
Legal Update – 4th Quarter 2021

Labor Newsletter

February 8, 2022



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Laboratory

At the close of 2021, the last quarter of which is covered in this newsletter, the Portuguese legislature passed two laws that affect the labor sector significantly.

Of particular importance is Law 83/2021, which has been in force since January 1, 2022, and which amends the remote working system.

Although before being approved the law went through a long process of parliamentary development and public discussion, it was still subject to criticism, and several doubts were raised regarding its application.

As regards its basic approach, it has been characterized as a fundamentally guarantees-based rather than innovative law, and it does not provide the flexibility that the interested parties —companies and employees— would aim at when adopting the remote work regime.

Above all, the law has raised many questions regarding its interpretation. Aside from the widely discussed admissibility of stipulating a fixed compensation value for remote employees' additional expenses, without being exempt from personal income tax and social security contributions (for which it is hoped that the tax authorities will set acceptable limits), we will highlight (i) the fact that the law does not distinguish clearly between employees originally hired to work remotely and those who were hired to work in person but want to join the remote work regime; (ii) the doubt concerning the basis on which an employer may reject an employee's proposal to work remotely; and (iii) the scope of the company's obligations regarding occupational health and safety.

Consequently, great care must be taken in preparing the remote work policy and in preparing the (mandatory) written agreements with employees who want, or agree, to be part of this regime.

In this newsletter, we also highlight Law 93/2021 of December 20, 2021, which will enter into force in June 2022, transposing Directive (EU) 2019/1937 into Portuguese law and establishing the system of protection for whistleblowers who report breaches of European Union law.

The implementation of internal reporting channels, which is mandatory for legal entities with 50 or more employees, will involve companies' human resources departments, as well as their legal advisors on criminal law, data protection, and labor law.

Happy 2022 to all of you!



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Maria da Glória Leitão,
Head of the Labor Law Practice Area



Legislation

Law 83/2021 of December 6, 2021

Amending the remote work regime, the Labor Code (*Código do Trabalho*) and the law regulating remedies for occupational accidents and professional disease.

With this amendment, remote work is now considered a provision of work under a regime of legal subordination, in a place not determined by the employer, through the use of information and communication technologies, with partial/flexible remote work being allowed.

This law imposes new obligations on employers, including the obligation to (i) pay compensation for any additional expenses that the employee can justify; (ii) provide employees with good working conditions, from both physical and psychological perspectives; and (iii) refrain from contacting employees during their rest periods (“right to disconnect”), except for reasons of force majeure.

Law 93/2021 of December 20, 2021

Establishing a system for protecting persons reporting breaches.

This law transposes Directive (EU) 2019/1937 of the European Parliament and of the Council, of October 23, 2019, on the protection of whistleblowers who report breaches of Union law.

Decree Law 109-B/2021 of December 7, 2021

Approving the updating of the amount of the guaranteed minimum monthly remuneration and creating an exceptional compensatory measure.

From January 1, 2022, the minimum wage is increased to €705 per month.

This decree law also creates an exceptional compensatory measure for employers that carry out the activities covered in the corresponding decree law, consisting of paying to the employer €102 for each employee. This is paid by *Agência para a Competitividade e Inovação, I. P.* - IAPMEI) or by the *Instituto do Turismo de Portugal, I. P.*



Decree Law 119/2021 of December 16, 2021

Providing greater social protection in the event of unemployment.

This decree law strengthens social protection in the event of unemployment, specifically with the guarantee that the beneficiaries' unemployment benefits must reach a minimum amount, calculated as a percentage of the value of the social support index. It also increases the daily amount of the unemployment benefit for spouses or persons living in a civil partnership and living in the same household who have children or similar dependents, as well as for single parents in a single-parent household.

Ordinance 208/2021 of October 15, 2021

Amending, for the first time, the system of minimum standards for the health and safety of employees using personal protective equipment, transposing Directive (EU) 2019/1832 of October 24, 2019

The amendment to Ordinance 988/93 considers the new risks that have emerged in workplaces relating to different parts of the body, which must be protected by using this equipment. It also includes examples of the personal protective equipment available in the market to protect employees from these new risks.

