Employment Law In Portugal And State Of Austerity Reforms

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Portugal, a country with a population of over ten million people, like many European countries, has suffered a serious economic crisis that has resulted in a 15% unemployment rate across the country and a 78 billion-euro bailout in 2011 from the European Union and the International Monetary Fund. Portugal, a European Union member since 1986, and a founding member of the euro zone[1], was the third country, following Ireland and Greece to require a financial bailout. As a result of the growing financial crisis and in order to comply with the terms of the financial bailout, over the last year the Portuguese government, lead by Prime Minister Pedro Passos Coelho, has implemented various amendments ("Law No. 23/2012" or "Amendments") to the Portuguese Labour Code ("Labour Code" or "Law No. 7/2009") aimed at reducing labor costs, increasing employment and improving Portugal's overall economic performance.

Portugal's Labour Code governs mandatory time off for holidays, sets forth requirements applicable to individual and collective redundancies, severance pay requirements, and wage and hour regulations. The Amendments passed by the Portuguese government directly impact each of these areas of employment law in that country. This article will provide a brief summary of the most critical aspects of the Amendments and discuss the current status of the proposed newest austerity measures relevant to severance pay and social security.

First, the number of minimum paid annual holiday entitlement for employees has been reduced by the Amendments from twenty-five (25) days to a total of twenty-two (22) working days. Additionally, time off for four (4) of the mandatory twelve (12) public holidays has been eliminated.

Second, Portuguese employers now have greater flexibility in implementing individual redundancies. Prior to the Amendments, employers were not permitted to terminate an employee if the grounds for the individual redundancy were caused by the employer or if it was possible for the employer to transfer the employee to another open comparable position within the organization. Rather, employers were only permitted to implement an individual redundancy if the employer could demonstrate specific changes in the workplace such as the introduction of technological innovations that required the employee's lay-off. However, as the result of the Amendments, employers are permitted to decide the criteria for an individual redundancy and are permitted to implement individual redundancies as the result of an employee's inability to meet company goals or comply with new work procedures and rules. The Amendments permit the employer to determine the criteria as long as the reasons for the redundancies are objective, relevant and non-discriminatory.

Additionally, in cases of position elimination, employers are no longer required to transfer an employee to another suitable position within the organization.

Third, the amount of required severance pay to separated employees was reduced to twenty (20) days from thirty (30) days per year of service. This change does not affect employees who entered into contracts prior to November 1, 2011. Notably, the Portuguese government is considering further reducing the amount of severance to a time period which would be more comparable with the euro zone average of seven (7) to thirteen (13) days. The decrease in job protection created by the reforms, although opposed by many, is expected to encourage hiring and decrease unemployment.

Fourth, the amount of compensation for overtime has been significantly reduced. Employees are now paid 25% extra for the first hour of overtime and 37.5% extra for each subsequent hour and 50% for each hour worked on a weekly rest day or public holiday. Additionally, employees are no longer entitled to additional break time as the result of working overtime.

The Portuguese government continues to consider additional amendments to the Labour Code in order to improve the economy and reduce costs to employers. For example, on September 7th of this year, the government proposed to reduce employer social security costs by raising employee contributions from 11% to 18%. Such a change would have effectively resulted in the reduction of a month's salary for most employees. However, after immense backlash by the public and labor unions and dozens of protests, Prime Minister Coelho agreed to abandon this latest proposed austerity reform and consider other alternatives to reduce labor costs and spur the economy such as alternative income tax and capital tax measures. The Portuguese government is expected to make a final decision regarding the additional measures in the weeks to come.

[1] "Euro zone" refers to the collective group of countries which use the Euro as their common currency.