

# CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | EMPLOYMENT LAW

EMPLOYMENT LAW NEWSLETTER | October, 2015

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EMPLOYMENT LAW NEWSLETTER

I LEGISLATION

**Decree-Law no. 210/2015 – D.R. (Portuguese Official Gazette) no. 188/2015, Series I of 2015-09-25**

**Ministry of Solidarity, Employment and Social Security**

Exempts companies from communicating the data of employees with contracts with a duration of less than to 2 months to the compensation funds, thereby producing the first amendment to Law no. 70/2013, August 30, which establishes the legal framework of the employment compensation fund and the employment compensation guarantee fund. The Decree-Law will enter into force in November 2016.

**Order no. 382/2015 – D.R. (Portuguese Official Gazette) no. 209/2015, Series I of 2015-10-26**

**Presidency of the Council of Ministers and the Ministries of Home Affairs; Justice; Economy; Environment, Spatial Planning and Energy; Agriculture and the Sea; Health; and Solidarity, Employment and Social Security**

Sixth amendment to Order no. 736/2006, July 26, approving the regulation of the minimum conditions for administrative staff.

**Collective Bargaining Agreement no. 82/2015 – D.R. (Portuguese Official Gazette) no. 205/2015, Series II of 2015-10-20**

**Ministry of Finance – Directorate-General of Administration and Public Employment**

Public Employer Collective Bargaining Agreement entered into between Sátão Municipal Council and *SINTAP*.

**Collective Bargaining Agreement no. 86/2015 – D.R. (Portuguese Official Gazette) no. 209/2015, Series II of 2015-10-26**

**Ministry of Finance – Directorate-General of Administration and Public Employment**

Public Employer Collective Bargaining Agreement entered into between Boticas Municipal Council and *SINTAP*.

**Collective Bargaining Agreement no. 87/2015 - D.R. (Portuguese Official Gazette) no. 209/2015, Series II of 2015-10-26**

**Ministry of Finance – Directorate-General of Administration and Public Employment**

Public Employer Collective Bargaining Agreement entered into between Póvoa de Lanhoso Municipal Council and *SINTAP*.

**Collective Bargaining Agreement no. 88/2015 - D.R. (Portuguese Official Gazette) no. 209/2015, Series II of 2015-10-26**

**Ministry of Finance – Directorate-General of Administration and Public Employment**

Public Employer Collective Bargaining Agreement entered into between Vila Real Municipal Council and *SINTAP*.

**Collective Bargaining Agreement no. 89/2015 - D.R. (Portuguese Official Gazette) no. 209/2015, Series II of 2015-10-26**

**Ministry of Finance – Directorate-General of Administration and Public Employment**

Public Employer Collective Bargaining Agreement entered into between Rio Maior Municipal Council and *SINTAP*.

II EXTENSION ORDERS

Area of Activity	Order
<p><b>Wholesale trade in chemical products</b></p>	<p><b>Order no. 313/2015 - D.R. no. 189/2015, Series I of 2015-09-28</b>                      Establishes the extension of the collective bargaining agreements and their amendments in force between <i>GROQUIFAR</i> – Association of the chemical and pharmaceutical products wholesalers and <i>COFESINT</i> – Industry, Energy and Transport Trade Unions Federation and other, and between the same employers’ association and <i>FETESE</i> – Industry and Services Trade Unions Federation (Wholesale trade in chemical products for industry or agriculture).</p>
<p><b>Wholesale trade in alcoholic beverages</b></p>	<p><b>Order no. 363/2015 - D.R. no. 202/2015, Series I of 2015-10-15</b>                      Establishes the extension of the amendments to the collective bargaining agreement between <i>ADCP</i> – Association of the Cooperative Wineries of Portugal and <i>SETAA</i> – Agriculture, Food and Woodlands Trade Union.</p>
<p><b>Agriculture</b></p>	<p><b>Order no. 364/2015 - D.R. no. 202/2015, Series I of 2015-10-15</b>                      Establishes the extension of the amendments to the collective bargaining</p>

