Portugal

# PORTUGAL

| Items | Regulations in force on 1 January 2019 |
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| **1:** Notification procedures in the case of individual dismissal of a worker with a regular contract | Dismissal due to extinction of work position:<br>The employer notifies the grounds for dismissal, in writing, to: (i) the workers committee or, in its absence, the inter-union committee or union committee, (ii) the worker involved and, (iii) if the worker is a union representative, his/her union association, [paragraph 1 of article 369 of the Labour Code (CT hereafter)].<br>During the ten days following the notification, those entities (including the employee affected) can issue a grounded opinion stating their reasons to oppose the dismissal as well as alternatives to mitigate the effects of the dismissal.<br>Any worker involved, committee representing these workers or union association may, within the three business days following the employer's notification, request to the competent inspection service of the ministry responsible for the labour area, to check the established requirements for dismissal, informing simultaneously the employer of this fact (paragraph 2 of article 370 of the CT).<br>Dismissal due to unsuitability:<br>A training and adaptation period or a previous warning must precede the beginning of the procedure of dismissal for unsuitability. The employer notifies the grounds for dismissal, in writing, to the worker and, if the worker is a union representative, the union association (paragraph 1 of article 376 of the CT). If the worker is not a union representative, three business days after having received the notification, the employer must send the same notification to the union association that the worker has indicated for that effect or, if the worker does not indicate any union, to the workers committee or, if it does not exist, the inter-union committee or union committee (paragraph 2 of article 376 of the CT). Within 10 days of the preceding notification, the worker may gather the documents and request the relevant probative steps, according to Paragraphs 3 and 4 of article 356 of the CT, with the necessary adjustments (paragraph 1 of article 377 of the CT). After the considered probative steps, the facts not contained in the employee's notification or response may not be invoked.<br><br>As of a certain number of dismissals (see Item 18): see item 19. |

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| **2:** Delay involved before notice can start | Dismissal due to extinction of work position:<br>Procedure: During the 10 days following the notification referred to in the previous item, the organisation representing the worker, the worker involved and, if the worker is a union representative, the respective union association, may issue a statement. These same entities may request to the competent inspection service of the ministry responsible for the labour area to check the requirements for the dismissal, no later than three business days after the notification. This service prepares and sends to the employer and/or to the entity that requested its intervention the response to the inquiry on the matter subject to verification, within the period of seven days after receipt of the request (paragraphs 1, 2 and 3 of article 370 of the CT).<br>Decision: After five days counted from the end of the period referred to above, the employer may proceed with the dismissal (paragraph 1 of article 371 of the CT).<br>Dismissal due to unsuitability:<br>Procedure: A training and adaptation period or a previous warning must precede the beginning of the procedure of dismissal for unsuitability (see item 5). During the 10 days following the notification referred to in the previous item, the worker may attach documents and request the needed investigative evidences (paragraph 1 of article 377 of the CT). If the worker requested to investigate evidences, the employer should inform the worker, the committee representing the worker and, if the worker is a union representative, the respective union association, of the result of this investigation (paragraph 2 of article 377 of the CT). After these notifications, the worker and the committee representing the worker may, within the period of 10 business days, send to the employer their substantiated opinion, namely on the motives justifying the dismissal (paragraph 3 of article 377 of the CT).<br>Decision: After the receipt of the opinions referred to in the previous paragraph or the end of the period prescribed for this, the employer has 30 days to proceed with the dismissal, otherwise it will expire (paragraph 1 of article 378 of the CT).<br>Calculation (for EPL indicators): average of extinction of work position (16 days = 1 day for letter + 10 days for first notification and reactions + 5 days for employer to make decision) and unsuitability (24.5 days = 6 days for training and post-training adaptation or previous warning + 1 day for letter + 10 days for first notification plus 5/2 days for investigation plus 10/2 days for reaction to result of investigation). The last two items are divided by 2 to account for the possibility that investigation is not requested.<br><br>As of a certain number of dismissals (see Item 18): 16 days (= 1 day for letter + 15 days for negotiation) |
| **3:** Length of notice period at different tenure durations (a) | Dismissal due to extinction of work position and dismissal due to unsuitability:<br>The employer notifies the decision of the dismissal in advance at least by (paragraph 3 of article 371 and paragraph 2 of article 378, both of the CT):<br>- 15 days, in the case of workers with job tenure of less than one year;<br>- 30 days, in the case of workers with tenure equal to or above one year and less than five years;<br>- 60 days, in the case of workers with tenure equal to or above five years and less than ten years;<br>- 75 days, in the case of workers with tenure equal to or above ten years. |
| **4:** Severance pay at different tenure durations (a) | The worker is entitled to severance payments corresponding to 12 days of base wage and tenure-based increments for every year of tenure (Paragraph 1 of article 366) subject to the limits referred in paragraph 2 of article 366. Whenever the employer fails, total or partly, to pay the full amount of compensation due for termination of employment, the worker may activate the compensation fund, intended to partially pay (up to 50%) the compensation due for termination of employment of its employees (paragraph 2 of article 33 of Law 70/2013, of 30 of august).<br>Calculation (for EPL indicators), assuming half of severance payment is covered by the compensation fund:<br>9 months tenure: 0.30 months ( =12*(9/12)*(1/30) ) => 0.15 months of wage, taking into account the compensation fund<br>4 years tenure: 1.60 months ( =12*4/30 ) => 0.80 months of wage<br>20 years tenure: 8.00 months ( =12*20/30 ) => 4.0 months of wage |

