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FLASH REPORT

Country:	Portugal
Title:	System of employment quotas for disabled people in private enterprises
Date:	31 January 2020
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<u>Context</u>	
Issue at stake:	System of employment quotas
Grounds of discrimination:	Disability
Field of application:	Employment
Source:	National legislation
Applicable law:	Law 38/2004 of 18 August; Labour Code

Content

Law development: Portuguese Parliament has approved Law 4/2019 of 10 January 2019, which regulates the system of employment quotas for people with disabilities with a degree of incapacity equal to or greater than 60%, in private companies.

Key points of analysis: Law 38/2004 of 18 August 2004, which defines the general framework and legal basis for the prevention of the causes of disability, and the training, rehabilitation and participation of people with disabilities, establishes quotas for the employment of people with disabilities of up to 2% for private enterprises and up to 5% for the public sector.

The system of employment quotas for people with disabilities in the public administration (central, regional, autonomous and local public administration bodies) is regulated by Decree-Law 29/2001 of 3 February 2001.

The new rules introduced by Law 4/2019 of 10 January 2019 are applicable to employers from the private sector (and to some public entities which are not covered by Decree-Law 29/2001).

According to Law 4/2019 of 10 January, the obligation of quotas for the employment of people with disabilities is imposed only on medium-sized and large private enterprises. The medium-sized enterprises with a workforce with more than 75 employees must employ at least 1% of employees with disabilities, while large enterprises with more than 250 employees are required to employ at least 2%.

Employers may request not to be obliged to comply with these new rules, upon written request to Portuguese labour authorities, along with a reasoned opinion issued by the Portuguese public authorities recognizing the impossibility to apply these rules to the specific work-post.

Employers may as well request their exemption to observe the introduced *numerus clausus* in their headcount for employees with disabilities upon proof to be presented to the Portuguese labour authorities of the inexistence of a sufficient number of candidates meeting the requirements to occupy the positions offered by the employer in the previous year.

Law 4/2019 of 10 January entered into force on 1 February 2019. Nonetheless, in order to comply with the new legislation, a transitional period of five years is allowed for medium-sized companies with a workforce between 75 and 100 employees and a four-year period for companies with more than 100 employees.

Employers who do not meet their quota obligation are subject to a fine, which goes to the Authority for Working Conditions (Autoridade para as Condições de Trabalho – ACT) and to the National Institute for Rehabilitation (Instituto Nacional para a Reabilitação – INR).

In the view of the authors, this legal development was necessary. However, since most Portuguese enterprises are micro and small enterprises, this legal development will have little impact on the numbers of people with disabilities in private sector employment, since the generally applicable framework - Law 38/2004 of 18 August 2004 - does not provide for any sanctions in the event of employers failing to meet the quotas it establishes.

Internet link source:

http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=2995&tabela=leis&nversao=&so_miolo=.