Ordinance 292/2021 of December 13, 2021

Amending, for the third time, Ordinance 182/2018 of June 22, which regulates the working conditions of administrative employees not covered by specific collective regulations.

Ordinance 294/2021 of December 13, 2021

Carrying out the annual update of the value of the social support index (IAS).

The value of the IAS for 2022 is set at €443.30.

Ordinance 301/2021 of December 15, 2021

Reviewing pensions for 2022.

With this review, in 2022, pensions and other payments made by the social security system and retirement and disability pensions assigned by the *Caixa Geral de Aposentações* (CGA) have seen the following increases:



- (i) Payments equal to or lower than twice the value of the social support index (IAS) (pensions equal to or lower than €886.40): 1% increase
- (ii) Payments between twice and six times the value of the IAS (pensions exceeding €886.40 and equal to or lower than €2,659.20): 0.49% increase
- (iii) Payments exceeding six times the value of the IAS (pensions exceeding €2,659.20): 0.24% increase

Pensions exceeding €5,318.40 have not been updated.

This ordinance also updates the portion of the disability, old-age and survivor pensions of the social security system and of the retirement, old-age, disability, and survivor pensions of the convergent social protection system, corresponding to extraordinary updates.

Ordinance 307/2021 of December 17, 2021

Determining for 2023 the normal age for accessing old-age pensions.

This ordinance establishes the normal age for accessing old-age pensions in 2023 at 66 years and 4 months.

Order 10077-A/2021 of October 15, 2021

Extending the period for restoring the level of employment given in Order 8148/2020 of August 21.

Directive (EU) 2021/1883, of October 20, 2021

Regulating the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment, repealing Council Directive 2009/50/EC.

With this directive, the conditions of entry and residence of third-country nationals for the purpose of highly qualified employment are regulated. The directive, which must be transposed by November 18, 2023, defines what is meant by highly qualified employment, defines the list of professions with priority for the entry of third-country nationals, and establishes information requirements for Member States.



Extension ordinances

Activity area	Law
Viticulture	Ordinance 215/2021 - Official Gazette of the Republic of Portugal 205/2021, Series I of October 21, 2021 Extending the collective agreement between <i>Associação das Adegas Cooperativas de Portugal</i> (Association of Portuguese Cooperative Wineries) (ADCP) and <i>Sindicato Nacional dos Trabalhadores da Agricultura, Floresta, Pesca, Turismo, Indústria Alimentar, Bebidas e Afins</i> (National Trade Union of Agriculture, Forestry, Fisheries, Tourism, Food Industry, Drinks, and Other Workers) (SETAAB).
Trade in pharmaceutical and veterinary products, or both	Ordinance 216/2021 - Official Gazette of the Republic of Portugal 205/2021, Series I of October 21, 2021 Extending the changes to the collective agreement between <i>Associação de Grossistas de Produtos Químicos e Farmacêuticos</i> and <i>Federação de Sindicatos da Indústria, Energia e Transportes</i> (Association of Wholesalers of Chemicals and Pharmaceuticals) (GROQUIFAR) and the Federation of Trade Unions in Industry, Energy and Transport (COFESINT) and another party (pharmaceutical products).
Meat trade	Ordinance 217/2021 - Official Gazette of the Republic of Portugal 205/2021, Series I of October 21, 2021 Extending the changes to the collective agreement between <i>Associação dos Comerciantes de Carnes do Concelho de Lisboa e Outros</i> (Association of Meat Traders of Lisbon and other Municipalities) and other employee associations and <i>Sindicato dos Trabalhadores da Indústria e Comércio de Carnes do Sul</i> (Trade Union of the Meat Industry and Trade in the South).
Retail trade of food products	Ordinance 218/2021 - Official Gazette of the Republic of Portugal 205/2021, Series I of October 21, 2021 Extending the changes to the collective agreement between <i>Associação dos Distribuidores de Produtos</i>



