

APRIL 2023

PRACTICAL GUIDE

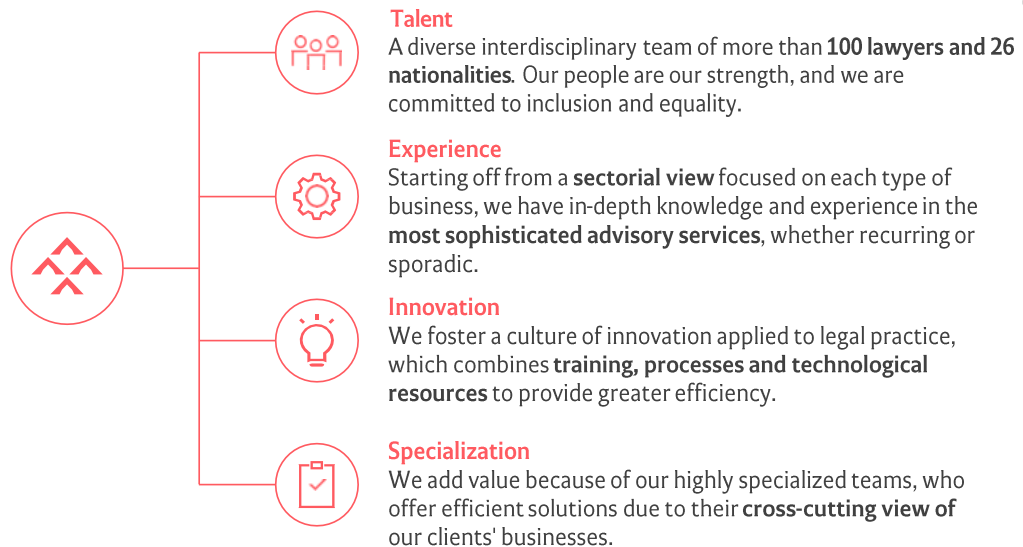
# Decent Work Agenda What changes?

