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NEWSLETTER I EMPLOYMENT LAW

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EMPLOYMENT LAW NEWSLETTER

I EXTENSION ORDERS

Area of Activity	Order
Wholesale trade in pharmaceutical products	**Order no. 325/2016 - Diário da República (Official Gazette) no. 242/2016, Series I of 2016-12-20** Establishes the extension of the amendments to the collective bargaining agreement between NORQUIFAR - National Association of the Importers/Stockists and Retailers of Chemical and Pharmaceutical Products and the Industry, Energy and Transport Trade Unions Federation-COFESINT and other (pharmaceutical products).
Electric and Electronic Sector	**Order no. 326/2016 - Diário da República (Official Gazette) no 242/2016, Series I of 2016-12-20** Establishes the extension of the amendments to the collective bargaining agreement between the Portuguese Association of Companies in the Electric and Electronic Sector and the Industry and Services Trade Union Federation and others.
Private Hospitals Sector	**Order no. 327/2016 - Diário da República (Official Gazette) no. 242/2016, Series I of 2016-12-20** Establishes the extension of the amendments to the collective bargaining agreement between the Portuguese Association of Private Hospitals - APHP and the Portuguese Nurses Association - SEP.

Import and Storage of chemical and pharmaceutical products	**Order no. 328/2016 - Diário da República (Official Gazette) no. 242/2016, Series I of 2016-12-20** Establishes the extension of the amendments to the collective bargaining agreements between NORQUIFAR - National Association of the Importers/Stockists and Retailers of Chemical and Pharmaceutical Products and the Industry, Energy and Transport Trade Unions Federation - COFESINT and other and between the same employers' association and FEPCES - Portuguese Trade, Offices and Services Trade Union Federation and other (chemical products).

II CASE LAW

Ruling by the Supreme Court of Justice, of 3 November 2016
Suspension of the employment contract – Termination of contract by the employee

The underlying context to this ruling is the situation of an employee who suffered a work accident on 4 May 2012, which left him with a total incapacity to work until 4 June 2012. At the time of the accident, the employer had not taken out a work accident insurance policy – which is a statutory obligation – having rectified this matter at a later date.

When the employee's medical leave finished, he did not immediately report for work, with his employer having ceased payment of remuneration in June 2012. In July 2012, the employee requested payment by the employer of outstanding earnings, in particular, wages, supplementary holiday pay and Christmas subsidies and amounts owing to cover the medical treatment that the employee had undergone, since at the time of the accident, the employee did not have any work accident insurance coverage encompassing such treatment. Since the employer did not pay the employee the amounts claimed, the latter suspended his employment contract on 13 September 2012.

The employee reported for work on 18 June 2013, but was not assigned any tasks on that day or the following ones. On 26 June 2013, the employer informed the employee that his employment contract was being terminated on the basis of his continually missing work, citing his uncertified absence since 4 May 2012. Since the employer was of the opinion that remunerations had always been paid in a timely manner, the declaration of suspension of the employment contract made on 13 September 2012 was null and void. On 28 January 2014, the employee sent the employer a letter in which he terminated the employment contract on

the lawful grounds of breach of the obligations to pay remuneration in a timely manner since July 2012 and take out a work accident insurance policy.

Having being called upon to rule on the lawfulness of the termination of the employment contract, the Supreme Court of Justice (SCJ) concluded that given that the employment contract had been suspended since 13 September 2012, no payments of remuneration were due, since the obligation to pay remuneration is frozen during the period in which the said contract is suspended. Moreover, the SCJ ruled that the employee having reported for work had not lifted such suspension, since, in view of the fact that suspension of the contract had been made in writing, the corresponding declaration to lift suspension must also be made in writing.

Hence, the SCJ's opinion was that the contract was still suspended, whereby no sums by way of remuneration were owing since 13 September 2012, in view of the fact that remuneration correlates to the obligation to perform work and is, thus, owed only when the employee actually performs his work, except in the circumstances which are duly set out in law. On the basis of the same rationale, the SCJ also ruled that even prior to the declaration of suspension of the contract (i.e. relating to the period between the end of the medical leave and the declaration of suspension) no remuneration was owing, in view of the fact that the employee had not performed any work.

Furthermore, whilst the law does indeed stipulate that work accident insurance coverage is mandatory, breach of this statutory obligation does not constitute lawful grounds for terminating an employment contract. The only effect it has is that the employer is made fully liable for redressing any damages arising from the work accident. In this particular case, the employer readily paid the initial medical costs, without the employee having to make such a request. Such payments ceased in June 2012, although it is true that the employee did not make a claim for additional medical costs to be paid.

In view of the above, the SCJ ruled that the employee did not have lawful grounds for terminating his employment contract; that neither did he have the right to any remuneration since 4 May 2012, nor did he have the right to any other outstanding earnings, and that the contract of employment was still fully in force.

Ruling by the Northern Region Central Administrative Court of 9 October 2016
Public duties employment contract – Individual redundancy

The ruling in question analyses the conditions under which a public duties employment contract entered into by an employee and a Secondary School on 1 November 2011 and expected to run until 31 December 2013 can be terminated. This fixed-term contract was signed under the auspices of a project entitled “Projecto Novas Oportunidades” (New Opportunities Project) in the said School. Since the project did not obtain the necessary funding, the employer terminated the employment contract on the grounds of individual redundancy on 14 November

2012, the day after having filed for the New Opportunities Centre (set up specifically for the project) to be wound up.

The first issue raised in the ruling is whether the employment contract had expired as a result of the New Opportunities Centre being wound up. On this matter, the Northern Region Central Administrative Court (NCAC) ruled that only the winding up of the public legal person with which the employee has a contract would result in its expiry. As in this case, the Secondary School was not wound up, there are no grounds for claiming expiry.

With regard to whether or not dismissal had been lawful, the NCAC pointed out that, on 14 November 2012, the employee had received a letter with the subject heading “Notice of Dismissal through Individual Redundancy”. The letter, however, merely informed the employee that the post she held was being cut and did not provide any evidence of a prior procedure, which is stipulated by law.

Despite the fact that the NCAC ruled the dismissal unlawful, it did not uphold the employee's claim, since she had not returned the amount received in compensation. She had, thus, accepted dismissal and could not challenge its lawfulness.

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