6 months; and in cases of exceptional increase in the company's activity, they may not exceed 12 months.

Can a CTT be signed for a period lesser than 6 months?

Yes. The law does not establish a minimum duration limit for the temporary employment contract.

Under what conditions does the CTT expire?

The fixed term CTT expires at the end of the stipulated period or of its renewal, provided that the employer or the employee informs the other party of his/her wish to put an end to it, in writing, respectively, 15 or 8 days before the expiry of the contract.

In the case of CTT for an uncertain term, the employer informs the employee of its end, at least 7 days in advance (duration of the contract up to 6 months), 30 days (contract of 6 months up to 2 years) and 60 days (over 2 years).

What are the mandatory elements that must be included in an employment contract for an indefinite period for temporary assignment?

- Identification, signatures, domicile or headquarters of the parties and number and date of the ETT license;
- Express statement that the employee accepts that the ETT will temporarily assign him to users;
- Activity contracted or generic description of the functions to be exercised and the appropriate professional qualification, as well as the geographical area in which the worker is assigned to exercise functions;
- Minimum remuneration during the assignments that occur (never lower than the minimum monthly remuneration guaranteed or, the more favourable to what is foreseen in a collective labour regulation instrument - IRCT).

What are the consequences if an employment contract of indefinite duration for temporary assignment does not contain the elements indicated in the previous answer?

If the contract is not written down or in the case of omission or insufficiency of an express statement of acceptance on the part of the employee that the ETT will temporarily assign him to users and/or an indication of the activity contracted or a general description of the functions to be performed and the appropriate professional qualification, as well as the geographical area in which the employee is assigned to perform his/her functions, the work is considered as being performed by the employee to the ETT under a contract of indefinite duration.

What are the employee's rights during the period in which he/she is not in temporary assignment situation?

During the period in which the worker is not in a assignment situation, he/she may perform his/her activity to the ETT. In such case he/she will has the right to the remuneration corresponding to the activity performed, otherwise (if he/she does not perform any activity) he/she will have the right to the compensation provided for in a collective labour regulation instrument (IRCT), or in the amount of two thirds of the last remuneration, or the minimum monthly guaranteed remuneration, whichever is more favourable.

What is the working regime to which the worker is subject?

The worker is subject to the work regime applicable to the user as regards the mode, place, duration and suspension of work, safety and health at work and access to their social equipment.

The user must draw up the working hours of the worker assigned and schedule the holiday periods, whenever these are taken at the worker's service.

However, the disciplinary power lies exclusively with the ETT.

What are the user's obligations to the ETT in terms of Security and Health at Work (SST)?

Before the placement of the temporary worker, the user must inform the ETT in writing:

- The results of the assessment of the risks to the temporary worker's security and health inherent to the workplace to which he will be assigned and, in case of high risks related to a particularly dangerous workplace, the need for appropriate professional qualification and special medical supervision;
- Instructions on the measures to be taken in the event of serious and imminent danger;
- first aid, fire-fighting and evacuation measures for workers in the event of an accident, as well as the workers or services responsible for putting them into

- How the occupational physician or the ETT's health and safety technician can access the jobs to be occupied.

What information should the ETT provide to the temporary worker on SST?

In writing and before its assignment, all the information contained in the previous answer.

Who should promote health examinations?

The ETT is responsible for the admission health exams, periodically and occasionally.

Which workers should benefit from special health surveillance?

The workers exposed to high risks related to particularly dangerous jobs are the responsibility of the user.

Can workers perform especially dangerous jobs?

No, unless that is their professional qualification.

Is the temporary worker entitled to vocational training?

Yes, promoted by ETT, whenever the duration of the contract, including renewals, or the sum of successive CTTs in a calendar year, is greater than three months. This professional training must have a duration of at least 8 hours.

The user must provide the temporary worker with sufficient training appropriate to the job, taking into account his/her professional qualification and experience.

What compensation is the temporary worker entitled to?

To the minimum remuneration of IRCT applicable to the ETT or to the user that corresponds to his functions, or to the one practiced by him for equal work or work of equal value, whichever is more favourable.

The worker is also entitled, in proportion to the duration of the temporary work contract, to holidays, holiday and Christmas subsidy, as well as other regular and periodic benefits to which the user's workers are entitled for equal work or work of equal value.

Who is responsible for fulfilling social obligations and transferring responsibility for accidents at work?

To the ETT.

Can a temporary worker with remuneration in arrears claim his payment through the deposit?

