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# Employment Law

Newsletter | Portugal

September 2019

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## Contents

- > **Laboratory**
- > **National legislation**
- > **Extension Orders**
- > **National case-law**



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## **I. Laboratory**

September was a prolific month when it comes to the publication of Employment and Social Security legislation.

The following acts were published: Law no. 90/2019, that strengthens social protection for working parents, Law no. 107/2019, that amends the Labor Procedural Code and the “headline-grabber”, Law no. 93/2019, that amends the Labor Code and the corresponding implementing regulations, in addition to the Contributions Code.

After being widely discussed in social dialogue, in the media and in the parliament, these amendments to Portuguese labor legislation were finally published and, for the most part, have already come into force on October 1.

This Newsletter provides a summary of the changes brought by the aforementioned laws, which Cuatrecasas had the opportunity to present and discuss, as well as their impact on companies, at the information and training workshops that took place at our Lisbon and Porto offices.

Companies must now face the task of interiorizing these new rules by bringing their practices into line with the new legal framework. During this adaptation process, you can count on us, as always, to give you a helping hand.

Maria da Glória Leitão  
Partner, Department of Employment Law



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## II. National legislation

**Law no. 90/2019 – Diário da República no. 169/2019, Series I, September 4, 2019**

**Strengthens social protection for working parents**

Law no. 90/2019, that strengthens social protection for working parents, amended the Labor Code, Decree-Law no. 89/2009, of April 9, which regulates social protection for public sector employees covered by the integrated social protection scheme, as parents of a newborn child or newly adopted child, and Decree-Law no. 91/2009, of the same date, that establishes legal rules on social protection of parents, under the social security scheme and the solidarity branch of that scheme.

Law no. 90/2019 entered into force in part on October 4, 2019, with remaining provisions entering into force with the next State Budget.

**Law no. 93/2019 - Diário da República no. 169/2019, Series I, September 4, 2019**

**Amends the Labor Code and corresponding implementing regulations, and the Contributions Code of the Social Security Welfare System**

This law introduces a number of changes to employment law. In particular, it covers: trial periods, fixed-term employment contracts, temporary employment contracts, hour banks, vocational training and collective bargaining agreements.

The following selected amendments are especially noteworthy:

- The maximum length of a fixed-term employment contract has been shortened from 3 to 2 years;
- The grounds which can be invoked to justify recruitment through fixed-term contracts have been amended and no longer include recruiting a first-time job seeker or a long-term unemployed person;
- The trial period in permanent contracts has been extended to 180 days for first-time job seekers and for the long-term unemployed;
- Removal of individually agreed hour banks;
- Possibility of creating an hour banks by holding employee plebiscites;
- Increase in compulsory continuing training from 35 to 40 hours;
- Establishment of an additional contribution on employers for excessive fixed-term employment relations, provided the number of recruited fixed-term employees exceeds the corresponding annual sectoral indicator in any given year.

This Law came into force on October 1, 2019.



It should be pointed out that employment contracts celebrated prior to the entry into force of this law are subject to the amendments that it introduces, with some exceptions:

- Fixed-term employment contracts celebrated prior to this law's entry into force are not subject to the new rules on maximum length and renewal, nor the changes in valid grounds for resorting to such contracts;
- The ceiling on the number of renewals does not apply to temporary employment contracts signed prior to the law's entry into force.

The first notification to pay the additional contribution for excessive staff turnover will only be made in 2021.

### **Law no. 107/2019 – Diário da República no. 172/2019, Series I, September 9, 2019**

**Amends the Labor Procedural Code, aligning it with the Civil Procedural Code**

The most noteworthy changes include:

- The Civil Procedural Code provisions concerning the inversion of litigation procedures are now explicitly applicable to the injunctions foreseen in the Labor Procedural Code, except when the Court is petitioned to suspend a dismissal, whilst main proceedings to evaluate its lawfulness and compliance with the mandatory procedural formalities are simultaneously brought;
- In claims whose value falls strictly under the jurisdiction of the court of first instance (until € 5000,00), the maximum number of witnesses has been reduced from 10 to 5;
- The general deadline for submitting an appeal to the Court of Appeal and to the Supreme Court has been extended from 20 to 30 days.

This Law came into force on October 9, 2019.

Its provisions are immediately applicable to on-going claims, proceedings and procedural issues on the date of its entry into force.

### **Order no. 323/2019 – Diário da República no. 180/2019, Series I, September 19, 2019**

**Regulates the establishment of the CONVERTE+ measure, comprising a temporary support for converting fixed-term employment contracts into permanent employment contracts, in the form of a cash grant to employers.**

This support measure will be managed by the IEFP, I.P. (National Employment and Vocational Training Institute, I.P.) and comprises a grant for the purposes of tackling job insecurity. The Order entitles employers to a cash grant corresponding to four times the basic monthly salary set out in permanent employment contracts, capped at 7 times the IAS (Social Benefits Reference Figure), which currently stands at €435,76 (i.e. €3 050.32). In certain situations,



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such as the conversion of a contract with an employee with disabilities, this amount may be increased by an additional 10%.

The Governing Board of the IAFP, I.P. will set the period for applications, and the application process will be entirely online-based.

Conceded grants will compel the employer to maintain the supported employment contract and the employment level for a period of no less than 24 months, from the date of the contract's entry into force.

This Order came into force on September 20, 2019 and shall remain in force until March 31, 2020.