Law 13/2023 of April 3

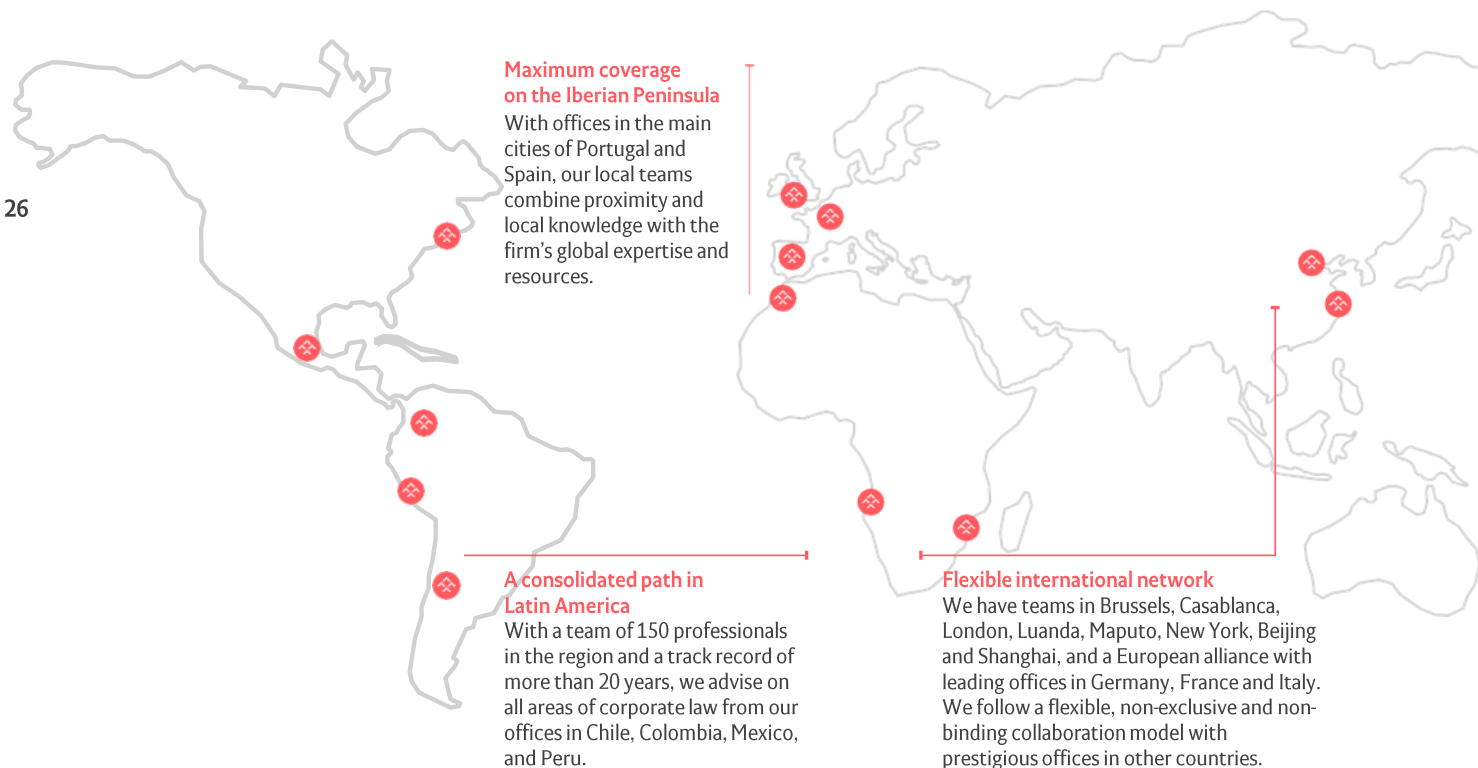


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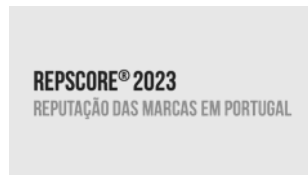
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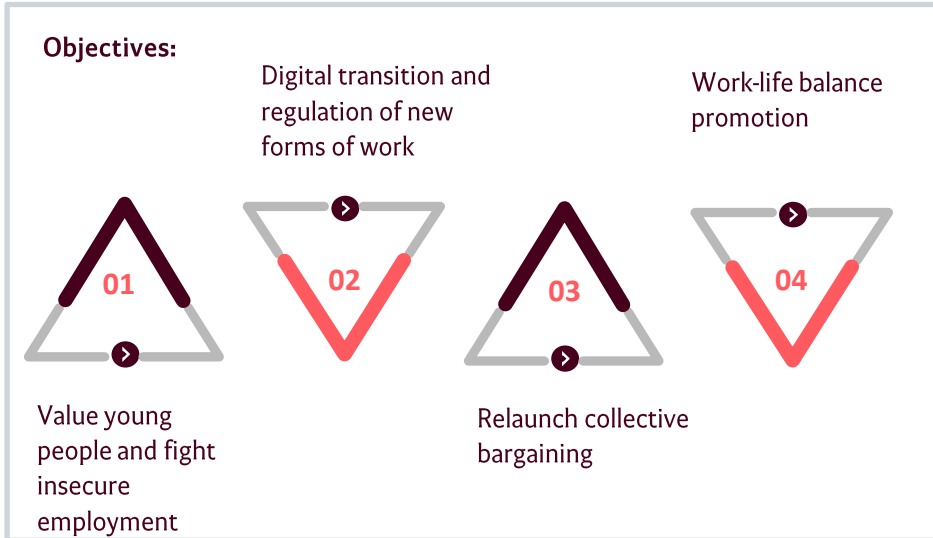
[Click here](#) for details of the key metrics we use to measure our ESG performance. See also our latest [Corporate Report](#).



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# 1. Framework



Law 13/2023 of April 3 makes more than 150 amendments to labor legislation

As a rule, the changes take effect on

**May 1, 2023**

Directors or managers of companies are jointly and severally liable for the payment of fines

Almost all labor law infringements are now administrative offenses. The maximum penalty for each infringement is:

**€61,200.00 per infringement**

**€122,400.00**

If the infringement involves a number of employees

## 2. Professional internships

- **Social Security:** Interns are equivalent to employees for social security purposes – **employers now have to pay social security contributions at the same rates that apply to employment relations.**
- **Increased monthly allowance:** The monthly allowance that internship employers must pay the trainee has increased. **In 2023, the minimum monthly allowance for professional internships is €608.00**, which is equivalent to 80% of the guaranteed minimum monthly salary. The allowance was previously equivalent to the amount of the Social Support Index (IAS).
- **Insurance:** Obligation to **include interns in occupational accident insurance cover** (instead of personal accident insurance cover).

## 3. Probationary period

- **Duty to provide information to employees:** Employers must now inform employees, in writing, of (i) the duration, and (ii) conditions of the probationary period. Time limit for compliance with this obligation: **On or before the seventh day** after the contract starts.
- **Reduced probationary period:**
  - **The 180-day probationary period for first-time job seekers is reduced or eliminated** - depending on the duration of a previous fixed- or non-fixed-term employment contract (90 days or more), even if it was with a different employer.
  - The probationary period is also decreased, depending on the duration of the professional internship (90 days or more) with a positive evaluation and in the same activity, even if the internship was with a different employer.
- **Termination notice period:** The notice period for terminating the contract when the probationary period is longer than 120 days increases from 15 to 30 days.
- **Communications:** It is now compulsory to communicate the termination of a caregiver’s employment contract during the probationary period to the CITE [Commission for Equality in Work and Employment] and the termination of a first-time job-seeker’s contract to the ACT [Working Conditions Authority].

If no information is given about the duration of the probationary period, it is considered that the parties agreed on the exclusion of a probationary period.

### What to do?

Comply with reporting and contributory obligations regarding interns, just as for employees

**Infringement: Very serious administrative offense**

Update the amounts paid as monthly internship allowance

**Infringement: Very serious administrative offense**

Include interns in occupational accident insurance cover

**Infringement: Serious administrative offense**

### What to do?

Include information about the applicable probationary period in the templates of employment contracts to be signed as of May 1, 2023

**Note:** Amendments affecting the existence and duration of probationary periods will only apply to employment contracts entered as of May 1, 2023

Review the procedures for reporting contract terminations during the probationary period

**Infringement:** Failure to send the legally required communications to the CITE and the ACT constitutes a **serious administrative offense**



## 4. Employment contracts - content

### 4.1 Duty of information

**New items added to the list of information that employers must provide to employees in writing:**

- Foreseeable duration of the contract in non-fixed-term employment contracts
- Formal requirements for terminating the contract, as well as the notice periods
- Payment method used for remuneration and an itemized list of remuneration components
- Applicable regime for overtime work and shift work
- Signatories to the applicable collective bargaining agreement
- User's identification in temporary employment contracts
- Duration and conditions of the probationary period (where applicable)
- Individual right to ongoing training
- Applicable regime in cases of intermittent work
- Social welfare regimes, including any benefits that are an addition to or a substitute for those provided by the general Social Security regime
- Parameters, criteria, rules and instructions that are the basis for the algorithms or other artificial intelligence systems that affect decision-making about access to and continuation of employment, as well as working conditions, including profiling and job monitoring

### 4.2 Exclusivity

**Employers can no longer prevent employees from working in any other professional activity**, except on objective grounds, such as health and safety or professional secrecy.