Yes, the employee must claim the credits within 30 days from the end of the employment contract, as well as inform the IEFP of this fact, for payment through the deposit.

The lack of in time payment of the employee's credit that lasts more than 15 days must be declared, at the employer's request, within five days or, in case of refusal, by the ACT, within 10 days.

The declaration must specify the nature, the amount and the period to which the credit relates.

The worker may request payment of the corresponding credit from the IEFP by means of a deposit, within 30 days following the date of its due date, by submitting the above mentioned declaration.

If the declaration issued by ACT is presented, the IEFP notifies the temporary employment company that the worker has requested the payment of the credit on account of the security and that this is made if the latter does not prove payment within eight days.

In the case that the deposit is insufficient in relation to the credits for which payment is requested, this is done according to the following criteria of precedence:

I. Employees' salary credits for the last 30 days of activity, with a limit corresponding to the amount of three times the minimum monthly salary guaranteed;

II. Other pay credits in order of request;

III. Indemnities and compensation for termination of the temporary employment contract;

IV. Other costs with workers.

- It is forbidden for ETT to charge candidates for temporary employment, directly or indirectly, any amounts in cash or in kind.

- ETT may not demand any amount from the temporary worker in any way, namely for guidance or vocational training services.

- Contracts of use, temporary work and employment for an indefinite period of time for temporary assignment, concluded by ETTs who do not hold a licence to exercise their activity, are null and void. If this happens, the work is considered to be provided to the ETT under an employment contract of indefinite duration.

- The contract entered into between temporary employment agencies, under which one assigns a worker to the other for subsequent assignment to a third party, is null and void.

If this is the case, the work is considered to be provided to the company that hires the employee under an employment contract of indefinite duration. However, the employee may, within 30 days after the beginning of the activity, opt for compensation under the general terms of the Labour Code.

- If the employee is assigned to a user by a licensed TTE without having entered into a temporary employment contract or open-ended employment contract for temporary assignment, the work is considered to be provided by the employee to this company under an open-ended employment contract. However, the employee may, within 30 days after the beginning of the activity, opt for compensation under the general terms of the Labour Code.

- The IEFP keeps the national register of temporary employment companies up to date and makes it available electronically for public access, which identifies the licensed companies and those in which there is a suspension of the activity, expiration or termination of the license or application of an accessory sanction, stating, for each one, of its full name, domicile or registered office and license number.

Part-time work

What legislation regulates it?

Art. 150 to 156 of the CT.

What is meant by part-time work?

A part-time contract is defined as a period of part-time work when the normal weekly working period is less than that of full-time work in a comparable situation. Collective regulation instruments may establish the maximum percentage limit of full-time determining the qualification of part-time.

Is the part-time contract subject to any special formality?

The part-time employment contract must be in writing; if not, it is presumed to be signed on a full-time basis.

The part-time contract must state the normal period of work, per day and week, as compared to full-time work. If the part-time contract lacks an indication of the normal daily and weekly period of work, the contract is presumed to be signed on a full-time basis.

How is part-time work paid?

As a rule, part-time workers should not be treated less favourably than full-time workers in a comparable situation and are entitled to remuneration calculated according to the expected remuneration for full-time work in proportion to their normal working hours. Part-time workers are also entitled to full meal allowance if the daily working period is five hours or more or paid proportionally if the daily working period is shorter.

Is the hiring of part-time workers irreversible?

No. The part-timer may, by written agreement with the employer, spend full time, just as the full-timer may spend part-time. This modification may be permanent or for a certain period. The employee may also revoke the agreement by written communication to the employer up to the seventh day after the conclusion, unless the modification agreement has been dated and the signatures have been notarially recognized in person.

Children's Work

What legislation regulates it?

Art. 66 to 83 of the TC and Law no. 105/2009, of 14 September 2009.

Under which conditions may the minor be admitted to work?

Only minors having reached the minimum age for admission (16 years of age), who have completed compulsory schooling or are enrolled in and attending secondary education and have physical and mental abilities appropriate to the job, may be admitted to work.

Anyone who disregards this principle is guilty of a crime.

The employer must provide the minor with working conditions that are appropriate to his/her age and development and that protect his/her safety, health, physical, mental and moral development, education and training, in particular preventing any risk resulting from his/her lack of experience or unawareness of existing or potential risks.

The employer shall provide the youngest person with working conditions appropriate to his/her age and development and protecting security, health, physical, mental and moral development, education and training, in particular by preventing any risk resulting from his/her lack of experience or unawareness of existing or potential risks.

