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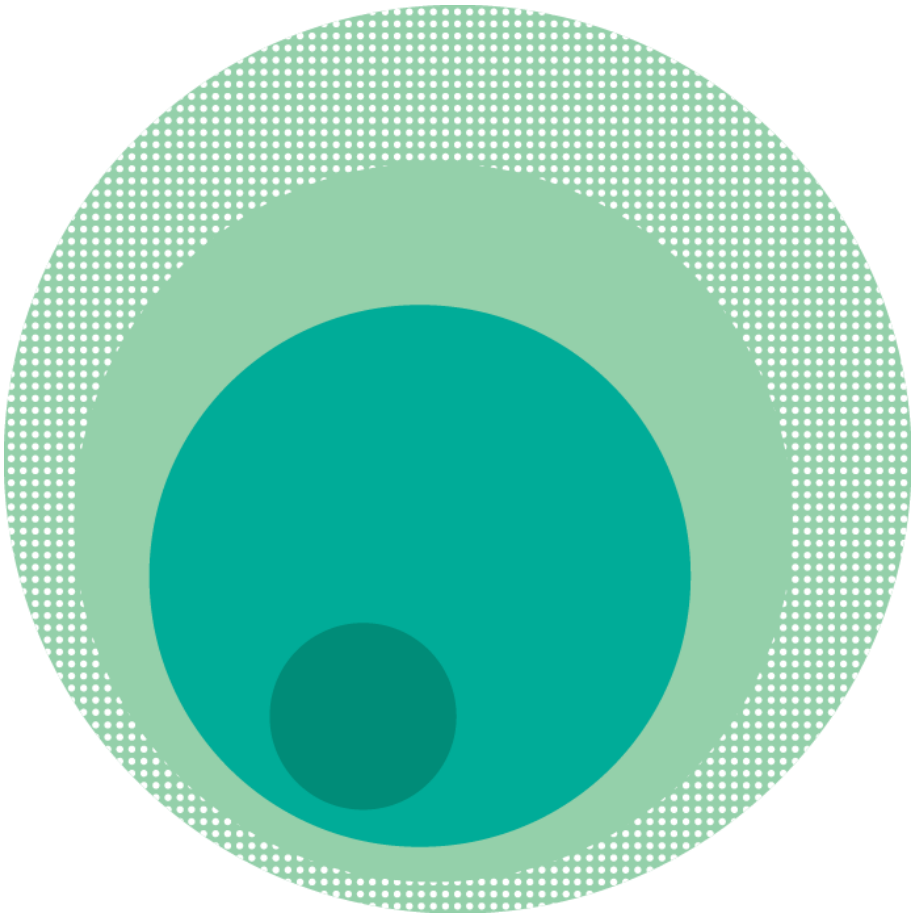
Probationary period in employment contracts: changes under the new law and its implications.

This modification provides a specific formula for calculating the probationary period, establishing minimum and maximum limits that cannot be exceeded even by collective labour agreement.



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Article 13 of Law 203/2024 (so-called Employment Related Provisions) introduces significant changes to the Transparency Decree, regulating the duration of the probationary period in employment contracts.

The Probationary Period in the Civil Code and Its Functions
The probationary period is governed by Article 2096 of the Civil Code, which establishes that the probationary agreement must be in writing, under penalty of nullity, and must define the tasks to be performed. The purpose of this initial period is to allow both the employer and the employee to assess the mutual convenience of continuing the employment relationship. During the probationary period, both parties can terminate the contract without notice or indemnity, unless a minimum probation period is established. In this case, termination cannot occur before the end of the aforementioned term.

Moreover, case law has emphasized the importance of specifically indicating the tasks to be performed, which can also be described by referring to a collective agreement, provided the levels and tasks are well defined and consistent with the employee's qualifications. A recent ruling by the Court of Cassation confirmed the validity of a probationary agreement with tasks specified by referring to a contractual level, sufficiently clarifying the work assigned.

Duration of the Probationary Period: Limits and Provisions
In general, the duration of the probationary period is established by collective agreements, but the law sets a maximum limit of six months. If this period exceeds six months, the regulations concerning dismissals apply. During the probationary period, the employer can unilaterally terminate the contract without justifying the decision.

The employee, for their part, has the burden of proving that the termination was unlawful if they believe they have successfully completed the probationary period.

Changes Introduced by the *"Collegato Lavoro"* Provisions in Fixed-Term Contracts
The main change introduced by the "Collegato Lavoro" concerns the calculation of the probationary period in fixed-term contracts. The new regulation establishes that, for fixed-term contracts, the duration of the probationary period will be calculated **as one day of actual work for every fifteen calendar days of the contract's duration.**

However, no periods less than two days or longer than 15 days are allowed for contracts with a maximum duration of six months (up to 6 months), and 30 days for contracts exceeding six months (6 months and 1 day) but less than twelve months (12 months minus 1 day).

This calculation formula applies automatically, but collective bargaining provisions may modify the probationary period if they are more favorable, provided the minimum and maximum limits established by law are respected. In any case, collective bargaining cannot override these minimum and maximum limits. These rules will apply only to fixed-term contracts signed with an effective date **starting January 12, 2025**.

Practical Examples of Calculation
To illustrate how the calculation of the probationary period works in fixed-term contracts, here are some examples:

- A 59-day contract will have a probationary period of 3 days.
- A 181-day contract (approx. 6 months) will have a probationary period of 12 days.
- A one-year contract of 365 days will have a probationary period of 24 days.

In any case, the duration of the probationary period is always proportionate to the actual duration of the contract, according to the formula established by law. For contracts of 12 months or more, no maximum limit is set.

Renewal of Contracts and Exclusion of the Probationary Period
An important change introduced by the new law concerns renewed contracts: if a contract is renewed to carry out the same tasks, the employee will not be subject to a new probationary period. This means the employer can no longer repeat the probationary period upon renewal if the tasks remain unchanged.

Controversial Aspects and Interpretations
Despite the clarifications, some issues remain unresolved, particularly regarding the term "more favorable provisions of collective bargaining." There is uncertainty about what exactly is meant by favorable treatment, whether it refers to the employer or the employee. In some cases, a shorter probationary period may be more advantageous for the employee, but further legal clarification is needed.
Additionally, the calculation of the probationary period may result in decimal fractions that require clarification on how they should be rounded. Some experts suggest that the most common method is truncating the decimals, but a clearer rule may emerge in the future.

The changes introduced by Law 203/2024 regarding the probationary period in employment contracts represent an important step toward greater clarity and uniformity in regulations. However, some issues still need to be addressed, especially concerning collective bargaining and specific cases of calculation and interpretation of the regulations. The correct application of these new provisions will require attention from both employers and employees, as well as potential intervention from the judiciary to resolve interpretative doubts.

The office is available to clients for any clarification and assistance.
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