

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | EMPLOYMENT

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NEWSLETTER EMPLOYMENT

I LEGISLATION HIGHLIGHT

Decree-Law No. 144/2014. D.R. (Portuguese official gazette) No. 188, Series I of 2014-09-30

Ministry of Solidarity, Employment and Social Security

Publication of Decree-Law No. 144/2014, of 30 September, updating the amount of the minimum guaranteed monthly remuneration to € 505.00.

The update aforementioned will only be in force during the period between 1 October 2014 and 31 December 2015.

However, the amount of the minimum guaranteed monthly remuneration is different in the territories of the Autonomous Regions of Madeira and Azores.

Amount of the Minimum Remuneration	Previous Amount	Updated Amount
Mainland Portugal	€ 485.00	€ 505.00
Autonomous Region of Madeira	€ 497.70	€ 515.50
Autonomous Region of Azores	€ 509.25	€ 530.25

Please note that such update will have significant repercussions on employment, in particular in terms of the limit of the compensation due for dismissal for objective reasons.

Decree-Law No. 154/2014. D.R. (Portuguese official gazette) No. 202, Series I of 2014-10-20

Ministry of Solidarity, Employment and Social Security

Reducing by 0.75 % the contribution rate for Social Security paid by employers regarding the remuneration due from November 2014 to January 2016 (including the amounts due under vacation and Christmas allowances).

This measure applies to employers governed by private law, as contributors of the dependent employees' Social Security regime.

The assignment of this reduction is subject to the following cumulative conditions:

- Existence of an employment relation between the parties, without interruption, since at least May 2014;

- The employee has received, in at least one of the months between January and August 2014, a remuneration equal to the amount of the minimum guaranteed monthly remuneration;
- Fulfilment of the employer's contribution obligations towards the Social Security.

Such reduction is granted *ex officio* by the Social Security's services, when the conditions referred to above are met, after the submission, by the employer, of the autonomous income statements of the employees covered by this reduction. In the case of part-time employment contracts, the reduction of the contribution rate is conditional upon the submission of an application.

The right to the reduction of the contribution rate ceases in either one of the two following situations:

- Termination of the employment contract;
- The contribution obligations of the employer are no longer fulfilled.

This support measure may be cumulated with other supports to employment applicable to the same job.

II EXTENSION ORDERS

Area of Activity	Legislation
<p align="center">Cork Industry</p>	<p>Order No. 196/2014 D.R. No 190, Series I of 2014-10-02 Establishes the extension of the amendments to the collective bargaining agreement between <i>APCOR - Associação Portuguesa de Cortiça</i> and <i>FEVICOM - Federação Portuguesa dos Sindicatos da Construção, Cerâmica e Vidro</i> and other unions (factory personnel).</p>
<p align="center">Cork Industry</p>	<p>Order No. 197/2014 D.R. No 190, Series I of 2014-10-02 Establishes the extension of the amendments to the collective bargaining agreement between <i>APCOR - Associação Portuguesa de Cortiça</i> and <i>SINDCES/UGT - Sindicato do Comércio, Escritórios e Serviços</i>.</p>
<p align="center">Chemical and Pharmaceutical Products Industry</p>	<p>Order No. 198/2014 D.R. No 190, Series I of 2014-10-02 Establishes the extension of the amendments to the collective bargaining agreement between <i>NORQUIFAR</i> -</p>

	<i>Associação Nacional dos Importadores/Armazenistas e Retalhistas de Produtos Químicos e Farmacêuticos and FEPCES - Federação Portuguesa dos Sindicatos do Comércio, Escritórios e Serviços and other unions.</i>
Electric and Electronic Sector	Order No. 201/2014 D.R. No 191, Series I of 2014-10-03 Establishes the extension of the amendments to the collective bargaining agreement between <i>Associação Portuguesa das Empresas do Setor Elétrico e Eletrónico</i> and <i>FETESE - Federação dos Sindicatos da Indústria e Serviços</i> and other unions.
Paper and Cardboard Industry	Order No. 202/2014 D.R. No 191, Series I of 2014-10-03 Establishes the extension of the amendments to the collective bargaining agreement between <i>FAPEL - Associação Portuguesa de Fabricantes de Papel e Cartão</i> and <i>FETESE - Federação dos Sindicatos da Indústria e Serviços</i> .

