

LABOUR AND EMPLOYMENT LAW I

Syllabus

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PART I – GENERAL CONCEPTS

CHAPTER I – INTRODUCTION

1. The subject matter of Labour Law.
2. Matters covered by Labour Law.
3. Connections between Labour Law and other branches of Law.
4. The Labour Law paradigm and the transformation of its traditional model.

CHAPTER II – FORMATION AND EVOLUTION OF LABOUR LAW

1. Roman Law.
2. Medieval and Intermediate Law.
3. The Industrial Revolution.
4. The emergence of social legislation.
5. The development of social legislation at the beginning of the 20th century.
6. The interruption of the development of social legislation under dictatorial regimes.
7. The consolidation and evolution of social legislation after the Second World War.
8. Economic crises and their impact on Labour Law.
9. The globalisation of the economy and its effects on labour legislation.
10. The history of Labour Law in Portugal.
 - 10.1. The absence of specific labour regulation in nineteenth-century legislation.
 - 10.2. The first labour regulations.
 - 10.3. Labour Law during the First Portuguese Republic.
 - 10.4. Labour Law under the “Estado Novo”.
 - 10.4.1. General aspects.
 - 10.4.2. The dictatorial period.
 - 10.4.3. The corporatist period.
 - 10.4.4. The liberalising period.
 - 10.5. Labour Law from the Revolution of 25 April 1974 to the present day.
 - 10.5.1. General aspects.
 - 10.5.2. The revolutionary period.
 - 10.5.3. The stabilisation period.
 - 10.5.4. The period of negotiated legislation.
 - 10.5.5. The codification period.

CHAPTER III – SOURCES OF LABOUR LAW

1. General principles.
2. The Constitution.
3. International Sources
 - 3.1. General principles
 - 3.2. International Conventions
 - 3.2.1. United Nations Conventions.
 - 3.2.2. ILO Conventions and Recommendations.
 - 3.2.3. Council of Europe Conventions.
 - 3.2.4. European Union Sources.
4. Statutory Law
5. Collective Labour Regulation Instruments
 - 5.1. General principles
 - 5.2. Negotiated Collective Labour Regulation Instruments
 - 5.2.1. General principles.
 - 5.2.2. The collective convention.
 - 5.2.3. The adhesion agreement.
 - 5.2.4. The voluntary arbitration decision.
 - 5.3. Non-Negotiated Collective Labour Regulation Instruments
 - 5.3.1. General principles.
 - 5.3.2. The extension act.
 - 5.3.3. The employment conditions act.
 - 5.3.4. The arbitration decision in mandatory or necessary arbitration process.
6. Labour Case Law
7. Custom
8. Labour uses
9. Legal Scholarship
10. Hierarchy of Sources
11. Interpretation and Gap-Filling in Labour Law Sources
 - 11.1. Interpretation
 - 11.2. Gap-filling (integration)
12. Application of Labour Law
 - 12.1. Application over Time
 - 12.2. Territorial Application
 - 12.2.1. Territorial application of labour legislation.
 - 12.2.2. International posting of workers.

PART II – INDIVIDUAL LABOUR LAW

CHAPTER IV – THE EMPLOYMENT CONTRACT

1. Definition of the employment contract.
2. Essential Elements of the Employment Contract
 - 2.1. General principles

- 2.2. Performance of an activity
- 2.3. Remuneration
- 2.4. Legal subordination
3. Defining Characteristics of the Employment Contract
 - 3.1. The employment contract as a nominated and typical contract.
 - 3.2. The employment contract as a predominantly non-formal contract.
 - 3.3. The employment contract as an obligatory contract.
 - 3.4. The employment contract as a contract for valuable consideration.
 - 3.5. The employment contract as a synallagmatic contract.
 - 3.6. The employment contract as a commutative contract.
 - 3.7. The employment contract as a contract of continuous performance.
 - 3.8. The employment contract as an *intuitu personae* contract.
 - 3.9. The question of the possible classification of the employment contract as a consumer transaction.
4. Distinction Between the Employment Contract and Related Legal Arrangements
 - 4.1. General principles
 - 4.2. Distinction between the employment contract and the service contract.
 - 4.3. Distinction between the employment contract and the mandate contract.
 - 4.4. Distinction between the employment contract and the deposit contract.
 - 4.5. Distinction between the employment contract and the works contract ("*contrato de empreitada*").
 - 4.6. Distinction between the employment contract and the partnership agreement ("*contrato de sociedade*").
 - 4.7. Distinction between the employment contract and a participation association ("*associação em participação*").
 - 4.8. Distinction between the employment contract and the agency agreement.
 - 4.9. Distinction between the employment contract and voluntary work performed for institutions pursuing altruistic purposes.
5. Methods for Distinguishing Employment from Self-Employment
6. The Burden of Proof Regarding the Existence of an Employment Relationship
7. Difficulties in Distinguishing Employment from Self-Employment. Quasi-subordinate work.

