

CUATRECASAS, GONÇALVES PEREIRA



NEWSLETTER | EMPLOYMENT LAW

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EMPLOYMENT LAW NEWSLETTER

I EXTENSION ORDERS

Area of Activity	Order
<p>Services provided to companies Merchandising</p>	<p>Order no. 9/2016 - D.R. no. 20/2016, Series I of 2016-01-29 Establishes the extension of the amendments to the collective bargaining agreement between ANESM - National Association of Services and Merchandising Companies and the Industry and Services Trade Unions Federation - FETESE and other.</p>
<p>Manufacture and trade of cork articles</p>	<p>Order no. 10/2016 - D.R. no. 20/2016, Series I of 2016-01-29 Establishes the extension of the amendments of the collective bargaining agreement between APCOR - Portuguese Cork Association and the Industry and Services Trade Unions Federation - FETESE (clerical staff).</p>
<p>Construction and public works</p>	<p>Order no. 11/2016 - D.R. no. 20/2016, Series I of 2016-01-29 Establishes the extension of the collective bargaining agreements between AECOPS - Association of Companies of Building and Public Works and Services and others and the FE - Federation of Engineers and between the same employers' associations and the Industry and Services Trade Unions Federation - FETESE.</p>
<p>Agriculture</p>	<p>Order no. 13/2016 - D.R. no. 21/2016, Series I of 2016-02-01 Establishes the extension of the collective bargaining agreement and its amendments between the Baixo Alentejo Farmers' Association and the Agriculture, Food and Woodland Trade Union - SETAA.</p>

<p>Paper manufacturing</p>	<p>Order no. 14/2016 - D.R. no. 21/2016, Series I of 2016-02-01 Established the extension of the collective bargaining agreement and its amendments between the Portuguese Association of Paper and Cardboard Manufacturers' (<i>FAPEL</i>) and the Industry, Energy and Transports Trade Unions Federation - <i>COFESINT</i> and other, and of the amendments to the collective bargaining agreement between the same employers' association and the Industry and Services Trade Unions Federation - <i>FETESE</i>.</p>
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II CASE LAW

Judgement of the Guimarães Court of Appeal of 03-12-2015 – Work accident – Self-employed worker – Specific features of the legal provisions

In the judgement in question, the Court of Appeal considered a compensation claim for damages caused by a work accident, brought by a self-employed worker, which had been rejected by the Court of First Instance.

The Court of Appeal drew attention to the fact that the dual capacity of employee and employer taken on by self-employed workers entails the need to adapt the legal arrangements for remedying damages caused by a work accident, to this particular circumstance. In fact, as a result of the employee holding both this position and that of employer in the legal relationship – stemming from the specific nature of self-employed work – the legal arrangements only exclude remedy for the accident should the self-employed worker in question have breached legal safety rules. Should it not prove possible to establish non-compliance with such rules, the insurer must necessarily provide a remedy and shall be liable to the extent of the assigned liability, in other words, in accordance with the remuneration declared for the purposes of the insurance premium.

Thus, in this specific case, despite having been proved the worker's carelessness in handling the machinery and that he followed procedures which may contradict the instruction manual, the Court of Appeal considered that a breach of the legal safety rules by the employee had not been proven. Accordingly, the Court ruled that such a breach could not be attributed to the self-employed worker and hence excluded remediability. The appeal was therefore upheld and

the insurer ordered to pay remedy for the accident.

Judgement of the Supreme Court of Justice of 17-12-2015 – Work Accident – Part-time Work

In the case under review, the Supreme Court of Justice stated that welfare benefits to be awarded to part-time employees must be calculated on the basis of the remuneration corresponding to normal working hours for full-time employment, and not on the basis of the remuneration actually paid in return for part-time work.

The Supreme Court underscored the fact that the legal arrangements in question were founded on “the principle related to work accidents, whereby the victim's potential earnings must be fully recovered”, since a work accident does not only affect the capacity to work in the activity performed part-time, but for any and all other activities that the employee could perform during normal working hours. Hence, his potential earnings would be reduced during all the possible working hours in which the corresponding occupational activity could be performed.

Lastly, the Supreme Court also drew attention to the fact that the right to remedy for damages caused by work accidents is unwaivable. Such a right has underlying public policy interests and a prevailing social purpose.

In view of the above, the Supreme Court decided that the remedy for the accident should be calculated on the basis of the remuneration that the employee would earn if in full-time employment, despite the fact that the victim actually worked part-time.

CONTACT

CUATRECASAS, GONÇALVES PEREIRA & ASSOCIADOS, RL

Sociedade de Advogados de Responsabilidade Limitada

LISBOA

Praça Marquês de Pombal, 2 (e 1-8º) | 1250-160 Lisboa | Portugal

Tel. (351) 21 355 3800 | Fax (351) 21 353 2362

cuatrecasasportugal@cuatrecasas.com | www.cuatrecasas.com

PORTO

Avenida da Boavista, 3265 – 5.1 | 4100-137 Porto | Portugal

Tel. (351) 22 616 6920 | Fax (351) 22 616 6949

cuatrecasasporto@cuatrecasas.com | www.cuatrecasas.com

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