CUATRECASAS, GONÇALVES PEREIRA

NEWSLETTER I EMPLOYMENT

NEWSLETTER LABORAL I September, 2014

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I LEGISLATION HIGHLIGHT

Law No. 55/2014. *D.R.* (Portuguese official gazette) No. 162, Series I of 2014-08-25

Parliament

Publication of Law No. 55/2014, of 25 August, amending for the seventh time the Labour Code, enacted by Law No. 7/2009, of 12 February, which introduced amendments to Articles 501 and 502 of the aforementioned Code, concerning collective bargaining agreements.

With regard to the duration and lapse of collective bargaining agreements, Article 501 of the Labour Code, as amended, sets the new timeframes, as follows:

Article 501 of the Labour Code	Previous Wording	Current Wording
Term:	5 years	3 years
In case of notice of non-renewal of the collective bargaining agreement, the will remain in force at least for:	18 months	12 months
Negotiation Period:	-	18 months
Should the negotiation process end without an agreement, the collective bargaining agreement remain in force, after communication to the ministry in charge for the employment area and to the other party, for a period of:	60 days	45 days

In case of notice of non-renewal of the collective bargaining agreement and of interruption of the negotiations (including through reconciliation, mediation or voluntary arbitration) for a period of more than 30 days, the extension of the duration period is suspended. However, the new regime sets the maximum negotiation period (with suspension) at 18 months.

The amendment aforementioned does not apply to collective bargaining agreements in respect of which notice of non-renewal is given until 31 May 2014.

Moreover, this Law amends Article 502 of the Labour Code, allowing for the suspension of the term of the collective bargaining agreement, in certain situations.

This suspension is conditional upon the written agreement between employers' associations and trade unions' associations that are parties to the collective agreement, and must mandatorily state the reasons for and the duration of the application of the suspension as well as the effects arising from the same.

The present Law further determines that, within one year from its entry into force date, a new reduction of the two periods referred to above must be promoted to, respectively 2 years and to 6 months, following a positive evaluation by the social partners, in the context of the *Comissão Permanente de Concertação Social* (permanent committee for social conciliation).

II LEGISLATION

***Portaria* (Ordinance) No. 171/2014. *D.R*. (Portuguese official gazette) No. 171, Series I of 2014-09-05**
Presidency of the Council of Ministers and Ministry of Solidarity, Employment and Social Security

Approving the *Regulamento de Gestão de Documentos da Autoridade para as Condições do Trabalho* (Documents Management Regulation of the Working Conditions Authority) (hereafter *ACT*), setting out storage periods and the final destination of the documents produced and received on any medium, pursuant with the ACT's assignments and competences.

Law No. 75/2014. *D.R.* (Portuguese official gazette) No. 176, Series I of 2014-09-12
Parliament

Determining the temporary application of the reduction of pay remuneration for civil servants and defining the principles governing reversion of the same.

III CASE LAW

Judgment of the Court of Appeal of Porto of 2014-09-08
Limits to the freedom of expression and communication of employees concerning content published on Facebook

The Court of Appeal of Porto was requested to examine the case of an employee (trade union delegate) of a company engaged in the provision of security services, in particular services of surveillance of persons and goods, against whom disciplinary proceedings were initiated, which ended with the sanction of fair dismissal.

The sanction of fair dismissal was based on behaviour adopted by the employee within the company, but also on the social network – Facebook.

The employee in question created a secret "Group" on Facebook ("*group of employees of the C …*"), composed by 140 members (employees and former employees of the company in question), of which he was the Administrator, as a centre of discussion of matters relating to the company's activity, to professional interests common to the employees and to the working conditions provided by the company, in an improper and insulting manner.

The employee requested the Court of 1st Instance to declare the dismissal unlawful and to order the employer to reintegrate him in the company, as he considered that the grounds for the disciplinary sanction violated his freedom of expression, communication and criticism, given that the posts posted in his Facebook Group were of a secret and personal nature and, as such, were immune from the employer's disciplinary power, who acquired the information in an abusive manner.

In the 1st instance, the Labour Court of Matosinhos discharged the employer from the claim, recognising that the dismissal was fair, as the employee "*published a number of posts on the Group "Employees of C…" in the Facebook social network where he made observations concerning a number of subjects related to the organisation and internal life of C…, (…) that were seriously damaging and harmful for the good reputation and image of C…, as well as extremely insulting*".

Requested to rule on the matter, the Court of Appeal of Porto began by analysing the protection of personality rights in the scope of employment relations enshrined established in several legislation in the Portuguese legal system, concluding that the same cannot be the subject of reservations on any accounts (type of service, membership of social network, number of members, matter concerned by the posts and account parameterisation).

Unlike in foreign jurisprudence, the national jurisprudence had not yet taken a stand on the posting by employees of texts and other types of communications on online social networks and on the possibility of the employer having access to it and, possibly, taking the behaviour therein embodied as grounds for the fair dismissal of the employee.

This is a particularly sensitive subject since it addresses several subjects, such as the employee's constitutional right to privacy and family life, freedom of expression and communication and, conversely, the employer's right to image and reputation and its disciplinary power.

The Court of Appeal of Porto followed the decision appealed against, as it considered that the private character of the Group created on Facebook was substantially reduced on account an online social network, with a large number of members (140), who, despite having the denomination of "*friends*" are not necessarily so, and who can easily disclose

to third parties the content of the secret group, and that therefore there was no close trust relationship between the group members giving rise to the expectation that the same would not be breached.

The court considered unacceptable that the freedom of expression and communication did not have any type of external limit, as the concrete content of the posts was presumed to be professional, since they focused on the organization and internal life of the company in an insulting manner.

In fact, the Court considered that there was "*no expectation that the circle established by the "group of employees of C…" be private and closed, there being no indication that the relationship established between its members was based on a minimum of trust that it was expected would not be breached by disclosing what was posted within the group*", and that therefore subject to the disciplinary power of the employer, in the name of the normal operation of the company and of its honour and reputation.

With regard to the fairness of the dismissal of the employee, the Court considered that the false and insulting nature, as well as harmful to the reputation and image of the company, of the posts published by the employee was capable of creating a divide among the employees as a whole, with negative impacts on the working environment of the company, and concluded that there had been a serious breach of employment duties that gave rise to justifiable doubts concerning the suitability of the employees behaviour in the pursuit of the employment relation in the future.

Accordingly, the Court of Appeal of Porto decided to dismiss the appeal brought by the employee, and concluded that the disciplinary proceedings and consequent dismissal were lawful, as they fulfilled the concept of fair dismissal.

Judgment of the Constitutional Court No. 574/2014. *D.R.* (Portuguese official gazette) No. 169, Series I of 2014-09-03 (civil service)

Following the request for the review of the constitutionality of Parliament Decree No. 264/XII (the regime setting out the temporary salary reduction mechanisms and conditions for reversion of civil servants), the Constitutional Court declared the non unconstitutionality of the combined provisions of Articles 2 and 4(1) and the unconstitutionality of the combined provisions of Articles 2 and 4 (2) and (3) of the same Decree, on grounds of the violation of the principle of equality, set out in Article 13 of the Portuguese Constitution.

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