

**Law no. 4/2009
of 29th of January**

Defines the social protection of workers fulfilling public functions

The Assembly of the Republic decrees, under the terms of paragraph c) of Article 161 of the Constitution as follows:

CHAPTER I

General provisions

SECTION I

Object and scope

Article 1

Object

The present law defines the social protection of workers fulfilling public functions.

Article 2

Framework in the social security scheme

The social protection of workers fulfilling public functions is framed in the social security scheme, passed by social security basic law, hereinafter known as basic law.

Article 3

Subjective scope of application

1 – The present law is applicable to all workers fulfilling public functions, irrespective of the pattern of job attachment and constitution of the public employment legal relationship under the terms of which they fulfil the respective functions.

2 – The present law is still applicable to the workers provided for in the preceding article who, under the terms of mobility instruments, do not fulfil public functions, but pursuant to the law, the respective social protection scheme is maintained.

Article 4

Objective scope of application

1 – The present law is applicable to services of the direct and indirect state administration, autonomous regional administration and local administration.

2 – The present law is also applicable to the organs and supporting services of the President of the Republic, of the Assembly of the Republic, of courts and Public Prosecution Service and respective management organs and other independent organs.

3 – The present law is still applicable to other entities provided for in the preceding numbers in which there are workers referred to in the preceding article.

Article 5

Employer entities

For the purposes of the provisions set out in the present law, the organs, services and other entities referred to in the preceding article are considered employer entities.

SECTION II

Materialization of the social protection

Article 6

Social protection schemes

The social protection of workers that fulfil public functions is materialized for integration:

- a) In the social security general scheme of employed workers, hereinafter known as social security general scheme;
- b) In the convergent social protection scheme, defined by the present law, that frames the workers in a specific organisation and funding system, with regulation of all contingencies, as to the material scope, rules generating rights and grant of benefits, including the calculation of the respective amounts, in convergence with the social security general scheme.

CHAPTER II

Integration in the social security general scheme

Article 7

Personal scope

The following staff are integrated in the social security general scheme:

- a) Workers who are holders of a public employment legal relationship, irrespective of the pattern of job attachment, formed as of 1st of January of 2006;
- b) The remaining workers, holders of an employment legal relationship constituted up to 31st of December of 2005 with employer entity, framed in the social security general scheme.

Article 8

Framework in the social security general scheme

Workers provided for in the preceding article and the respective employer entities are obligatorily registered with social security institutions as beneficiaries and taxpayers, respectively.

Article 9

Contributory obligations

The beneficiaries and the taxpayers are subject to contributory obligations, under the terms of the basic law and further applicable legislation.

Article 10

Protection in the unemployment

1 – Without prejudice to provisions set out in the following number the protection in the contingency of unemployment of workers fulfilling public functions, in the conditions referred to in article 10 of the Law no.12-A/2008, of 27th of February, is materialised under the terms of the social security general scheme.

2 – The payment of the amount of the social benefits in the contingency of unemployment is made by the competent employer entities, pursuant to the regulation provided for in the article 29.

3 – The provisions set out in the preceding numbers are applicable to the workers referred to in no. 4 of article 88 of the Law no.12-A/2008, of 27th of February, whose employment legal relationship was formed as of 1st of January of 2006.

CHAPTER III

Convergent social protection scheme

SECTION I

General provisions

Article 11

Personal scope

The convergent social protection scheme is applicable to the workers who are holders of a public employment legal relationship, irrespective of the pattern of job attachment, constituted up to 31st of December of 2005 and that are not covered by the provisions set out in paragraph b) of article 7.

Article 12

Objectives

1 – The convergent social protection scheme materialises the objectives of the welfare scheme, by way of substitutive pecuniary benefits of work incomes lost, which assume the nature of social benefits.

2 – The convergent social protection scheme still materialises the objectives of the solidarity subsystem relating to the situations of social or economic compensation, by virtue of insufficient contributions or of insufficient benefits of the welfare system.

Article 13

Material scope

The convergent social protection scheme integrates the contingencies provided for in the welfare system, namely:

- a) Illness;
- b) Maternity, paternity and adoption;
- c) Unemployment;
- d) Accidents at work and occupational diseases;
- e) Disability;
- f) Old age;
- g) Death.

Article 14

Concepts

For the purposes of the provisions set out in the present chapter and in the chapters iv and v of this law and respective regulation, it is deemed as:

a) «Contributory career» the periods corresponding to:

i) Receiving contributions or equivalent legally situations;

ii) Equivalence to receiving contributions;

b) «Equivalence to receiving contributions» the periods in which there is no actual performance of work on account of the contingencies referred to in article 13, and therefore there is no due payment of contributions because there was no remuneration. These periods may or not entitle to the grant of the corresponding benefits, under the terms of the law, are entered for the purposes of the contributory career, as well as other situations provided for in the law;

c) «Waiting period» is a minimum period of contributions or legally equivalent situations, which is a general condition to grant benefits;