#### Shorter time limits – duty of information

After beginning of contract: Seven days to comply with the duty of information (previous time limit was 30 days)

Changes: These must now be communicated on or before the date they take effect (and not within the following 30 days)

#### What to do?

Review the drafts of employment contracts to be signed as of May 1, 2023

**Infringement:** Failure to provide or omission of timely updates to any legally required information constitutes a **serious administrative offense**

#### What to do?

Review the templates of employment contracts to be entered into as of May 1, 2023, to assess the validity of the exclusivity clauses

**Infringement: Very serious administrative offense**

## 5. Employment contracts - types

### 5.1 Fixed- or non-fixed-term employment contracts

- Non-fixed-term employment contracts must now expressly state the foreseeable duration of the contract.
- **Prohibition of successive fixed- or non-fixed-term contracts** before one-third of the contract duration has elapsed - applicable not only to the same job position but to the same professional activity.
- **Obligation to inform the CITE of the reason for not renewing a fixed- or non-fixed-term employment contract** whenever a caregiver is involved.
- **Increase in compensation for expiry of a fixed- or non-fixed-term contract** – compensation will now be 24 days' base pay and seniority benefits for each year of seniority. (Previously the compensation payable was 18 days for fixed-term contracts and non-fixed-term contracts during the first three years of the contract, and 12 days in non-fixed-term contracts as of the fourth year of the contract.)
- **Note:** The new amendments do not affect the validity of existing fixed- or non-fixed-term contracts.

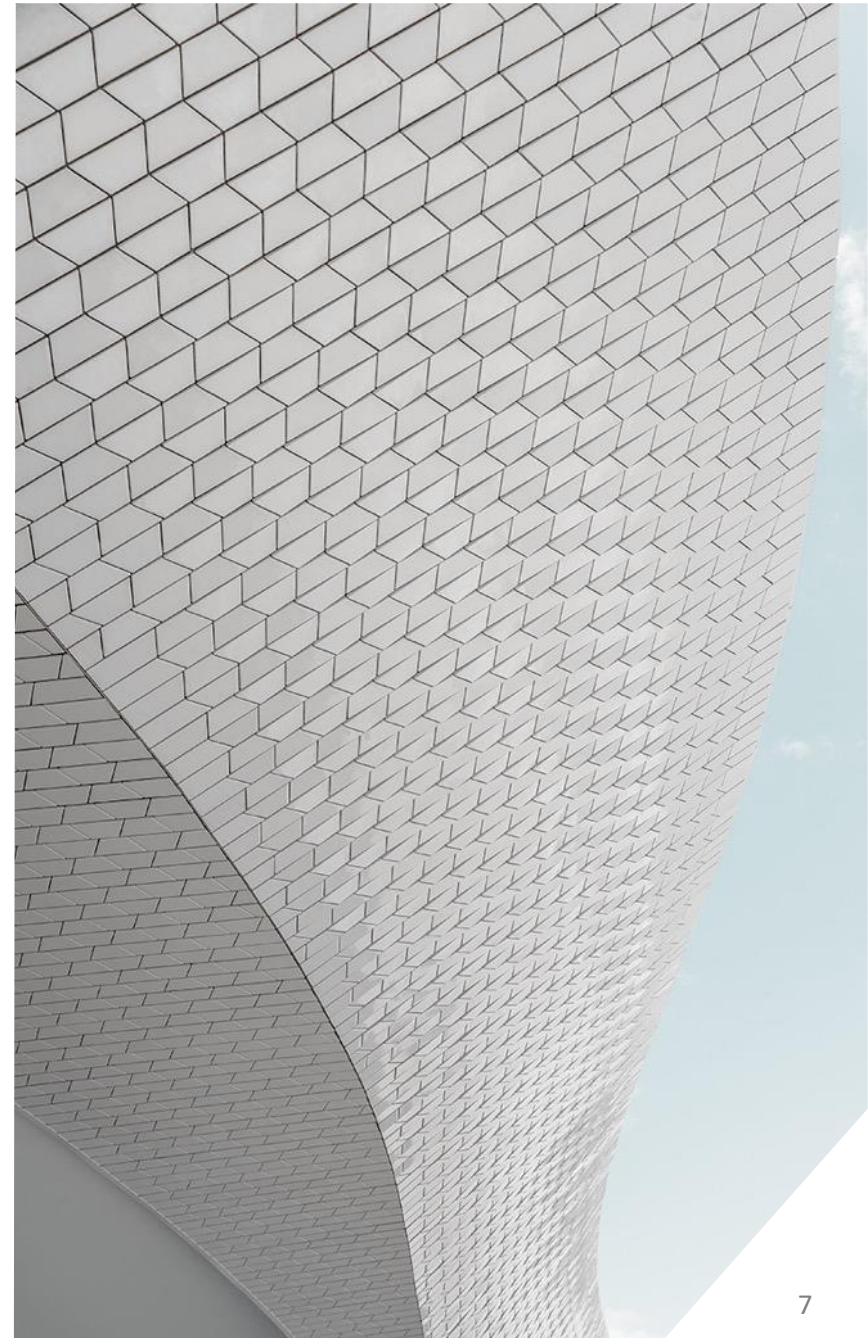
#### What to do?

