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Hot Topics in Employment 2024



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Editorial

A new year, new challenges in the world of employment, and some *déjà vu* as well.

2024 promises to bring **artificial intelligence** (AI) and, more generally, the algorithmization of work, to the agenda, having a profound impact on organizations and employment relationships. The individual and collective algorithmic information duties introduced by the Decent Work Agenda are likely to be given new impetus by the anticipated final approval of the AI Regulation, which will put pressure on employers in this regard.

On a different note, the idea of **work flexibilization**, whether in terms of working hours or location, will certainly gain ground this year due to increasing internal and external pressure to find solutions that promote a work-life balance.

Additionally, regarding attracting and retaining employees, we expect 2024 to be marked by **new incentives and benefit programs** (which pose so many labor, social security and tax challenges) introduced by companies, experimenting with new solutions now that we are faced with the dematerialization of the concept of “money”.

This year will also see renewed concern about **ESG** and, more specifically, **equality and diversity matters**, following multiple inspections by the Authority for Working Conditions (ACT) in 2023. Companies shall continue to adapt to the challenges of international employee mobility because of the growing need to hire foreign employees, whether resident in Portugal or not, as well as the opposite, i.e., companies located abroad hiring Portuguese residents.

In this publication, we look at what we consider to be this year’s five hot topics, identifying their main aspects and explaining why they matter and what employers should do from a practical and immediate perspective.

Have a good year at work!

Rui Vaz Pereira

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1. International mobility

What's happening?

The evolution of the global economy has generated numerous trends that have an impact on employee hiring and international mobility.

Firstly, Portuguese companies are increasingly faced with the need to hire foreign employees, whether they are resident in Portugal or not.

Secondly, companies located abroad have been hiring more and more foreign and Portuguese employees that are resident in Portugal.

Similarly, as a result of the crossborder expansion of national companies or their incorporation into global corporate groups, a

growing number of employees are, permanently or partially, assigned to other international companies in the group or other jurisdictions for specific projects, although they maintain their original employment relationship with the national company.

This situation has raised several questions not only about the way of hiring but also the law that governs these relationships, whether labor legislation or tax and social security regulations.

Why is it important?

This topic immediately raises questions such as which law governs the contractual relationship, or which rules apply regarding working time, remuneration, social security, etc.

Due to these trends and for compliance reasons, the possibility of hiring a certain employee and the legality of it needs to be assessed. It is vital to check the entry conditions for certain employees into Portugal and their work permits.

Another important aspect is that these employees are mainly hired by foreign companies. In fact, hiring through third parties has become widespread. These third parties include not only temporary employment agencies, but also new types of entities called employers of record (EoRs)—companies that specialize in hiring employees for foreign employers.

The legality of each specific situation and the risk of a direct employment relationship being considered to exist between the beneficiary entity and the employee need to be assessed.

Finally, these situations are usually associated with remote working so it is important to establish rules for this type of work provision, particularly regarding employee mobility, which may have implications for determining, for example, which legal regime applies.

What should employers do?

- Develop and review teleworking/remote working policies
- Create internal procedures for hiring foreign employees
- Create internal procedures for international mobility of employees, not only within the group but also for secondments
- Pre-analyze the hiring and working conditions in other jurisdictions when choosing to hire employees that are resident in those countries
- Pre-analyze the solution of hiring employees in Portugal through third parties, whether they are temporary employment agencies or EoRs.



2. New incentives and benefits

What's happening?

The need to ensure new benefits and incentives for employees, thus attracting and encouraging the retention of talent, is one of the new challenges that companies face. Besides the mechanisms for work flexibility, employees also consider new (more flexible) forms of compensation or payment for working and staying at the company as attractive and decisive. Moreover, the growing internationalization of organizations has given rise to the need for companies to reinvent themselves and incorporate the demands of new and increasingly diverse ecosystems into their structures.

In this context, companies have been seeking to adopt flexible payment programs that include a wide variety of services, such as education, health, culture, and even patronage, as a way of

compensating employees' work. Similarly, the emergence of a new generation entering the labor market that values and associates itself to a constant dematerialization of the concept of "money", has led to the replacement of (the so-far wanted) fixed income for both variable or fluctuating types of income, namely non-fungible tokens (NFTs) and cryptoassets. Also, as regards the incentive framework for retaining talent, the volatile and permanently mobile job market encourages the implementation of retention bonuses or long-term incentive plans.

Why is it important?

The volatile and constantly mobile labor market poses a new and more demanding challenge for companies. In part, the granting of flexible benefits and/or the payment of remuneration using unconventional methods will—if integrated into and incorporated by organizations—be measures that can generate greater attractiveness and retain talent and, at the same time, be more efficient in the management of resources.

