

INCREASING THE FLEXIBILITY OF PORTUGUESE LABOUR REGULATION - F. CASTELO BRANCO

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Given the current economic context, the ongoing revision of Portugal's Labour Code offers the potential to promote greater economic growth and business competitiveness, through its stated intention to increase productivity and employment levels.

La letrada Alexandra Almeida Mota, de F. Castelo Branco, explica en este artículo el actualizado código de trabajo luso. Esta reforma aspira a favorecer la flexibilidad en los horarios laborales por la

creación de "bancos de hora", horarios comprimidos y la creación del concepto de empleo mediante la modalidad de contrato fijo intermitente. No obstante, en opinión de la autora, los empresarios lamentan la falta de envergadura que ofrece el nuevo código, especialmente en lo relativo a la flexibilidad en caso de cese del contrato laboral.

This reform is viewed by the Portuguese Government as an opportunity to introduce both speedier processes and to cut some of the traditional 'red tape' that surrounds the current labour regulations.

However, although the desired outputs of the proposed reforms are the stability of employment contracts, while increasing the flexibility of human resources management, the revisions proposed represent only a small step forward in the modernisation of employment laws as well as in its ability to allow employers to adapt to the current new challenges of labour relationships. The proposed changes are intended to promote the adaptability of companies, and to better facilitate the relationship between employees professional life and their personal and family life. The main changes proposed are therefore focused on working time management and on a simplification of procedures concerning the dismissal of employees.

Among the innovations foreseen in the proposal of revision are:

- (i) the possibility of creating employee "hour banks";
- (ii) the possibility to concentrate working timetables; and
- (iii) the creation of the "permanent intermittent" employment contract.

"Hour banks", which must be foreseen in the applicable CBA, allow the employer to increase the daily working period of employees up to a maximum of 4 hours per day, although it is limited to 200 hours per year.

The concentration of working timetables is intended to allow an employer to agree with their employees an increased daily working period and therefore to be able to concentrate employees' weekly working period into fewer days, thus offering the potential for shorter working weeks and more days away from work.

"Intermittent employment" contracts are particularly foreseen as relevant for companies that develop their activity in a discontinued or variable intensity, namely tourism, and which therefore allow employers to reach agreement with their employees to render their work in an interspersed way with one or more periods of inactivity. In such situations, the rendering of work by the employee must last for no less than six months on a full-time basis, per year, of which at least four months must be consecutive.

Finally, regarding the termination of employment contracts, and although a broader reduction in the 'red tape', surrounding dismissals was expected, the current proposal contemplates a number of changes that, in our opinion, will certainly make for more agile proceedings.

Indeed, the proposal, while fully respecting the constitutional principle that prohibits the dismissal of an employee without just cause it nonetheless simplifies the disciplinary proceedings involved and, at the same time, increases the legal protection of the parties during these proceedings. In this respect the proposal also increases the protections granted to pregnant and nursing employees and aggravates the severity of legal ramifications regarding the breach of the procedural rules in the case of the dismissal of a union representative.

Given the changes foreseen in the revision of the Portuguese Labour Code, the general opinion among Portuguese employers is however that the proposals suggested should have been broader, notably in respect of their flexibility when it comes to the termination of employment contracts.

However, and notwithstanding the merit of the proposals advanced and even though they represent a step forward in the modernisation of labour relationships in Portugal, we consider that the revision

of the Portuguese Labour Code could have been used to introduce a greater simplification of procedures and flexibility in the management of human resources – to bring the framework that surrounds Portuguese labour relationships closer to that established in some other European member states, namely, the Spanish labour system.

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