
Labor

Newsletter | Portugal

4th Quarter 2020



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I. *Laboratory*

The year 2020 ended without major domestic legislative developments, except for the intense and extensive output related to the crisis caused by the COVID 19 pandemic, which we reported on in specific newsletters.

This newsletter covers the final quarter of 2020, where an order to increase guaranteed minimum monthly remuneration to €665.00 was published on the last day of the year.

In the context of labor mobility, the decree transposing Directive (EU) 2018/957 changes the protection scheme for posted employees in the framework of the provision of services.

Also, domestic courts passed two noteworthy decisions: (i) the judgment of the Court of Appeal of Coimbra admitted prior agreement on set-off payments pending a contractual relationship; and (ii) the same court validated the dismissal with just cause of an employee based on offenses and accusations made against the employer while protected by an assumed “right to criticize and protest.” In his decision, the judge stated that, “in the framework of a company, an employee’s freedom of expression is not unlimited, as the employee is also bound by the duties of respect, courtesy and probity.”

We wish everyone a good 2021!

Maria da Glória Leitão,
Head of the Labor Law Department



II. Legislation

Resolution of the Portuguese Parliament 87/2020 - Official Gazette of the Portuguese Republic No. 227, Series I of 11-20-2020

Approves Protocol 1930 on the Convention on Forced or Compulsory Labor adopted by the International Labor Conference at its 103rd Session, held in Geneva on June 11, 2014

This resolution encourages measures to prevent forced labor, such as increasing education, and more legislation, supervision and inspection and protection services for people against possible abusive or fraudulent practices.

Ministerial Order 275/2020 - Official Gazette of the Portuguese Republic No. 236, Series I of 12-4-2020

Second amendment to Ministerial Order 182/2018 of June 22 regulating the working conditions of administrative employees not covered by specific collective agreements

This ministerial order changes the meal allowance amount for covered employees to €5.00 and amends the values in the minimum monthly remuneration table.

Ministerial Order 278/2020 - Official Gazette of the Portuguese Republic No. 236, Series I of 12-4-2020

Provides annual update for 2020 on pensions for accidents at work

This ministerial order updates pensions for accidents at work to the amount resulting from applying the 0.70% increase.

Decree Law 101-E/2020 - Official Gazette of the Portuguese Republic No. 237, Series I of 12-7-2020

Transposes Directive (EU) 2018/957 on the posting of employees in the framework of the provision of services

This decree-law implements protection measures for posted service providers, by guaranteeing rights relating to the condition of accommodation provided by the employer, and remuneration, subsidies and allowances applicable to the posting. It also covers the application of overtime work conditions to posts lasting more than 12 months, as well as the company's obligation to inform the temporary employment agency of the working conditions it provides, so posted employees are provided with the most favorable working conditions.



III. Extension orders

Area of Activity	Order
Horticulturists, fruit and flower growers	Ministerial Order 226/2020 - Official Gazette of the Portuguese Republic No. 190/2020, Series I of 9-29-2020 Extends the collective agreement between the Association of Horticulturists, Fruit and Flower Growers of the Municipalities of Odemira and Aljezur (AHSA) and the National Trade Union of Agriculture, Forestry, Fisheries, Tourism, Food and Drink Industries and Other Employees (SETAAB).
Milk production	Ministerial Order 227/2020 - Official Gazette of the Portuguese Republic No. 190/2020, Series I of 9-29-2020 Extends the collective agreement between the Union of Milk Producing Cooperatives of Entre Douro e Mondego, UCRL and others (LACTICOOP) and the Union of Commercial, Office and Service Industry Employees/UGT (SINDCES/UGT).
Fruit and vegetable industry	Ministerial Order 228/2020 - Official Gazette of the Portuguese Republic No. 191/2020, Series I of 9-30-2020 Extends the amendments to the collective agreement between the National Association of Food Product Traders and Industrialists (ANCIPA) and the National Trade Union of Agriculture, Forestry, Fisheries, Tourism, Food



	and Drink Industries and Other Employees SETAAB (fruit and vegetable industry).
Chips, snacks and equivalent products industry	Ministerial Order 229/2020 - Official Gazette of the Portuguese Republic No. 191/2020, Series I of 9-30-2020 Extends the amendments to the collective agreement between the National Association of Food Product Traders and Industrialists (ANCIPA) and the National Trade Union of Agriculture, Forestry, Fisheries, Tourism, Food and Drink Industries and Other Employees (SETAAB) (chips, snacks and equivalent products industry).
Metallurgy, metalworking and related products	Ministerial Order 249/2020 - Official Gazette of the Portuguese Republic No. 207/2020, Series I of 10-23-2020 Extends the amendments to the collective agreement between the Association of Portuguese Metallurgy, Metalworking and Related Products Industries (AIMMAP) and the National Industry and Energy Union (SINDEL).
Cork industry	Ministerial Order 250/2020 - Official Gazette of the Portuguese Republic No. 207/2020, Series I of 10-23-2020 Extends the amendments to the collective agreement between the Portuguese Cork Association (APCOR) and the Portuguese Federation of Construction, Ceramics and Glass Unions (FEVICCOM) and others (factory staff).



