



CUATRECASAS

Employment

Newsletter | Portugal

June 2019



Contents

- > Extension Orders
- > National Case-law
- > European Case-law



I. Extension Orders

Sector	Order
Trade and Services – Algarve	Order no. 164/2019 - Diário da República no. 102/2019, Series I, May 28, 2019 Establishes the extension of the collective bargaining agreement between ACRAL – Algarve Region Trade and Services Association and CESP - Portuguese Trade, Offices and Services Trade Union and others.
Driving Schools	Order no. 171/2019 - Diário da República no. 105/2019, Series I, May 31, 2019 Establishes the extension of the amendments to the collective bargaining agreement between APEC – Portuguese Driving Schools' Association and SITESE - Services, Trade, Catering and Tourism Workers and Technicians Trade Union.
Farming	Order no. 184/2019 - Diário da República no. 113/2019, Series I, June 14, 2019 Establishes the extension of the collective bargaining agreement between Cooperativa Agrícola de Tocha, C.R.L. and others and SETAAB - National Trade Union of Farming, Fisheries, Tourism, Food and Beverages Sector and Similar Workers.



<p>Trade - Beja</p>	<p>Order no. 187/2019 - Diário da República no. 116/2019, Series I, June 19, 2019</p> <p>Establishes the extension of the amendments to the collective bargaining agreement between the Trade Association of the Municipality of Beja and CESP - Portuguese Trade, Offices and Services Trade Union and another.</p>
---------------------	---

II. National Case-law

Ruling by the Évora Court of Appeal, of March 14, 2019

A declaration entitled *waiver of further claims* signed by the employee does not extinguish all employment-related credits

An employee brought proceedings against his employer to claim payment of €9,815.48 in employment-related credits arising from the termination of two fixed-term contracts from 2015 and 2016. The employee alleged that the employer had forced him to sign a waiver of further claims, pursuant to which the employee declared that by virtue of the final payment of the terminated employment contract, which included all credits derived from the employment contract and the termination thereof, full settlement had been made and no further payments were owed.

The Court of First Instance ruled that the credits derived from the employment relationship, which terminated in 2015, had lapsed, but upheld the claim concerning credits derived from the employment relationship terminated in 2016, and ordered the employer to proceed with payment.

The employer brought an appeal before the Évora Court of Appeal on the basis of the declaration signed by the employee, which in its opinion was valid and tantamount to waiver of further claims.

The Court of Appeal held that it had been proved that the terms of the declaration signed by the employee had been drafted solely by the employer, and that the latter was aware that the former needed to receive the sum considered therein to meet his monthly expenses. Hence, the Court found that the employee's true will in signing the declaration was not to waive any and all



additional credits, but to receive the amount of the final pay check, since he needed it to meet his outlay, without wanting to waive any further claims on his employer.

In light of the foregoing, the Court of Appeal ruled that the mentioned declaration could not be held as a waiver of further claims, extinguishing all employment-related credits, but merely a receipt for the amount effectively paid to the employee.

III. European Case-law

Ruling by the European Court of Justice, of May 8, 2019

The calculation of compensation payment for dismissal and redeployment leave allowance of an employee on part-time parental leave must be based on remuneration for full-time work

An employee, employed full-time and for indefinite duration, took maternity leave, followed by a period of childcare leave to care for her two year-old children. She then took another period of maternity leave, followed by a period of childcare leave, in the form of her working hours being reduced by a fifth.

In 2010, she was dismissed as part of a collective dismissal on economic grounds and accepted redeployment leave for a period of nine months. She subsequently brought proceedings to challenge her dismissal and the calculation of her compensation payment for dismissal and the redeployment leave allowance paid regarding her dismissal, whilst she was on part-time parental leave.

Following a judgment dismissing her claims, the employee lodged an appeal before the Cour de Cassation (France) which referred two questions to the European Court of Justice (ECJ) for a preliminary ruling:

- i) whether the Framework Agreement on Parental Leave (contained in annex to Directive 96/34/CE of the Council, of June 3, 1996) precludes that, when permanent and full-time employees are dismissed during the period in which they are taking part-time parental leave, the compensation payment for dismissal and redeployment leave allowance is calculated, at least in part, on the reduced salary being received when the dismissal takes place;
- ii) in so far as a far greater number of women than men choose to take part-time parental leave, whether the indirect discrimination which results therefrom as regards the receipt of lower compensation payment for dismissal and redeployment leave allowance by women, constitutes a violation of Article 157 of the Treaty on the Functioning of the European Union regarding the principle of equal pay for male and female employees for equal work or work of equal value.



