

Legal framework for occupational qualifiers

Presidential Decree 96/22 of 2 May was published and has now come into force. This Decree approves new instructions for the preparation and application of the Occupational Qualifier by employers. In doing so, it revokes Decree 70/01 of 5 October.

Draft of the Occupational Qualifier

The obligation to prepare the Occupational Qualifier applies to all employers subject to the General Employment Law provided they employ more than 10 (ten) workers with distinct functions.

There are now 3 (three) types of Occupational Qualifier, which can be:

- a) own: describes the specific jobs or functions of the employer, sector or sub-sector of activity;
- b) collective: describes the specific functions of a group of employers who are organised in a similar way by belonging to an economic group, sector or type of activity;
- c) of reference: this is the compilation of the functions existing in a sector of the national economy and is created at the initiative of the Ministerial Department of the sector in question.

In any of the above models, the job description must include the following details: occupation, position or function; base pay; job content or procedure in the description of the duties; job responsibilities; academic and professional knowledge and skill requirements; career progression levels; lower level categories and career progression levels that may be determined by years of professional experience.

Implementation of the Occupational Qualifier

The General Labour Inspectorate (Inspeção Geral do Trabalho - "IGT") is responsible for approving, registering and inspecting compliance with the implementation of the Occupational Qualifier. It is also responsible for applying fines for any infringements of this Decree.

The IGT's negative opinion on the Qualifier does not result on the employment contract invalidity. However, the employer must adopt the IGT's recommendations.

Employers that already have an Occupational Qualifier, or which will be obliged to have one from now on, have 12 (twelve) months to implement an Occupational Qualifier prepared under the terms of this Decree.

Employers that are created after this Decree comes into force on 2 May 2022 will benefit from a grace period of 12 months to prepare and apply the Occupational Qualifier.

The absence of an Occupational Qualifier, whenever it is mandatory, constitutes a infraction punishable by a fine of five (5) to ten (10) times the average monthly salary paid by the employer.

Any failure to respect the methodology imposed for the preparation of the Occupational Qualifier constitutes a infraction punishable by a fine of three (3) to six (6) times the average monthly salary paid by the employer. ■