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| **5:** Definition of unfair dismissal (b) | Dismissal due to extinction of work position (art.368 CT): Dismissal due to extinction of work position can only take place if the subsistence of the work relation is, in practice, impossible and there are no fixed term contracts at the company with tasks similar to those of the extinct job. In assessing the regularity and lawfulness of the dismissal for extinction of the work position, the Court must review the veracity of the grounds for dismissal and determine whether it is reasonable to conclude that such grounds are adequate to justify the decision to reduce staff. If there is in the section or equivalent structure a plurality of jobs of identical functional content, in order to determine the job to be extinguished, the employer's decision shall observe, by reference to the respective holders, the following order of relevant and non-discriminatory criteria. : a) Worst performance evaluation, with parameters previously known by the worker; b) Lower academic and professional qualifications; c) Greater burden for maintaining the employee's employment relationship with the company; d) Less experience in the position; e) Lower job tenure in the company (paragraph 2 of article 368 of the CT).. Any worker who, in the three months prior to the beginning of the dismissal procedure, has been transferred to a job which is then suppressed, is entitled to be reallocated to the previous job, if it still exists, with the same base wage. It is considered that the subsistence of the work relation is, in practice, impossible when the employer does not have another job compatible with the professional category of the worker (paragraph 4 of article 368 of the CT, Case Law 1950/14.2TTLSB.L1, 6 April 2017, from Supreme Court of Justice, ).<br>Dismissal due to unsuitability: (art. 375 CT): Dismissal due to unsuitability can occur if one of the following occurs: 1) continued reduction of productivity or of quality, repeated breakdowns in the resources allocated to the job and risks to the safety and health of the worker, other workers or third parties; or 2) the worker is allocated to a technically complex or management position and does not meet the objectives that were previously agreed in writing. Unsuitability under 1) can take place in two circumstances: i) in the previous six months, modifications of the job requirements occurred, vocational training suitable to the modifications of the job has been provided and after the training, the worker has been provided with a period of adaptation of at least 30 days; or ii) the following conditions are met, cumulatively: a) substantial modification of the output produced by the worker, determined by the poor performance of his/her duties which is predicted to be definitive; b) the employer informs the worker, attaching documents where the previously provided work is stated, demonstrating this way the substantial modification in the work provided (on which the worker may issue a statement in writing on the referred elements within a period of no less than five business days); c) after the worker statement or after the end of the period prescribed for that, the employer gives the worker, in writing, suitable orders and instructions relative to the execution of his/her tasks, with the purpose of correcting it; and d) suitable vocational training has been provided and after the training, the worker has been provided with a period of adaptation of at least 30 days. Dismissal due to unsuitability could occur if there is no other job in the company available and compatible with the professional category of the worker (article 375 (1) (d) of the CT.<br>The procedure under ii) applies also to unsuitability under 2.<br>Discriminatory dismissal is always unfair. |
| **6:** Length of trial period (c ) | The trial period, for an open ended employment contract, is of the following duration (paragraph 1 of article 112 of the CT):<br>- 180 days for workers who hold positions of technical complexity, high level of responsibility or which presuppose special qualification, as well as those who perform trustworthy duties;<br>- 240 days for workers who hold directorship or senior management positions;<br>- 90 days for other workers<br>The duration of the trial period may be reduced by a collective agreement or by a written agreement between the parties (paragraph 5 of article 112 of the CT).<br>Calculation (for EPL indicators): average of qualified and other workers: 4.5 months |

