

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | EMPLOYMENT

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NEWSLETTER EMPLOYMENT

I LEGISLATION HIGHLIGHTS

Ordinance No. 149-A/2014. D.R. (Portuguese official gazette) No. 141, Supplement, Series I of 2014-07-24

Ministry of Solidarity, Employment and Social Security

Publication of *Ordinance* No. 149-A/2014 of 24 July, which creates the *Medida Estímulo Emprego*, consisting of the granting to employers of financial support towards the execution of employment contracts with unemployed individuals registered with *Instituto do Emprego e da Formação Profissional, I.P. (IEFP, I.P.)* (Institute of Employment and Vocational Training).

The employer, which can be a profit or non profit natural or a legal person governed by private law, must meet certain requirements in order to be eligible, namely, having its situation concerning tax and Social Security contributions regular.

The granting of financial support underlying the *Medida* depends upon the fulfilment of the following criteria:

- 1) Execution of a part-time or full-time employment contract with an unemployed individual registered with *IEFP, I.P.*:
 - a. Who benefits from unemployment benefit;
 - b. Who benefits from social reintegration income (*Rendimento Social de Inserção [RSI]*);
 - c. Whose spouse or civil union partner is also unemployed and registered with *IEFP, I.P.*;
 - d. Who has been unemployed for at least 60 consecutive days, in the case of unemployed individuals less than 30 years old or over 45 years old or also other unemployed individuals not registered with the Social Security as either employed individuals or self-employed individuals in the 12 months before application;
 - e. Who is the member of a single parent family, or a victim of domestic violence or disabled or incapacitated;
 - f. Who is a former prisoner or is or was subject to suspensory penalty or judicial measures, who is in a position to be integrated into working life;
 - g. Who are recovering drug addicts;
 - h. Who have been registered for at least 6 consecutive months.
- 2) Net job creation and maintenance of the employment level achieved through the support;
- 3) Providing vocational training for the duration of the support;

4) The remuneration offered must observe the Minimum Guaranteed Monthly Salary and, where applicable, the corresponding collective bargaining agreement.

Depending on the type of employment contract concluded by the employer under this *Medida*, the same will be entitled to the following financial support:

<p>Fixed Term Employment Contracts</p>	<p>80% of the Social Support Index (IAS = € 419.22) multiplied by half the number of whole months of duration of the contract, which cannot exceed 80% of <i>IAS</i> x 6.</p> <p>This financial support is exceptionally calculated based on 100% of the <i>IAS</i> for unemployed individuals:</p> <ul style="list-style-type: none"> a. Registered with IEFP, I.P. for at least 12 consecutive months; b. Who are less than 30 years old; c. Who are 45 years old or more; d. Who benefit from unemployment benefits; e. Members of single-parent families; f. Whose spouse or civil union partner is also unemployed and registered with <i>IEFP, I.P.</i>; g. Victims of domestic violence; h. Disabled or incapacitated; i. Former prisoners or people who are or were subject to suspensory penalty or judicial measures, who are in a position to be integrated into working life; j. Recovering drug addicts; k. Who receive Social Integration Income (<i>RSI</i>).
<p>Permanent Employment Contract</p>	<p>1.1 <i>IAS</i> x 12</p>
<p>Part-time Employment Contracts</p>	<p>The support will be reduced proportionally, based on a normal working period of 40 hours/week.</p>

This *Medida* may be combined with measures providing for the total or partial exemption from payments to the Social Security scheme, however, it cannot be combined with other direct support to employment applicable to the same job.

Fixed-term employment contracts supported under the *Medida Estímulo 2013* may benefit from the conversion from fixed-term employment contracts into permanent employment contracts as provided for in Ordinance No. 106/2013, of 14 March.

Ordinance No. 149-B/2014. D.R. (Portuguese official gazette) No. 141, Supplement, Series I of 2014-07-24

Ministry of Solidarity, Employment and Social Security

Publication of *Ordinance* No. 149-B/2014 of 24 July, amending the *Medida Estágios Emprego*.

The *Estágios Emprego* may now be used to develop internships to take up regulated professions, without prejudice to the decisions of Public Professional Associations.

The scope of application has also been extended to other types of unemployed individuals, such as former prisoners and recovering drug addicts. It should be mentioned that the *Medida Estágios Emprego* will no longer be applicable to local governments and entities of the State business sector or local sector.

