



COVID-19

Legal Insights

Employee Mobility in the context
of the "COVID-19 crisis"

While the country is facing, and trying to react to, the health and economic crisis caused by the COVID-19 pandemic, companies are implementing various available measures in order to mitigate the effects of the crisis and avoid reducing their workforces.

Mechanisms that can be applied to balance the workforce needs in the companies or sectors, in the context of COVID-19.

One possible solution may be the change of the employment contract from full-time to part-time, with the employee possibly entering into a parallel part-time contract with another employer, during the COVID-19 pandemic.

Alternatively, although with more restrictions, companies may enter into occasional employee assignment contracts, which consist in the temporary assignment of an employee to render his activity to a different company (being the employee subject to the management decisions of this different company). In this case, the initial contractual relationship shall be maintained. Considering that this relationship has three parties, being necessarily temporary and occasional, upon termination of the assignment (the duration of which shall be considered for purposes of seniority), the employee shall return to continue its activity in the original employer.

These mechanisms allow companies to manage the cost structure of their labor resources during the COVID-19 crisis, maintain the employees' original employment relationship with their employer and guarantee the maintenance of the employee's rights and duties during the term of both measures.

Legal requirements inherent to these mechanisms

The first measure only requires that the original employer enters into an amendment to the employment contract with the employee, reducing the working hours to part-time. At the same time, a fixed-term employment contract, duly justified (which should happen on a case-by-case basis), would have to be signed between the employee and the new employer.

On the other hand, according to the legal requirements set forth in the Portuguese Labor Code, the temporary assignment of an employee may only occur if the following conditions are cumulatively met: i) when the assigned employee has a permanent employment contract with the assigning company; ii) if the employee grants its consent to the assignment; iii) between affiliated companies, companies with reciprocal equity participation or in a group or control relationship, or between employers with common organizational structures, in this case regardless of the corporate nature; and iv) if the assignment has a maximum duration of one year, renewable for equal periods up to the maximum limit of five years.

The requirements for the occasional employee assignment can be regulated differently in a collective bargaining agreement, with the exception of the need for the employee's consent.

Main implications for the companies involved

From an employment law point of view, the change of an employment contract from full-time to part-time has no particular implications, beyond those expected in any employment contract.

In the case of the occasional assignment of employees, the parties, specifically the employers, have a considerable degree of freedom to set forth an assignment agreement in accordance with their needs.

In any case, the assigning employer is generally exempt from paying the employee's remuneration, and the receiving employer shall become responsible for that payment to the employee, as well as for guaranteeing the maintenance of the remaining benefits of the employee. However, since the contractual link between the employee and the assigning employer remains unchanged, that employer shall maintain the obligation to keep the employer in its staff and to comply with all tax and Social Security obligations.

Employee guarantees

In order to guarantee the interests and rights of the employee, the amendment to the employment contract that formalizes the change from full-time to part-time should expressly clarify that the amendment shall be in force exclusively during the crisis period arising from COVID-19 and that, upon termination of this crisis, the employment relationship between the original employer and the employee will be resumed under its standard terms.

In case of the use of a temporary assignment, during the assignment the employee shall be subject to the work regime applicable to the transferee employer with regards to form, location, duration of work, suspension of the employment contract, safety and health and access to social facilities.

However, considering the employment law principle preventing a reduction in remuneration, the assigned employee shall be entitled to the remuneration in force in the transferee employer or to the remuneration paid during the time of the assignment, whichever is higher. If the remuneration paid by the transferee company is higher than that the one paid by the assigning company, the increase is only due for the duration of the assignment. Furthermore, the employee is also entitled to holidays, vacation allowance and Christmas allowance and other regular and periodic benefits to which the employees of the transferee company are entitled for the same provision of work, in proportion to the duration of the assignment.

The transferee company must inform the assigning company and the transferred employee about the risks to safety and health inherent to the work to be performed by the employee. The employee cannot be allocated to a position particularly dangerous for his safety or health, unless if such position correspond to his specific professional qualification.

These conditions can be regulated differently by a collective bargaining agreement (IRCT), save for the requirement of the employee's consent.

This document contains only an overview of some measures that can be taken by companies. If you need additional information or any assistance, do not hesitate to contact the Labor Law team of CTSU - Sociedade de Advogados.

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