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| **7:** Compensation following unfair dismissal (d) | Dismissal declared unfair (art. 389 CT):<br>The employer is condemned to indemnify the worker for all the (material and moral) damages caused.<br>In the case of mere irregularity of the procedure for dismissals, due to omission of required investigative measures required in the case of misconduct, and if the justifying motives claimed for the dismissal are declared founded, the worker is merely entitled to indemnity corresponding to half the value that would result from the application of what established as regards indemnity instead of reinstatement at the worker's request (paragraph 2 of article 389 of the CT).<br>Indemnity instead of reinstatement (art. 391 and 392 CT):<br>If the worker chooses an indemnity, instead of reinstatement, the court determines the amount, between 15 and 45 days of base wage and tenure-based increments for every year or year fraction of tenure, depending on the value of the wage and degree of unfairness. The indemnity cannot be less than three months of base wage and tenure based increments.<br>In the case of micro-enterprises or workers holding management or directorship positions, the employer may request the court to refuse reinstatement, with the worker being entitled to indemnity, determined by the court, between 30 and 60 days of base wage and tenure-based increments for every year or year fraction of tenure, which cannot be less than the value corresponding to six months of base wage and tenure based increments.<br>Calculation (for EPL indicators): 20 months |
| **8:** Reinstatement option for the employee following unfair dismissal (b) | Dismissal declared unfair:<br>- The employer is condemned to reinstate the worker in the same department of the company, keeping the previous category and tenure of the worker [subparagraph b) of paragraph 1 of article 389of the CT].<br>- The worker may choose an indemnity, instead of reinstatement (article 391 of the CT), and the employer, in the case of a micro-enterprise or if the worker holds directorship or management positions, may request the court to avoid ordering reinstatement, based on facts and circumstances that would make the worker's return severely harmful and disturbing to the company's operation (article 392 of the CT).<br>In the case of mere irregularity on procedure for dismissals, due to omission of required investigative measures required both for misconduct and unsuitability, and if the justifying motives claimed for the dismissal are declared founded, the worker is merely entitled to indemnity at a reduced rate.<br>Calculation: average of unsuitability (2) and redundancy (3) |
| **9:** Maximum time period after dismissal up to which an unfair dismissal claim can be made (e) | The worker may choose to object to the dismissal, presenting a judicial claim through submission of an application, to the competent court, within the period of 60 days, which starts when the dismissal notification is received or , if later, from the date of termination of the contract,, except in the case of collective dismissal, which must be filed within the period of six months from the date when the contract ends (paragraphs 1 and 2 of article 387 and paragraph 2 of article 388, both of the CT).<br>Calculation (for EPL indicators): 2 month<br>As of a certain number of dismissals (see Item 18):12 months (Case Law 16514/18.3T8SNT.L1-4, from the Lisbon Appeal Court, 29 May 2019) |

