
Employment Law

Newsletter | Portugal

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I. Laboratory

This newsletter examines a judgment from the Lisbon Court of Appeal regarding the legal concept of “abandonment of workplace.” This concept refers to an “employee’s absence from his work duties in circumstances that clearly indicate, in all likelihood, that he does not intend to return to them.”

When employers claim that employees have abandoned their workplace, they risk mislabeling a situation that “merely” amounts to absenteeism, which is also (unjustified) absence from work duties. However, this definition does not imply the likelihood of the employees not returning to their workplace in the future.

To apply the legal concept of abandonment of workplace, this judgment stresses the need for facts (objective requirement) from which we can conclude that the employee in question does not intend to return to work (subjective requirement).

Therefore, the mere absence of an employee, even if it is not justified, does not automatically imply a case of abandonment of workplace. Oftentimes, employees are unable to contact their employer and will only come forward once their situation has been solved. When they do so, they are likely to present reasonable justifications for their absence.

All leading to the conclusion that employers must carefully weigh up the evidence before going down the road of lawful dismissal, based either on uncertified absences or on the claim of abandonment of workplace.

Maria da Glória Leitão,
Partner, Department of Employment Law



II. National legislation

Decree-Law no. 153/2019 – Diário da República no. 200/2019, Series I, October 17, 2019

Amending the application period for the social unemployment benefit

Decree-Law no. 153/2019 reduces, from 180 to 120 days, the application period for claiming the initial social unemployment benefit for employees whose employment contracts have expired and not been renewed.

This new application period also applies when employers terminate an employment contract during the trial period. In this situation, beneficiaries may claim the social unemployment benefit once every two years, starting from the date on which the social unemployment benefit was granted.

Decree-Law no. 153/2019 came into force on November 4.

III. Extension orders

Sector	Order
Civil aviation	Order no. 344/2019 – Diário da República no. 188/2019, Series I, October 1, 2019 Establishes the extension of the collective bargaining agreement between Easyjet Airline Company Limited's subsidiary in Portugal and the National Trade Union for Cabin Crew Employees in Civil Aviation (SNPVAC).
Paper and cardboard manufacturing	Order no. 363/2019 – Diário da República no. 194/2019, Series I, October 9, 2019 Establishes the extension of the amendments to the collective bargaining agreement between the Portuguese Association of Paper and Cardboard Manufacturers (FAPEL) and the Industry,



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	Energy and Transport Trade Unions Federation (COFESINT).
Leather and leather products	Order no. 384/2019 – Diário da República no. 205/2019, Series I, October 24, 2019 Establishes the extension of the amendments to the collective bargaining agreement between the Portuguese Tanning Industry Association and the Trade Union Federation of Textiles, Woolens, Garments, Footwear and Leather Workers (FESETE).
Trade and services	Order no. 385/2019 – Diário da República no. 205/2019, Series I, October 24, 2019 Establishes the extension of the amendments to the collective bargaining agreement between Leiria Regional Trade, Industry, Services and Tourism Association (ACILIS) and the Services, Trade, Catering and Tourism Workers and Technicians Trade Union (SITESE).
Hospitality and tourism	Order no. 386/2019 – Diário da República no. 205/2019, Series I, October 24, 2019 Establishes the extension of the amendments to the collective bargaining agreement between the Portuguese Hospitality Association (AHRESP) and the Services, Trade, Hospitality and Tourism Workers and Technicians Trade Union (SITESE).
Trade and services	Order no. 387/2019 – Diário da República no. 205/2019, Series I, October 24, 2019



	Establishes the extension of the amendments to the collective bargaining agreement between Leiria Regional Trade, Industry, Services and Tourism Association (ACILIS) and the Portuguese Trade, Offices and Services Trade Union (CESP).
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IV. National case law

Ruling by the Lisbon Court of Appeal, of September 25, 2019

An employee's refusal to report for duty at a new client's premises, while repeatedly appearing at the company's headquarters to demand a more convenient schedule, does not constitute abandonment of workplace.

The employee (a security guard) was informed by his employer that he would no longer carry out his functions in a given location, and would instead be allocated to another client's premises.

Unhappy with the new schedule and the new premises, the employee did not report for duty. Instead, he presented himself repeatedly at the company's headquarters to demand that his previous working conditions be reinstated. On November 6, 2017, the employer informed the employee that his conduct constituted abandonment of workplace.

Following this, at the end of November 2017, the employee received a letter from the company informing him that his contract had been terminated on the grounds of abandonment of workplace. In response, the employee brought proceedings against his employer for "unfair dismissal," demanding that he be reinstated in the company's workforce.

The Court of First Instance considered that the employment contract had been terminated based on abandonment of workplace, dismissing the employee's claim. Following this, the employee appealed to a higher court.

Examining the situation, the Court of Appeal first drew attention to the case law of higher courts, which considers that there are two requirements for abandonment of workplace to exist:

- i) An objective requirement, that consists in the factual absence of the employee.



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- ii) A subjective requirement, expressed through the employee's clear intention of not wanting to return to work.

To argue that an employee has abandoned his workplace, employers must send a registered letter to the employee's last known address, stating the facts that prove that abandonment of workplace has taken place.

In this case, even though the employer sent the required registered letter to the employee, the Court of Appeal did not consider the situation to amount to abandonment of workplace. Although the employee did not report for duty in the new premises (thus fulfilling the objective requirement), he did not abandon his workplace, since he never expressed a clear intention of not returning to work (therefore failing to fulfil the subjective requirement)

Instead, what the employee did was openly disobey his employer through a series of (unjustified) absences, which might not constitute abandonment of workplace, but can nonetheless amount to a disciplinary offence for breaching his duties to obey the employer's instructions, to be assiduous and to act diligently.



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