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# Employment Law

Newsletter | Portugal

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## I. Legislation

### **Regional Legislative Decree no. 5/2018/M - Diário da República no. 42/2018, Series I, February 28, 2018**

Amends the amount of the guaranteed minimum monthly income in force in the Autonomous Region of Madeira.

This Regional Legislative Decree determines the minimum monthly income applicable henceforth in the Autonomous Region of Madeira at € 592.00.

This Regional Legislative Decree took effect on January 1, 2018.

### **Law no. 14/2018 - Diário da República no. 55/2018, Series I, March 19, 2018**

Amends the legal framework applicable to the transfer of businesses or undertakings, thereby amending the Labour Code for the thirteenth time.

For more detailed information on this topic, please refer to our [\*Legal Flash on Employment of March 8, 2018\*](#).

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## II. National case law

### **Ruling by the Porto Court of Appeal, January 24, 2018**

#### **Work accident – Disqualification – Proof - Blood-Alcohol level**

In this case, in March 2016, an employee working as a waiter was travelling home from work on a motorcycle, along his usual route, and suffered a road accident, which proved to be fatal.

Subsequently, his heirs brought proceedings on the basis of a work accident against the insurer.

The insurer claimed that the accident should be disqualified as a work accident, since, at the time at which it occurred, the victim was driving a motorcycle with a blood-alcohol concentration of 1.89 g/l, which greatly impaired his sense of balance and reactions.

The Court of First Instance ruled that the accident was a work accident, since it had *“occurred along the usual route taken between his place of work and home, within the period of time generally taken for this purpose and had caused him physical injuries with fatal consequences”*. The Court pointed out that it was impossible to clearly ascertain whether or not the victim's state of inebriation had contributed to the event *“and, if it had, to what extent”*.



The insurer lodged an appeal, claiming that the reason for the motorcyclist having fallen from his vehicle had not been proved; therefore, no natural, unforeseen or external cause of the accident had been demonstrated. Therefore, the insurer reiterated its claim for disqualification on these grounds.

The Porto Court of Appeal began by clarifying that *“for an accident to be considered a work accident, three conditions should be met: a) the accident must occur in the workplace or in the journey to or from it; b) during working hours; c) and a cause-effect relationship should be established between the event and the injury”*.

The Court went on to refer to the insurer's claim that it had not been proved that the accident occurred in the work context, by explaining that sufficient evidence had already been provided. In fact, the issue potentially at stake was a different one: whether or not the accident could be disqualified and thus, whether or not it was eligible for compensation.

With regard to its consideration of the claim for disqualification from a work accident, based on the victim's blood-alcohol concentration, the Court noted that, although the victim's high blood-alcohol concentration impaired his concentration and reactions, the required cause-effect relationship between his state of inebriation and the accident occurring had not been proved – the burden of which lays with the insurer. Hence, contrary to the insurer's claim, a legal presumption could not be invoked to establish the said cause-effect relationship.

The Court of Appeal therefore rejected the appeal on these grounds and upheld the ruling handed down by the Court of First Instance.

### **Ruling by the Porto Court of Appeal, January 24, 2018**

#### **Work Accident – Breach of Security Rules**

This case also concerned legal proceedings involving a work accident, albeit in different circumstances.

The victim was working on a road re-surfacing project and, whilst taking a machine to the place where he thought it would be loaded on to a transporter lorry, he fell along with the machine down a ravine running adjacent to the road he was walking along and died from his injuries.

The victim's heir brought legal proceedings based on the claim that *“the accident occurred as a result of the machine not having any protective structure to prevent overturning or pieces of equipment from falling”* and that the employer had not provided the victim *“with any training in the activity being undertaken at the time when the accident occurred”*.

The employer alleged that the victim had not been instructed to handle the machine in question, and that this machine was in full compliance with safety rules.



The Court of First Instance dismissed the case.

The victim's heir lodged an appeal before the Porto Court of Appeal, claiming that the evidence had not been properly assessed and that the requirements foreseen in Article 18 of Law no. 98/2009, of September 4, to determine aggravated liability on the part of the employer, had been met.

The Court of Appeal ruled that the material facts of the case did not enable a cause-effect relationship to be established between the breach of any safety rules and the accident itself. Therefore, and given that the culpability of the employer had not been demonstrated, the Porto Court of Appeal upheld the lower court's decision and acquitted the employer from the claim.

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