	<p><i>Alimentares</i> (Association of Food Product Distributors) (ADIPA) and <i>Sindicato dos Trabalhadores e Técnicos de Serviços, Comércio, Restauração e Turismo</i> (Trade Union of Service, Trade, Catering, and Tourism Workers and Technicians) (SITESE) (food product retail trade).</p>
Aviation	<p>Ordinance 219/2021 - Official Gazette of the Republic of Portugal 205/2021, Series I of October 21, 2021 Extending the company agreement between the Portuguese branch of Ryanair (Designated Activity Company) and <i>Sindicato dos Trabalhadores dos Transportes de Portugal</i> (Trade Union of Transport Workers of Portugal) (STTAMP) (cabin crew).</p>
Farm, livestock, and forestry	<p>Ordinance 222/2021 – Official Gazette of the Republic of Portugal 206/2021, Series I of October 22, 2021 Extending the collective agreement between <i>Associação dos Agricultores do Ribatejo – Organização de Empregadores dos Distritos de Santarém, Lisboa e Leiria</i> (Association of Farmers of the Ribatejo – Organization of Employers of the Districts of Santarém, Lisbon and Leiria) and <i>Sindicato Nacional dos Trabalhadores da Agricultura, Floresta, Pesca, Turismo, Indústria Alimentar, Bebidas e Afins</i> (National Trade Union of Agriculture, Forestry, Fisheries, Tourism, Food Industry, Drinks, and Other Workers) (SETAAB).</p>
Trade of storage and distribution of food products	<p>Ordinance 223/2021 - Official Gazette of the Republic of Portugal 206/2021, Series I of October 22, 2021 Extending the changes to the collective agreement between <i>Associação dos Distribuidores de Produtos Alimentares</i> (Association of Food Product Distributors) (ADIPA) and others, and <i>Sindicato dos Trabalhadores e Técnicos de Serviços, Comércio, Restauração e Turismo</i> (Trade Union of Service, Trade, Catering, and Tourism Workers and Technicians) (SITESE) (wholesale trade).</p>
Pharmaceutical industry	<p>Ordinance 224/2021 - Official Gazette of the Republic of Portugal 206/2021, Series I of October 22, 2021 Extending the changes to the collective agreement between <i>Associação Portuguesa da Indústria Farmacêutica</i></p>



	(Portuguese Pharmaceutical Industry Association) (APIFARMA) and <i>Federação de Sindicatos da Indústria, Energia e Transportes</i> (Federation of Industry, Energy, and Transport Trade Unions) (COFESINT) and others.
Retail trade	Ordinance 225/2021 - Official Gazette of the Republic of Portugal 206/2021, Series I of October 22, 2021 Extending the changes to the collective agreement between <i>Associação do Comércio e Serviços da Região do Algarve</i> (Association for Trade and Services in the Algarve Region) (ACRAL) and <i>Sindicato dos Trabalhadores do Comércio, Escritórios e Serviços de Portugal</i> (Trade Union of Trade, Office and Service Workers of Portugal) (CESP) and others.
Retail trade	Ordinance 226/2021 - Official Gazette of the Republic of Portugal 206/2021, Series I of October 22, 2021 Extending the changes to the collective agreement between <i>Associação Portuguesa das Empresas do Sector Eléctrico e Electrónico</i> (Portuguese Association of Companies of the Electrical and Electronic Sector) and <i>Federação dos Sindicatos da Indústria e Serviços</i> (Federation of Trade Unions in Industry and Services) (FETESE) and others.
Food industry	Ordinance 232/2021 - Official Gazette of the Republic of Portugal 213/2021, Series I of November 3, 2021 Extending the changes to the collective agreement between <i>Associação Nacional de Comerciantes e Industriais de Produtos Alimentares</i> (National Association of Traders and Industrial Producers of Food Products) (ANCIPA) and <i>Sindicato Nacional dos Trabalhadores da Agricultura, Floresta, Pesca, Turismo, Indústria Alimentar, Bebidas e Afins</i> (National Trade Union of Agriculture, Forestry, Fisheries, Tourism, Food Industry, Drinks, and Other Workers) (SETAAB) (industry of potato chips, beverages and similar products).
Ceramics industry	Ordinance 233/2021 - Official Gazette of the Republic of Portugal 213/2021, Series I of November 3, 2021