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| **10:** Valid cases for use of standard fixed term contracts | Admissibility of fixed term contracts:<br>Fixed term contracts can only be used to meet a temporary need of the company and for the period strictly necessary to meet this need (paragraph 1 of article 140 of the CT).<br>The following are considered as temporary needs of the company (paragraph 2 of article 140 of the CT):<br>- Direct or indirect replacement of a worker who is absent or, for any motive, is temporarily unable to perform his/her duties [subparagraph a)];<br>- Direct or indirect replacement of a worker to whom an action of assessment of unfair dismissal is pendent in court [subparagraph b)];<br>- Direct or indirect replacement of a worker in a situation of unpaid leave [subparagraph c)];<br>- Replacement of a full-time worker who now works on a part-time basis for a defined period [subparagraph d)];<br>- Seasonal or other activity which annual production cycle shows irregularities arising from the structural nature of the respective market, including the supply of raw materials [subparagraph e)];<br>- Exceptional increase of the company's workload [subparagraph f)];<br>- Execution of occasional tasks or a certain service that is precisely defined and not long-lasting [subparagraph g)];<br>- Execution of a defined and temporary work, project or other activity, including the execution, direction or supervision of work in the area of civil construction, public works, industrial assembly and repair, under contract or direct administration, as well as the respective projects or other complementary activity involving control and monitoring [subparagraph h)].<br>A fixed term contract may also be signed for (paragraph 4 of article 140 of the CT):<br>- The launch of a new activity of an undefined duration, as well as the start-up of a company or establishment belonging to a company with less than 750 workers;<br>- Contracting of workers in search of their first job, in a situation of long-term unemployment or other situation established in special employment policy legislation. |
| **11:** Maximum number of successive standard FTCs (initial contract plus renewals and/or prolongations) | Renewal of fixed term contracts:<br>A fixed term contracts may be renewed up to three times (paragraph 1 of article 148 of the CT), which means that the maximum number of successive fixed term contracts is 4 (initial contract plus the three permitted renewals). |
| **12:** Maximum cumulated duration of successive standard FTCs | Duration of fixed term contracts:<br>A fixed term contract may be renewed up to three times and their duration cannot exceed (paragraph 1 of article 148 CT):<br>- 18 months, when involving a person in search of a first job;<br>- Two years, in the other cases established in paragraph 4 of article 140 (referred to in item 10);<br>- Three years, in all other cases.<br>- Six years in cases of uncertain duration<br>Calculation: average of cases established in paragraph 4 of article 140 and other cases (((18+24)/2)+((36+72)/2))/2= 37.5 months |
| **13:** Types of work for which temporary work agency (TWA) employment is legal | A contract for the use of temporary work (article 175 of the CT) can only be signed in the situations referred to in subparagraphs a) to g) of paragraph 2 of article 140 (Item 10) and also in the following cases:<br>- Job vacancy during a recruitment process for its filling;<br>- Intermittent labour need, determined by fluctuation of the activity during days or parts of the day, provided that the use does not exceed, on a weekly basis, half the normal work hours typically undergone at the user;<br>- Intermittent need to provide direct family support, of social nature, during days or parts of the day;<br>- Implementation of a temporary project, namely company or establishment installation or restructuring, industrial assembly or repair. |
| **14:** Are there restrictions on the number of renewals and/or prolongations of TWA assignments? (f) | Renewal of contracts and assignments:<br>They can be renewed for as long as the justifying motive is maintained (article 178, 179 and 182 of the CT). |