d) «Civil Service Social Protection Scheme» the social protection in force on 31st of December of 2005, applicable to civil servants and contractual staff and to further workers of Public Administration, constituted by the components of social security special scheme, health subsystems and complementary social action;

e) «Reference remuneration» is the average value of remunerations entered in a given period, variable according to the regulation of each contingency, which is the basis for the calculation of the corresponding benefits;

f) «Legally equivalent situation to the receiving of contributions» the fulfilment of functions equivalent to a contributory career regarding contingencies which do not require the payment of contributions;

g) «Totalising of contributory periods» the solution used in the articulation between the social protection schemes. According to this reckoning up the contributory periods or equivalent situation verified in a scheme are considered in another scheme, both for the entitlement to the protection, namely as regards the compliance with the waiting period, and for the calculation of the value of benefits;

h) «Actual work» work really performed by the worker in the employer entities.

Article 15

Beneficiaries and taxpayers

1 – Beneficiaries and taxpayers of the convergent social protection scheme are respectively the workers provided for in article 11 and the corresponding employer entities.

2 – The workers provided for in the preceding article whose public employment legal relationship has been changed, namely for alteration of the pattern of job attachment or by application of mobility instruments, do not lose the status of beneficiaries of convergent social protection scheme.

Article 16

Contributory nature

1 – For the purposes of the entitlement to social benefits relating to contingencies referred to in paragraphs a), b), c) and d) of the article 13, the fulfilment of functions of workers is compared to a contributory career.

2 – The right to social benefits of contingencies referred to in paragraphs e), f) and g) of article 13 depends upon the payment to the Civil Servants Special Pension Scheme (CGA) of contributions, by the beneficiaries, and of contributions, by the taxpayers.

3 – Failure to pay contributions relating to periods of the fulfilment of professional activity of beneficiaries that are not imputable to them does not prejudice the right to social benefits to which refers the preceding number.

SECTION II

Framework in the welfare system

Article 17

Principles

1 – The general principles set out in the basic law are applicable to the convergent social protection scheme.

2 – The principles and further provisions relating to the welfare system set out, namely in chapters iii, iv and vi of Law no.4/2007, of 16th of January are still applicable to the convergent social protection scheme, without prejudice to the necessary adaptations resulting from its organisation and own funding system.

SECTION III

Benefits

Article 18

Nature of benefits

1 – Social benefits are demandable administratively and judicially, with a regime similar to that one of benefits of the social security general scheme.

2 – Social benefits are not taken into consideration, in any case as remuneration.

Article 19

Equivalence to the receiving of contributions

The periods in which there is no actual performance of work, under the terms provided for in the present law and further legislation applicable, as well as the those corresponding to other situations provided for in the law, are deemed equivalent to the receiving of contributions for the CGA, and there is no payment of same.

Article 20

Civil liability of third parties

When the beneficiary of the convergent social protection scheme has received, as injured party, for the same fact, social benefits and compensation borne by third parties, the employer entities exercise the right of refund up to the limit of the value of benefits for which they are responsible, without prejudice to provisions set out in article 70 of the Law no.4/2007, of 16th of January.

SECTION IV

Organization and funding

Article 21

Responsibilities for the management

1 – Without prejudice to provisions set out in the following number, the grant and the payment of social benefits relating to contingencies provided for in paragraphs a), b), c) and d) of the article 13 are of the direct responsibility of the employer entities.

2 – The grant and the payment of the social benefits relating to the contingencies provided for in paragraphs e), f) and g) of the article 13 are of the responsibility of the CGA, as well as of the benefits for permanent disabilities and death, resulting from accidents at work and occupational diseases.

3 – The employer entities still refund the CGA of the charges for this one borne in relation to the social benefits referred to in the final part of the preceding number.

Article 22

Funding

1 – Social benefits relating to the contingencies provided for in paragraphs a), b), c) and d) of the article 13 constitute charges of the employer entities.

2 – The social benefits relating to contingencies provided for in paragraphs e), f) and g) of article 13 are funded by way of both workers' and employer entities contributions.

3 – The insufficiency of the substitutive benefits of work incomes or of the contributory career of the beneficiaries, relating to the contingencies referred to in the preceding numbers is funded by State Budget transfers.

4 – Further revenues legally provided for are still sources of funding of the convergent social protection scheme.

Article 23

Setting of the amount of contributions

1 – The amounts of contributions, provided for in no.2 of the preceding article result from the application of the respective rates on the remunerations that constitute basis of contributory incidence.

2 – The remunerations and the rates provided for in the preceding number are defined by decree-law in convergence with the criteria of the social security general scheme.

CHAPTER IV

Design and coordination of the social protection

Article 24

Design and coordination

1 – The coordination of the application of the social protection of workers fulfilling public functions, in particular of the convergent social protection scheme, is of the responsibility of the members of the government in charge of Public Administration, finance and social security areas.

