



CUATRECASAS



NEWSLETTER | EMPLOYMENT LAW

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EMPLOYMENT LAW NEWSLETTER

I LEGISLATION HIGHLIGHTS

Ministerial Order no. 97/2017 - Diário da República (Official Gazette) no. 47/2017, Series I of 2017-03-07

Establishes the annual increase in accidents at work pensions, for 2017

This order updates the accidents at work pensions by applying the coefficient of 0,5%, which takes effect as from 1 January 2017.

Ministerial Order no. 99/2017 - Diário da República (Official Gazette) no. 47/2017, Series I of 2017-03-07

Establishes the age of eligibility for the old age retirement pension payable under the general social security scheme in 2018

Taking into account the evolution of the average life expectancy at age 65, the normal pensionable age in 2017 increases from 66 years and 3 months to 66 years and 4 months.

The sustainability factor for pensions granted to beneficiaries who qualify for the old-age pension under the general regime before the normal pensionable age in force in that year is 0,8612.

The sustainability factor applicable to the amount of the relative invalidity and absolute invalidity pensions awarded for a period of 20 years or less, converted into old-age pension in 2017, is 0,9291.

II EXTENSION ORDERS

Area of Activity	Order
Coffee Industry and Trade	Order no. 76/2017 - Diário da República (Official Gazette) no. 40/2017, Series I of 2017-02-24 Establishes the extension of the collective bargaining agreement, and its amendments, between the AICC - Coffee Trade and Industry Association and FESAHT - Portuguese Farming, Food,



	Beverages, Hospitality and Tourism Trade Unions Federation.
Building and Public Works	Order no. 77/2017 - Diário da República (Official Gazette) no. 40/2017, Series I of 2017-02-24 Establishes the extension of the collective bargaining agreement between AECOPS – Association of Building and Public Works and Services Companies and others and FETESE – Industry and Services Trade Union Federation and others.
Footwear, Leather Components and Goods Industry	Order no. 78/2017 - Diário da República (Official Gazette) no. 40/2017, Series I of 2017-02-24 Establishes the extension of the amendments to the collective bargaining agreement between the Portuguese Association of Footwear, Leather Components and Goods and its substitutes - APICCAPS and the Portuguese Textile, Woolens, Garments, Footwear and Leather Trade Unions Federation – FESETE and the collective bargaining agreement between the same employers’ association and the Industry, Energy and Transports Trade Unions Federation – COFESINT and another.
Cork	Order no. 79/2017 - Diário da República (Official Gazette) no. 40/2017, Series I of 2017-02-24 Establishes the extension of the amendments to the collective bargaining agreement between APCOR – Portuguese Cork Association and the Portuguese Construction, Ceramics and Glass Trade Union Federation – FEVICCOM and others (factory workers).



Metal Industry	Order no. 80/2017 - Diário da República (Official Gazette) no. 40/2017, Series I of 2017-02-24 Establishes the extension of the collective bargaining agreement between FENAME – National Metal Industry Federation and the Workers and Service Technicians Trade Union – SITESE and others.
Joint Use of Hospitals Service	Order no. 81/2017 - Diário da República (Official Gazette) no. 40/2017, Series I of 2017-02-24 Establishes the extension of the works agreement between the Joint Use of Hospitals Service (SUCH) and FESAHT – Portuguese Farming, Food, Beverages, Hospitality and Tourism Trade Unions Federation and others.
Cork	Order no. 82/2017 - Diário da República (Official Gazette) no. 40/2017, Series I of 2017-02-24 Establishes the extension of the amendments to the collective bargaining agreement between APCOR – Portuguese Cork Association and the Trade, Offices and Services Trade Union – SINDCES/UGT (office staff).
Press	Order no. 83/2017 - Diário da República (Official Gazette) no. 40/2017, Series I of 2017-02-24 Establishes the extension of the amendments to the collective bargaining agreement between APIMPrensa – Portuguese Press Association and FETESE – Federation of Industry and Services Trade Unions.
Wholesale of chemical and pharmaceutical products	Order no. 84/2017 - Diário da República (Official Gazette) no. 40/2017, Series I of 2017-02-24 Establishes the extension of the amendments to the collective bargaining



	agreement between GROQUIFAR - Association of Wholesalers of Chemical and Pharmaceutical Products and COFESINT - the Confederation of Industry, Energy and Transport Trades Unions and another, between the same employers' association and FEPCES - Portuguese Trade, Offices and Services Trade Union Federation, and also between the same employers' association and SITESE - the Workers and Service Technicians Trade Union (Wholesale chemical products for industry or farming).
Setúbal District Business, Industry, Services and Tourism	Order no. 85/2017 - Diário da República (Official Gazette) no. 40/2017, Series I of 2017-02-24 Establishes the extension of the amendments to the collective bargaining agreement between the Setubal District Business, Industry, Services and Tourism Association and another and CESP - Portuguese Trade, Offices and Services Trade Union and another.

III NATIONAL CASE-LAW

Ruling by the Lisbon Court of Appeal, on 15 December 2016

Lawful grounds for dismissal - Obligation to be punctual and diligent - Possession of Hashish

In the case under review, the employee filed a claim against his employer for unlawful dismissal.

