CUATRECASAS, GONÇALVES PEREIRA

NEWSLETTER | EMPLOYMENT LAW

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# EMPLOYMENT LAW NEWSLETTER

## I LEGISLATION HIGHLIGHTS

### Decree Law no. 10/2016, of 8 March

This diploma amends Decree-Law no. 8/2015, 14 January, which revoked the suspension of access to early retirement, establishing a transitional regime concerning the conditions for recognition of the right to early retirement, which was in force during 2015.

After this transitional regime, access to early retirement once again depended on the beneficiary having at least 55 years and, when reached this age, 30 or more years with registration of relevant remunerations for calculation of the pension.

With this amendment, until the regime of the age of early retirement is reviewed, the recognition of the right to an early retirement pension depends on the beneficiary having 60 or more years, and 40 or more years with registration of relevant remunerations for the calculation of the pension (regime in force in 2015).

Note, however, that this amendment safeguards the rights of those who have submitted their early retirement pension application until the date of its entry into force, on 9 March 2016, accessing early retirement in the conditions mentioned in the second paragraph above.

This diploma also introduced, as a differing condition of the pension, the need for an express statement of the will of the beneficiary to keep the decision to access to early retirement.

### Decree Law no. 11/2016, of 8 March

Following the increase of the value of the minimum monthly remuneration (€ 530), the Government has decided to proceed with the reduction of 0.75% of the Social Security contributions paid by the employers regarding the remuneration due between February 2016 and January 2017 (including the amounts due under the vacation and Christmas allowances).

This measure applies to the private employers, as contributors of the Social Security regime, without prejudice to the exceptions provided for in the aforementioned decree-law.

The assignment of this reduction is subject to the following cumulative conditions:

- A full time or part-time employment contract between the parties, with date prior to January 1, 2016;

- The employee earning, as of December 31, 2015, a monthly base salary in the amount comprised between € 505 and € 530, or in its proportional amount in the case of part-time contracts;
- The employer has the situation regularized before Social Security.

Such reduction is granted *ex officio* by the Social Security's services, when the required conditions are met, after the submission, by the employer, of autonomous income statements of the employees covered by this reduction. In case of part-time employment contracts, such reduction depends on the submission of an application.

This support measure may be combined with other employment incentives applicable to the same workplace.

## II LEGISLATION

**Order no. 3859/2016 – *D.R.* (Portuguese Official Gazette) no. 53/2016, Series II, 16 March 2016**
**Ministry of Labour, Solidarity and Social Security**

This order adopts the rules and regulations for recognizing equivalent status to private social solidarity institutions (IPSS) of social solidarity cooperatives which pursue the aims set out in the IPSS Statute.

**Law no. 6/2016 - *D.R.* (Portuguese Official Gazette) no. 54, Series I, 17 March 2016**
**Parliament**

This Law amends the special protection arrangements for disability and the dependency supplement.

**Law no. 7/2016 - *D.R.* (Portuguese Official Gazette) no. 54, Series I, 17 March 2016**
**Parliament**

This Law establishes an increment in social benefits for maternity, paternity and adoption for residents in the Autonomous Regions.

**Edict no. 3968/2016 - *D.R.* (Portuguese Official Gazette) no. 58/2016, Series II, 23 March 2016**
**Ministry of Labour, Solidarity and Social Security**

Application of the Social Security agreement between the Portuguese Republic and the Federative Republic of Brasil.

## III EMPLOYMENT OBLIGATIONS

**Holiday chart**

Employers must draw up a holiday chart, indicating the starting and finishing date of each employee's holiday periods by 15 April, and display it in workplaces thenceforth and until 31 October.

## IV CASE LAW

**Judgement of the Évora Court of Appeal of 28 January 2016 – Hearing of Parties – Justification of failure to attend - Fine**

In the ruling in question, the Évora Court of Appeal was called on to pass judgement as to whether a party can be represented at a hearing of parties by legal counsel with special powers of attorney to confess, withdraw and enter into an agreement, without having to provide a justification for non-attendance.

Article 54, paragraph 3 of the Code of Employment Procedure (CPT) prescribes that the plaintiff is informed and the defendant summonsed to attend in person, or, when there are justified grounds for non-attendance, to be represented by legal counsel with special powers of attorney to confess, withdraw or enter into an agreement.

