

REGULATIONS ON EMPLOYMENT UNDER WORKS CONTRACTS



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The Regulations that govern employment relationships between civil and complementary construction contractors and their employees came into force recently, approved by Decree no. 69/2016 of 30 December.

These Regulations were approved as a result of the imposition enshrined in the Law of Employment (Law no. 23/2007 of 1 August), which establishes in article 3(1) that employment relationships under works contracts must be governed by special legislation.

The Regulations on Employment under Works Contracts have been long-awaited, because there are constant labour disputes in the civil construction sector resulting from the absence of specific and appropriate rules on employment relationships.

The relationships between the contractor and the construction owner are excluded from the scope of application of these Regulations and are governed by legislation.

When it comes to the employment relationship under a works contract, the Regulations provide that the parties may freely enter into an open-ended employment contract, and the employment relationship is not limited by the restrictions on temporary work established in the Law of Employment.

The contract expires when the reason that justified the hiring of the employee no longer exists, in other words, upon the conclusion of the works.

The expiry of the contract must be communicated to the employee in writing, within 7 days. Any breach of this duty to communicate within the applicable period gives the employee the right to compensation corresponding to the period of notice not given.

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The Regulations also provide for the possibility of extending the normal working hours (8 hours a day and 48 hours a week) and, in exceptional circumstances, they may be increased to 56 hours a week. For this purpose, the contractor must communicate the extension of the working hours to Ministry of Employment and to the trade union association in question. The notice must be given with 15 days of the date of implementation and must specify the reasons, the number of employees affected, and the period the measure is expected to remain in place.

While the measure extending working hours is in place, the employees affected have the right to a complementary half-day's rest per week, in addition to the weekly rest day provided for in the Law of Employment.

As labour disputes are common in the area of civil works contracts, it is important to clarify the rights and duties of both the employee and the contractor that are expressly provided for and explained in these Regulations:

1) RIGHTS AND DUTIES OF THE EMPLOYEE:

- Right to paid holidays, which can neither be renounced by the employee nor denied to him or her, in the following terms:
 - i) During the first year, 1 day per month of service, provided the service less between 3 and 12 months;
 - ii) 2 days per actual month of work, if the contract has a duration of at least 1 year;
 - iii) 30 days per year of actual work, if the contract has a duration of at least 3 years.

Upon agreement between the employee and the contractor, the holidays may be replaced by supplementary pay, but the employee must take at least 6 working days' holiday.

Besides the general duties established in the Law of Employment, employees in civil construction and complementary works are subject to specific duties, which include:

- wearing the work uniform and using the equipment or other means of individual protection supplied by the contractor and intended to protect against risks while working;
- attending professional training and training on techniques for safety and prevention of work accidents.

2) RIGHTS AND DUTIES OF THE CONTRACTOR:

In turn, the contract has the right to:

- Exercise authority, and manage and organise the work in the works for which the contractor is responsible;
- Exercise disciplinary authority over the employees hired by it

The most important specific duties that the contractor must perform in its capacity as employer are as follows:

- The duty to register the employees with the National Institute of Social Security (Instituto Nacional de Segurança Social – INSS);
- Pay the contributions to the INSS;
- Supply the work uniform and equipment or means of individual protection, free of charge;
- Prepare a health and safety plan for the works;
- Guarantee and ensure order, discipline and safety on the site and in the work areas;
- Comply with the legislation on health, hygiene and safety at the places of work and workstations;
- Maintain a system of signage in all the places of work, and principally on the public roads;

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- Ensure all employees against accidents at work and occupational diseases, and, at the beginning of each set of works, present the policies or certificates for this insurance to the Inspectorate General of Employment (Inspeção Geral do Trabalho).

A programme is now required for prevention of AIDS among other degenerative diseases, and the contractor must prepare this plan in cooperation with competent authorities.

It is hoped that when these Regulations come into force, the rights of both employees and contractors will be better protected and that there will be more stability and safety in the civil construction sector.

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