2 – It is of the responsibility of the Directorate General for Administration and Public Employment (DGAEP), with regard to the convergent social protection scheme:

- a) The specialised support to the design and coordination, in articulation with the entities responsible for the respective management;
 - b) The articulation with the competent services in matters pertaining to the international coordination on social security.
- 3 – For the purposes of the compliance with the legal obligations relating to the obtaining and availability of data relating to the social protection, the DGAEP is liaised with the competent services.

Article 25

National Social Security Council

- 1 – The Public Administration, as an employer entity, integrates the National Social Security Council, provided for in article 95 of the Law no.4/2007, of 16th of January.
- 2 – For the purposes of the provisions set out in the preceding number the designation of the representative is the responsibility of the member of the Government in charge of Public Administration.

CHAPTER V

Complementary, final and transitional provisions

Article 26

Accidents at work

- 1 – The legal scheme of the protection of the accidents at work of all workers covered by the present law is set out in a decree-law.
- 2 – The decree-law provided for in the preceding number includes the principles and rights established in the general law, by adapting them to the specificities of the Public Administration, still defining the terms of responsibility of the employer entity for the redress of the damages resulting from accidents at work, moving away the principle of obligation of its transfer.
- 3 – The general law is applicable to workers who under the terms of the mobility instruments, shall perform service to the entities provided for in no.3 of article 4.

Article 27

Safeguard of the rights

- 1 – In the situations in which the performance of actual work is not verified, resulting from contingencies referred to in paragraphs a), b) and d) of article 13, irrespective of the applicable social protection scheme, the inexistence of a remuneration does not determine the loss or the damage of any rights and fringe benefits of any kind whatever under the terms laid down in the law.
- 2 – The provisions set out in the present law do not affect the schemes of social benefits enjoyed by workers, namely in the scope of health and complementary social action.

Article 28

Subsidiary Law

The basic law is subsidiarily applicable to the convergent social protection scheme.

Article 29

Regulation

1 – The regulation of contingencies referred to in article 13, in the convergent social protection scheme, is made by decree-law, in accordance with the principles, concepts and general conditions of the social security scheme and those specific ones of the welfare system.

2 – The regulation, provided for in the preceding number, includes the definition of the object, objective, nature, general and special conditions, rules of calculation of the amounts and other conditions of grant of benefits that carry into effect the right to the protection in all contingencies, referred to in article 13, in a way identical to the respective applicable legislation in the general regime, without prejudice to the specificities arising from the organisation and funding system specific of the convergent social protection scheme.

3 – The regulation of the regime referred to in the preceding numbers, as to relates to the funding rules, namely with regard to the setting of the global rate of contributions, follows the criteria laid down in the basic law and complementary legislation.

4 – The regulation referred to in no.2 provides for that, if, in concrete cases and in any of the contingencies, of which result a level of protection lower than to the insured person by the civil service social protection scheme previously in force, this level of protection is maintained, by way of grant of social benefits by the employer entity.

5 – Up to the commencement of the effectiveness of the regulation provided for in the present article, the legal and regulatory regimes that govern the various contingencies of the convergent social protection scheme are maintained in force.

Article 30

Transitional regime

1 – The convergent social protection scheme is applicable to the workers, covered by the civil service social protection scheme on the date of the coming into force and effect of the present law and that are fulfilling functions in the entities referred to in no. 3 of article 4.

2 – The regime set out in the Decree-Law no.117/2006, of 20th of June is applicable, to the workers referred to in paragraph a) of article 7, whose employment legal relationship has been formed between 1st of January of 2006 and the date of coming into force and effect provided for in no.1 of article 32, in case of taking place contingencies of illness, maternity, paternity and adoption, unemployment and occupational disease, whenever necessary.

Article 31

Repealing norm

1 – Without prejudice to provisions set out in the following number, the articles 9 and 10 of the Law no. 11/2008, of 20th of February are repealed.

2 – The repeal provided for in the preceding number only takes effect as of the coming into force and effect of the regulation of the contingency of unemployment, of the convergent social protection scheme.

3 – The effectiveness of article of article 10 of Law no. 11/2008, of 20th of February is extended, up to the date of coming into force and effect of the regulation provided for in the preceding number.

4 – The pieces of legislation that govern, in the convergent social protection scheme, the contingencies provided for in article 13 repeal all norms that contradict the provisions set out in the present law.

Article 32

Coming into force and effect

1 – Without prejudice to provisions in the following numbers, the present law takes effect on the date of coming into force and effect of the employment contract regime in public functions provided for in article 87 of the Law no. 12-A/2008, of 27th of February.

2 – The chapter III comes into force and effect, in relation to each one of the contingencies referred to in article 13, on the date of commencement of validity of decrees-law that make its regulation.

3 – The articles 19, 29 and 31 come into force and effect on the following day after the publication of the present law.

Passed on 5th of December of 2008

The President of the Assembly of the Republic, *Jaime Gama*

Promulgated on 21st of January of 2009

Let it be published

The President of the Republic, *Aníbal Cavaco Silva*

Countersigned on 22nd of January of 2009

The Prime Minister, *José Sócrates Carvalho Pinto de Sousa*