



WHITE PAPER

Decent Domestic Work

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1. Legal Framework for Domestic Work

- In Portugal, the domestic service contract was regulated in the **Civil Code of 1867**, from a purely civil perspective and **without any concern for the worker's defence**.
- Throughout the evolution and conquest of labour and social rights by workers, domestic workers **have been segregated from various pieces of legislation**.
- **Domestic workers only gained spurious dignity in 1980** when **Decree-Law no. 508/80 of 21 October** came into force, which confers to domestic workers, for example, the right to rest and leisure, to a maximum limit on working hours, to weekly rest and to periodic paid holidays
- Only in **1992**, Decree-Law no. 235/92 of 24 October came into force, approving the **legal framework for employment relationships arising from domestic service contracts** (henceforth RCSD), in which an **approximation was made to the general legal framework for subordinate workers with regard to absences, holidays and the respective allowances**.
- Later, continued the legislative immobility given that twenty-three amendments have been made to the Labour Code, in 2015 Portugal has ratified ILO Convention 189 and, therefore, **31 years have passed without the RCSD being amended, which only came about with Law 13/2023, of 3 April**, following a bill presented by the government that was called the **"Decent Work Agenda"**. Even so, the domestic work contract was still regulated by special legislation and not included in the Labour Code.
- Under Law no. 13/2023, of April 3, several articles were amended and several provisions of the RCSD were repealed to finally **harmonise the RCSD with the provisions of the Labour Law** on matters such as vacations, holidays and absences; working periods; meal and rest breaks; remuneration and Christmas allowance, although some specifications were maintained. Despite the RCSD's approach to the Labor law, **there is still a way to go** to effectively grant dignity to domestic workers.

Recommendation 1

Improving the legal regime of Decree-Law no. 235/92, of 24 October, enshrining the domestic service contract as a special employment contract and harmonising the concepts of the legal regime of domestic work with those of the general law, namely in the modalities of contract

termination, introducing the distinction between dismissal, termination and denunciation.

- Within the framework of the “Decent Work Agenda”, the RCSD has maintained **the expiry of the domestic service contract for obvious economic insufficiency on the part of the employer**. The life of a household is dynamic, which is why it is considered that no household that, for a supervening reason, is no longer able to pay the salary can be prevented from ending the contract. The problem lies in **identifying, recognising and (com)proving this manifest economic insufficiency** so that it does not constitute a means of terminating the contract in this way.
- The current legal wording for the termination of the employment relationship due to the family's economic insufficiency **needs to be clarified so as not to weaken the worker** or jeopardise the possibility for **families in a fragile economic situation to legitimately reduce their costs**.
- **A mechanism for proving the family's economic insufficiency** and a **mechanism for mutualising the risk of the domestic worker losing their income** due to the family's inability to pay compensation **should be introduced**.

Recommendation 2

In a dismissal due to the employer's economic insufficiency, the manifest economic insufficiency must be proven by a written statement from the employer given to the domestic worker and communicated to the Authority for Working Conditions (ACT).

Recommendation 3

Safeguarding situations in which economic insufficiency means not being able to afford the legal redundancy payment through a risk mutualisation mechanism, which can take the form of a compulsory contribution fund on the part of employing families.

- One of the characteristics of the domestic workers is their **isolation**, since the **possibility of resorting to inspection entities** such as ACT, or **submitting anonymous complaints** is quite reduced when compared to other workers.
- This is largely due to the fact that **inspection visits to domestic workers' workplaces** are **different** from inspections of other workplaces. In the first case, the **inspection will take place at the employer's home, a place protected by the right to privacy** which has to be reconciled with **the workers' right to carry out their work in decent conditions that respect their rights**.
- The importance of the ACT's inspection activities and compliance with social security and employment contract rules is clear, and there is **a need to find appropriate methodologies to monitor and enforce compliance with legal rules and to report periodically** on the actions taken and the results obtained. The aim is to achieve better levels of compliance with better levels of information.

Recommendation 4

Reinforcement of ACT's inspection activity to monitor situations of non-compliance with domestic workers' rights, accompanied by awareness-raising campaigns on rights and duties aimed at both domestic workers and their employers.

To overcome the limitations of home inspections, alternative inspection or control mechanisms should be sought. Take the example of Ireland, where the National Employment Rights Authority (NERA) invites employers by email to allow access to their homes and, if they refuse, suggests choosing an alternative location for an interview and analysis of documentation.