CHAPTER V – THE WORKER

1. The legal concept of the worker.
2. The protection of the worker's personality
 - 2.1. General principles.
 - 2.2. The right to physical and moral integrity.
 - 2.3. Freedom of expression and opinion.
 - 2.4. Freedom to choose one's appearance and attire.
 - 2.5. Freedom of religion.
 - 2.6. Freedom of conscience.
 - 2.7. The right to one's image.
 - 2.8. The right to privacy.
 - 2.8.1. General principles.

- 2.8.2. The collection of personal data by the employer.
- 2.8.3. The lawfulness of personal data processing within the employment relationship.
- 2.8.4. The exception regarding sensitive data.
- 2.8.5. Restrictions on data recording.
- 2.8.6. Medical tests and examinations.
- 2.8.7. The issue of electronic surveillance means.
- 2.8.8. The issue of searches of the worker, the worker's locker and belongings.
- 2.8.9. The confidentiality of communications.
- 3. Equality and non-discrimination.
 - 3.1. The protection of workers' equality and the prohibition of discriminatory conduct by the employer.
 - 3.2. Sexual harassment.
 - 3.3. Moral harassment or mobbing.
- 4. Professional category.
 - 4.1. The concept of professional category.
 - 4.2. Determination of the professional category.
 - 4.3. The professional category as a limit on the duties that may be assigned to the worker.
 - 4.4. The legal guarantee of maintenance of the worker's professional category.
 - 4.5. Changes to the professional category.
 - 4.5.1. General principles.
 - 4.5.2. Contractual demotion based on the employer's compelling operational needs or the worker's strict necessity.
 - 4.5.3. The worker's return to the previous professional category after the temporary performance of other duties.
 - 4.5.4. Termination of the commission of service.
 - 4.6. *Ius variandi* or functional mobility.
- 5. Seniority
 - 5.1. General principles.
 - 5.2. Effects of seniority.
 - 5.3. Determination and protection of seniority.
- 6. Particular status regimes applicable to certain categories of workers
 - 6.1. The particular status of managerial workers
 - 6.2. The particular status of pregnant, postpartum and breastfeeding workers, and workers with dependent children, grandchildren or adopted children
 - 6.2.1. General principles
 - 6.2.2. Enhanced protection of equality at work
 - 6.2.3. Enhanced protection of occupational safety and health
 - 6.2.4. Granting of special leave and exemptions
 - 6.2.5. Enhanced protection against dismissal
 - 6.3. The particular status of minor workers
 - 6.3.1. General principles
 - 6.3.2. Special requirements for access to employment
 - 6.3.3. Ancillary duties of the employer
 - 6.3.4. Duration of work
 - 6.3.5. Granting of special leave

- 6.4. The particular status of workers with reduced working capacity or workers with disabilities or chronic illnesses
 - 6.4.1. General principles
 - 6.4.2. Protection of equal treatment and positive action measures
 - 6.4.3. Requirement to adapt working conditions
- 6.5. The particular status of worker-students
 - 6.5.1. General principles
 - 6.5.2. Special regime governing working time, absences, vacation and leave entitlements
 - 6.5.3. Acquisition, maintenance and termination of worker-student status
- 6.6. The particular status of foreign or stateless workers

CHAPTER VI – THE EMPLOYER

- 1. The legal concept of employer.
- 2. The undertaking as employer.
- 3. Ideological or tendency undertakings.
- 4. Groups of undertakings.
- 5. Multiple employers.