The duration of these internships has been reduced to 9 months, although there is the possibility to extend it to up to 12 months in duly substantiated situations to be analysed by *IEFP*, which must be raised while the internships are in progress, based on the fulfilment of the training plan or of situations relevant for future employability.

Internships developed in the scope of projects acknowledged by *IEFP* as having a strategic interest for the national economy or the economy of a given region, may have a duration of 6, 9 or 12 months.

IEFP no longer contributes wholly for internship scholarships, having reduced the contribution to 80% or 65%, depending on the situation concerned. A 15% increase is provided for in special situations specified in the law.

II LEGISLATION

Law No. 48-A/2014. D.R. (Portuguese official gazette) No. 146, Supplement, Series I of 2014-07-31

Parliament

Amends for the second time Law No. 23/2012 of 25 June, extending the suspension period of the provisions of collective labour regulation instruments and of employment contract clauses until 31 December 2014, concerning:

- a) Payment increases for overtime work higher than the ones set out in the Labour Code; and
- b) Remuneration for normal work on a bank holiday, or time off *in lieu* of that work, in an undertaking not obliged to suspend its operation on bank holidays.

III CASE LAW

Judgment of the Court of Appeal of Lisbon of 2014-07-02 Sequence of Fixed-Term Contracts and Limitation Period of Employment Claims

The Court of Appeal of Lisbon was requested to examine the case of the employer of a handling company who had been hired under successive fixed-term employment contracts by the same employer, in a total of 3 fixed-term employment contracts and, who, finally, concluded a permanent employment contract.

In the action filed on 19 November 2012, the employee requested that the Court declared his automatic career progression in the professional category of *Operador de Assistência*, ordering the company to pay the salary difference due.

In the 1st instance, the Labour Court of Lisbon discharged the employer from the claim, recognising the limitation period claimed in respect of the requests and claims made by the employee in the action. The Labour Court of Lisbon did not accept the argument of the employee that he was always under a permanent employment contract and that the employment relation should be considered to be one and the same since 3 June 2005, date of execution of the first fixed-term contract. Indeed, the Court considered that, for the purpose of claims arising from the possible invalidity of the contractual relation, the date of termination of the second contract should be considered.

Being requested to rule on the case, the Court of Appeal of Lisbon began by examining the sequence of contracts, concluding that between the first and the second fixed-term contract there was no time gap, since one ended on 31 October 2005 and the other began the following day, on 1 November, and continued until 31 October 2006; the third fixed-term contract was in force since 1 December 2006 until 30 November 2007, and on 2 February 2008 the parties signed a permanent employment contract.

The Court considered that there had been a chronological sequence between the first and the second contract and a 1 month gap (November 2006) and a 2-month and 1 day gap (December 2007, January 2008 and the 1st day of February of the same year) between, respectively, the second and the third and between the third and the fourth contract.

The Court of Appeal of Lisbon concluded that the contracts had always been concluded between the same employee and employer, and that there had never really been a situation of autonomy and availability by the employee since 3 June 2005 until the action had been brought against the employer, as implied by the 1-year limitation period.

Indeed, the Court considered that the situation described in the records never put the employee in the conditions legally required to entitle him to exercise the rights arising from fixed-term contracts, stating that if the limitation period relating to those three fixed-term contracts were to be counted from 1 November 2006 (it should be reminded that between the first and the second there was no time gap) the same was suspended

with the beginning of the employment relation based on the third fixed-term employment contract (that is, only consuming 1 month of the 1-year limitation period), counting of the same being resumed on 1 December 2007 and again suspended on 2 February 2008 (summing another two months and 1 day), and has been finally suspended from the latter date until then.

It was the opinion of the Court of Appeal of Lisbon that the 1-year term from the end of any of the three fixed-term employment contracts never fully elapsed, since the same was suspended.

The Court of Appeal of Lisbon further considered that such suspension, had it not occurred pursuant to Article 381(1) of the 2003 Labour Code (applicable to this case), could possibly be based on an *event of force majeure*, as provided for in Article 321 of the Civil Code.

The Court sustained that, with several successive fixed-term employment contracts, with time gaps between them, the limitation period of claims arising from the contracts already terminated, which began on the day following termination, must be considered suspended again from the time the parties execute a new contract, since the rationale for the legislator choosing the specificity referred to above with regard to the limitation period of employment claims, subsists.

Therefore the Court of Appeal of Lisbon decided to uphold the appeal brought by the employee and dismiss the exception of limitation period raised by the employer.

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