Can an under-16 be admitted to work?

He or she may, provided that he or she has completed compulsory schooling or is enrolled in and attending secondary school and provides light work which, by the nature of the tasks or

the specific conditions in which they are carried out, is not likely to harm his or her physical integrity, safety or health, attendance at school, participation in orientation or training programmes and ability to benefit from instruction given, or his or her physical, mental, moral, intellectual and cultural development.

The employer must notify the ACT of the admission of minors with these characteristics within eight days.

What is light work?

Light work is that which consists of simple and defined tasks which do not require physical or mental effort, and which may endanger the child's physical integrity, health and physical, mental and moral development.

Is the employer obliged to provide vocational training to the minor?

Yes, the employer must provide vocational training for the minor in his/her service, seeking the cooperation of the competent bodies where he/she does not have the means to do it. The minor must also be guaranteed the right to unpaid leave to attend a vocational training course conferring school qualifications or an education and training course for young people, without prejudice to the rights of the student worker.

What security and health protection does the minor have?

The employer must submit the minor to health exams, namely:

- a) Health examination that certifies the suitability of the minor's physical and mental capacity to perform the duties, to be carried out before the start of work, or within 15 days after admission if this is urgent and with the consent of the minor's legal representatives;
- b) Annual health examination, so that the exercise of the professional activity does not result in damage to his health and to his physical and psychic development.

Work which, due to its nature or the conditions under which it is performed, is harmful to the physical, psychological and moral development of minors is prohibited or conditioned by specific legislation. Failure to comply with this legal requirement is a crime.

Are there forbidden activities, processes and working conditions for minors?

Yes, as stated in articles 61 to 72 of Law no. 102/2009 of 10 September, namely:

What activities are forbidden to minors?

Activities:

- a) Manufacturing of auramine;
- b) Industrial slaughter of animals.

Physical agents

Activities in which there is a risk of exposure to the following physical agents are prohibited to the minor:

- a) Ionizing radiation;
- (b) high-pressure atmospheres, particularly in hyperbaric and underwater diving chambers;
- c) Contact with high voltage electrical energy.

Biological agents:

Activities in which there is a risk of exposure to biological agents classified in risk groups 3 and 4 are prohibited for the minor, in accordance with the legislation on minimum requirements for the protection of the health and security of workers from the risks of exposure to biological agents at work.

Chemical agents, substances and preparations:

1 - Activities in which there is a risk of exposure to the following chemical agents are prohibited to the minor:

- a) Asbestos;

b) Lead and its ionic compounds, in so far as these agents are liable to be absorbed by the human body;

c) Chlorpromazine;

d) Toluene and xylene;

e) Polycyclic aromatic hydrocarbons present in soot, tar or coal pitch;

f) Dust, smoke or mists produced during the calcination and electrorefining of nickel mattes.

2 - Activities in which there is a risk of exposure to substances and preparations which, according to the applicable legislation on classification, packaging and labelling of dangerous substances and preparations, are classified as toxic (T), very toxic (T+), corrosive (C) or explosive (E) are prohibited.

3 - Activities in which there is a risk of exposure to substances and preparations which, according to the applicable legislation on the classification, packaging and labelling of dangerous substances and preparations, are classified as harmful (Xn) and qualified by one or more of the following risk warnings are prohibited:

a) 'R 39 - danger of very serious irreversible effects';

b) 'R 40 - possibility of irreversible effects';

c) "R 42 - may cause sensitisation by inhalation";

d) 'R 43 - may cause sensitisation by skin contact';

e) 'R 45 - may cause cancer';

f) 'R46 - may cause heritable genetic damage';

g) 'R 48 - risks of serious damage to health in case of prolonged exposure";

h) "R 60 - may impair fertility";

i) 'R 61 - risk of harm to the unborn child'.

4 - Activities in which there is a risk of exposure to substances and preparations which, according to the applicable legislation on the classification, packaging and labelling of dangerous substances and preparations, are classified as irritant (Xi) and qualified by one or more of the following risk warnings are prohibited to the minor:

- a) 'R 12 - extremely flammable';
- b) 'R 42 - may cause sensitisation by inhalation';
- c) 'R 43 - may cause sensitisation by skin contact'.

Processes:

Activities in which there is a risk of exposure to the following processes are prohibited to the minor:

- a) strong acid process during the manufacture of isopropyl alcohol;
- b) manufacture and handling of devices, devices or objects containing explosives.