What should employers do?

- Develop and review incentive and benefit policies
- Develop appropriate new compensation packages, especially based on NFTs and cryptoassets
- Implement retention bonuses' policies or long-term incentive plans



3. Flexible working

What's happening?

Employees are increasingly demanding new ways of working that promotes a work-life balance, based on flexible work models. Employment relationships have gradually become more flexible and adaptable to the employees' need of accommodating their availability and non-availability periods.

Moreover, technology has brought numerous advantages not only for companies, but also for employees, who can now work remotely outside the company's physical premises thus accessing a more flexible way of carrying out their activity .

Besides these remote working practices, which have given rise to modern phenomena such as digital nomads and co-working spaces, flexible models for organizing working time have also become particularly important.

Flexible ways of organizing working time such as adaptability, exemption from working schedule, and concentrated working hours—with the renewed four-day week—have been gaining ground. These make it possible to adapt the company's labor needs

to the employee's need for a work-life balance without clashing with the right to disconnect.

In addition, there is growing interest in topics related to flexible working, boosting models such as partial or hybrid telework or even Anglo-Saxon developments such as purchasing vacation days or paid time off (PTO)/earned time off (ETO).

In summary, it is becoming more difficult to identify work with an inflexible, fixed and predefined time and place, as new gray areas blur work boundaries.

Why is it important?

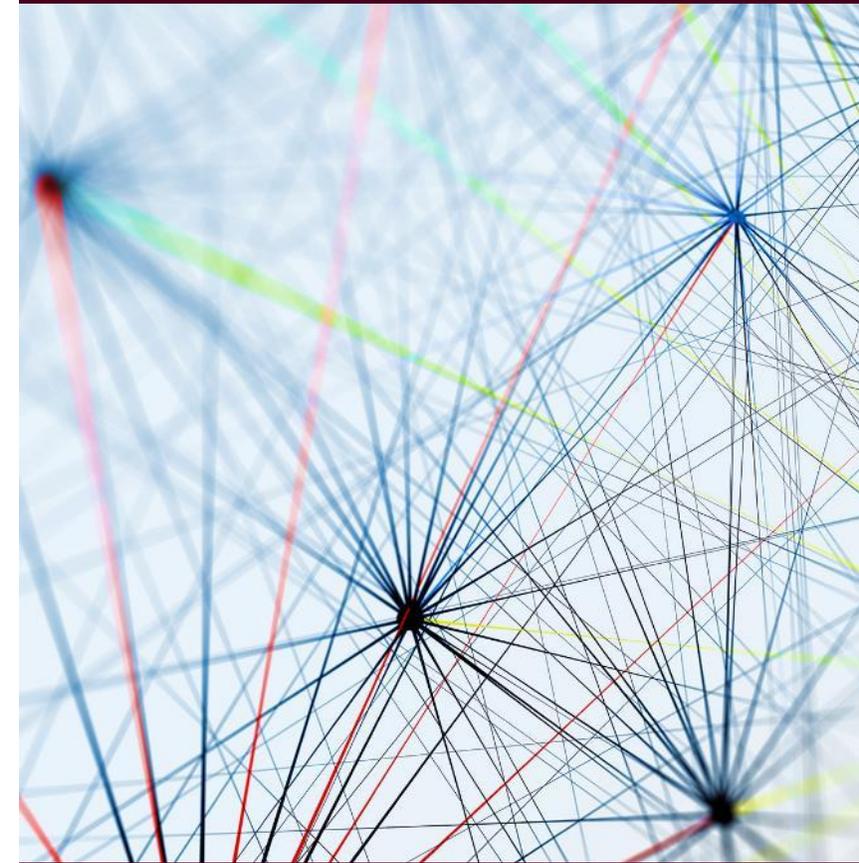
In an increasingly more competitive job market where it is difficult to recruit and retain talent, organizations must ensure that they have policies and procedures in place that are able to accommodate the flexibility and autonomy required by employees.

Employees' work-life balance is now a key condition for attracting and retaining excellent human resources, and more and more companies want to keep pace with this increasing trend.

On the other hand, with the flexibilization of working life,

companies are facing many concerns and challenges, such as (i) monitoring attendance and productivity, (ii) confidentiality and secrecy of information, or (iii) preserving the organization's own culture and identity.

Finally, the implementation of some international systems (such as PTO and ETO) brings many other challenges, which have captured the attention of companies and must be dealt with properly to avoid unexpected legal contingencies.



What should employers do?

- Develop and review teleworking and flexible working policies
- Prepare and review specific teleworking agreements for each employee
- Implement and review flexible ways of organizing working time
- Implementing and reviewing policies on vacation leave and absence periods

4. Artificial intelligence and technology

What's happening?

