

# CUATRECASAS, GONÇALVES PEREIRA



## NEWSLETTER | EMPLOYMENT LAW

### EMPLOYMENT LAW NEWSLETTER | December, 2015

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EMPLOYMENT LAW NEWSLETTER

I LEGISLATION

**Decree-Law no. 254-A/2015 – D.R. (Portuguese Official Gazette) no. 255/2015, 1<sup>st</sup> Supplement, Series I of 2015-12-31**  
**Ministry of Employment, Solidarity and Social Security**

Updates the minimum wage guaranteed for 2016 to 530.00€ (five hundred and thirty euros).

**Decree-Law no. 254-B/2015 – D.R. (Portuguese Official Gazette) no. 255/2015, 1<sup>st</sup> Supplement, Series I of 2015-12-31**  
**Ministry of Employment, Solidarity and Social Security**

Restores the update rules regarding the pensions of the social security regime and social protection converged regime and sets the reference value of the Solidarity Supplement for the Elderly, to be in force as of January 1, 2016, to 5,022.00€ (five thousand and twenty two euros) per year.

II EXTENSION ORDERS

Area of Activity	Order
<p align="center"><b>Broadcasting</b></p>	<p><b>Order no. 410/2015 - D.R. no. 231/2015, Series I, 2015-11-25</b>                      Establishes the extension of the company agreement between Rádio e Televisão de Portugal, SA and FE – Federation of Engineers and others.</p>
<p align="center"><b>Electrical and electronics sector</b></p>	<p><b>Order no. 415/2015 - D.R. no. 237/2015, Series I, 2015-12-03</b>                      Establishes the extension of the amendments to the collective bargaining agreement between the Portuguese Association of Electrical and Electronics Sector Companies and FETESE – Industry and Services Trade Unions Federation and others.</p>
<p align="center"><b>Optics</b></p>	<p><b>Order no. 416/2015 - D.R. no. 238/2015, Series I, 2015-12-04</b>                      Establishes the extension of the collective bargaining agreement between the National Optics Association and FETESE - Industry and Services Trade Unions Federation.</p>

### III CASE LAW

#### **Judgment of the Porto Court of Appeal of 2015-11-16 - Termination of overtime remuneration – Principle of the irreducible nature of remuneration**

In the present case, in which the employee was no longer working overtime, the Court analysed whether the termination of the corresponding payment for overtime by the employer was in breach of the principle of the irreducible nature of remuneration.

According to the Court, the principle of the irreducible nature of remuneration does not prohibit termination of the payment of all and every sum of remunerative nature. The Court pointed out that the said principle is based on the assumption that employees are economically dependent on their salaries, in view of the fact that in most cases such remuneration is their only source of income.

Hence, considering the reasoning of the referred principle, the Court underscored that both doctrine and case law unanimously consider that the principle does not apply to remuneration in its entirety, but only to remuneration in the narrow sense – upon which the employee is presumed to be economically dependent – and therefore, does not encompass the amounts pertaining to overtime, nor, for example, the remuneration for working-time exemption or shift work.

Accordingly, the Court ruled that the employer was not in breach of the principle of the irreducible nature of remuneration by terminating the overtime remuneration as the aftermath of the employee having ceased to work overtime, even though such overtime work was of remunerative nature considering the regularity and periodicity of the respective payment.

#### **Judgment of the Court of Justice of the European Union of 2015-11-11 – Concept of redundancy within the meaning of the Collective Redundancies Directive**

A Spanish court submitted a reference for a preliminary ruling requesting the Court of Justice of the European Union (“CJEU”)’s opinion on the scope of the concept of redundancy within the meaning of the collective redundancies directive, in particular, if termination of an employment contract by mutual agreement, following an employee’s refusal to accept unilaterally-decided detrimental amendments to core contractual conditions, was tantamount to redundancy within the meaning of the collective redundancies directive.

The CJEU was of the opinion that the termination of the employment relationship by mutual agreement in the present case stemmed from unilaterally-decided changes made by the employer to a key condition of the employment contract, for reasons not related to the individual employee – specifically a 25% cut in the said employee’s remuneration – and that, as this was the root cause of the termination of the employment relationship, it was encompassed by the concept of redundancy within the meaning given by the directive.

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Furthermore, the CJEU underlined the fact that any other interpretation would render the directive ineffective and recalled that the concept of redundancy cannot be subject to restrictive interpretations, since the directive's purpose is to strengthen the protection of employees when a collective redundancy occurs.

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