Working conditions:

1 - Activities whose performance is subject to the following working conditions are forbidden to the minor:

- a) Risk of collapse;
- b) Manipulation of devices for production, storage or use of compressed, liquefied or dissolved gases;
- c) Use of vats, tanks, reservoirs, bottles or containers containing agents, substances or chemical preparations mentioned above;
- d) The driving or operation of transport vehicles, tractors, forklifts or earthmoving machinery;
- e) Release of free silica dust, in particular in the spraying of sandblasts;
- f) Melting of metals;
- g) Glass blowing operations;
- h) Breeding or preservation of ferocious or poisonous animals;
- i) Practised underground;
- j) Practised in wastewater drainage systems;
- l) Practised on airport runways;
- m) Held in activities that take place in night clubs and similar;

n) Whose cadence is conditioned by machines and the retribution determined according to the result.

2 - It is also forbidden for minors under the age of 16 to perform activities in discos and similar establishments.

What are the activities, processes and working conditions - conditioned to minors aged 16 or over?

Minors aged 16 or over may only perform the activities, processes and working conditions subject to exposure to the physical, biological and chemical agents mentioned below.

Physical agents

Provided that the employer submits the minor to a health examination certifying the adequacy of his/her physical and mental capacity to perform the duties to be performed before the start of the work, or within 15 days after admission if this is urgent, and with the consent of the minor's legal representatives; and also submit the minor to an annual health examination, so that the exercise of the professional activity does not result in damage to the minor's health and physical and mental development, and that it evaluates the nature, degree and duration of the minor's exposure to activities or conditioned work and takes the necessary measures to avoid this risk, activities in which there is a risk of exposure to the following agents may be carried out by a minor aged 16 years or older physicists:

a) Ultraviolet radiation;

b) Noise levels exceeding 85 dB(A), measured by L (EP index, d), in accordance with the arrangements for the protection of workers from the risks related to exposure to noise at work; c) Vibrations;

d) Temperatures below 0°C or above 42°C;

e) Contact with medium voltage electrical energy.

Biological agents:

Activities in which there is a risk of exposure to biological agents in risk groups 1 and 2, in accordance with the legislation on minimum requirements for the protection of the health and safety of workers from the risks related to exposure to biological agents at work, may be

carried out by a minor aged 16 or over, provided that the employer complies with article 68 no. 2.

Chemical agents:

If the employer assesses the nature, degree and duration of the minor's exposure to activities, or conditioned work, that involve chemical risks, and takes the necessary measures to avoid these risks of exposure, activities where there is a risk of exposure to the following chemical agents may be carried out by a minor aged 16 or over:

- a) Ethyl acetate;
- b) Uric acid and its compounds;
- c) Alcohols;
- d) Butane;
- e) Ketones;
- f) Chloronaphthalenes;
- g) Proteolytic enzymes;
- h) Manganese, its compounds and alloys;
- i) Iron oxide;
- j) Propane;
- l) Phosphorus sesquisulphide;
- m) Sodium sulphate;
- n) Zinc and its compounds.

Comentário [RD1]: here

Working conditions:

1 - The activities subject to the following working conditions may be performed by minors aged 16 or over, provided that the employer assesses the risks and implements measures to eliminate and/or reduce :

- a) The use of work equipment which, under the terms of Article 5 of Decree-Law No. 50/2005 of 25 February 2005, presents specific risks to the safety or health of workers;

- b) Demolitions;
- c) The execution of dangerous manoeuvres;
- d) Dismantling works;
- e) The collection, manipulation or conditioning of blood, organs or any other animal spoils, manipulation, washing and sterilization of materials used in the said operations;
- f) the removal and handling of waste from dumps and similar waste;
- g) the manual handling of loads greater than 15 kg;
- h) excessive physical effort, in particular kneeling or in positions and movements resulting in compression of nerves and nerve plexus;
- i) execution in silos;
- j) carried out in refrigeration installations where there may be a risk of the refrigerant escaping;
- l) slaughterhouses, butcheries, fish shops, poultry houses, sausage factories, canned meat or fish factories, milk distribution depots and cheese dairies.

2 - In cases of violation of the provisions of paragraphs b) to d) of the previous paragraph, the implementing entities are jointly and severally liable for payment of the fine.

Does the minor have the capacity to sign an employment contract?

Yes, the employment contract signed by a minor who has completed 16 years of age and has completed compulsory schooling or is registered and attending secondary education is valid. However, if his/her legal representatives write an opposition, this contract is not valid.