	<p>Extending the changes to the collective agreement between <i>Associação Portuguesa das Indústrias de Cerâmica e de Cristalaria</i> (Portuguese Association of Ceramic and Glass Industries) (APICER) and <i>Sindicato Nacional dos Trabalhadores das Indústrias de Cerâmica, Cimentos, Abrasivos, Vidros e Similares, Construção Civil e Obras Públicas</i> (National Trade Union of Ceramic, Cement, Abrasives, Glass and Similar, Civil Works, and Public Works Industries) (SINTICAVS) (factory workers in the ceramic industry).</p>
<p>Metallurgical and metalworking sector</p>	<p>Ordinance 234/2021 – Official Gazette of the Republic of Portugal 213/2021, Series I of November 3, 2021 Extending the changes to the collective agreement between <i>Federação Nacional do Metal</i> (National Metal Federation) (FENAME) and <i>Sindicato dos Trabalhadores e Técnicos de Serviços, Comércio, Restauração e Turismo</i> (Trade Union of Service, Trade, Catering, and Tourism Workers and Technicians) (SITESE) and others.</p>
<p>Processing of fruit and vegetable products</p>	<p>Ordinance 235/2021 – Official Gazette of the Republic of Portugal 213/2021, Series I of November 3, 2021 Extending the changes to the collective agreement between <i>Associação Nacional de Comerciantes e Industriais de Produtos Alimentares</i> (National Association of Traders and Industrial Producers of Food Products) (ANCIPA) and <i>Sindicato Nacional dos Trabalhadores da Agricultura, Floresta, Pesca, Turismo, Indústria Alimentar, Bebidas e Afins</i> (National Trade Union of Agriculture, Forestry, Fisheries, Tourism, Food Industry, Drinks, and Other Workers) (SETAAB) (fruit and vegetable industry).</p>
<p>For-profit operation under a concession system of canteens and cafeterias and preparation of meals to be served outside these premises</p>	<p>Ordinance 238/2021 – Official Gazette of the Republic of Portugal 216/2021, Series I of November 8, 2021 Extending the changes to the collective agreement between <i>Associação da Hotelaria, Restauração e Similares de Portugal</i> (Association of Hotels, Restaurants and Similar Establishments of Portugal) (AHRESP) and <i>Sindicato dos Trabalhadores e Técnicos de Serviços, Comércio, Restauração e Turismo</i> (Trade Union of Service, Trade, Catering, and Tourism Workers and Technicians)</p>



	(SITESE) (canteens, cafeterias and meal-production facilities).
Trade in chemicals	Ordinance 239/2021 – Official Gazette of the Republic of Portugal 216/2021, Series I of November 8, 2021 Extending the collective agreement between <i>Associação de Grossistas de Produtos Químicos e Farmacêuticos</i> (Association of Wholesalers of Chemicals and Pharmaceuticals) (GROQUIFAR) and <i>Federação Portuguesa dos Sindicatos do Comércio, Escritório e Serviços</i> (Portuguese Federation of Trade Unions in Trade, Offices and Services) (FEPCES) and another party (wholesale trade in chemicals for industry or agriculture).
Industry for freezing and processing fish products, vegetables, pre-cooked foods, cold stores and ice production	Ordinance 240/2021 – Official Gazette of the Republic of Portugal 216/2021, Series I of November 8, 2021 Extending the changes to the collective agreement between <i>Associação da Indústria pelo Frio e Comércio de Produtos Alimentares</i> (Association of the Industry for Cold Chains and Trade in Food Products) (ALIF) and <i>Sindicato Nacional dos Trabalhadores da Agricultura, Floresta, Pesca, Turismo, Indústria Alimentar, Bebidas e Afins</i> (National Trade Union of Agriculture, Forestry, Fisheries, Tourism, Food Industry, Drinks, and Other Workers) (SETAAB).
Trade in chemicals	Ordinance 241/2021 – Official Gazette of the Republic of Portugal 216/2021, Series I of November 8, 2021 Extending the collective agreement between <i>Associação de Grossistas de Produtos Químicos e Farmacêuticos</i> (Association of Wholesalers of Chemicals and Pharmaceuticals) (GROQUIFAR) and <i>Federação de Sindicatos da Indústria, Energia e Transportes</i> (Federation of Trade Unions in Industry, Energy and Transport) (COFESINT) and another party (wholesale trade in chemicals for industry or agriculture).
Chemical industry	Ordinance 242/2021 – Official Gazette of the Republic of Portugal 216/2021, Series I of November 8, 2021