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### III. Extension Orders

Sector	Order
<b>Metal, Metalworking and Similar Industries</b>	<b>Order no. 278/2019 - Diário da República no. 176/2019, Series I, September 13, 2019</b> Establishes the extension of the amendments to the collective bargaining agreement between FENAME – National Metal Federation and SITESE - Services, Trade, Catering and Tourism Workers and Technicians Trade Union and others.
<b>Private Security Sector</b>	<b>Order no. 307/2019 - Diário da República no. 176/2019, Series I, September 13, 2019</b> Establishes the extension of the amendments to the collective bargaining agreement between AES – Association of Security Companies and STAD – Gatekeepers, Security, Cleaning, Domestic and Other Activities and one other.



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<p><b>Private Security Sector</b></p>	<p><b>Order no. 308/2019 - Diário da República no. 176/2019, Series I, September 13, 2019</b> Establishes the extension of the collective bargaining agreement between AES – Association of Security Companies and FETESE – Industry and Services Trades Unions Federation and one other.</p>
<p><b>Trade and Services</b></p>	<p><b>Order no. 311/2019 – Diário da República no. 178/2019, Series I, September 17, 2019</b> Establishes the extension of the amendments to the collective bargaining agreement between ACIRO – Association for Trade, Industry and Services in the West Region and SITESE – Services, Trade, Catering and Tourism Workers and Technicians Trade Union.</p>
<p><b>Trade and Services</b></p>	<p><b>Order no. 312/2019 – Diário da República no. 178/2019, Series I, September 17, 2019</b> Establishes the extension of the amendments to the collective bargaining agreement between ACIRO – Association for Trade, Industry and Services in the West Region and CESP – Portuguese Trade, Offices and Services Trade Union and others.</p>
<p><b>Dairy and Dairy Derivative Products Industries</b></p>	<p><b>Order no. 313/2019 – Diário da República no. 178/2019, Series I, September 17, 2019</b> Establishes the extension of the collective bargaining agreement and its amendments between LACTICOOP – Union of Dairy Producers Cooperatives in Entre Douro and</p>



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	Mondego, UCRL and one other and the Trade, Office and Services Union/UGT-SINDCES/UGT.
<b>Clothing</b>	<b>Order no. 331/2019 – Diário da República no. 183/2019, Series I, September 24, 2019</b> Establishes the extension of the amendments to the collective bargaining agreement between ANIVÉC/APIV – National Association of Garments, Clothing and Fashion Industries and FESETE – the Trade Union Federation of Textiles, Woolens, Garments, Footwear and Leather Workers.
<b>Electronic Products</b>	<b>Order no. 335/2019 – Diário da República no. 185/2019, Series I, September 26, 2019</b> Establishes the extension of the amendments to the collective bargaining agreement between AGEFE – Entrepreneurial Association of the Electrical, Household Appliances, Photographic and Electronic Sectors and FEPCEs – Portuguese Trade, Office and Services Trade Union Federation.



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## IV. National Case-law

### **Ruling by the Porto Court of Appeal, of July 10, 2019**

**An accident which occurred during the performance of a job-integration contract must be considered a work accident and jurisdiction for dealing with its consequences conferred upon the Labor Courts**

This case concerned an employee, who had entered into a job-integration contract with the Municipal Council, pursuant to which he was undertaking a child-care project. When starting his activity, he was the victim of a work-related accident, which rendered him unfit for work for a period of 160 days. He claimed compensation from the insurer on the basis of an insurance policy to cover the project's risks.

Even though he had received a compensation for the accident in question, the employee did not agree with the way the monetary sum was set, and decided to bring proceedings to the Civil Courts. In his defense, the insurer alleged that the Civil Courts did not have jurisdiction over the substantive issues in the claim, and that this was a matter for the Labor Courts.

Siding with the insurer's arguments, the Court of First Instance dismissed the claim on the grounds that the Civil Courts did not have jurisdiction to rule on the dispute. The employee then decided to lodge an appeal before the Porto Court of Appeal.

The Court of Appeal's analysis made it quite clear that Labor Courts hold jurisdiction over claims arising from work accidents, but that there had to be an employment contract for this framework to be applicable. Hence, the crucial question to determine the competent Court was whether or not job-integration contracts are real employment contracts.

Initially, job-integration contracts were regulated by Orders, which created them for the purposes of promoting "work for social needs", from two different angles: firstly, they were aimed at unemployed persons, registered at job centers. Secondly, they would enable the undertaking of activities that meet certain social or collective needs.

The Court of Appeal pointed out that a number of provisions from standard employment contracts had been copied into job-integration contracts. Following this line of reasoning, the Court also highlighted the existing legal obligation for the managing entity to take out an insurance policy for the purposes of covering risks at work.

Originally, case-law from higher courts had ruled out jurisdiction of Labor Courts to decide on accidents occurring with the performance of job-integration contracts. Such case-law was, however, interrupted by a ruling from the Court for Conflicts of Jurisdiction, on October 19, 2017, which determined that accidents occurring during the performance of job-integration contracts should be considered as true work accidents.



The Court for Conflicts of Jurisdiction based its reasoning on the following arguments: (i) the existence of an employer-employee relationship; (ii) the monetary sum paid in return for work is akin to remuneration.

Concurring with the findings of the Court for Conflicts of Jurisdiction and specially noting the fact that job-integration contracts stipulate the subordination and dependence of their beneficiary in relation to the promoting entity, the Court of Appeal ruled that a *sui generis* employment relationship exists.

Hence, being the beneficiary of a job-integration contract, in a broad sense, a dependent employee, accidents occurring during the performance of such contracts must be considered work accidents. Disputes arising from such accidents shall therefore fall under the jurisdiction of the Labor Courts.



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