Only with the written authorisation of legal representatives of a minor who has not completed 16 years of age and who has not completed compulsory schooling or who is not enrolled and attending secondary education, shall the contract signed by him/her be valid.

Who receives the remuneration due for the minor's work?

The minor himself, except when there is written opposition from his legal representatives.

What are the maximum limits of the child's normal working period?

The child's normal working period may not exceed eight hours on each day and forty hours on each week.

In cases of light work performed by a minor under the age of 16, the normal working period may not exceed seven hours per day and thirty-five hours each week.

Is the minor obliged to perform overtime work?

No, the minor cannot do overtime work. Unless the minor worker is 16 years or more and if this is indispensable to prevent or repair the serious damage to the company (due to an abnormal and unforeseeable fact or an exceptional circumstance, even if predictable, whose consequences could not be avoided), provided that no other worker is available and for a period not exceeding five working days.

What rights does the minor have when working overtime?

In addition to the compensation due, a minor worker who provides overtime work is entitled to an equivalent period of rest to be taken in the following three weeks.

Is the minor allowed to work at night?

Minors under the age of 16 are prohibited from working between 8 pm on one day and 7 am the next.

Minors aged 16 or over may not work between 10 pm on one day and 7 am on the following day, except:

- a) in an activity provided for in a collective work regulation instrument, except in the period between 0 and 5 hours;

b) if justified by objective reasons, in an activity of a cultural, artistic, sporting or advertising nature, as long as it has an equivalent period of compensatory rest on the following day or as close as possible.

What is the minor's daily rest period?

The daily working period of a minor must be interrupted by a pause of one to two hours, so he/she has not to work more than four consecutive hours if he/she is under 16 years of age, or four hours and thirty minutes if he/she is 16 years of age or older.

The collective working regulation instrument may lay down the duration of the rest pause of more than two hours, as well as the frequency and duration of other rest pauses in the daily working period or, in the case of a minor aged 16 or over, a reduction of the pause of up to 30 minutes.

What is the daily rest of the minor worker?

Between working periods of two successive days, the minor is entitled to a daily rest - if you are under 16 years of age - of a minimum of fourteen consecutive hours;

- if aged 16 or over - twelve consecutive hours.

In relation to minors aged 16 or over, the daily rest referred to above may only be reduced by an instrument of collective work regulation if justified by objective reason, provided that it does not affect their safety or health and this reduction is compensated in the following three days, in the agriculture, tourism, hotel or restaurant sector, in a commercial marine vessel, hospital or other health establishment or in an activity with fractional working periods throughout the day.

The limitation on daily rest of fourteen or twelve consecutive hours shall not apply to a minor aged 16 or over who provides work, the normal duration of which shall not exceed twenty hours per week, or occasional work for a period not exceeding one month:

a) on domestic service in the household;

b) in a family business, if it is not harmful, harmful or dangerous to the minor.

Between the periods of work of two successive days, the minor is entitled to a daily rest - if he is under 16 years of age - with a minimum duration of fourteen consecutive hours;

- if aged 16 or over - twelve consecutive hours.

As far as 16 years old or older minors are concerned, the daily rest period referred to above can only be reduced by an instrument of collective work regulation if it is justified by objective reason, provided that it does not affect their safety or health and this reduction is compensated in the following three days, in the agriculture, tourism, hotel or restaurant sector, in a commercial marine vessel, hospital or other health establishment or in an activity characterized by fractional working periods throughout the day.

The limitation on daily rest of fourteen or twelve consecutive hours shall not apply to a minor aged 16 or over who provides work, the normal duration of which shall not exceed twenty hours per week, or occasional work for a period not exceeding one month:

a) on domestic service in the household;

b) in a family business, if it is not harmful, harmful or dangerous to the minor.

What is the minor worker's weekly rest?

In each period of seven days, the weekly rest of a minor has the duration of two consecutive days, if possible, unless there are technical or work organization reasons to be defined by collective work regulation instrument, which justify that the weekly rest of a minor aged 16 or over has the duration of thirty-six consecutive hours.

Domestic Worker

What legislation regulates this matter?

Articles 3, 5, 8, 14, 15, 24, 26 no. 1 paragraph d), 3, 4, 29, 30, 32, 33 of the Decree-Law no. 235/92, of 24 October, and Articles 112, 203, 237, 263, 271. 273 and 274, 295, 239 No. 6, 343 of the CT (Labour Code) and Decree-Law No. 143/2010, of 31 December.