	<p>Extending the changes to the collective agreement between <i>Associação Portuguesa da Química, Petroquímica e Refinação</i> (Portuguese Chemical, Petrochemical and Refinery Association) (APQuímica) and others and <i>Federação de Sindicatos da Indústria, Energia e Transportes</i> (Federation of Industry, Energy, and Transport Trade Unions) (COFESINT) and others.</p>
<p>Leather processing and related trades</p>	<p>Ordinance 250/2021 – Official Gazette of the Republic of Portugal 221/2021, Series I of November 15, 2021 Extending the changes to the collective agreement between <i>Associação Portuguesa dos Industriais de Curtumes</i> (Portuguese Leather Industry Association) and <i>Federação dos Sindicatos dos Trabalhadores Têxteis, Lanifícios, Vestuário, Calçado e Peles de Portugal</i> (Federation of Trade Unions of Textile, Woolens, Clothing, Footwear and Leather Workers of Portugal) (FESETE).</p>
<p>Wholesale trade in milk, cattle-rearing, trade in production factors, farmer-support services, transport, maintenance and repair of farm vehicles and equipment</p>	<p>Ordinance 251/2021 – Official Gazette of the Republic of Portugal 221/2021, Series I of November 15, 2021 Extending the collective agreement between <i>União de Cooperativas de Produtores de Leite de Entre Douro e Mondego</i> (Union of Milk Producer Cooperatives from Entre Douro and Mondego) (LACTICOOP), UCRL, and another, and <i>Sindicato do Comércio, Escritórios e Serviços/UGT</i> (Trade Union for Trade, Offices and Services) (SINDCES/UGT).</p>
<p>Driving instruction</p>	<p>Ordinance 252/2021 – Official Gazette of the Republic of Portugal 221/2021, Series I of November 15, 2021 Extending the collective agreement between National Association of Automobile Driving Schools (ANIECA) and the Federation of Transport and Communications Trade Unions (FECTRANS).</p>
<p>Pest control services</p>	<p>Ordinance 253/2021 – Official Gazette of the Republic of Portugal 221/2021, Series I of November 15, 2021 Extending the changes to the collective agreement between <i>Associação de Grossistas de Produtos Químicos e Farmacêuticos</i> (Association of Wholesalers of Chemicals</p>



	and Pharmaceuticals) (GROQUIFAR) and <i>Federação Intersindical das Indústrias Metalúrgicas, Químicas, Eléctricas, Farmacêutica, Celulose, Papel, Gráfica, Imprensa, Energia e Minas</i> (Inter-Trade Union Federation of Metallurgical, Chemical, Electrical, Pharmaceutical, Cellulose, Paper, Graphical, Press, Energy and Mining Industries) (FIEQUIMETAL) (management of pests and environmental health).
Cork	Ordinance 289/2021 – Official Gazette of the Republic of Portugal 238/2021, Series I of December 10, 2021 Extending the changes to the collective agreement between <i>Associação Portuguesa da Cortiça</i> (Portuguese Cork Association) (APCOR) and <i>Federação Portuguesa dos Sindicatos da Construção, Cerâmica e Vidro</i> (Portuguese Federation of Construction, Ceramics and Glass Trade Unions) (FEVICCOM) and others (factory staff).
Wheat, maize and rye milling industry	Ordinance 290/2021 - Official Gazette of the Republic of Portugal 238/2021, Series I of December 10, 2021 Extending the changes to the collective agreement between <i>Associação Nacional dos Industriais de Moagem, Produção e Comércio de Cereais, Leguminosas, Massas e Derivados</i> (National Association of the Milling, Production and Trade Industry for Cereals, Legumes, Pasta and Derivatives) (ANIM) and <i>Federação dos Sindicatos da Agricultura, Alimentação, Bebidas, Hotelaria e Turismo de Portugal</i> (Federation of Agriculture, Food, Beverage, Hospitality and Tourism Trade Unions of Portugal) (FESAHT).
Cork	Ordinance 296/2021 - Official Gazette of the Republic of Portugal 239/2021, Series I of December 13, 2021 Extending the changes to the collective agreement between <i>Associação Portuguesa da Cortiça</i> (Portuguese Cork Association) (APCOR) and <i>Sindicato do Comércio, Escritórios e Serviços/UGT</i> (Trade Union for Trade, Offices and Services) (SINDCES/UGT) (office staff).
Manufacture, processing or sale of paper and cardboard	Ordinance 297/2021 - Official Gazette of the Republic of Portugal 239/2021, Series I of December 13, 2021