The ECJ ruling asserted that the Framework Agreement on parental leave is based on a commitment made by the social partners to adopt measures offering both men and women an opportunity to reconcile their work responsibilities with family obligations and is applicable to all employees, who have an employment contract or employment relationship as defined by the law, collective agreements or practices in force in each Member State.

The ECJ held that, when employees employed full-time and for an indefinite duration are dismissed during a period of part-time parental leave, their compensation payment for dismissal must be based entirely on the full-time salary of said employees. The basis for its judgment was that any reduction in rights flowing from an employment relationship could discourage employees from taking such leave and could encourage employers to dismiss employees who are on parental leave rather than other employees. This would run directly counter to the aim of the Framework Agreement on parental leave.

Having regard to the redeployment leave allowance, the Court pointed out that such remuneration constitutes a right derived from the employment relationship, which the employee is entitled to claim from the employer. Indeed, in the undertakings covered by that legislation, the employer is to offer each employee, for whom he envisages dismissal on economic grounds, redeployment leave for the purposes of enabling the employee to benefit from training initiatives and the services of a support team in the job search process. In this context, the ECJ considered that the Framework Agreement on parental leave is also applicable to a benefit such as redeployment leave allowance.

Thus, the ECJ answered the questions for preliminary ruling in the following manner:

- i) the Framework Agreement on parental leave precludes national legislation, which involves taking into account the reduced salary received by the employee on part-time parental leave when the dismissal takes place;
- ii) a benefit such as the redeployment leave allowance must, pursuant to the said Framework Agreement, be determined entirely on the basis of the full-time salary of that employee.

On the question of different treatment regarding parental leave, the ECJ held that indirect discrimination on grounds of sex arises where a national measure puts considerably more employees of one sex at a disadvantage. Such a measure is compatible with the principle of equal pay only if the difference in treatment between the two categories of employees to which it gives rise is justified by objective factors unrelated to any sex discrimination.

In such a case, the ECJ held that French legislation is not justified by such objective factors, hence it is not compatible with the principle of equal pay for male and female employees for equal work or work of equal value.

In light of the foregoing, the Court ruled that Article 157 of the Treaty on the Functioning of the European Union must be interpreted as precluding legislation which provides that, where



CUATRECASAS

permanent and full-time employees are dismissed at the time they are on part-time parental leave, those employees receive a compensation payment for dismissal and a redeployment leave allowance determined at least in part on the basis of the reduced salary which they receive when the dismissal takes place, in circumstances when a far greater number of women than men choose to take part-time parental leave.



Contact

Cuatrecasas, Gonçalves Pereira & Associados,
Sociedade de Advogados, SP, RL
Sociedade profissional de responsabilidade limitada

Lisboa

Praça Marquês de Pombal, 2 (e 1-8º)
1250-160 Lisboa | Portugal
Tel. (351) 21 355 3800 | Fax (351) 21 353 2362
cuatrecasasportugal@cuatrecasas.com | www.cuatrecasas.com

Porto

Avenida da Boavista, 3265 - 5.1
4100-137 Porto | Portugal
Tel. (351) 22 616 6920 | Fax (351) 22 616 6949
cuatrecasasporto@cuatrecasas.com | www.cuatrecasas.com

For additional information on the contents of this document, please contact Cuatrecasas.

© Cuatrecasas, Gonçalves Pereira & Associados, Sociedade de Advogados, SP, RL 2019.

The total or partial reproduction is forbidden. All rights reserved. This communication is a selection of the news and legislation considered to be relevant on reference topics and it is not intended to be an exhaustive compilation of all the news of the reporting period. The information contained on this page does not constitute legal advice in any field of our professional activity.

Information about the processing of your personal data

Data Controller: Cuatrecasas, Gonçalves Pereira & Associados, Sociedade de Advogados, SP, RL ("Cuatrecasas Portugal").

Purposes: management of the use of the website, of the applications and/or of your relationship with Cuatrecasas Portugal, including the sending of information on legislative news and events promoted by Cuatrecasas Portugal.

Legitimacy: the legitimate interest of Cuatrecasas Portugal and/or, where applicable, the consent of the data subject.

Recipients: third parties to whom Cuatrecasas Portugal is contractually or legally obliged to communicate data, as well as to companies in its group.

Rights: access, rectify, erase, oppose, request the portability of your data and/or limit its processing, as described in the additional information.

For more detailed information on how we treat your data, please go to our [data protection policy](#).

If you have any questions about how we treat your data, or if you do not wish to continue to receive communications from Cuatrecasas Portugal, we kindly ask you to inform us by sending a message to the following email address data.protection.officer@cuatrecasas.com.