CHAPTER VII – FORMATION OF THE EMPLOYMENT CONTRACT

- 1. Private autonomy and freedom to work.
- 2. Requirements for entering into an employment contract
 - 2.1. Capacity of the parties
 - 2.2. Capacity, professional qualifications, professional licence and registration with professional associations
 - 2.3. Requirements relating to the subject matter and purpose of the legal transaction
- 3. Equality and non-discrimination in relation to job applicants
- 4. The process of formation of the employment contract
- 5. Adherence to the internal undertaking regulation
- 6. Formation of the employment contract through general contract clauses
- 7. The promissory employment contract
- 8. Information duties
 - 8.1. General principles
 - 8.2. Information duties of the worker
 - 8.3. Information duties of the employer
- 9. Pre-contractual liability
- 10. Form of the employment contract
 - 10.1. General regime
 - 10.2. Special cases in which written form is required
 - 10.3. Requirement of special formalities and mandatory references
 - 10.4. Consequences of failure to comply with the required form and formalities
- 11. Invalidity of the employment contract

12. Trial period

CHAPTER VIII – THE WORKER’S DUTIES

1. The worker’s performance
 - 1.1. Content of the worker’s performance
 - 1.2. Definition of the functions performed by the worker
 - 1.3. Granting of powers of representation to the worker
 - 1.4. Attribution of rights over the result of the worker’s performance
2. The worker’s ancillary duties
 - 2.1. General principles
 - 2.2. Ancillary duties forming part of the principal performance
 - 2.2.1. Duty of obedience
 - 2.2.2. Duties of attendance and punctuality
 - 2.2.3. Duty of care and diligence in the performance of work
 - 2.2.4. Duty to promote improved productivity within the undertaking
 - 2.3. Ancillary duties autonomous from the principal performance
 - 2.3.1. Ancillary duties of information
 - 2.3.2. Ancillary duties of protection
 - 2.3.3. Ancillary duties of loyalty

CHAPTER IX – THE WORKPLACE

1. General principles
2. Determination of the workplace
3. Change of the workplace
 - 3.1. General principles
 - 3.2. Permanent transfer of the worker by decision of the employer
 - 3.2.1. General principles
 - 3.2.2. Unilateral transfer
 - 3.2.3. Collective transfer
 - 3.3. Temporary transfer of the worker by decision of the employer
 - 3.4. Transfer of the worker at their request
 - 3.5. Amendments to the regime governing transfer of the workplace

CHAPTER X – WORKING TIME

1. General principles
2. Working time and rest time
3. Normal working period and operating period
4. Working schedule
5. Limits on working time
 - 5.1. General principles

- 5.2. Maximum working time limits
- 5.3. Adaptability arrangements
- 5.4. Bank of hours arrangements
- 5.5. Concentrated schedule arrangements
- 5.6. Maximum limits where the working schedule is established on an average basis
- 6. Working time flexibility
- 7. Changes to working time
- 8. Exemption from working schedule
- 9. Shift work
- 10. Night-time work
- 11. Overtime work
- 12. The right to rest
 - 12.1. General principles
 - 12.2. Daily rest periods
 - 12.3. Weekly rest period
 - 12.4. Public holidays
 - 12.5. Vacation
 - 12.5.1. The right to vacation
 - 12.5.2. Prohibition on carrying out another activity during vacation
 - 12.5.3. Acquisition of the right to vacation
 - 12.5.4. Duration of the vacation period
 - 12.5.5. Remuneration during vacation
 - 12.5.6. Scheduling of vacation
 - 12.5.7. Changes to vacation
 - 12.5.8. Effects of the reduction, suspension and termination of the contract on vacation
 - 12.5.9. Breach of the right to vacation
- 13. Absences from work
 - 13.1. General principles
 - 13.2. Justified absences
 - 13.2.1. Grounds for justification of absence
 - 13.2.1.1. Marriage
 - 13.2.1.2. Death of spouse, relatives or relatives by affinity
 - 13.2.1.3. Sitting examinations at an educational institution
 - 13.2.1.4. Inability to perform work due to a circumstance not attributable to the worker
 - 13.2.1.5. Need to provide care to family members
 - 13.2.1.6. Absences to obtain information regarding the educational situation of a minor
 - 13.2.1.7. Absences of workers elected to collective representation bodies
 - 13.2.1.8. Absences of election candidates
 - 13.2.1.9. Absences authorised or approved by the employer
 - 13.2.1.10. Other absences provided for by law
 - 13.2.2. Duty to notify and provide evidence
 - 13.2.3. Effects of justified absences
 - 13.3. Unjustified absences

- 13.3.1. Concept of unjustified absence
- 13.3.2. Effects of unjustified absences

