

EMPLOYMENT REDUCTION, SUSPENSIONS AND THE ABILITY TO REDUCE REMUNERATION - F. CASTELO BRANCO

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The current financial and economic crisis is affecting the performance of many companies and employers have inevitably felt the need to implement cost-saving measures.

Among the most common costreducing measures in Portugal are redundancies (collective or individual).

However, we are also seeing less radical measures that do not involve dismissals, but instead a reduction of remuneration, awards or bonuses.

Como resultado de la actual crisis financiera y económica, los empresarios inevitablemente se

encuentran con la necesidad de introducir medidas para reducir costes; una de las herramientas más frecuentemente utilizadas en Portugal ha sido el despido. No obstante, Alexandra Almeida Mota, de F Castelo Branco & Associados, opina que hay varias alternativas disponibles, menos radicales aunque igualmente complejas.

Nonetheless the implementation of these types of measures can be complex and Portuguese employment law remains very restrictive regarding the reduction of employees' acquired rights and benefits.

As a general rule, an employer cannot reduce an employee's remuneration including their bonus or any other benefit that is considered part of the global remuneration. In fact, the employee is not even allowed to unilaterally ask the employer to reduce his remuneration.

Exceptions to the above-mentioned rule are however foreseen in the Portuguese Employment Code (Code) or in a collective bargaining agreement applicable to the company (if any), relating to:

i) Part-time work

According to article 155 of the Code, an employer and employee may agree to a reduction of the individual employee's working period – for example, a full-time employee may permanently change to part-time in which case their remuneration may be reduced proportionately.

ii) Change of professional category

The Code also allows for an employer to change an employee's professional category, placing them in a lower one to that which they were initially hired or had been promoted.

However, such a change must be justified not only by the urgent needs of the company, or strict interest of the employee, but has also to be accepted by the employee and the Portuguese Labour Authority. If these requirements are met, the employer may then reduce the remuneration relative to the new professional category.

iii) Temporary reduction of working period or suspension of employment contracts

An employer may temporarily reduce the normal working periods or suspend employment contracts when:

- (a) market, structural or technological reasons have seriously affected the normal operation of the company, and
- (b) such measures are necessary to ensure the viability of the company and the preservation of jobs.

Such reductions may take the form of a suspension of activity for one or more normal daily or weekly working period; or a reduction in the number of hours in the normal daily or weekly working period.

During a period of suspension, employees are though generally entitled to receive an amount equal to the legally guaranteed minimum monthly salary, to be paid by the employer; or in the case of a reduction, receive an amount proportional to the working hours actually worked and to receive compensation – 30% of which is payable by the employer and 70% payable by Social Security. This compensation is intended to guarantee the employee an amount equivalent to the legally guaranteed minimum monthly salary or 2/3 of his regular gross remuneration (depending on which is higher). In addition, employers must maintain all fringe benefits and social security payments calculated according to their normal remuneration and work outside the company.

Considering the recent entry into force of a revision of the Code (17 February 2009) issues regarding employee salaries and benefits will likely be revised in the near future.

The procedure to be followed for a reduction of employees' remuneration in the above-mentioned

case is however strict, lengthy and complex.

A reduction or suspension due to market, structural or technological reasons must have a pre-defined duration, which cannot exceed six months although can be extended for an additional period of six months. The employer must also inform workers' representatives, on a quarterly basis, of the evolution of the reasons that justified the reduction or suspension of work.

In our opinion, the recent amendments to the Code were a missed opportunity to provide companies facing financial difficulties with adequate mechanisms to face up to them without having to resort to dismissals and, by doing so, contributing to a quicker recovery.

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