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Employment Law

Newsletter | Portugal

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I. Laboratory

Law no.58/2019 was finally published on August 8, thereby “*guaranteeing the enforcement of Regulation EU 2016/679 under domestic law*” regarding the protection of personal data of natural persons, more commonly known by the acronym, GDPR (General Data Protection Regulation).

This Law is not a prerequisite for implementing the GDPR, which became directly applicable in domestic legal frameworks without the need for transposition through a domestic act, as of May 25, 2018.

Nevertheless, the GDPR allows for a certain room for adaptation at domestic level, in particular, under the terms and effects of Article 88, enabling Member-States to adopt “*more specific rules to ensure the protection of rights and freedoms*” in “*the employment context*”.

This possibility is reflected for example in Articles 20 (Video surveillance) and 28 (Labor relations).

It is worth remembering, however, that neither the GDPR nor Law no.58/2019 explicitly repeal previous rules, in particular, those contained in the Labor Code pertaining to this field.

Nevertheless, such rules must now be analyzed in light of the new legal framework.

Accordingly, the GDPR and the new Law no.58/2019 prescribe an in-depth review of company practices in which personal data are involved.

When conducting such a review, one cannot lose sight of the fact that data protection in the employment context goes far beyond Article 28 of Law no.58/2019. Careful holistic analysis of the entire Law in conjunction with other applicable employment, criminal and regulatory rules *inter alia* and, in addition, the GDPR, of course, is of the essence.

Meanwhile, it was also published Law no.93/2019 on September 4, that introduces the much heralded and debated amendments to the Labor Code. We will cover this Law, as well as Law no.107/2019 of September 9, which introduces amendments to the Labor Procedure Code, in our next Newsletter.

Maria da Glória Leitão
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II. National Legislation

Law no.58/2019 - Diário da República no. 151/2019, Series I, August 8, 2019

Ensuring the enforcement of the General Data Protection Regulation under Portuguese law

This Law provides for the enforcement in Portuguese law of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, on the protection of natural persons with regard to the processing of personal data and the free movement of such data (GDPR).

The Law includes a number of rules affecting the area of employment, with specific regard to:

- Scope and lawful restrictions on the processing of employees' personal data by employers;
- Video surveillance and use of video footage or other personal data recorded using video cameras or other remote surveillance technology;
- Lawfulness of processing employees' biometric data;
- Storage period of personal data for the purposes of meeting contractual or other obligations.

This Law came into force on August 9, 2019.

III. Extension Orders

Sector	Order
Import, warehousing and retail sale of chemical and pharmaceutical products	Order no. 240/2019 - Diário da República no. 144/2019, Series I, July 30, 2019 Establishes the extension of the amendments to the collective bargaining agreement between NORQUIFAR – National Association of Importers/Wholesalers and Retailers of Chemical and Pharmaceutical Products and COFESINT - Industry, Energy and



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	Transports Trade Unions Federation and one other (chemical products).
Import, warehousing and retail sale of chemical and pharmaceutical products	Order no. 241/2019 - Diário da República no. 144/2019, Series I, July 30, 2019 Establishes the extension of the amendments to the collective bargaining agreement between NORQUIFAR – National Association of Importers/Wholesalers and Retailers of Chemical and Pharmaceutical Products and COFESINT - Industry, Energy and Transports Trade Unions Federation and one other (pharmaceutical products).
Private Hospital Care	Order no. 242/2019 - Diário da República no. 146/2019, Series I, August 1, 2019 Establishes the extension of the amendments to the collective bargaining agreement between APHP - Portuguese Association of Private Hospital Care and SEP – Portuguese Nurses Trade Union.
Trade and Industry – Figueira da Foz	Order no. 243/2019 - Diário da República no. 146/2019, Series I, August 1, 2019 Establishes the extension of the collective bargaining agreement between ACIFF – The Figueira da Foz Trade and Industry Association – Regional Association of Employers and CESP - Portuguese Trade, Offices and Services Trade Union.
Hospitality and Related Sectors	Order no. 244/2019 - Diário da República no. 146/2019, Series I, August 1, 2019 Establishes the extension of the amendments to the collective bargaining agreement between AHRESP -



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	<p>Portuguese Hospitality Association and SITESE - Services, Trade, Catering and Tourism Workers and Technicians Trade Union (restaurant, catering and beverages).</p>
<p>Foodstuffs Trade and Industry</p>	<p>Order no. 245/2019 - Diário da República no. 146/2019, Series I, August 1, 2019 Establishes the extension of the collective bargaining agreement between ANCIPA – National Association of Foodstuffs Trade and Industry and FESAHT - the Federation of Farming, Food, Beverages, Hospitality and Tourism Trade Unions (horticulture sector).</p>
<p>Footwear and Leather Pieces and Articles Industry</p>	<p>Order no. 246/2019 - Diário da República no. 146/2019, Series I, August 1, 2019 Establishes the extension of the amendments to the collective bargaining agreements between APICCAPS - Portuguese Footwear, Leather and leather-substitute Pieces and Articles Industrial Association and FESETE - the Trade Union Federation of Textiles; Woolens, Garments; Footwear and Leathers Workers.</p>
<p>Trade, Industry and Services - Bragança</p>	<p>Order no. 247/2019 - Diário da República no. 146/2019, Series I, August 1, 2019 Establishes the extension of the amendments to the collective bargaining agreement between ACISB - Bragança Trade, Industry and Services Association and others and FEPCES - Portuguese Trade, Office and Services Trade Union Federation.</p>



