

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | EMPLOYMENT

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NEWSLETTER EMPLOYMENT

I LEGISLATION

Order No 26/2015. D.R. (Portuguese official gazette) No 28, Series I of 2015-02-10

Ministry of Solidarity, Employment and Social Security

This Order revokes Order No 207/2012, of 6 July, and establishes the *Medida Incentivo à Aceitação de Ofertas de Emprego* (Job Acceptance Incentive Measure), which foresees the granting of financial support to the unemployed who accept job offers presented by the services of *Instituto do Emprego e Formação Profissional, I.P.* (IEFP, I.P.), or found through their own means.

This Measure is targeted to beneficiaries of the General Social Security Scheme who fulfil the following conditions:

- (i) Receive unemployment benefits;
- (ii) Are registered with IEFP, I.P. services for more than 3 months;
- (iii) Accept a job offer presented by the IEFP, I.P. services, or find a job through their own means, with a gross salary lower than the unemployment benefit;
- (iv) Are entitled, on the effective start date of the activity, to unemployment benefit for a remaining period of 3 months or more.

For the purpose of this Measure, only employment contracts not entered into with an employer with whom the beneficiary has maintained a working relation, which termination led to the right to unemployment benefit; and ensure, at least, the minimum monthly salary and with a minimum duration of 3 months on a full-time work basis, will be taken into consideration.

The financial support consists of granting a monthly amount equal to:

- (i) 50% of the unemployment benefit, during the first six months of the period in which the support is granted, up to the maximum amount of € 500.00;
- (ii) 25% of the unemployment benefit, for the following six months, up to the maximum amount of € 250.00.

The beneficiary must apply for the financial support from *IEFP, I.P.* within 30 days from the effective start date of the employment contract.

II EXTENSION ORDERS

Area of Activity	Legislation
<p>Wholesale of pharmaceutical or veterinary products</p>	<p>Order No 40/2015 D.R. (Portuguese official gazette) No 33, Series I of 2015-02-17</p> <p>Establishes the extension of the collective bargaining agreements between <i>GROQUIFAR – Associação de Grossistas de Produtos Químicos e Farmacêuticos</i> and <i>COFESINT – Confederação de Sindicatos da Indústria, Energia e Transportes</i> and between the latter employers’ association and <i>FETESE – Federação dos Sindicatos da Indústria e Serviços</i>.</p>
<p>Winegrowers cooperatives</p>	<p>Order No 27/2015 D.R. (Portuguese official gazette) No 29, Series I of 2015-02-11</p> <p>Establishes the extension of the collective bargaining agreement and its amendments between <i>ADCP – Associação das Adeegas Cooperativas de Portugal</i> and <i>SETAA – Sindicato da Agricultura, Alimentação e Florestas</i>.</p>
<p>Metal industry and metalworking sector</p>	<p>Order No 28/2015 D.R. (Portuguese official gazette) No 29, Series I of 2015-02-11</p> <p>Establishes the extension of the collective bargaining agreement between <i>FENAME – Federação Nacional do Metal</i> and <i>FETESE – Federação dos Sindicatos da Indústria e Serviços</i> and others.</p>

III EMPLOYMENT OBLIGATIONS

Holiday schedule

The employer must prepare the holiday schedule stating the beginning and end of each employee’s holiday period, until 15 April, and must keep the schedule posted at the workplace between this date and 31 October.

Delivery of the Annual Report ("Relatório Único")

The employer must deliver the Annual Report of 2014 electronically, through the appropriate form, during the period between 16 March and 15 April 2015.

IV CASE LAW

Judgment of the Supreme Court of Justice of 2015-01-14

Breach of conduct rules regarding the dress code – Termination for cause

The Supreme Court of Justice was requested to rule on the sanction of termination for cause of an employee who breached a number of employment duties, among which the duty of diligence.

The aforementioned employee was a Head Waiter in a hotel for 10 years.

The decision to dismiss him was based specifically on two offences, related to two separate situations.

The first was related to his undisciplined behaviour, particularly in terms of presentation, as he appeared *"permanently with rolled up shirt sleeves, while it was mandatory that the sleeves should be correctly worn and the cuffs buttoned"*.

For this reason the employee was successively reprimanded, but he consciously disregarded the repeated warnings and orders of the employer.

On the other hand, the second situation concerning the repeated theft of the company's assets and the consequent economic damage done to it, *i.e., "on successive days, as rule, after serving the tables, when charging the bill, for which he was also responsible, he charged from customers less than what it was actually due, without being authorised to do so, using various ways of action to that effect, both by omitting the consumption of products by customers in the bill, and by exchanging, in the bill, the product actually consumed for another, cheaper product, or by registering a smaller number of clients."*

With regard to the first conduct, the Court considered that the same was relevant for disciplinary purposes, inasmuch as it breached the duty to respect the orders and the employer's instructions, concerning the work performance; and the etiquette and clothing rules imposed did not affect the rights and guarantees of employees. For which reason, even if there was no Rules of Procedure or dress codes the employee's conduct constituted an aggravating circumstance which led to termination for cause.

Regarding the conduct adopted by the employee by charging the customers different sums from the ones actually consumed at the restaurant, the Court considered that it was unquestionable that the same were relevant for disciplinary purposes and that the duty of diligence had been consequently breached, considering that it could not be

demanded that the employment relation be maintained, " (...) *inasmuch as the continuity of the employment contract represents, in objective terms, an "unbearable and unjust imposition to the employer".*"

In this sense, the Supreme Court of Justice decided for the termination for cause.

Judgment of the Court of Appeal of Porto of 2015-02-09
Presumption of work relation between spouses – Commercial company

The Court was requested to analyse the nature of the contractual relation between two spouses, in the scope of a commercial company engaged in the restaurants business and managed by the husband, who held a 95% share of the same, while the remainder was held by the wife.

The wife claimed to have an employment contract with the company, considering that the evidences of an employment relation were present: she received direct orders and instructions from the husband; she used the restaurant working tools; she performed her tasks in accordance with the opening and closing times of the restaurant, she had a monthly salary of € 532.00 (although she never received it).

However, the Court considered that "*(...) all indicates that the activity provided by the Claimant in the commercial establishment of the Defendant, of which the Claimant is also a partner, took place pursuant to a plan of life outlined by the Claimant and by her husband, according to which the earnings of the restaurant provided were the source of income family.*"

In addition, "*the facts proven indicate that the appellant provided her activity pursuant to the duty of cooperation, to which the spouses are mutually bound (...)*", therefore eliminating the existence of an employment contract.

The Court concluded that, even if one of the evidence of an employment relation was deemed to be present - the existence of a workplace - this would be insufficient for there to be a presumption of an employment contract, and therefore concluded that no such contract existed.

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