The employer argued the case for lawful dismissal on the following grounds: "on 4 February and 3 March 2015, the Complainant breached the obligations to report punctually for duty; perform work with due effort and diligence; follow the employer's orders and instructions concerning work and working procedures, in addition to occupational safety and health; the Complainant's behavior jeopardized the Defendant's image and reputation; the Complainant took narcotic drugs during working hours and supplied them to colleagues, encouraging them to take them; the Complainant willingly put himself in a position which undermined his ability



to work and seriously compromised the tasks which were his responsibility; the Complainant's behavior made it unfeasible to pursue the contractual relationship, since the Defendant could not condone consumption of narcotic drugs on his premises, nor allow the safety of other employees and clients to be endangered (...)"

The Court of First Instance found in favor of the Complainant, declaring the dismissal to be unlawful, with the ensuing legal effects.

The employer appealed to the Lisbon Court of Appeal, seeking a ruling as to whether or not the proven facts constituted lawful grounds for dismissal.

The Court of Appeal upheld the findings of the Court of First Instance and considered that *"not all the allegations had been proved"*, given that only the possession and display of hashish had been proved, but not the remaining allegations made by the employer, in particular, that the employee had taken narcotic drugs and supplied them to colleagues.

The Court thus concluded that the proven facts (possession and display of hashish and arriving 20 minutes late) were not particularly serious and did not jeopardize continuing the employment contract.

Hence, taking into consideration *"the company's management structure; the degree of damage caused to the employer's interests; the nature of the relationship between the parties or between the employee and his colleagues and other relevant factors"*, the Court ruled that although the employee's conduct could give rise to disciplinary proceedings, there were no lawful grounds for dismissal, given that such must comprise willful acts on the part of the employee, the nature and effects of which immediately and substantively preclude continuing the employment relationship and foster doubts in the employer's mind regarding the employee's future probity, and therefore upheld the original ruling.

Ruling by the Lisbon Court of Appeal, on 25 January 2017

Dismissal – Evidence – E-mail

In proceedings contesting the procedural formalities and lawfulness of an employee's dismissal, the employer, a company operating in the insurance sector, argued that the employee in question had sent an e-mail message to an e-mail address belonging to another company, for which the employee also worked. The message included 14 attachments containing confidential information about the employer's operations, specifically names of suppliers, internal procedures, assistance procedures and clients.

The employer also argued that by sending the aforementioned e-mail message, the employee had passed on the information contained in the files to third parties, in particular, to an entity whose main shareholder was a company operating in the insurance industry and an employer's



competitor. The employee had, therefore, infringed her obligations of respect, loyalty and confidentiality, thereby precluding the employment relationship from continuing.

The employee rebutted that the evidence was invalid, since the employer had accessed her e-mail correspondence without her consent, thereby breaching Article 22 of the Labor Code, i.e. the right to privacy and confidentiality of the contents of personal messages sent, received or consulted, namely through e-mail.

The Court of First Instance had ruled that the evidence presented by appending the aforementioned e-mail was not null and void, and therefore judged the dismissal to be lawful.

The employee lodged an appeal with the Lisbon Court of Appeal, which only concerned the nullity of the evidence provided by appending the aforementioned e-mail to the case. The Appeal Court upheld the Court of First Instance's decision.

Its judgement was based on the fact that the e-mail message had been sent from an e-mail account open to all employees working in the same department as the employee in question. The employer learned of the message in question having been sent, when the Departmental Coordinator was trying to find an e-mail message that she had sent herself using the same e-mail account and came across the message sent by the dismissed employee, which was stored in the "sent items" folder. She forwarded the message to the Assistant Director for her information.

Furthermore, the "subject" of the message sent by the employee coincided with the name of the files sent. Such names reflected the areas of work they concerned. The text of the message itself had been left blank and thus it comprised only the 14 files containing the aforesaid information regarding the employer's business.

The Court, therefore, considered that neither the privacy and confidentiality concerning the contents of personal messages nor access to information of a non-professional nature sent, received or consulted by the employee, in particular through e-mail, had been breached: whilst in the case in hand, the employer had not issued internal instructions concerning the personal and professional use of e-mails, the message contents and information contained in the attached files was entirely of a professional nature and sent from and to e-mail accounts not belonging to the employee, but rather to two corporate entities for which she worked, one of them being the Defendant.

Both the Court of First Instance and the Court of Appeal underscored: *"The fact that such e-mail accounts had been assigned to the Complainant by the corporate entities in question, in her capacity as an employee, does not make them the Complainant's personal e-mail accounts and thereby protected by the guarantee of privacy and confidentiality that encompasses personal correspondence."*



Furthermore, the Court of Appeal also considered the fact that the employee was fully aware that the e-mail account from which she sent the e-mail in question was accessible to all employees in her Department to be legally relevant and that this state of affairs "*immediately denies the confidential or even personal nature of any and a fortiori this particular e-mail message sent in this manner, unless the sender (in this case, the appellant) is willing to send them using such a channel and is fully aware that they may be subsequently consulted by third parties (regardless of the nature of their contents), and in particular by all departmental employees,*" which is tantamount to tacitly authorizing the employer to consult them.

The Court, therefore, considered that the evidence at stake could not be disregarded as being null and void, found against the employee and dismissed the appeal.

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