

Portugal

Wage guarantee in case of insolvency

Phase	Labour Code (Law 7/2009 of 12 February); Decree-Law 59/2015 of 21 de April, amended by Law 71/2018 of 31 December
Native name	Código do Trabalho (Lei 7/2009 de 12 de fevereiro); Decreto-Lei 59/2015, de 21 de abril, alterado pela Lei 71/2018 de 31 de dezembro
Type	Wage guarantee in case of insolvency
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Article

Labour code, article 336; Decree-Law 59/2015 of 21 de April, amended by Law 71/2018 of 31 December - whole document

Description

The Labour Code in its article 336 determines the Wage Guarantee Fund (Fundo de Garantia Salarial - FGS). A new system for the FGS was approved in 2015: the fund ensures the financial protection of employees in case of the employer's insolvency (defined as a debtor's inability to meet his commitments as they fall due - article 3 of [CIRE](#)) or of the employer's coverage by the revitalisation special process or by a procedure for extrajudicial recovery (in order to recover companies which are in a difficult economical situation or in imminent insolvency, but not in a current insolvency situation, a special revitalisation procedure has been created which allows the company to establish negotiations with its creditors to reach agreement on the recovery of the company. During this period, any pending judicial proceedings will be suspended). The fund guarantees the payment of wages, holidays, Christmas and food allowances and redundancy compensation.

The fund ensures the payment of labour credits due to workers since the six months preceding the start of the insolvency procedure, of the Extrajudicial Recovery Procedure

(Regime Extrajudicial de Recuperação de Empresas - RERE), or the submission of the application to Special Revitalisation Process (Processo Especial de Revitalização - PER).

The payment of the claims referred to above is subject to a double limitation:

- one of a temporal nature, since the worker is requested to file the application for the payment of outstanding labour credits at district centres or local social security services within one year from the day following the day on which the employment contract ended; and
- another of a pecuniary nature, as the fund simply ensures the payment of claims arising from the employment contract for at maximum of six months, and with the maximum monthly amount up to three times the [minimum guaranteed monthly wage](#).

Under the new regime, the fund now also covers employees who work or have habitually worked within the national territory for an employer with activities in the territories of at least two EU Member States, even if the employer is declared insolvent by a tribunal or competent authority of another Member State of the European Union or of the European Economic Area.

Commentary

The Constitutional Court

(<https://www.jornaldenegocios.pt/economia/detalhe/tc-diz-que-prazo-de-um-ano-para-aceder-ao-fundo-de-ga>

declared unconstitutional the one-year deadline for workers require this Fund, without it being possible to suspend or interrupt it.

Additional metadata

Cost covered by	Companies National government
Involved actors other than national government	Other Employer organisation
Involvement (others)	Institute of Financial Management of the Social Security (Instituto de Gestão Financeira da Segurança Social - IGFSS); Institute of Management of Capitalisation Funds of the Social Security (Instituto de Gestão de Fundos de Capitalização da Segurança Social, I. P. – IGFCSS)

Thresholds

Affected employees: No, applicable in all circumstances
Company size: No, applicable in all circumstances
Additional information: No, applicable in all circumstances

Sources

- [Labour code \(Law 7/2009, of 12 February\) – updated version](#)~~~ [Law 71/2018 of 31 December](#)~~~ Deutsch, A., 2011, Europäische Beispiele für die Insolvenzentgeltsicherung, Federal Ministry of Labour, Social Affairs and Consumer Protection/IEF~~~ Sargant, M., 2007, Implementation Report Directive 80/987 EEC amended by Directive 2002/74/EC [protection of employees in the event of the insolvency of their employer], Human European Consultancy/Middlesex University Business School~~~ [Observador 'TC diz que prazo de um ano para aceder ao Fundo de Garantia Salarial é inconstitucional'](#)~~~ [Decree-Law 59/2015 of 21 April](#)~~~

Citation

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