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<p>Hospitality and Related Sectors</p>	<p>Order no. 248/2019 - Diário da República no. 146/2019, Series I, August 1, 2019 Establishes the extension of the amendments to the collective bargaining agreement between AHRESP - Portuguese Hospitality Association and FESAHT - the Federation of Farming, Food, Beverages, Hospitality and Tourism Trade Unions (restaurant, catering and beverages).</p>
<p>Jewellery</p>	<p>Order no. 251/2019 - Diário da República no. 152/2019, Series I, August 9, 2019 Establishes the extension of the amendments to the collective bargaining agreement between APIO – Portuguese Jewellery Sector Association and FIEQUIMETAL - Inter-trade Union Federation of Metalwork, Chemical, Electrical, Pharmaceutical, Pulp, Paper, Graphics, Printing, Energy and Mining Industries.</p>
<p>Distribution of Food Products</p>	<p>Order no. 252/2019 - Diário da República no. 152/2019, Series I, August 9, 2019 Establishes the extension of the amendments to the collective bargaining agreement between ADIPA - Foodstuffs Distributors' Association and others and SITESE - Services, Trade, Catering and Tourism Workers and Technicians Trade Union (wholesale trade).</p>
<p>Paper and Cardboard Industry</p>	<p>Order no. 253/2019 - Diário da República no. 152/2019, Series I, August 9, 2019 Establishes the extension of the amendments to the collective bargaining</p>



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	agreement between ANIPC - National Association of Paper and Cardboard Industries and FIEQUIMETAL – Inter-Trade Union Federation of Metal-working; Chemical; Electrical; Pharmaceutical; Cellulose; Paper; Graphic; Print; Energy, and Mining Industries.
Garments, Clothing and Fashion Industries	Order no. 259/2019 - Diário da República no. 157/2019, Series I, August 19, 2019 Establishes the extension of the amendments to the collective bargaining agreement between ANIVÉC/APIV - National Association of Garments, Clothing and Fashion Industries and COFESINT - Federation of Industry, Energy and Transport Trade Unions, and another.
Hospitals Common Service Provider (SUCH)	Order no. 260/2019 - Diário da República no. 157/2019, Series I, August 19, 2019 Establishes the extension of the company-level agreement between SUCH - Hospitals Common Service Provider and FESAHT - Federation of Farming, Food, Beverages, Hospitality and Tourism Trade Unions and others.



IV. National Case-law

Ruling by the Lisbon Court of Appeal, of July 11, 2019

The average amount of payments made by employers to employees for overtime should be considered an integral part of their remuneration for the purposes of calculating work accident benefits' payments.

An employee reported a work accident, having suffered what was both a road and a work accident, when travelling by motorcycle from his place of abode to work. The said accident caused injuries to the employee, which resulted in temporary total incapacity and permanent total incapacity for his normal work duties.

Since an agreement was not achieved during the pre-litigation phase, the employee brought legal proceedings to enforce his rights arising from the work accident, against both his employer and the insurer to which liability for work accidents had been transferred. The employee alleged to have worked overtime on a regular basis, and thus considered that overtime pay should be incorporated into the concept of regular pay, which is the basis for calculating work accident benefits' payments.

Conversely, the employer claimed to have transferred liability for all amounts paid to the victim encompassed in the concept of regular pay to the insurer, not including overtime pay, since the employee had only worked overtime sporadically and during the summer months. As a result, he alleged that amounts paid in overtime pay should not be incorporated into the concept of "remuneration" for the purposes of calculating compensation to the employee for temporary and permanent incapacity.

The Court of First Instance ruled in favor of the plaintiff and ordered the insurer and the employer (for the share of liability not transferred to the insurer, pertaining to overtime) to pay an annual lifelong pension and compensation for permanent total incapacity.

The employer lodged an appeal before the Lisbon Court of Appeal, which set out that the first issue to determine was whether or not overtime pay earned by the employee over the course of the 12 months prior to the accident should be incorporated into the concept of regular pay, for the purposes of calculating benefits payable to him, pursuant to work accident laws.

The Court pointed out that the concept of remuneration, used as the basis for calculating compensation for work accidents, does not entirely match the concept of remuneration arising from the Labor Code. In fact, the former is broader than the latter, since in addition to payments



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received by employees in return for performing work, it also encompasses payments received by employees on a regular basis, provided their purpose is not to compensate them for unforeseen expenses.

Thus, the Court of Appeal held that the concept of remuneration, as the basis for calculating work accident benefits, is defined by the regularity with which a given payment is made to the victim.

In view of the employee having worked overtime in 7 of the previous 12 months immediately prior to the accident, the Court held that the average amounts paid by the employer to the employee for overtime work should be considered as an integral part of the employee's remuneration, for the purpose of calculating work accident benefits.

In light of the foregoing, the Lisbon Court of Appeal rejected the appeal, thereby upholding the judgment under appeal pertaining to the employer's liability for payments not transferred to the insurer.



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