Review templates of new fixed- or non-fixed-term contracts to be signed as of May 1, 2023

Review compensation amounts payable

**Infringement: Very serious administrative offense**

In the case of unlawful use of a fixed- or non-fixed-term contract, the ACT can also take legal action to have the contract recognized as a permanent employment contract



## 5. Employment contracts - types

### 5.2 Temporary employment contracts – *Contratos de Trabalho Temporário*

- Temporary employment contracts **must now identify the user**. If a user engages an unlicensed temporary employment company, it will be considered that the work is being done for the **user** under a permanent employment contract.
- **Prohibition of successive temporary employment contracts** before one-third of the contract duration has elapsed after the maximum duration of the contract ends - applicable not only to the same job position but to the same professional activity. It also prohibits services agreements for the same subject matter or activity with the same employer or with a company that is in a controlling or group relationship with the employer, or that has common organizational structures. In the case of an infringement of the rules that prohibit successive contracts, the employment contract will be considered permanent, and all the time worked for the user under the successive contracts will count toward the employee's seniority.
- **Renewal and duration:** Temporary employment contracts can now only be renewed up to four times (instead of six times) and cannot exceed four years' duration under penalty of being converted into a permanent employment contract for temporary assignment.
- **Licensing:** The legal regime for the pursuit and licensing of private placement agencies and temporary employment companies (TECs) has undergone a profound change, with a substantial expansion of the requirements for pursuing these activities.

#### What to do?

TECs: Ensure compliance with the new legal requirements for pursuit of the activity  
Users should only engage licensed TECs and check that they are complying with their legal obligations

Review drafts of temporary employment contracts to be signed as of May 1, 2023

**Infringement:** Failure to comply with these rules may constitute a **serious** or **very serious administrative offense**

In the case of unlawful use of a TEC, the ACT can also take legal action to have the contract recognized as a permanent employment contract





## 5. Employment contracts - types

### 5.3 Telework

- Employers and employees must now **establish by agreement the amount of compensation payable to the employee for additional telework expenses.** For tax purposes, this compensation is considered a cost for the employer but not income for the employee, up to the maximum amount to be established by ordinance.
- Employees that have children living with them who have disabilities, chronic disease or cancer, regardless of their age, are now entitled to work on a telework basis.

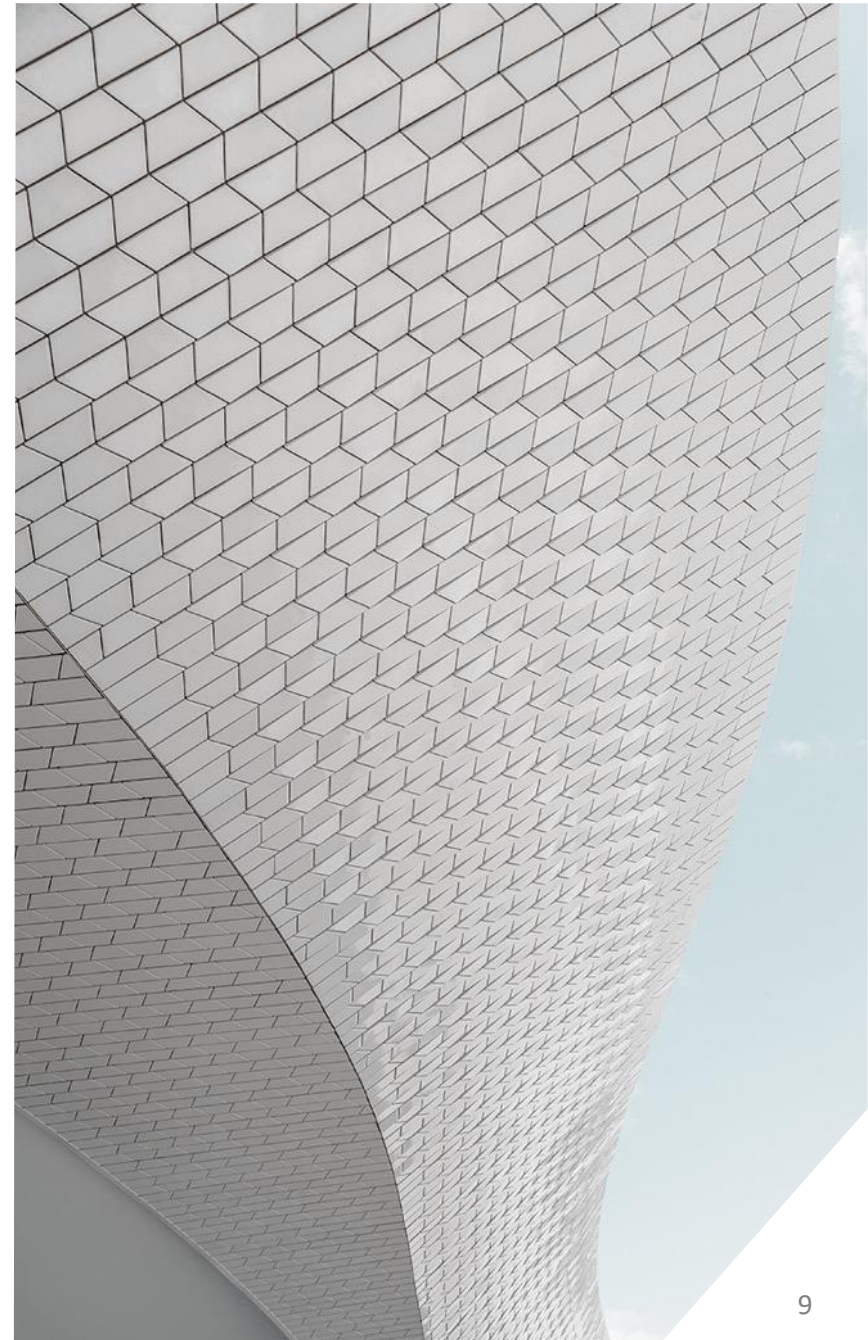
#### What to do?