This provision provides the same representation arrangements for both plaintiff and defendant when either is prevented from attending. It therefore enshrines the principle of equality of arms between plaintiff and defendant, with regard to representation when prevented from attending.

By limiting representation by legal counsel to situations of justified failure to attend, the law seeks to coerce both parties to attend the hearing, since the very presence of the subjects of the breached relationship fosters dispute settlement by agreement.

Moreover, the dynamic nature of the hearing of parties promotes dialogue between them, the direct submission of claims and rebuttals, since they have the best first-hand knowledge of the employment relationship and its vicissitudes, in order to create an enabling environment for an agreement on the subject of the proceedings.

Furthermore, since the law prescribes attendance in person as compulsory, the letter of the law does not allow for any interpretation other than that the plaintiff and the defendant may only be represented by legal counsel should there be justified grounds for non-attendance. The onus of declaring the grounds for non-attendance lies with the party at fault, with failure to do so rendering it liable to a fine.

**Judgement of the Supreme Court of Justice of 28 January 2016 – Just Cause for dismissal – Duty to Respect- Opposition to reintegration.**

In the ruling under review, the SCJ declared the dismissal of a Director unlawful in the context of corporate restructuring, since his humiliation and disrespect for colleagues and junior staff, grounds used for his dismissal, did not reach such a level as to enable his lawful dismissal.

Under these terms and in the case under review, the SCJ underscored that lawful dismissal for just cause is based on the employee's wrongful conduct rendering it immediately and feasibly impossible to maintain the employment relationship, by dint of its serious nature and consequences.

Notwithstanding, the SCJ punctiliously clarified the fact that despite the Director having violated the rights of employees in the employer's service, in particular through insults; threats; humiliation and failure to respect rest periods, these facts were not serious enough to be accepted as grounds for his dismissal for just cause.

Moreover, the alleged facts did not render the employment relationship unsustainable, since the Director's dismissal occurred in the context of the employer's corporate re-structuring, in which his position was cut, rendering his dismissal unlawful.

With regard to the possibility of returning to the company, the SCJ considered that, given the fact that the relationship of trust between the Director and the employer had been undermined by the nature of his dismissal, his return to the company would critically disrupt the employer's operations, since the former's responsibilities required a high degree of trust between the parties.

**Judgement of the Supreme Court of Justice of 18 February 2016 – Employment Contract – Termination of Employment Contract – Suspension of Dismissal – Obligation to pay Remuneration**

In the above ruling, the SCJ issued a benchmark decision whereby dismissed employees are entitled to remuneration during a period of six months, even if the employer challenges the decision to temporarily suspend dismissal.

The SCJ rules that *"during such time as the employee remains unemployed, he shall be entitled to receive remuneration during a period of six months, by dint of the deposit made by the employer as a condition for the appeal being awarded suspensory effect."*

Notwithstanding, *"should the dismissed employee obtain a temporary suspension of dismissal at the court of first instance and the employer challenge such a decision, with his appeal being awarded suspensory effect, remuneration shall not be owed for the intervening period between dismissal and a final ruling of the court of second instance which upholds suspension of dismissal."*

**Judgement of the Constitutional Court of 7 March 2016**

In the ruling under review, the Constitutional Court ruled that the provision set out in article 186-O, paragraph 1, of the Code of Employment Procedure, brought in by Act no. 63/2013, of 27 August, was not unconstitutional, interpreted as follows: in a case to have an employment contract recognized, the putative employee and employer cannot, at the hearing of parties, agree that the legal relationship between them is one of service provision and thereby bring an end to proceedings, without the concurrence of the Public Prosecution Service.

## CONTACT

CUATRECASAS, GONÇALVES PEREIRA & ASSOCIADOS, RL
Sociedade de Advogados de Responsabilidade Limitada

LISBOA
Praça Marquês de Pombal, 2 (e 1-8º) l 1250-160 Lisboa l Portugal
Tel. (351) 21 355 3800 l Fax (351) 21 353 2362
cuatrecasasportugal@cuatrecasas.com l www.cuatrecasas.com

PORTO
Avenida da Boavista, 3265 – 5.1 l 4100-137 Porto l Portugal
Tel. (351) 22 616 6920 l Fax (351) 22 616 6949
cuatrecasasporto@cuatrecasas.com l www.cuatrecasas.com