

## The ABCs of employment contracts for startups

### (Part 1)

No less important than product development, compliance, and market positioning, managing human resources is also key to making sure your startup runs smoothly.

So, in this series of articles on ‘The ABCs of employment contracts for startups’, we'll explore the essential topics to consider when drafting and executing these contracts in Portugal.

#### **The form of the contract: does it need to be in writing?**

Although the law allows verbal agreements in certain cases, it is advisable to put the agreement in writing to avoid doubts and conflicts between the parties. In a verbal relationship, proving the agreed conditions (salary, working hours, duties, etc.) can become extremely difficult, exposing the startup to a level of risk (e.g. litigation) that can be easily avoided by putting the agreement in writing.

Therefore, the written form is the most recommended practice, as it ensures greater clarity and security of conditions for both parties.

#### **Types of contract: can I hire on a fixed-term basis?**

The law presumes that you are hiring on a permanent basis (the ‘open-ended’ contract), unless otherwise stated in writing and with legal grounds.

Therefore, yes, startups can use fixed-term contracts for greater flexibility, provided they are in the early stages of operation or have fewer than 250 employees – which will be the rule.

In any case, in fixed-term contracts, it is important to bear two distinctions in mind:

- Fixed-term contract: Lasts for a maximum of two years. It can be renewed up to three times, but the total duration cannot exceed two years.
- Indefinite-term contract: Valid until the completion of a project or condition. But beware: it becomes a permanent contract if it exceeds four years.

**Other obligations: what about Social Security?**

Once the employment contract has been signed, the startup will have to register the new team member with Social Security. What this means in practice: notify Social Security of the new hire within 15 days before the contract takes effect.

**Termination of the employment contract: can I dismiss an employee?**

If the employee has a permanent contract, the possibility of terminating it is very limited: it can only occur for just cause (if they commit a serious infraction) or through specific dismissal procedures (collective dismissal, job termination, etc.). With regard to just cause, it is important to note that if the employer wishes to take this route, they must initiate formal disciplinary proceedings.

If the contract is fixed-term, the simplest termination is expiration, i.e., when the term expires or when the condition ends.

In any case, prior notice must be given:

- In fixed-term contracts, the employer must notify the employee at least 15 days before the contract termination date;
- In indefinite-term contracts, the employer must notify the employee at least 7, 30, or 60 days before the contract termination date, depending on the total duration of the contract.

It is also important to note that in certain cases (e.g. dismissal without cause, or in breach of the requirements for dismissal with just cause), the employee is entitled to compensation. It is therefore important to consider the various factors before taking this step.

In the next article, we will discuss ways in which startups can protect their ideas, know-how, secrets, and other resources when creating an employment contract, through confidentiality, non-competition, intellectual property, and other clauses.

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