Special attention should be paid in inspections to the rights and duties of "hourly" labour, which is more fragmented and has been shown to have lower levels of protection.

In order to guarantee the existence of actions focused on domestic service, specific periodic reports should be drawn up, for example every two years, analysing the situation of compliance with legislation (at all levels) in order to inform the responsible public bodies.

2. Social Security

- The biggest problem with social protection for domestic workers continues to be **under-registration**, both because **there are people who are not registered at all** and because, especially for people who work for more than one employer family, **there is partial registration**, which doesn't cover all the employer families, all the working time and all the pay.
- According to data from the Social Security Institute, between 2012 and 2022, **the drop in the number of domestic workers with a declared contribution was around 42,000**, i.e. **37% less** (from 113,000 to just 71,000).
- Given the data collected in the survey applied to domestic workers in the Decent Domestic Service project, **the main reasons for not being registered with social security** where:
 - The employer doesn't want to ensure deductions;
 - They have already made discounts with another employer;
 - The possibility of making social security contributions has not been raised;
 - They do not consider it advantageous to make this type of discount;
 - They were unaware that they had the right to be registered with Social Security.
- With the “Decent Work Agenda”, employers who **fail to comply with the duty to notify Social Security** of the hiring of workers are **punished with imprisonment of up to three years or a fine of up to 360 days**. This criminalisation of undeclared work appears to be an attempt to combat precariousness, however, additional measures are needed to combat under-registration.

Recommendation 5

Continued efforts to promote registration with Social Security, in particular with awareness-raising campaigns aimed at both domestic workers and their employers.

Recommendation 8

Encouraging domestic workers to register with Social Security, by continuing to adopt tax benefits for employer families, such as taking

Social Security contributions into account as a tax-deductible item

- The payment of contributions to social security **depends on the salary declared** (hourly, daily and monthly) by employers and domestic workers.
- The domestic worker must choose whether to declare the **real salary** or a **conventional salary** based in the social security reference values calculated based on the Social Support Index (IAS).
- According to data from the Social Security Institute **the average monthly discount for domestic service was €89.58 in 2022**, i.e. around **23.4% of the respective value for the total contributions of all workers**, which was €382.33.
- The realisation of domestic workers' right to social security requires measures that both make **social protection sensitive to this type of work** and guarantee workers **the same protection as everyone else**.
- **There is no reason to maintain a lower level of social protection for domestic service than for other workers**, which is why it should be integrated into the General Social Security System, in order to prevent discrimination in access to social protection.

Recommendation 6

Integration of the domestic scheme into the General Social Security Scheme. A transitional period may be allowed for this integration, in order to give all players time to adapt to the system. In this transitional period, which is proposed to last a maximum of five years, the possibility of making contributions through the conventional system is allowed to continue, but it is proposed to change the reference salary value for contributions. This should no longer be linked to the social support index, which is clearly not designed to index salaries, but to the national minimum wage. The adoption of the IAS as the conventional wage base for domestic workers' social security is generating low pensions and inducing social protection, as if the national minimum wage did not apply to domestic service, when provided on an hourly basis. In these cases, it is the social security system itself that induces a lack of protection for domestic workers.

- In general terms, **domestic workers in Portugal are protected in the following situations:**

Situations	Examples of Social Security products
Family expenses	Pre-Natal Family Allowance; Family Allowance for Children and Young People; Childhood Guarantee; Funeral allowance.
Unemployment	Unemployment benefit*; Initial or Subsequent Unemployment Benefit; Partial Unemployment Benefit.
Death	Survivor's pension; Dependency supplement; Death Benefit; Reimbursement of Funeral Expenses.
Illness	Sick pay; Compensation payments for holiday, Christmas or similar allowances (only in the case of real salary).
Invalidity	Invalidity pension; Dependency supplement; Spouse Pension Supplement,
Occupational illnesses	Guaranteed protection in cases of occupational illness.
Parenthood	Pregnancy Medical Risk Allowance; Pregnancy Interruption Benefit; Parental Allowance (Initial Parental Allowance, Exclusive Initial Parental Allowance for the Father, Exclusive Initial Parental Allowance for the Mother and Initial Parental Allowance to be used by one Parent in the event of the other's impossibility); Extended Parental Allowance; Adoption Allowance; Childcare Allowance; Allowance for children with disabilities or chronic illnesses; Grandchildcare Allowance; Sickness Benefit for Children under 12 and Disabled Children; Grandparents' Special Absence Allowance
Old age	Old Age Pension; Dependency Supplement; Spouse Pension Supplement Position

Source: ISS, I.P. (2024). *Guia Prático-Inscrição, Alteração e Cessação de Serviço Doméstico*, Instituto da Segurança Social, I.P.