Review templates of telework agreements to be signed as of May 1, 2023

**Infringement:**

**Serious administrative offense**

Agree on addenda to existing telework agreements



# 6. Work-life balance

## 6.1 Non-discrimination

- **Unfavorable treatment relating to parental rights** and any other rights aimed at helping to reconcile private life and work life, including rights granted to informal caregivers, **is expressly classified as a discriminatory practice.**
- Unfavorable treatment relating to the exercise of parental rights on assiduity and punctuality bonuses, performance valuation, and career progression.

## 6.2 Parental rights

- **Accumulating entitlements:** Parents can now accumulate the initial parental leave with part-time work after taking 120 consecutive days. Both parents can take this period simultaneously or sequentially.
- **Paternity leave** will now be calculated in **calendar days** and not business days. **Maternity leave will now be calculated at 42 consecutive days** after childbirth.
- In addition to employees with children **under three years of age**, who are currently excluded, the following will now also be **excluded from several ways of organization of working hours such as adaptability and time bank schemes:** (i) employees with children who suffer from a **chronic disability or illness**, regardless of their age, and (ii) employees with **children between the ages of 3 and 6 who submit a declaration that the other parent works and cannot provide assistance.**
- There will be an increase in subsidies in situations where the various types of parental leave are shared by both parents.
- Parental rights are extended to adoptive parents, prospective adoptive parents. and foster families, though with several changes.

What to do?	
Review salary, evaluation, bonus, and career plan policies	<b>Infringement:</b> Discriminatory practices constitute <b>very serious administrative offenses</b>
Review affixed information on equality and non-discrimination	
What to do?	
Review processes for handling leave requests and policies for reporting and justifying absences	<b>Infringement:</b> Failure to comply with parental leave rules constitutes a <b>very serious administrative offense</b>  Failure to comply with the rules on excluding adaptability and the time bank constitutes a <b>serious administrative offense</b>
Review parameters of management programs for absences due to parental leave	
Review affixed information on parental rights	

## 6. Work-life balance

### 6.3 Caregivers

- **Employees who have been recognized as having the status of non-primary informal caregivers** by the Social Security Office because they regularly care for and accompany a family member **are considered caregivers.**
- Caregivers are granted the right to:
  - leave;
  - part-time work;
  - flexible timetable;
  - absence to care for a household member;
  - exemption from overtime work; and
  - special protection if their employment contract is terminated.

### 6.4 Absences

- **Gestational bereavement:** Working mothers may now take justified absences for gestational bereavement for up to three consecutive days when they have not taken the leave for interruption of pregnancy. Working fathers may now also be justifiably absent in either situation (interruption of pregnancy or gestational bereavement) for up to three consecutive days. These absences do not entail any loss of rights and are considered time worked.
- **Justified bereavement absences:** Increase from five to twenty consecutive days for the death of a spouse. Increase from two to five consecutive days for the death of a parent, grandparent or grandchild, but not including children or stepchildren.
- Up to a maximum of two times a year, employees can make a solemn declaration of illness **to the digital national health services to prove illness for up to three consecutive days.**
- Employers can no longer deny an employee's request to replace loss of remuneration due to absence with vacation leave or overtime (within the legal limits).

#### What to do?

Review procedures for dealing with requests for leave and absences

Review policies on reporting and justifying absences and parameters of the management programs for absences due to leave

#### Infringement:

Failure to comply with the rights now granted to informal caregivers constitutes **a serious or very serious administrative offense**

#### What to do?

Review policies on communicating and justifying absences

Review parameters of absence management programs

#### Infringement:

**Serious administrative offense**

## 7. Working time

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### Overtime

- The payment due for overtime work increases after 100 hours a year.
- Overtime that exceeds 100 hours a year will be paid at the hourly rate plus the following increases:
  - i. 50% for the first hour or fraction of an hour and 75% for each subsequent hour or fraction of an hour on business days
  - ii. 100% for each hour or fraction of an hour on a compulsory or complementary weekly rest day or on a public holiday

#### What to do?

Review parameters of salary-processing programs

#### Infringement:

Failure to pay the updated amounts for overtime work constitutes a **serious administrative offense**





## 8. Terminating employment contracts

### 8.1. Compensation for termination of employment contracts

- Increased compensation:
  - i. As of May 1, 2023, compensation for **collective dismissal, elimination of job position, and dismissal for unsuitability** increases from 12 to **14 days** of base pay and seniority benefits per year of seniority for the duration of the contract.
  - ii. Compensation for **termination of a fixed- or non-fixed-term contract** increases, as a rule, from 18 days to **24 days of base pay** and seniority **benefits** per year of seniority.

**Infringements:** Failure to pay the amount due for expiry of a fixed- or non-fixed-term contract constitutes a **serious administrative offense**. Failure to pay the compensation due in the event of dismissal for objective reasons makes the **dismissal unlawful and constitutes a serious administrative offense**.

### 8.2 Suspension of dismissals

- The **ACT will now be able to inform the Public Prosecutor's Office (PPO)** of any dismissal it considers unlawful so that the PPO can initiate injunction proceedings to suspend it.

### 8.3 Prohibition of outsourcing

- **The use of external services (i.e., outsourcing) is no longer allowed for work carried out** by an employee whose contract was terminated due to a **collective dismissal** or the **elimination of job position** in the previous 12 months.

**Infringement:** Very serious administrative offense

### 8.4 No waiver of employment claims

- Employees' claims arising from an employment contract, or breach or termination of that contract, **can no longer be extinguished by waiver, but only through a judicial settlement**.
- **Consequences of non-compliance:** Waivers (full discharge statements) of employee claims as of May 1, 2023, can be challenged, especially when they concern other claims than those that are specifically paid.