What is the legal regime applicable to a domestic work contract?

DL no. 235/92, of 24-10, which regulates the legal regime of domestic labour contracts and the Labour Code (CT), approved by Law no. 7/2009, of 12/02.

DL no. 235/92, of 24-10 - this regime is a special regime relating to the general regime enshrined in the Labour Code. The specificity lies in the fact that domestic work is provided to households and therefore generates professional relationships with a marked personal character. It implies a permanent climate of trust that has conditioned the legislator's choice of a regime that differentiates it from the general regime.

The CT applies to domestic labour contracts insofar as this is compatible with their specific nature. The TC did not revoke the special regime for domestic labour, but only determined in article 9 that the general rules of the Code, which are not incompatible with the specificity of these contracts, apply to contracts with a special regime (such as domestic labour contracts).

How is it determined which legal regime applies to the domestic work contract?

In the light of each question, it has to be specifically identified which particularities make the domestic work contract unique. Therefore, if the legal regime of the domestic labour contract does not seem to be specific to the application of the Labour Code, this will be the applicable regime.

What is the form of the domestic service contract?

A domestic service contract has no special form, except in the case of a fixed term contract. If it is a fixed-term contract, it must be in writing.

What is the form of the domestic service contract if the employee is a foreigner?

An employment contract concluded with a foreign worker is always subject to a written form (even if it is indefinite), it must be drawn up in duplicate and each of the parties must have one copy and the copy of the contract remaining with the employer must have attached the documents proving the fulfilment of the legal obligations relating to the foreign citizen's entry

and stay or residence in Portugal, and copies of the same documents must be attached to the other copies.

These rules do not apply to an employment contract of a national of a member country of the European Economic Area or of another state that consents to equal treatment with a national citizen in matters of free exercise of professional activity.

What is the limit for renewals of a fixed-term employment contract?

A fixed-term employment contract may be renewed up to two times, provided that its duration does not exceed one year.

What's the holiday entitlement?

Rule: 22 working days, due on January 1st of each year. In the year of admission, the employee is entitled to 2 working days of vacation for each month of the duration of the contract, up to 20 days, whose enjoyment can take place after 6 full months of performance of the contract.

Employment contracts with a duration of less than 6 months - 2 working days of holiday for each full month of the duration of the contract and must be taken immediately before termination of the contract, unless the parties agree.

Is the domestic worker entitled to the Christmas allowance?

Yes. The amount of the Christmas allowance is proportional to the length of service provided in the calendar year, in the following situations:

- in the year of the worker's admission;
- in the year of termination of employment;
- in the event of the suspension of the employment contract, except if due to the employer.

When is the Christmas allowance paid?

The employee is entitled to a Christmas allowance equal to one month's pay, which must be paid by 15 December of each year.

How long is the normal weekly working period?

- 8 hours a day;
- 40 hours a week.

How many weekly rest days is the domestic service worker entitled to?

The worker is entitled to one day which must coincide with Sunday and which may fall on another day of the week, when serious and non-regular reasons of household life justify it. By agreement, the parties may agree to a day or noon in addition to Sunday.

Is a domestic servant entitled to public holidays?

Without prejudice to remuneration, domestic servants are entitled to public holidays.

With the employee's agreement, work of normal duration may be done on public holidays, which must be compensated with time off corresponding to half the number of hours worked, for a period to be taken in the same week or the following week. When, for reasons of family interest, compensation with time off is not feasible, the worker is entitled to an increase of 50% of the corresponding remuneration.

Those workers whose wages are fixed with reference to the week, fortnight or month may not suffer a reduction in wages due to the enjoyment of compulsory holidays.

The worker paid per day suffers a reduction in salary due to public holidays. Workers paid by the week, fortnight and month do not suffer any reduction in pay.

How are meal breaks and rest breaks taken?

The housed worker is entitled to meal and rest breaks every day, without prejudice to the supervision and assistance functions to be provided to the household.

The housed worker is entitled to a night rest of at least eight consecutive hours, which must not be interrupted, except for serious, unforeseen or force majeure reasons, or when he/she has been contracted to assist sick people or children up to the age of 3.

The organisation of meal and rest breaks shall be established by agreement or, in the absence of agreement, by the employer within the periods established for this purpose by custom.

How long is the trial period?

-90 days;

-30 days in the case of an employment contract with a duration of 6 months or more;

-15 days in the case of an employment contract with a duration of less than 6 months.

The employee must be given at least 24 hours to leave the accommodation.