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| **15:** Maximum cumulated duration of TWA assignments (f) | Maximum duration of temporary employment contracts between the agency and the worker:<br>A temporary employment contract cannot exceed the duration of the contract for the use of temporary work (paragraph 1 of article 182).<br>A temporary fixed term contract, including renewals, cannot exceed two years, or six or 12 months, in the case of a job vacancy when arising from a process of recruitment for its filling or exceptional increase of the company's activity, respectively (paragraph 3 of article 182 of the CT).<br>The calculation of the above limit shall include the duration of a FTC or a TWA contract for the same workstation, as well as a service agreement for identical tasks, between the worker and the same employer or companies that are in a group or in a controlling relationship with the employer or have common organizational structures (paragraph 5 of article 148, referred to by paragraph 5, article 182 of the Labour Code).<br>Contracts between the agency and the worker can, however, be open-ended (articles 183 and 184 of the CT).<br>Maximum duration of contracts for the use of temporary work (assignments):<br>A contract for the use of temporary work, including renewals, can neither exceed the duration of the justifying cause nor the limit of two years, or six or 12 months in the case of a job vacancy when a process of recruitment for its filling is already underway or exceptional increase of the company's activity, respectively (paragraph 2 of article 178 of the CT). |
| **16:** Does the set-up of a TWA require authorisation or reporting obligations? | The activity of temporary assignment of workers for occupation by users is subject to a license. Its granting depends on the observance of the following cumulative requirements: suitability; appropriate organisational structure; regular situation with respect to to the tax administration and social security; legal designation of single or collective legal person under the designation «temporary work» and setting aside a financial guarantee (paragraph 1 of article 5 of Decree-Law paragraph 260/2009, of 25 September).<br>Bi-annual reporting to PES about workers employed in the previous semester (paragraph 2 of article 9 of Decree-Law number 260/2009, of 25 September). |
| **17:** Do regulations ensure equal treatment of regular workers and agency workers at the user firm? | Working conditions of temporary workers:<br>During the assignment, the worker is subject to the regime applicable to the user with respect to place, working time and suspension of the employment contract, occupational safety and health and access to social facilities (paragraph 2 of article 185 of the CT).<br>The worker is entitled:<br>- To the minimum wage defined in the collective agreement applicable to the temporary work agency or to the user, or to the same work, according to which is more favourable (paragraph 5 of article 185 of the CT);<br>- In proportion to the duration of the respective contract, to holidays, holiday and Christmas allowances, as well as other regular and period benefits to which the user's workers are entitled for the same work (paragraph 6 of article 185 of the CT). |
| **18:** Definition of collective dismissal (b) | As of a certain number of dismissals (see Item 18): I:<br>Collective dismissal is considered the termination of employment contracts promoted by the employer in the period of three months, covering at least two workers, in micro-enterprise or a small company, and five workers in case of a medium-sized or large company, whenever the dismissal occur due to the closure of one or various divisions or equivalent structure or to the reduction of the number of workers as result of market, structural or technological motives (paragraph 1 of article 359 of the CT). Conditions on fixed-term contracts and on workers recently transferred to redundant positions – required for individual redundancies (see Item 5) – do not apply for collective redundancies. |