	Extending the collective agreement between <i>Associação Portuguesa de Fabricantes de Papel e Cartão</i> (Portuguese Association of Paper and Cardboard Manufacturers) (FAPEL) and <i>Federação dos Sindicatos da Indústria e Serviços</i> (Federation of Trade Unions in Industry and Services) (FETESE).
Insurance	Ordinance 298/2021 - Official Gazette of the Republic of Portugal 239/2021, Series I of December 13, 2021 Extending the collective agreement between Fidelidade - Companhia de Seguros, S. A., and others, and <i>Sindicato Nacional dos Profissionais de Seguros e Afins</i> (National Trade Union of Insurance and Related Professionals) (SINAPSA) and others.
Farm, livestock and forestry	Ordinance 299/2021 - Official Gazette of the Republic of Portugal 239/2021, Series I of December 13, 2021 Extending the collective agreement between Cooperativa Agro-Pecuária da Beira Central (Agricultural and Livestock Cooperative of Beira Central), C. R. L., and others, and <i>Sindicato Nacional dos Trabalhadores da Agricultura, Floresta, Pesca, Turismo, Indústria Alimentar, Bebidas e Afins</i> (National Trade Union of Agriculture, Forestry, Fisheries, Tourism, Food Industry, Drinks, and Other Workers) (SETAAB).

Portuguese case law

Judgment of the Constitutional Court of October 27, 2021

The uncertainty in defining criminally relevant conduct results in the unconstitutionality of the interpretation of the rules of Decree Law 50/2005 of February 25. This leads to the conclusion that the failure to carry out periodic checks of work equipment, subject to influences that may lead to deterioration likely to cause risks, is a serious offense.

The Constitutional Court considered that the joint application of articles 6(2) and 43(2) of Decree Law 50/2005 of February 25, concerning minimum health and safety standards for employees' use of work equipment and defining the criteria for establishing the work equipment that is subject to mandatory periodic checks, does not provide a sufficiently



objective reference point that enables the employer to decide, with a minimum degree of infallibility, the prescribed action and prohibited omission.

Consequently, the Constitutional Court concluded that article 6(2) of Decree Law 50/2005 reveals a degree of uncertainty in defining criminally relevant conduct that is incompatible with the demands of predictability and judicial trust that results from the principle of democratic rule of law. For this reason, it declared as unconstitutional the joint application of the referred articles of the decree law.

Supreme Court judgment of September 29, 2021

A venture capital fund, with independent assets and without legal personality, but granted legal personality, is not jointly and severally liable to employers for credit arising from an employment agreement or its termination due to its violation or suspension more than three months prior, under article 334 of the Labor Code.

Unlike companies, a venture capital fund is not jointly and severally liable to employers for credit arising from an employment agreement or its termination due its violation or suspension more than three months prior, under article 334 of the Labor Code. The Supreme Court understands that this legal solution does not create a situation of unequal treatment between employees whose employers are held by companies and those that are held by venture capital funds, because, unlike with companies, the legal nature of venture capital funds is different, as it does not have decision-making power to interfere in the management of the company whose capital it holds.