The trial period may be eliminated or reduced.

How is the hourly pay calculated?

Hourly pay= $(Rm \times 12) : (52 \times n)$ where "Rm" = is the value of the monthly wage and

"n" = normal weekly working period.

What is the regime applicable when domestic servants are absent?

It follows the general arrangements for absences, laid down in the Labour Code.

What effects does the suspension of an employment contract due to long-term disability of the employee (e.g. illness) have on the contract?

During the suspension, the rights, duties and guarantees of the parties that do not presuppose the effective performance of the work are maintained.

What effects does suspension of an employment contract due to long-term disability (e.g. illness) have on the contract?

During the suspension the rights, duties and guarantees of the parties that do not presuppose the effective performance of work are maintained.

What are the cases of termination due to expiry?

In addition to the grounds found in the Labour Code, there are also the special grounds for termination of employment:

- there is a manifest economic insufficiency of the employer, supervening the conclusion of the contract; and
- there is a substantial change in the circumstances of family life of the employer that makes it immediate and practically impossible for the work relationship to continue. In this case, he will be entitled to compensation of a value corresponding to one month's salary for every three years of service, up to a limit of five.

On the other hand, the compensation for lapsing due to the verification of its termination must be calculated in the general terms of the Labour Code (Law no. 7/2009, of 12-02 - art. 344 and 366).

In case of termination of a fixed-term domestic work contract with accommodation, when does the domestic worker have to leave accommodation?

When the fixed term contract with the housed worker expires, a period of three days will be granted to leave the accommodation.

What behaviour of the employee could be a fair cause for dismissal?

Among other behaviours, they justify the just cause for dismissal:

- Illegitimate disobedience to orders given by the employer or other household members;
- Repeatedly provoking conflicts with other workers in the service of the employer;

- Injury to serious property interests of the employer or the household;
- Abnormal reductions in the worker's productivity;
- False statements concerning the justification of absences;
- Manifest lack of urbanity in the usual dealings with household members, namely children and the elderly, or with other persons who, regularly or accidentally, are received in the family;
- Refusal to account for money entrusted to him/her for purchases or payments, or infidelity in the rendering of such accounts.

How does dismissal with just cause is made?

The procedure is more simplified than the general regime. Thus, if just cause occurs, either party may immediately end the contract; this party must expressly and unequivocally state in writing the facts and circumstances on which the dismissal is based.

What behaviour of the employer gives the employee the right to te end the contract with just cause?

They are those identified in the general regime of the Labour Code to which; among others, it should be mentioned:

- Change of permanent residence of the employer to another location.

If the employee wishes to end the contract, what is the period of notice to be given to the employer?

The employee has the right to end the contract by giving the employer at least two weeks' notice in writing for each year of service or part thereof, but no more than six weeks' notice is required.

Does the law on parenthood (DL no. 91/2009, of 9 April) apply to domestic labour contracts?

Yes, it does.

Is the domestic worker entitled to the status of working student?

Yes.

How do I notify Social Security of the registration, change or end of the domestic service?

http://www4.seg-social.pt/documents/10152/14967/inscricao_admissao_cessacao_sd

Is it compulsory to have work accident insurance for domestic workers?

Yes.

Is it necessary to provide the worker with any clothing?

If necessary, appropriate protective clothing and equipment should be provided in order to prevent, as far as possible, the risks of accidents and/or harmful effects on workers' health.

Private Placement Agencies

What is the legislation governing this issue?

Decree-Law no. 260/2009, of 25 September, amended by the Law no. 5/2014, of 12 February.

What is a private placement agency?

Natural or legal person that develops the activity of intermediation between the supply and demand of employment and promotes the placement of jobseekers, without being part of the labour relations resulting therefrom.

What is a job applicant placement?

Promoting the filling of a job in the dependence of the beneficiary of a given economic activity.

What services can be developed by a private placement agency?

Receive job offers; registration of jobseekers; placement of candidates; selection, orientation or vocational training, provided that it is developed with a view to placing the jobseeker.

It is enough to develop one of these activities for the entity to be qualified as a private placement agency.

What is required to carry out the agency activity?

It is necessary to report in advance to the Public Employment Service (IEFP), evidence of suitability and regularized tax and social security status.

Who can place jobseekers?

Apart from the Institute of Employment and Vocational Training (IEFP), only private placement agencies registered at the IEFP can do so.

What are the general duties of the agency in making the placement?