Note: *Only domestic workers who are paying social security contributions on the remuneration actually earned under a full-time monthly employment contract are entitled to unemployment benefit.

- The Code of Contributory Regimes states that protection against unemployment depends on the worker making Social Security deductions on the **remuneration actually earned under a full-time monthly employment contract, which substantially reduces the scope of domestic workers eligible for this benefit**, since it is usual for these people to work for several households in hourly or part-time work situations.
- The Code states that the **monthly number of hours to be declared cannot be less than 30** for each worker and their employer, so a part-time domestic worker needs to declare 30 hours or, if they work in more than one household, they need to declare 30 hours for each employer. In practice, **this system is detrimental to domestic workers who don't have a full-time monthly employment contract**, because if the worker doesn't work a total of 30 hours in all households, they won't have access to unemployment benefit.

- Thus, the Portuguese legislation **doesn't comply with the ILO Convention 189**, because if the aim is to dignify domestic work on the basis of national legislation that takes into account the specific characteristics of domestic work, **then the legislator should have taken into account the fact that the majority of domestic workers don't benefit from a full-time monthly employment contract**, which means that many of these workers **are left unprotected in a situation of unemployment**.
- Domestic workers with more than one employer and part-time domestic workers **can also become unemployed**. In times of economic crisis, in particular, **there may be a simultaneous termination of the employment relationship with several employers**, creating a situation that should give access to unemployment social protection.

Recommendation 7

Access to unemployment benefit for domestic workers with more than one employer or part-time.

3. Accidents at work

- Under the terms of RCSD, **employers must take out occupational accident insurance** to cover **any accidents suffered by domestic workers** during the course of their work or on the journey between their home and the workplace.
- In this context, domestic workers **who work for several employers may have work accident insurance from different insurance companies**, which causes problems when there is an accident at work. In the event of an accident at work at one employer, the respective insurance is activated, but the person may be prevented from carrying out their activity at the other workplaces, **requiring joint and several liability on the part of the various companies with which they are registered**, which may not be the case.

Recommendation 9

Compensation for loss of earning capacity in the service of an employer should be extended to all insurers in respect of the remaining working period of domestic workers.

4. Collective bargaining

- If there is no employer's association that can negotiate better working conditions with the trade union partners through conventional collective labour regulation instruments, **non-negotiating instruments should be used** (Article 2(4) CT) since it is possible to use these instruments in the absence of negotiated collective regulation instruments (Article 515 CT). Therefore, the use of extension ordinances or working conditions ordinances should be considered.

Recommendation 10

Approval of an ordinance on working conditions for domestic workers

5. Trade Union Action

- With the project Decent Domestic Service, **various dimensions of domestic service** (economic, social, legal, etc.) **were structured and systematised**, which from now on can be worked on in a sustained way by STAD, the Concierge Services, Surveillance, Cleaning, Domestic Workers and Miscellaneous Activities' Union in order to better guarantee the rights of domestic workers.

Recommendation 11

Existence of a list of demands for the sector

6. Workers who provide services comparable to domestic service

- There is a tendency for **work performed in a residential context**, which can be assimilated to domestic service, **to be progressively performed outside the legal framework of the domestic service employment relationship**. This is the case with the aforementioned emergence of companies providing cleaning services in family homes and platforms offering the same services.
- Currently, **collective bargaining does not cover domestic cleaning**, which is why it is important to promote **collective bargaining with the business association of the facility services sector in order to cover services provided at home**, i.e. to extend the Collective Labour Agreement with a new chapter containing specific conditions and the respective salary scale for domestic cleaning work provided by for-profit entities.
- The work of domestic cleaning and other services that fall under the umbrella of domestic service via platforms raises **new issues that need to be monitored and analysed**.

Recommendation 12

Guaranteeing the right to collective bargaining for people who work in private homes in the same way as domestic service. These are people who are not covered by the specific domestic service instruments, as they are not considered domestic workers under the sector's legislation, since, according to the law, there is no domestic service in a business employer, but only if the employer is a family or non-profit organisation. The collective bargaining agreement for facility services should include its own chapter, to be negotiated with the business association, regulating domestic work provided by for-profit entities.

Recommendation 13

Monitor that the regulation of platform work guarantees the dignifying of home work provided under conditions similar to domestic service.