CUATRECASAS

Employment Law

Newsletter | Portugal

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I. Legislation

Law no. 4/2019 - Diário da República n.º 7/2019, Series I, January 10, 2019

Establishing a quota system for the employment of persons with disabilities, with a degree of disability of 60% or more.

Law no. 4/2019 was adopted on January 10 for the purpose of fostering the recruitment of persons with disabilities of 60% or more by public entities and private-sector employers.

Scope

- These legal arrangements shall only apply to medium size companies with 75 or more employees and large companies (with 250 or more employees);

- In the meaning of this Law, persons with disabilities are those who can perform the duties they are applying for without functional limitations, or, who have functional limitations which can be overcome by accommodating or adapting their tasks or assistive devices;

- Disabilities arising from cerebral palsy; organ; motor; visual; hearing and intellectual impairments are specifically considered under these arrangements.

Employment quota

- The employment quota differs in accordance with the size of the company, as follows:
  - Medium-sized companies with 75 or more employees – not less than 1% of all posts must be filled by employees with disabilities;
  - Large companies – not less than 2% of all posts must be filled by employees with disabilities.

Exceptions

- Employers falling within the scope of these arrangements may be exempted from applying them in the following situations:
  - Practical Impossibility of applying the legal arrangements in view of the nature of job functions;
  - Insufficient number of applicants with disabilities registered at job centres, who meet the requirements for taking up vacancies advertised during the previous year.

- Exceptions to the legal arrangements require an application to be submitted to the Authority for Working Conditions, including the requisite opinions and declarations

from the INR, I.P. (National Institute for Rehabilitation) and the IEFP, I.P. (Institute for Employment and Vocational Training).

Non-compliance

- Failure to fulfil obligations within the scope of these arrangements are considered serious or minor administrative offences.

Transitional Period

- Employers of between 75 and 100 employees shall enjoy a transitional period of 5 years and those with over 100 employees a transitional period of 4 years to comply with the employment quota for persons with disabilities, starting from the entry into force of this Law.

- Employers corresponding to the definition of medium-sized company with 75 or more employees, or of a large company, are granted an extra two years to meet the requirements of the arrangements set out in this Law.

Entry into force

- This Law shall enter into force on February 1, 2019.

Order no. 23/2019 – Diário da República no. 12/2019, Series I, January 17, 2019
Indexation of work accident pensions

This Order sets out the annual adjustment of work accident pensions for 2019, which are increased by 1.6%

Order no. 24/2019 – Diário da República no. 12/2019, Series I, January 17, 2019
Adjustment to the Social Benefits Reference Figure

The Social Benefits Reference Figure *(IAS)* has been adjusted to €435.76 for 2019.

Order no. 25/2019 – Diário da República no. 12/2019, Series I, January 17, 2019
Annual indexation of pensions and other social benefits

This Order establishes the 2019 annual indexation of pensions and other social benefits granted by the social security system and the CGA (civil servants' general fund) social protection system and for permanent incapacity to work and occupational illness-related deaths.

The indexation rate depends on the amount of the benefit, with regard to the IAS (Social Benefits Reference Figure).

II. Extension Orders

Sector	Order
Trade and Services in Lisbon and the Tagus Valley	**Order no. 336/2018- Diário da República no. 250 /2018, Series I, December 28, 2018** Establishing the extension of the amendments to the collective bargaining agreement between UACS - Lisbon and Tagus Valley Regional Union of Trade and Services Associations and SITESE - Services, Trade, Catering and Tourism Workers and Technicians Trade Union.
Hospitality	**Order no. 9/2019 - Diário da República no. 7/2019, Series I, January 10, 2019** Establishing the extension of the collective bargaining agreement between AHRESP (Portuguese Association of Hotel, Catering and Similar) and SITESE - Services, Trade, Catering and Tourism Workers and Technicians Trade Union (Accommodation).
Hospitality	**Order no. 18/2019 – Diário da República no. 10/2019 Series I, January 15, 2019** Establishing the extension of the collective bargaining agreement between AHRESP (Portuguese Association of Hotel, Catering and Similar) and SITESE - Services, Trade, Catering and Tourism Workers and Technicians Trade Union (food and beverages).

Hospitality and Tourism	**Order no. 30/2019 – Diário da República no. 16/2019, Series I, January 23, 2019** Establishing the extension of the amendments to the collective bargaining agreement between APHORT – Portuguese Hotel, Catering and Tourism Association and SITESE - Services, Trade, Catering and Tourism Workers and Technicians Trade Union.

