

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | EMPLOYMENT

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NEWSLETTER EMPLOYMENT

I LEGISLATION

Order No. 71/2015 – D.R. (Portuguese official gazette) No. 48/2015, Series I of 2015-03-10

Ministry of Solidarity, Employment and Social Security

Revokes Ministerial Order No. 299/2007, of 16 March and approves the standard fitness for employment form.

Decree-Law No. 37/2015 – D.R. (Portuguese official gazette) No. 48/2015, Series I of 2015-03-10

Ministry of Solidarity, Employment and Social Security

Establishes, on the basis of the legislative authorisation provided under Law No. 83-C/2013, of 31 December, the regime for access to professions and professional activities.

Ministerial Order No. 84/2015 – D.R. (Portuguese official gazette) No. 56/2015, Series I of 2015-03-2066818377

Ministry of Solidarity, Employment and Social Security

Creates and regulates the measure for Gender Equality in the Labour Market.

Ministerial Order No. 85/2015 – D.R. (Portuguese official gazette) No. 56/2015, Series I of 2015-03-2066818378

Ministry of Solidarity, Employment and Social Security

Creates the measure for Support for Geographical Mobility in the Labour Market.

II EXTENSIONS ORDERS

Area of Activity	Legislation
<p>Retail trade and repair of electric domestic appliances</p>	<p>Ministerial Order No. 79/2015 – D.R. No. 53/2015, Series I of 2015-03-17</p> <p><i>Determines the extent of the amendments to the collective bargaining agreement between ACRAL - Association of Trade and Services of the Algarve Region and CESP - Union of Commerce, Office and Service Workers of Portugal and others.</i></p>
<p>Retail trade and/or provision of services</p>	<p>Ministerial Order No. 80/2015 – D.R.</p>

	<p>No. 53/2015, Series I of 2015-03-17</p> <p><i>Determines the extent of the amendments to the collective bargaining agreement between Commercial, Industrial and Services Association of Bragança and others and FEPCES - Portuguese Federation of Unions of Commerce, Offices and Services.</i></p>
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III LABOUR 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 keep the plan 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 Court of Justice of the European Union of 2015-02-12 Case C-396/13

The Court of Justice of the European Union was requested to rule on the interpretation of Article 3.1 and 3.7, of Directive 96/71, of 16 December 1996, concerning the posting of employees in the framework of the provision of services, the request having been made concerning pay claims arising out of employment relationships by Polish workers posted in Finland.

According to that Directive, minimum rates of pay are defined by the national legislation of the host State of the posted employee, the constituent elements of those rates of pay being defined in that State, in so far as this does not have the effect of impeding the freedom to provide services between Member States.

Thus, collective agreements in these Member States that calculate the minimum wage for hourly work and/or for piecework based on the categorisation of employees into pay groups do not infringe the Community principle of freedom to provide services, provided that that

calculation and categorisation are carried out in accordance with rules that are binding and transparent.

The Court of Justice considers as part of the minimum wage of posted employees: daily allowances; compensation for daily travelling time, on condition that their daily journey to and from their place of work is of more than one hour's duration; and the pay which the posted employees must receive for the minimum paid annual holidays, corresponding to the minimum wage to which those workers are entitled during the reference period.

However, coverage of the cost of posted employees' accommodation, as well as an allowance taking the form of meal vouchers are not to be regarded as an element of their minimum wage.

Judgment of the Court of Appeal of Guimarães of 2015-01-15

The Court of Appeal of Guimarães was called to pronounce on the dismissal of an employee whose culpable conduct made it immediately and effectively impossible to continue the working relationship.

For the court, the fact that the director of services at a home for the elderly, in the presence of third parties, had criticised, in a mocking tone, the employer's decision to set up fencing panels of a significant height, notwithstanding the breach of the duty to respect and be courteous with employers, hierarchical superiors, work companions and other people who are or may enter into a relationship with the company, this does not make it impossible to maintain a working relationship.

In turn, the court also regarded the fact that the employee in question addressed a member of the board, in this case the Treasurer, in a recriminatory tone of voice, having thus also breached the duties referred to above, merely represents a disciplinary infringement and not therefore sufficient grounds for dismissal with just cause.

Finally, and also in the atmosphere of hostilities between the employee and the employer, the fact that, while visiting one of the users of the centre, who was her aunt, she sang the song "Grândola Vila Morena" as it was her birthday, is not sufficiently reprehensible to justify the dismissal since the employee was not working at that time and was there on a private matter.

Judgment of the Court of Appeal of Guimarães of 2015-02-12

The Court of Appeal of Guimarães was called to pronounce on the lawfulness of the dismissal of a bank employee who had made a transfer from the account of a customer to the account of a third party and, following this, applied the money in capitalisation products without the knowledge and consent of the customer.

For the court, this situation amounts to just cause for dismissal, given that it constituted infringement of a fundamental rule that exists in the banking system and which aims to guarantee the transparency of all operations carried out by the bank and, at the same time, raise the confidence of its customers: the money which it holds as depositary can only be used for a purpose other than that initially proposed with the customer's consent.

Given that the employee knew that the bank did not authorise him to make a transfer from a customer's account to the account of a third party or to acquire financial instruments without the customer's consent, his attitude could not fail to be considered culpable and, as it had serious consequences, made it immediately and effectively impossible to continue the working relationship.

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