#### What to do?

Review waiver drafts/clauses (full discharge statements), particularly those in employment contract revocation agreements

## 9. Digital platforms

- A **new presumption of employment** is created for work carried out through digital platforms (consequence), the Labor Code provisions compatible with the nature of this activity apply.

## 10. Algorithms and artificial intelligence

### Use of algorithms or other artificial intelligence (“AI”) systems

- The legal rules on the use of algorithms, AI and related matters can only be excluded by a **collective bargaining agreement that is more favorable to employees.**
- **Employers have a duty to provide information on algorithms and AI systems** to individual employees and to workers’ committees and trade union representatives. (There is also a duty to consult the latter two.).
- **Algorithmic discrimination** is expressly prohibited.

What to do?	What to do?
<p>Carry out a general review of the employment relations of companies that operate through digital platforms with service providers</p> <p><b>Infringement:</b> Contracts for work to be carried out in an apparently independent way but with characteristic employment contract terms that may adversely affect the employee or the State constitute a very serious <b>administrative offense</b></p> <p><b>Repeated infringements</b> are subject to the following additional accessory penalties :</p> <ul style="list-style-type: none"><li>• Suspension of the right to fiscal or contributory support, subsidies, or benefits from European Union funds granted by a public entity or service for up to two years</li><li>• Suspension of the right to participate in public auctions or tenders for up to two years</li></ul>	<p>Consider including the topic of the use of algorithms, AI systems and other related matters in collective bargaining negotiations, specifically for company collective agreements (<i>acordos de empresa</i>)</p> <p>Update the affixed information on equality and non-discrimination to include algorithmic discrimination</p> <p>Carry out a self-assessment to identify and characterize the algorithms and AI systems the employer uses that affect decision making on accessing/maintaining employment or working conditions</p> <p>Provide information to existing employees and new admissions about the algorithms and AI systems used</p> <p><b>Infringement:</b> <b>Discriminatory practices based on algorithms or other AI systems constitute very serious administrative offenses</b></p> <p><b>Failure to provide the legally required information to employees or their representatives constitutes a serious administrative offense</b></p>

# 11. Compensation funds

Suspension of the obligations relating to the Wage Guarantee Fund (“FGS,” in its Portuguese acronym) (until at least 2026) and to the Work Compensation Fund (“FTC,” in its Portuguese acronym) until the legislative amendments to the legal regime come into force.

# 12. Trade union activity and collective bargaining

## 12.1 Trade union activity and workers’ representation

- Financially dependent service providers will now be entitled to have their socio-professional interests represented by a trade union/workers’ committee.
- The right to hold meetings in the workplace and to affix and distribute trade union information is now recognized for trade union associations even when no employees at the company are members of trade unions.

## 12.2 Broadening collective bargaining coverage

- When external services are acquired through outsourcing from a third-party entity and the work falls within the acquirer’s corporate purpose, **the acquirer’s collective bargaining agreement (“CBA”) applies to the service provider.**
- **Financially dependent service providers will now have the right to negotiate specific CBAs** and to have existing CBAs applied to them on the same terms as employees, to the administrative extension of a CBA, and to have minimum working conditions set administratively.

### What to do?

Review salary processing

### What to do?

Allow trade union activity in the company even when no employees are trade union members

**Infringement:** Preventing trade union activity constitutes a **very serious administrative offense**

### What to do?

Identify service providers for the purpose of applying the collective bargaining agreement and assess the possible financial impact and the impact on working conditions

**Infringement: Serious administrative offense.** This may lead to service providers **claiming the employment credits and rights** that were not applied to them

Amend template service agreements to include a reference to the CBA and identify the entity responsible for ensuring compliance with the labor obligations established in the CBA

**Infringement: Serious administrative offense**

## 13. Construction and agriculture

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- Employers, user companies or final beneficiaries of services—as applicable—with **10 or more employees on farms and temporary or mobile construction sites** will now be required to organize a **weekly record of the workers assigned by temporary employment companies or through outsourcing**. Objective: to strengthen monitoring of compliance with occupational safety and health rules and inform social security about new admissions.
- **Note:** The contractor and the site, company or farm owner, as well as their respective directors or managers, and companies that have a holding, control or group relationship with the contractor or the site, company or farm owner, are **jointly and severally liable for compliance with the law and for any infringements committed by the subcontractor** that carries out all or part of the contract on its premises or under its responsibility, **as well as for the payment of the respective fines**.

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## 14. Increasing inspection authorities' penalties and powers