- To act in accordance with the principle of good faith, refraining from making placements that do not guarantee good working conditions;
- Act according to the principle of equal opportunities in access to employment, not being able to practice any direct or indirect discrimination;
- Act in accordance with the principle of proportionality between the information requested from jobseekers and the needs and characteristics of the employment relationship offered.

What are the agency's duties towards the job applicant?

- Inform the jobseeker whenever he/she makes use of a job offer advertised by the public employment services;
- To ensure the protection of the job applicant's personal data;
- Ensure that the employment relationship offered consists of the exercise of functions or tasks likely to be performed by the job applicant;
- To ensure that the services provided to the jobseeker are free of charge, not charging him/her directly or indirectly, any amount in cash or in kind;

- To respect the rules on minimum age for admission to work and compulsory schooling in the registration and placement of job applicants;
- Ensure that the third-country national seeking employment in national territory is in possession of a residence permit in Portugal or another permit allowing him/her to work;
- Inform the jobseeker in writing about the relevant aspects of the placement, namely his rights, and provide relevant information about the employment relationship offered.

The jobseeker also has the right to be informed, in writing, about:

- The recruitment methods and techniques;
- The rules concerning the confidentiality of the results obtained;
- The compulsory or optional nature of responses to tests or questionnaires;
- The persons or companies receiving the information provided;
- The collective bargaining applicable to the sector of the contracting entity;
- The rights under Decree-Law No. 260/2009, as amended by Law No. 5/2014, as well as under the employment relationship offered.

What are the duties of the agency towards the contracting entity?

Ensure that the contracting entity:

- Complies with the legal and conventional prescriptions regarding safety and health at work and respects the rights of freedom of association and collective bargaining;
- Has its tax situation regularized before the social security and tax administration;
- Proposes to the applicant the working conditions disclosed in the job offer.

Inform the contracting entity whenever it uses a job offer advertised by the State employment services.

What are the agency's duties towards the public employment service?

Agencies must report to the State Employment Service through the one-stop electronic service counter or mailbox agencia@iefp.pt the following information:

- The change of do address, head office or main establishment in Portugal, within 15 days after the change;
- The cessation of the activity in national territory, when established therein or in the Member State of provenance within 15 days
- List with data on the activity performed in the previous year, stating the number of job applicants registered, job offers received and placements made, by professions and sectors of economic activity, up to January 15 of each year.

The State Employment Service (IEFP) keeps the national register of agencies up to date and makes it available electronically for public access.

Does the agency have special duties towards third country nationals?

Yes. The agency must ensure that the third-country national seeking employment on national territory is in possession of a residence permit in Portugal, or other title that allows him/her to work.

What are the duties of the agency in the case of a job applicant being placed abroad?

In case of placement abroad, the agencies, in addition to having to comply with the obligations listed above, must also comply with the obligations listed above:

- Report to the General Directorate of Consular Affairs and Portuguese Communities, at least 15 days before leaving the national territory, the identification of the job applicant and the contracting entity, the place of work, as well as the predictable start and end of the placement;
- Ensure that the jobseeker has access to medical, pharmaceutical and hospital services in the country of destination, under the same conditions as in the national territory, as well as adequate accommodation;
- Ensure, in the event of a breach of the employment contract or a promise of employment for a cause for which the jobseeker is not responsible, that the jobseeker is repatriated no later than six months after the placement;
- Inform the jobseeker in writing about:
 1. The conditions of access, in the country of destination, to medical, pharmaceutical and hospital services and appropriate accommodation, stating whether the contracting authority

guarantees such access, in the context of the employment contract or the promise of an employment contract;

2. The applicability and the repatriation process of the agency's responsibility;

3. The existence of a bond or equivalent financial instrument for the fulfilment of the repatriation obligation (the agency may constitute, in favour of the Public Employment Service (IEFP), a bond for the exercise of the activity, with a minimum value corresponding to 13 times the value of the minimum monthly salary guaranteed (national minimum wage), intended to ensure the agency's responsibility for the repatriation of the job applicant placed abroad.

What are the agency's obligations regarding the content of job offers?

The content of advertisements and other forms of advertising of vacancies issued by the agency must:

- Respect the principle of truthfulness, not distorting the elements that characterize the employment relationship offered;
- Be written or formulated in Portuguese;
- Identify the issuing agency;
- Refer to the possible existence of a guarantee or equivalent financial instrument.

The agency must ensure that the services provided to the job applicant are free of charge.

Yes, the agency must ensure that the services are free of charge. It may not charge any amounts to the job applicant.

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