	agreement between <i>CAP</i> – Confederation of the Farmers of Portugal and <i>SETAA</i> – Agriculture, Food and Woodlands Trade Union.
<b>Wholesale trade in pharmaceutical goods</b>	<b>Order no. 369/2015 – D.R. no. 204/2015, Series I of 2015-10-19</b> Establishes the extension of the amendments to the collective bargaining agreements between <i>GROQUIFAR</i> – Chemical and Pharmaceutical Goods Wholesalers Association and <i>COFESINT</i> – Industry, Energy, and Transport Trade Unions Federation and others, and between the same employers’ association and <i>FETESE</i> - Industry and Services Trade Unions Federation (Pharmaceutical Goods).
<b>Wholesale trade in alcoholic beverages</b>	<b>Order no. 385/2015 – D.R. no. 209/2015, Series I of 2015-10-26</b> Establishes the extension of the collective bargaining agreement and its amendments between <i>ADCP</i> – Association of the Cooperative Wineries of Portugal and <i>FETESE</i> – Industry and Services Trade Unions Federation.

### III CASE LAW

#### **Judgment of the Lisbon Court of Appeal of 23-09-2015 – Retirement on grounds of age – Expiration of contract – Conversion to fixed-term contract**

In the present case, the Lisbon Court of Appeal was asked to give a ruling on the lawfulness of terminating an employment contract on the grounds of expiry by dint of the employee having reached the age of 70 without having taken retirement.

The Court sustained that there is a fundamental difference between an employment contract which expires owing to the employee’s retirement on the grounds of age, and an employment contract in which an employee reaches the age of 70 without having retired – as, in the latter, the contract does not expire.

The Court further clarified that on the day the employee reaches the age of 70, the employment contract does not expire, but is converted *ope legis* into a renewable fixed-term employment contract with a duration of six months. Thus, notwithstanding its conversion into a fixed-term

contract, in view of the fact that the employment relationship continues, the contract can only be terminated after the first six months have lapsed.

In this way, the Court took the view that the notice of termination the employer sent to the employee amounted to an unlawful dismissal, taking into account that it corresponded to a statement of termination of the employment relationship prior to the term of the contract, without justified grounds and with no prior disciplinary procedure.

### **Judgment of the Lisbon Court of Appeal of 09-10-2015 – Collective dismissal**

This judgment concerns the collective dismissal carried out by a company in its diamond wheel division, as a result of winding up its disc assembling activity in Portugal and its subsequent de-localization to another country.

The employees challenged the dismissal in court, claiming their reinstatement in the company. They contended that (i) there were no grounds to dismiss permanent employees and retain employees on term contracts, transferring the later to other divisions within the company and (ii) the company could and should have redeployed the employees affected by the dismissal to other areas of production and that (iii) in general terms, it was not impossible to maintain the employment relationship.

The Court of Appeal upheld the decision of the Court of First Instance, taking the view that the company had undertaken a lawful dismissal.

Indeed, the Court ruled that *“even taking a more interventionist view of the court’s power to assess the grounds upon which a company decides to make a collective dismissal”*, there were no doubts concerning the merits of the causation of the dismissal undertaken by the company, which had merely closed down one of its divisions in order to relocate it to a lower cost site and, under these circumstances, dismissed the employees allocated to that division.

The Court additionally stated that the company was under no legal obligation to offer employees included in the collective dismissal other positions within the company that were compatible with their job category and, even less, to move them to a new job category for this purpose.

In this regard, the Court took the view that the redeployment of employees on term contracts or with a shorter length of service to another division was not relevant for judging the lawfulness of the dismissal, in view of the aforementioned fairness of the causation. Such redeployment would only be relevant should the plaintiffs have proved its unfairness, proving that the redeployment artificially created grounds for the specific termination of the employment contracts of the employees remaining in the closed area of activity – since the burden of proof laid with the employees, and not with the company that undertook the collective dismissal. Hence, since such proof was not provided by the employees, the Court of Appeal concluded that the collective dismissal was lawful.

## **CONTACT**

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