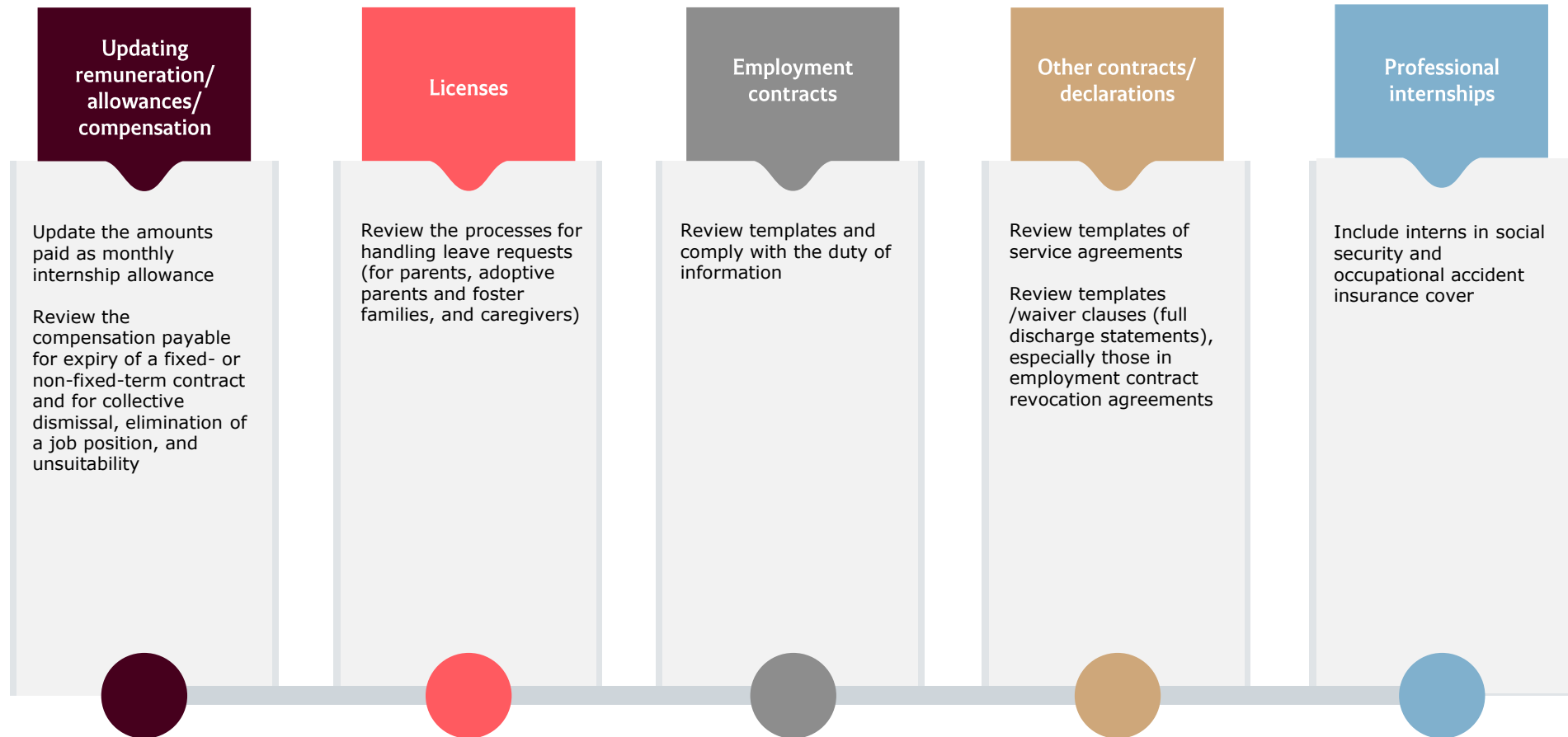
- **Failure to inform the Social Security Office about the admission of employees will now be a criminal offense.** Companies that fail to inform the Social Security Office about the admission of employees within six months of the end of the period established by law can be **punished with a term of imprisonment of up to three years or a fine of up to 360 days**.
- **Repeatedly hiring apparently independent workers under conditions that are characteristic of an employment contract** is subject to the following **additional penalties**:
  - a) **Suspension of the right to fiscal or contributory support, subsidies or benefits** from European Union funds granted by a public entity or service for up to two years
  - b) **Suspension of the right to participate in public auctions or tenders** for up to two years
- **Data interconnection** will now be possible for the ACT, the Social Security Office, the Tax and Customs Authority (AT), the Institute of Registries and Notary, the FGS, and the FTC.

### What to do?

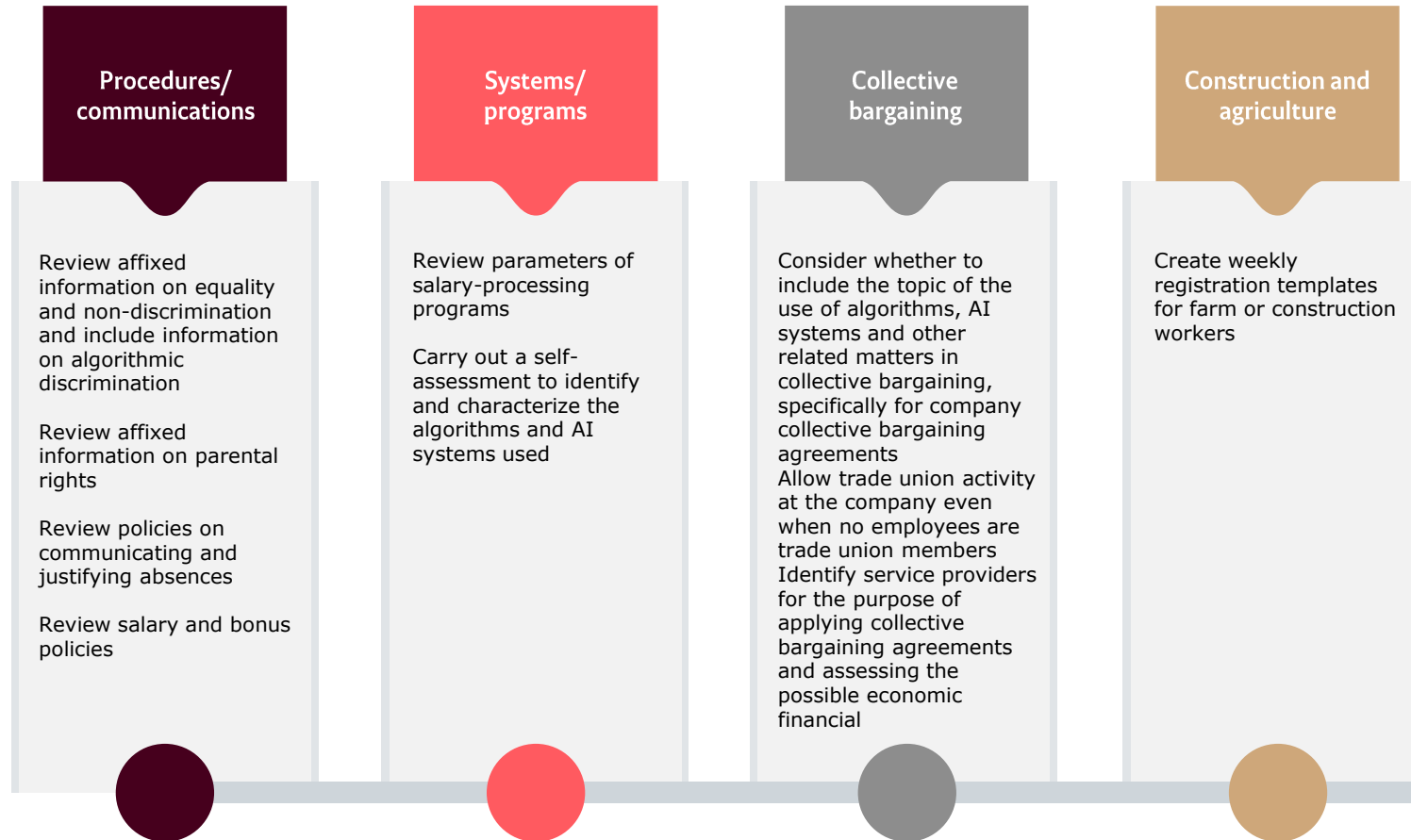
Create weekly registration templates for farm or construction workers, regardless of the nature of the employment relationship