III. Domestic Case-law

Ruling by the Constitutional Court of November 8, 2018

Constitutionality of the rule establishing the deadline of one year for claiming salary-related benefits with a declaration of insolvency

Having been unfairly dismissed on May 8, 2012 and his employer declared insolvent on July 14, 2015, the employee claimed the payment of salary-related benefits to which he was entitled (compensation and remuneration over the intervening period) from the Salaries Guarantee Fund (SGF). His action, however, was rejected for having been submitted out of time, in view of the one-year deadline having lapsed since termination of the employment contract, as set out in Article 2 (8) of the SGF statutes.

The Administrative and Tax Court's (Coimbra) ruled the said article to be unconstitutional, following which, the Public Prosecutor lodged the mandatory appeal before the Constitutional Court (CC).

The scope of the appeal was the interpretation of the aforementioned Article 2(8), whereby *the deadline of a year for claiming the payment of salary-related benefits, on the basis of a declaration of insolvency, established in the said legal provision limits a right and cannot be suspended or stopped.*

The CC endorsed the decision that the deadline limits a right and also found that there are no legal provisions which allow it to be suspended or stopped.

The CC also analysed whether or not the calculation of the limitation period in question can *be based on a period of time which has been specifically established for and ought to foster the basic premise of the right to use the SGF* (the period between filing for bankruptcy and the actual declaration of bankruptcy by the competent Court), *the length of which is completely outside the worker-creditor's control, to the point that the mere lapse of time during this procedural stage could cause the right to be lost.*

In addition to asserting the right to remuneration as an equivalent right to rights, freedoms and safeguards, through its analysis of the European Court of Justice's case-law, the CC also pointed out that Directive 987/80 seeks to provide employees with minimum guarantees in the event of insolvency, since it allows Member-States to shorten the guarantee period and to establish ceilings to the liability.

The CC considered that the interpretation of the SGF legal framework created insecurity among beneficiaries, since, even when taking all diligent action, they may be thwarted in their attempt to obtain salary-related benefits for reasons quite beyond their control, *thereby undermining the minimum requirements of legal certainty arising from the principle of the democratic rule of law* and in this specific case, applying a year's limitation period upon which the right to salary-related benefits expires would undermine the effective protection of the special guarantee provided by the SGF.

In light of the foregoing, the CC ruled the *provision in Article 2 (8) of the New Statutes of the Salaries Guarantee Fund, adopted pursuant to Decree-Law no. 59/2015 of 21 April, to be unconstitutional, whereby the deadline of a year for claiming the payment of salary-related benefits, on the basis of a declaration of insolvency, established in the said legal provision, limits a right and cannot be suspended or stopped.*

Ruling by the Lisbon Court of Appeal of October 24, 2018
Compensation – Individual Redundancy

The employer paid severance and labour credits in an individual redundancy, challenged by the employee, who nonetheless did not return the amounts received.

The employer responded to this challenge by claiming that the employee not having returned the amounts received was tantamount to acceptance of the redundancy, under the terms and effects of Article 366 (4) of the Labour Code. In other words, the presumption that by accepting severance pay (and not returning it) represented acceptance of redundancy should apply and was thus at odds with the legal challenge to it.

The ruling found in favour of the employer, but the employee appealed against the decision on the grounds that the employer had not settled the severance pay, had not itemized the amounts nor set out the methods of calculation of the amount paid. The employee also claimed Article 366 of the Labour Code to be unconstitutional.

With regard to the matter of the unconstitutionality of Article 366 of the Labour Code, the Lisbon Court of Appeal followed the Supreme Court ruling of November 16, 2017, which found that such provision was not unconstitutional, since the legal framework allows employees to rebut the presumption of acceptance of redundancy by returning amounts paid as severance, does not impair employees' access to the Courts nor does it jeopardise judicial safeguards.

Notwithstanding, with regard to the issue of duly settling the amount of severance on the employee, the Court of Appeal found it did not, in fact, correspond to the severance owing.

In the Court's view, severance must correspond to the amount calculated on the basis of Article 366 of the Labour Code, which was not the case here, since in view of the employee's remuneration and his length of service, he should have received over €20,000.00 whereas only €16,531.52 was paid to him. In other words, the employer did not calculate the length of service or remuneration correctly.

Hence, the Lisbon Court of Appeal annulled the decision and ordered that the employee's length of service and remuneration be properly ascertained in order to ensure the correct calculation of the severance.

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