

# CUATRECASAS, GONÇALVES PEREIRA



## NEWSLETTER | EMPLOYMENT LAW

### CONTENTS

EMPLOYMENT LAW NEWSLETTER | AUGUST, 2016

I HIGHLIGHTS	2
II LEGISLATION	3
III CASE-LAW	3

## EMPLOYMENT LAW NEWSLETTER

### I HIGHLIGHTS

#### **Law no. 28/2016, of 23 August – Combatting modern forms of forced labour**

Law no. 28/2016, of 23 August, which will come into force on 22 September 2016, amends the Labour Code; the legal arrangements for promoting and protecting occupational health and safety, as well as the rules governing the licensing and activities of private employment agencies and temporary work agencies.

The amendments made by this law extend employers' responsibility in the aforementioned areas, as follows:

- **Amendments to the Labour Code**

Under current law, the user companies of temporary work are subsidiarily liable for the payment of employees' salaries and social security contributions pertaining to their first twelve months' employment.

The effects of the amendments made by this law are to not only remove this time-limit, but to also make the user entity in addition to its managers; board members and executive directors and those of the temporary work agency, in addition to the companies connected to the temporary work agency or user entity through cross ownership, controlling interest or corporate group subsidiarily liable for the payment of salaries; social security contributions and any possible fines incurred.

Amendments have also been made in the area of liability for administrative infringements. Hitherto, the contracting party was jointly liable for fines imposed on the sub-contractor performing work on the former's premises, or under his oversight, for the breach of rules categorised as a very serious infringement, unless he could prove that he had acted with due diligence.

By dint of these amendments, the contracting party; developer; farming company or holding, as well as their respective managers; board members or executive directors, in addition to companies connected to them through cross ownership, controlling interest or corporate group are made jointly liable.

The scope of such liability is also extended: the aforementioned natural and legal persons are directly responsible for fulfilling legal requirements and liable for any breach thereof; no reduction of their liability is provided for, nor can they claim to have acted with due diligence, and are held liable for paying corresponding fines.

- **Amendments to the legal arrangements for promoting occupational health and safety**

By dint of the amendments made through Law no.28/2016, of 23 August, the developer; farming company or holding and the user or awardee entity of the work or service, in addition to their respective managers; board members or executive directors, as well as those companies to which the developer; farming company or holding and the user or awardee entity of the work or service are connected through cross ownership; controlling interest or corporate group become jointly liable for any infringements of the legal rules pertaining to the health and safety of temporary workers; workers temporarily loaned, or the employees of service providers, committed whilst the latter were undertaking work on the former's premises, as well as for the payment of the corresponding fines.

- **Amendments to the rules governing the licensing and activities of private employment agencies and temporary work agencies**

The effects of the amendments made through Law 28/2016, of 23 August are to possibly oblige the users of temporary work, in the broad sense, thereby encompassing the managers; board members or executive directors and companies connected through cross ownership, controlling interest or corporate group to pay social security contributions and work accident insurance premia, since the law holds them joint liability for non-payment of statutory charges and breach of legal obligations towards employees, as well as for the payment of corresponding fines.

## II LEGISLATION

*Law no. 34/2016 – Diário da República no. 162/2016, 1<sup>st</sup> Series, 24 August 2016*

Repeals compulsory fortnightly reporting by beneficiaries of unemployment benefit and consolidates personalised support for employment, under the auspices of the “personal job plan”.

## III CASE-LAW

*Ruling by the Lisbon Court of Appeal, of 29 June 2016. Expiry of the right to impose disciplinary sanctions – Disciplinary Proceedings – Promptness of Procedures – Duty to Act Loyally – Lawful grounds for dismissal*

In the ruling under review, the Lisbon Court of Appeal (LCA) concluded that the fact that disciplinary proceedings had been stalled for two months between stages of proceedings does not violate the principle of a prompt procedure, on the grounds that no time limit is set in Law for such proceedings to be conducted. Under such terms, the employing entity's

## CUATRECASAS. GONÇALVES PEREIRA

right to impose the disciplinary sanction had not expired, since the legally provided 30-day time-limit for this purpose is counted from the last investigative proceeding.

Apart from the procedural issues, the LCA concluded that the employee had breached the principle of loyalty to such a degree as to warrant the disciplinary sanction of lawful dismissal. In this particular case, the employee, who was employed as a salesperson, was tasked with regularly visiting the retail outlets where the employing entity's products were on sale and informing his supervisor of visits conducted on a daily basis. By cross-checking the visits made to certain outlets, as reported by the employee to his supervisor with the motorway toll statement of the vehicle supplied to the employee for performing his duties, the employee was shown to have deceived his employer, causing him to believe that he had visited a number of outlets, when this had clearly not been the case. The LCA thus concluded that the employee's failings were serious; wrongful and prevented the employment relationship from being pursued, by dint of having breached the principle of loyalty which was an essential component of the employee's professional activities, undertaken outside the employer's physical presence.

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