CHAPTER XI – EMPLOYERS’ DUTIES

- 1. General principles
- 2. The main obligation: remuneration
 - 2.1. General principles
 - 2.2. Concept and characteristics of remuneration
 - 2.2.1. General principles
 - 2.2.2. Consideration for the provision of work
 - 2.2.3. Regularity and periodicity
 - 2.2.4. Consisting of payments in cash or in kind
 - 2.3. Criteria for establishing and determining remuneration
 - 2.4. Types of remuneration
 - 2.4.1. Remuneration in cash and in kind
 - 2.4.2. Fixed, variable and mixed remuneration
 - 2.4.3. Basic remuneration, length-of-service increments and wage supplements
 - 2.5. Non-remuneratory payments
 - 2.5.1. General principles
 - 2.5.2. Reimbursement of expenses
 - 2.5.3. Cash handling allowance
 - 2.5.4. Meal allowance
 - 2.5.5. Gratuities
 - 2.5.6. Extraordinary benefits granted by the employer as a reward or bonus for the good results achieved by the undertaking
 - 2.5.7. Benefits arising from facts related to professional performance or merit, as well as the employee’s attendance record
 - 2.5.8. Participation in the undertaking’s profits
 - 2.6. Guaranteed minimum remuneration
 - 2.7. Payment of remuneration
 - 2.7.1. Method of payment
 - 2.7.2. Time of payment
 - 2.7.3. Place of payment
 - 2.8. Overpayment of remuneration
 - 2.9. Protection of remuneration
- 3. Secondary obligations
 - 3.1. The duty to provide effective occupation to the employee
 - 3.2. The duty to provide vocational training
- 4. Ancillary duties of the employer
 - 4.1. General principles
 - 4.2. Protection of the employee’s safety and health
 - 4.3. Protection of the employee’s personality rights
 - 4.4. Respect for the employee’s technical autonomy

CHAPTER XII – THE EMPLOYER’S POWERS

1. General principles
2. Management power
3. Regulatory power
4. Disciplinary power
5. Exercise of the employer’s powers by other workers

CHAPTER XIII – INCIDENTAL ELEMENTS OF THE EMPLOYMENT CONTRACT

1. General principles
2. Employment contract subject to suspensive condition and term
3. Employment contract subject to resolutive condition
4. Employment contract subject to a resolutive term
5. Clauses limiting freedom to work

CHAPTER XIV – CHANGES AFFECTING THE EMPLOYMENT RELATIONSHIP

1. General principles
2. Transfer
 - 2.1. Assignment of the contractual position
 - 2.2. Transfer of the undertaking or establishment
 - 2.3. Occasional assignment
3. Reduction of activity and suspension of the contract
 - 3.1. General regime
 - 3.2. Reduction of activity or suspension of the contract by agreement between the parties.
Unpaid leave. Pre-retirement
 - 3.3. Suspension of the contract due to a circumstance related to the worker
 - 3.4. Reduction of activity or suspension of the contract due to a circumstance related to the employer

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COURSE TEXTBOOK:

LUÍS MENEZES LEITÃO, *Direito do Trabalho*, 8th ed., Coimbra, Almedina, 2023 (in Portuguese)

OTHER RELEVANT STUDY MATERIALS:

Guilherme Dray, *An Introduction to Portuguese Employment & Labour Law*, 3rd edition, Almedina, Coimbra, 2023 (available at <https://www.almedina.net/an-introduction-to-portuguese-employment-labour-law-1681985201.html>)

LEGISLATIVE MATERIALS REQUIRED FOR THE COURSE:

Portuguese Labour Code, available at <https://idt.fduisboa.pt/publication/codigo-do-trabalho-portugues-portuguese-labour-code-2/> or https://www.almedina.net/codigo-do-trabalho-portugues-portuguese-labour-code-2024-1750944398.html?utm_source=google&utm_medium=cpc&utm_campaign=WP%20%7C%20PMax%20%7C%20Feed%20Only%20%7C%20Direito&utm_id=24071858837&gad_source=1&gad_campaignid=24158504566&gbraid=0AAAAAD3l2adpttQ9oG2hyf461C7iD4oM1&gclid=Cj0KCQjwk5nVBhDiARIsAHNGgadXBzYQ5FPGh6oeYCMcQAZQFAXH2zg8FSB7d3HWGzRr_LSYqb_r6REUaAnnJEALw_wcB

ASSESSMENT:

- Students will be assessed based on class **participation in class** (50%) and must submit a **paper** on a topic of their choice from the course syllabus by 7 December 2026 (50%).
- Details regarding the structure and size of the paper to be confirmed.
- The grade awarded for the paper may be subject to confirmation by means of an oral examination to be scheduled by the lecturer, which will take place until the end of the semester.