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| **19:** Additional notification requirements in cases of collective dismissal (g) | Collective dismissal follows a specific legal procedure, which, in general, has three stages: (1) communication of intention to proceed to collective dismissal (article 360 of the CT); (2) formal discussion with information and negotiation meetings (article 361 of the CT); (3) notification of the final dismissal decision to each employee (article 363 of the CT).<br>Notifications in the case of collective dismissal:<br>An employer intending to proceed with a collective dismissal notifies this intention, in writing, to the workers committee or, in its absence, to the inter-union committee or to the union committee of the company representing the workers who will be involved (paragraph 1 of article 360 of the CT). In the absence of the entities referred to above, the employer notifies the intention of proceeding with the dismissal, in writing, to each worker potentially involved, who may appoint, amongst them, within the period of five business days counting from the receipt of the notification, a representative committee (paragraph 3 of article 360 of the CT). The employer, on a date prior to the referred notification, must send a copy of the notification to the ministerial department responsible for the labour area entrusted with the monitoring and fostering of collective contracting (paragraph 5 of article 360 of the CT). |
| **20:** Additional delays involved in cases of collective dismissal (h) | Information and negotiation with the structure representing the workers:<br>During the five days after the date of notification of the dismissal intention, the employer promotes a period of information and negotiation, with the organisation or committee representing the workers, with a view of reaching an agreement on the dimension and effects of the measures to be applied, in addition to other measures to reduce the number of workers to be dismissed (paragraph 1 of article 361 of the CT).<br>Decision:<br>Once the agreement has been signed, or in its absence, after 15 days have passed since the date of notification of the dismissal intention, the employer notifies in writing each concerned worker involved, observing ordinary notice periods (paragraph 1 of article 363 of the CT).<br>Calculation: 1 day for letter + 15 days for negotiation minus delays reported in item 2 for economic reasons |
| **21:** Other special costs to employers in case of collective dismissals (i) | No additional requirements |
| **22:** The worker alone has the burden of proof when filing a complaint for unfair dismissal | No |
| **23:** Ex-ante validation of the dismissal limiting the scope of unfair dismissal complaints | No |
| **24:** Pre-termination resolution mechanisms granting unemployment benefits | In general, the employee is only eligible to receive unemployment benefits if unemployed for reasons beyond his control (involuntary unemployment). Some terminations via mutual consent are deemed to be considered as involuntarily unemployment, such as:<br>- as part of a process towards the reduction of costs, either because of the company's restructuring, viability or recovery, or because the company is in a difficult economic situation, regardless of its size.<br>- based on reasons that allow the use of collective dismissal or the termination of employment due to the extinction of the work position, taking into account the size of the company and the number of employees covered, within the following quantitative limits, in each three-year period: (a) In enterprises employing up to 250 employees, termination of employment contract up to and including up to three employees or up to 25% of staff (b) In enterprises employing more than 250 employees, termination of employment contracts up to and including 62 employees, or up to 20% of the establishment plan, with a maximum limit of 80 employees shall be considered.<br>- that aim to enhance the qualifications and technical capacity of enterprises and not to reduce employment<br>(Practical Guide - Unemployment Allowance, 18 march 2019, published by ISS).<br><br>Value for EPL indicators for individual dismissals: average of economic (Yes) and personal (No) reasons |

Legend: d: days; w: weeks; m: months; y: years. For example "1m < 3y" means "1 month of notice (or severance) pay is required when length of service is below 3 years".

Notes:
a) Three tenure durations (9 months, 4 years, 20 years). Case of a regular employee with tenure beyond any trial period, dismissed on personal grounds or economic redundancy, but without fault (where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment). Averages are taken where different situations apply – e.g. blue collar and white collar; dismissals for personal reasons and for redundancy.
b) Based also on case law, if court practice tends to be more (or less) restrictive than what specified in legislation.

c) Initial period within which regular contracts are not fully covered by employment protection provisions and unfair dismissal claims cannot usually be made.
d) Typical compensation at 20 years of tenure, including back pay and other compensation (e.g. for future lost earnings in lieu of reinstatement or psychological injury), but excluding ordinary severance pay and pay in lieu of notice. Where relevant, calculations of scores to compute OECD EPL indicators assume that the worker was 35 years old at the start of employment and that a court case takes 6 months on average. Description based also on case law.
e) Maximum time period after dismissal up to which an unfair dismissal claim can be made.
f) Description based on both regulations on number and duration of the contract(s) between the temporary work agency and the employee and regulations on the number and duration of the assignment(s) with the same user firm.
g) Notification requirements to works councils (or employee representatives), and to government authorities such as public employment offices. Only requirements on top of those requirements applying to individual redundancy dismissal count for Versions 1 to 3 of the OECD EPL indicators (cf. Item 1).
h) Additional delays and notice periods in the case of collective dismissal (only delays on top of those required for individual dismissals – as reported in Items 2 and 3 – count for the OECD EPL indicators).
i) This refers to whether there are additional severance pay requirements and whether social compensation plans (detailing measures of reemployment, retraining, outplacement, etc.) are obligatory or common practice.