We are witnessing the algorithmization of work processes. Companies have an increasing number of technological solutions available to them to optimize employee management and improve productivity and efficiency. These AI solutions are used (i) when selecting and recruiting (candidate pre-selection and ranking); (ii) throughout the term of employment (performance assessment, promotions, salary increases); and (iii) in employee terminations (to identify employees to be made redundant.)

The tools powered by generative artificial intelligence—like

ChatGPT—that were in the spotlight last year will continue to gain ground in 2024 and be integrated into the way many employees do their jobs.

Moreover, in the context of flexible working, concerns about monitoring work and, therefore, the ever-challenging use of video surveillance, GPS, email access, among others, remain relevant.

Why is it important?

The widespread use of these disruptive technologies within the workplace carries considerable risks for employees' fundamental rights, particularly in terms of privacy, equality and non-discrimination, and can generate liability for companies.

In 2023, the Decent Work Agenda already created new obligations for employers regarding AI algorithms and systems, and information and transparency duties are expected to increase once the Artificial Intelligence Regulation has been approved.

Moreover, the growing use of tools such as ChatGPT exposes companies to problems such as confidentiality of information, data protection, or even reputational problems, which must be prevented and combat.



What should employers do?

- Conduct an inventory and audit of existing algorithms and other AI systems
- Comply with information obligations to individual employees and the employees' committee regarding algorithms and other AI systems
- Regulate the use of technology by employees, whether it involves new tools or, for example, the (now) outdated work email
- Train employees in the technologies themselves, their implications and prudent use
- Promote employees' digital skills (let us recall, for example, the [Employee Digital Training Voucher](#) initiative for digital training courses).



5. ESG | D&I

What's happening?

ESG stands for Environment, Social and Governance and refers to a set of metrics which aim to measure an organization's sustainability performance, including indicators related to the environment, human rights, and the company's own management model.

Today, besides their natural profitmaking purpose, companies are required to act responsibly, ethically, and with integrity and to commit to ESG objectives and a sustainable future, ensuring the well-being of their employees, making a positive contribution to the community, and protecting the planet.

ESG is not a new development, but the pandemic, climate change, and associated disasters have proven that financial sustainability is

not separate from environmental and social concerns. This is why the topic has gained particular importance and is expected to continue to do so in 2024.

Socially, one of the aspects that has been in the spotlight is Diversity and Inclusion (D&I), which also includes working conditions, employee health and safety, work-life balance, and respect for human rights' concerns.

Why is it important?

Investing in ESG is an intelligent business development strategy.

There is greater awareness for the importance of non-financial factors for better positioning in the market, which is gradually beginning to prize companies that are "ESG leaders" .

Customers, partners, investors and employees are looking for ESG companies, which are seen as more reliable and adaptable and, therefore, more sustainable and less exposed to risk.

The adoption of ESG policies and measures contributes to attracting and retaining talent and creating happier work environments in which employees identify with the company's values.

In particular, it is well-established that D&I contributes to companies' evolution and profit. More diverse and inclusive teams, including in leadership positions, are not only more representative and attractive, but are also more innovative and achieve better results.

But ESG is not just a set of best practices from a business and talent retention standpoint. It is also a result of the evolution of the legal landscape, involving more reporting duties and particular obligations to comply with in this respect.



5. ESG | D&I

What should employers do?

Employers shall map out the legal requirements applicable to the company from a labor perspective and consider adopting good ESG practices, thus combining the “must-have” with the “nice-to-have”.

Employers are already obliged to:

- prepare codes of good conduct to prevent and combat workplace harassment;
- implement whistleblowing channels;
- evaluate all job positions based on objective criteria (≠ performance assessment);
- prepare transparent remuneration and promotion policies, ensuring gender equality;
- prepare equality and non-discrimination policies;
- ensure compliance with gender quotas for management and supervisory bodies, where applicable;
- ensure compliance with employment quotas for people with disabilities, where applicable;
- have psychosocial and teleworking’s specific risks assessments.

Employers may/shall also:

- appoint an ESG officer;
- inform and train employees in ESG matters;
- continuously monitor results;
- adopt policies for granting benefits to employees, such as health/life/personal accidents’ insurance, gym membership, nutrition, supplementary sick allowance, supplementary parental allowance, pension plans;
- adopt policies for work-life balance, such as smart working policies, hybrid teleworking schemes, concentrated working hours (four-day week) or flexible working hours;
- establish partnerships with institutions for the inclusion of employees with special needs;
- adopt sustainable mobility policies (for example, favoring the use of public transportation for business trips and for commuting to work);
- introduce performance assessment methods linked to sustainability factors and variable remuneration plans with objectives directly related to sustainability.



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