III CASE LAW

Judgment of the Court of Appeal of Lisbon of 2014-09-24

Limits to the freedom of expression and communication of employees concerning content published on Facebook

The Court of Appeal of Lisbon was requested to rule on the case of an employee (a trade union delegate) who published on his personal profile of the Facebook social network a text that was offensive to the name and reputation of the employer and against whom disciplinary proceedings were brought, leading to the sanction of termination for cause.

The employee wanted the court to declare the unlawfulness of the dismissal and to order the employer to reinstate him.

This is the second judgment of the Court of Appeal to rule on Facebook posts with texts that are potentially offensive and harmful for the good reputation of the employer (see judgment of the Court of Appeal of Porto dated of 2014-09-08).

Following the aforementioned judgment of the Court of Appeal of Porto and of the Court of 1st Instance, the Court of Appeal of Lisbon considered that the content posted

exceeded the private domain of the employee and, consequently, it was not worthy of the protection of confidentiality provided for in the applicable Portuguese legislation.

The Court considered that the private domain of the employee was not at stake. For instance the content of the post itself, which encouraged those considered "friends" of the employee to share the post (by writing "SHARE, FRIENDS" at the end of his post), and could not therefore "...expect any privacy, since it deliberately did not even try to preserve it ...", "...nor be unaware of the serious and foreseeable possibility that the post could be known by a large group of employees, or even immediate superiors, or even his employer".

On the other hand, the Court concluded that the employee should keep his criticising and opinion within certain boundaries, in particular, respecting the personality rights of the employer and the normal functioning of the company.

Finally, the Court considered that the comments posted were sufficiently offensive and serious to amount to a disciplinary infringement reasoned by the breach of the duty of courtesy and respect, which threatened the quietness of the work environment and the balance of the organisation and that therefore justified the arising of "*serious and legitimate doubts as to the conformity of the employee's behaviour in the future, which made it practically and immediately impossible to maintain the employment relation ...*".

The Court of Appeal of Lisbon therefore decided not to uphold the appeal brought by the employee, concluded that the disciplinary proceedings were lawful as was the consequent enforcement of the sanction of dismissal, since the concept of termination for cause had been met.

Judgment of the Constitutional Court of 2014-09-29 Compatibility of Religious Freedom with Employment and Corporate Needs

The Constitutional Court was requested to rule on the resolution of the Plenary of the Supreme Council of the Department of Justice, which denied the request made by an employee to suspend work on shift days falling on a Saturday, since the employee is a Seventh Day Adventist and reserves that day of the week as holy day.

After the appeal was dismissed by the Plenary of the Administrative Litigation Section of the Supreme Administrative Court, the employee resorted to the Constitutional Court for a review of the material constitutionality of Article 14(1)(a) of the Law of Religion Freedom, when interpreted as meaning that the exemption from work for religious reasons can only occur with employees with flexible working hours.

The employee in question (currently Deputy Public Prosecutor at the court of Covilhã) is a member of the Seventh Day Adventist Church that reserves Saturday as holy day, dedicated to rest, but above all to adoration and religious ministry, during which is impossible to work.

However, the employee is obliged to the shift system in order to ensure that urgent work is done, which must be performed on Saturdays, forcing her to disrespect her beliefs.

The successive dismissed requests of the employee and dismissed actions were based on the argument that the employee did not have flexible working time, and as such, excluded from the exception provided for in the Law of Religious Freedom referred to above.

Nevertheless, the Constitutional Court considered that the only interpretation that was in accordance with the Portuguese Constitution and, consequently, capable of protecting freedom of religion, worship and conscience foreseen in the Constitution threatened in this case, would be to admit that the "*flexible working time scheme*" provided for in the Law of Religious Freedom covers situations other than the flexible working time, such as "*work in shifts, irregular shifts, no timetable situations or exemption from timetable*".

Accordingly, the Constitutional Court upheld the appeal and, consequently, revoked the judgment appealed against to reform it, so that the aforementioned provision could be applied with the interpretation above.

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