## 15. Summary | What to do?



## 15. Summary | What to do?



## 16. Key contacts

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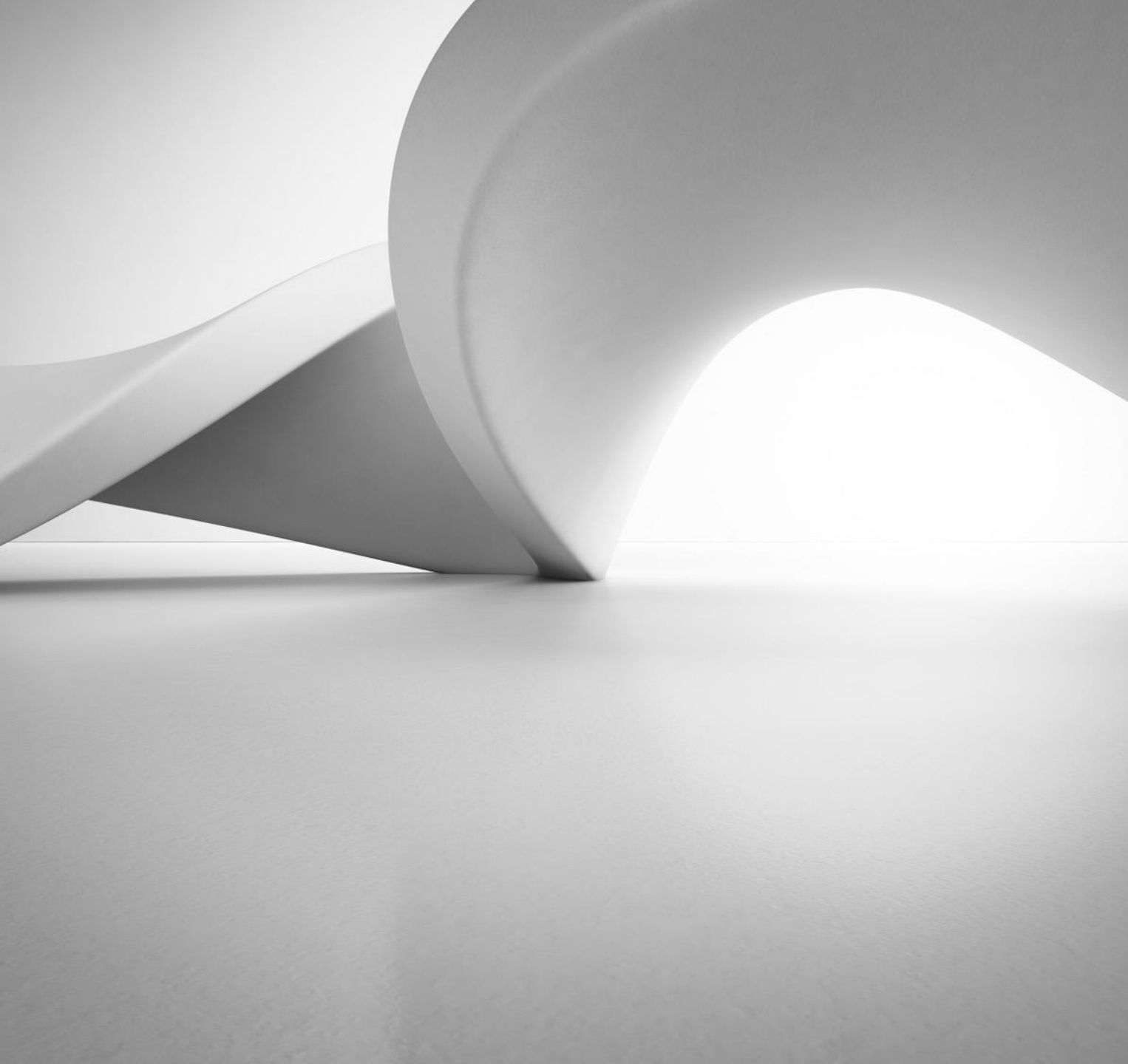
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