Judgment of the Lisbon Court of Appeals of September 15, 2021

When the employee's salary varies based on different amounts earned in Portugal and abroad, the amount of the payments due following an occupational accident is calculated by the average days worked and corresponding remuneration in the annual period before the accident.

This judgment concerned an employee who worked in Portugal and abroad, receiving a different remuneration in each site. The Lisbon Court of Appeals decided to apply article 71(4) of the Occupational Accidents Act, under which, *“if the remuneration corresponding to the day of the accident was different from the normal remuneration, this is calculated by the average of the days worked and the corresponding remuneration earned by the accident victim during a one-year period before the accident.”* The Lisbon Court of Appeals considered that the *“normal salary”* is not the salary the employee earned in the country in which the accident occurred, as determining a normal and periodic salary is not possible because the remuneration varied based on the place of activity, which was not provided in either place on a regular basis.

Judgment of the Porto Court of Appeals of September 20, 2021



The employee's opposition to the transfer of his contractual position to another employer is valid, based on the possible removal of his position, as mentioned in the meeting with the transferee, and the possibility that the other employer will not pay the salary credits owed.

The Porto Court of Appeals considered that, as part of a transfer of an establishment, the employee has two reasons for opposing the transfer of his position to another employer: the employee's lack of trust in the purchaser's work organization and the possibility of causing serious loss to the employee. In these terms, the Porto Court of Appeals ruled that the employee's opposition was lawful, because of (i) the employee's lack of trust in the purchaser's work organization, which could result in his position being removed in the future; and (ii) the purchasing company's indication that the employee is not guaranteed the labor credits due before the transfer.

Judgment of the Guimarães Court of Appeals of September 23, 2021

The arguments the employee used in his defense did not have to be limited to the ones contained in the response to the accusation note, provided the additional arguments the employee used in the defense did not concern the essential facts of which the employer was unaware.

The Guimarães Court of Appeals understood that the employee could bring to the proceedings items of defense that were not included in the response to the accusation note, and that the court could evaluate those items, provided they did not concern essential facts of which the employer was unaware, and which, if the employee had not concealed them in good faith, would have led to a different result.

Judgment of the Évora Court of Appeals of October 28, 2021

To observe gross negligence of the accident victim leading to the declassification of the accident, the conduct must have been reckless, clearly lacking the prudence that a moderately careful employee would observe if he or she were placed in the other's situation, being aware of the same circumstances.

The Évora Court of Appeals understood that, as gross negligence was a cause for excluding the employer's liability in case of an occupational accident, the conduct of the accident victim must have been reckless, clearly lacking the prudence that a moderately careful employee would observe if he or she were placed in the other's situation, being aware of the same circumstances. The occupational accident cannot be declassified if the employee violated only general safety rules, without proof of absence of a justified cause, and his conduct comes under the violation of that duty of care, but without being classified as reckless to a high and significant degree. A general violation of safety rules is insufficient, and it must be proven that the employee specifically knew that he had to observe certain safety rules but did not follow them.



European Union case law

Judgment of the European Court of Human Rights, of November 9, 2021

Member States have the duty to protect the physical and psychological integrity of citizens, and they must establish laws for this purpose.

The European Court of Human Rights confirmed that the concept of private life includes multiple contexts, including the labor context, understanding that Member States have the duty to protect the physical and psychological integrity of citizens, specifically in matters of workplace harassment.

In the situation being analyzed, an employee, a citizen of Montenegro, suffered at her workplace several episodes of bullying, and situations of “*physical contact*,” intimidating calls, damage to her belongings, and verbal insults, which resulted in her being diagnosed with post-traumatic stress disorder. However, the Montenegrin courts ruled that no situation of bullying was observed at the workplace.

The European Court of Human Rights concluded that the way in which legal mechanisms were implemented in the case had been insufficient, specifically the disciplinary proceedings and court proceedings in the national court, representing a breach of the state’s obligation to protect the employee’s rights, and that the complaints of bullying must be examined comprehensively and in detail, and not rejected solely on the basis of how often they occur.

The court required the State of Montenegro to pay the employee €4,500 for personal damages.



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