

Labour Law – Portugal

1.	Is it a legal requirement that employees must receive an employment contract?	It is always necessary to have a written contract (work contract or rendering of services contract). There are several types of contracts and the one that is applicable depends on the kind of work developed and the intention of the employer. A work relationship without a written contract is not illegal, but in case of dismissal it is considered the most formal contractual relationship by the Portuguese Authorities, thus making the calculations of the compensations clearer.
2.	What factors constitute fair dismissal i.e. legally justifiable reasons to terminate employment without the need to pay compensation?	There are two kinds of reasons for terminating the contract, the non litigious ones (e.g. retirement, end of the period stated on the contract, end of the reason for the celebration of the contract, mutual agreement) and the end of the labour relationship with litigation (with just grounds for dismissal all stated in the Portuguese Labour Code) nevertheless the employer must follow all the procedures set out under Portuguese Law.
3.	What is good practice with regard to dismissal procedures to minimise the risk of claims for unfair dismissal?	<p>When the employee has a permanent work contract, the requirements for dismissal are more demanding. Situations like violation of the instructions of the employer; false declarations about the absence of work or misconduct in the activity developed are some of the reasons that can justify the beginning of the statutory procedure for dismissal.</p> <p>Although the employer must comply with the previous procedure – failure to do so means that the employer will be held liable, either in terms of compensation or reinstatement to the former position of employment:</p> <ul style="list-style-type: none"> - Start of a disciplinary procedure; - Response from the worker to the disciplinary procedure, where he as well as the employer can present witnesses; - If applicable the employer can apply a penalty that can go from an official warning to a dismissal (the payment of compensation is analysed on a case by case basis); <p>In case of the company closing the section where the worker is developing his activity or in the case of a group dismissal, different procedures must be followed.</p> <p>All the work contracts may have a clause where a minimum notice period is stated, where both parties can end the contract, by written communication to the other party, without the above mentioned procedure, the employer paying the employee a set compensation according to the Portuguese Labour Code.</p>
4.	If an employee is dismissed unfairly what is the financial range of compensation that can be made to employees?	Between 15 and 45 (or until 60 days if the worker appeals to the court regarding the decision of dismissal and wins) days remuneration per year or fraction worked, the minimum being 3 months of remuneration, without mention of the maximum amount (depending on the number of years of work). A compensatory amount may be settled by the court in considering the damage that the employer caused directly or indirectly to the worker.
5.	Do employees have the right to be members of a trade union?	Yes, an employee is free to join a trade union. Consequently it is illegal to dismiss any employee either because of his trade union connection or absence of it.
6.	Is there any legal requirement for an employer to contribute to a pension for employees?	There is no obligation upon employers to contribute to employee's private pension schemes. Employers and employees only are obliged to make contributions to the general complimentary schemes of the State pension regime. Employers may voluntarily provide an additional pension regime.
7.	What are standard maternity rights?	Maternity leave is 120 or 150 days. If the employed woman opts for 150 days, the additional days

		<p>have to be taken after the birth and she will receive 80 % of her salary during this period. If she does not officially opt for 150 days, she will only be entitled to 120 days at full pay, 90 of which must be taken after the birth.</p> <p>Alternatively, the mother could choose a six-week leave period after the birth; the rest of the period could then be used up by the father, by joint decision.</p> <p>The pregnant employee is allowed time off work for pre-natal appointments, for as many times as necessary, including the preparation for birth (medical justifications must be delivered to the employer afterwards).</p> <p>During the pregnancy and for twelve months after the birth, women have the right not to work at night or work overtime. Activities or tasks that might harm the health of the pregnant woman or the foetus are also forbidden or should be restricted. Breast-feeding mothers have the right to a leave of absence of two periods of one hour each per day, without loss of pay. She will need to alert her employer ten days prior to the beginning of the leave of absence and needs to produce a doctor's note. Should they decide to bottle-feed, the mother or the father will be entitled to a leave of absence.</p> <p>After maternity leave they have a right to return to the same job unless it is not reasonably practicable for them to do so in which case they have the right to return to another job which is suitable and appropriate.</p> <p>All Foreign nationals are entitled to the same subsidies stated above as long as they meet all the standards mentioned above and have all the legal documentation needed to work in Portugal.</p>
8.	What are parental leave rights (including paternity leave)?	<p>For working fathers, mandatory paternity leave is set at ten working days; five of them must be taken <u>immediately</u> after the birth and the other five within 30 days after the birth.</p> <p>After the ten mandatory days of paternity leave are taken, ten optional days of leave are available, at 100 percent salary, though these ten days must be taken at the same time the mother is on maternity leave.</p> <p>Protection from dismissal. The employee may not be dismissed until the child is 12 months old.</p> <p>Paternity Leave– no statutory right to salary during leave. Both Maternity and Paternity Leave are paid by social security.</p>
9.	When are employees eligible for redundancy payments?	<p>After the experimental period and with three months of effective work, the employer is entitled to a redundancy payment calculated according to the time worked</p>
10.	What are the statutory redundancy payment limits?	<p>The redundancy payment is due after three working months and the payment is proportional to the period (minimum), the maximum is calculated according to the time worked - between 15 and 45 (or until 60 days if the worker appeals to the court regarding the decision of dismissal and wins) days of remuneration per year or fraction worked</p>
11.	Can existing employees be dismissed if you buy a business with employees?	<p>Generally 'no'. There will be an automatic transfer of the contracts of employment.</p> <p>If an employee is dismissed for a reason connected with the transfer, this is automatically considered as an unfair dismissal unless the employer can show economic, technical or organisational reasons for a change in the workforce.</p>
12.	Any other general legislation?	<p>Workers are protected by the Data Protection Act protecting personal data and the Human Rights Act implements the European Convention of Human Rights.</p>