<p>Frozen food industry</p>	<p>Ministerial Order 252/2020 - Official Gazette of the Portuguese Republic No. 208/2020, Series I of 10-26-2020 Extends the amendments to the collective agreement between the Association of the Frozen Food Industry (ALIF) and the National Trade Union of Agriculture, Forestry, Fisheries, Tourism, Food and Drink Industries and Other Employees (SETAAB).</p>
<p>Commercial, office and service industry employees</p>	<p>Ministerial Order 253/2020 - Official Gazette of the Portuguese Republic No. 208/2020, Series I of 10-26-2020 Extends the collective agreement between the Association of Commercial, Industrial and Service Industry Employees of Bragança (ACISB) and others, and the Portuguese Federation of Unions of Commercial, Office and Service Industry Employees (FEPCES).</p>

IV. Domestic case law

Ruling of the Coimbra Court of Appeal of June 26, 2020

Ban on offsetting earnings under article 279 of the Labor Code only applies to cases of legal (unilateral) offsetting, with conventional or voluntary offsetting being permitted

The basic problem dealt with in this ruling is based on article 279 of the Labor Code, which, with some exceptions, prevents the employer from offsetting remuneration with amounts payable by the employee, or from applying equivalent discounts or deductions.

In this case, the employee claimed the payment of remuneration owed and the employer claimed that it had a right of recourse because the employee was liable for fines that the employer had incurred. The employer also claimed that the two parties had agreed that the employee would pay these fines through a deduction of one-third of his salary.



In the first instance, the court ruled that the action had partial grounds to proceed, and it ordered the employer to pay part of the amounts requested by the employee, including those considered to have been unduly deducted from the employee's salary.

The employer filed an appeal with the Coimbra Court of Appeal, which clarified that the Labor Code prohibits the employer from unilaterally deciding to offset remuneration owed with amounts payable by the employee. However, in this case, there was a prior agreement between the parties, meaning that the employer did not make the decision unilaterally to offset an amount, and that it had been agreed with the employee.

Thus, the court concluded that the ban in article 279 of the Labor Code is restricted to cases of legal (unilateral) offsetting and, within these, to cases of unilateral offsetting by the employer. It would be different if an employee were to make a decision to offset an amount unilaterally, as would be the case for conventional or voluntary offsetting. These are situations that go beyond the respective regulatory provision, so there are no obstacles to offsetting in this precept.

Although the court considered the impact of the employee's fragility in the agreement entered into with the employer, it concluded that it could not ignore the parties' autonomy, and it decided that both the agreement and the practice of offsetting were valid.

Ruling of the Lisbon Court of Appeal of September 23, 2020

In the framework of a company, an employee's freedom of expression is not unlimited, as the employee is also bound by the duties of respect, courtesy and probity.

In this case, the employee was dismissed with just cause for sending several communications to the employer's management division, in which, under the protection of an assumed "right to criticize and protest," he insulted and made accusations against management personnel.

In its ruling, the court of first instance stated that the employee had been dismissed with just cause.

Dissatisfied with the ruling, the employee appealed to the Lisbon Court of Appeal, which confirmed that the dismissal was lawful. It found that the offensive, defamatory and insulting nature of the communications does not show that the employee was limited to exercising "the right to criticize and protest" arising from the right to free expression of thought, which is constitutionally enshrined in article 37 of the Constitution of the Portuguese Republic, as these rights have limits, such as respect for the rights of all people and institutions (including the employer and its management) and respect for good name and reputation, which is also enshrined in article 26, item 1 of the Constitution of the Portuguese Republic.



The Lisbon Court of Appeal also found that the Labor Code recognizes freedom of expression and freedom to disclose thoughts and opinions within a corporate framework. However, this freedom is subject to limits arising from respect for the employer's personal rights, including those of the individuals who represent it, and the normal functioning of the company, where the employee is required to treat the employer and its superiors with respect, courtesy and probity. The court of appeal concluded that freedom of expression is not unlimited, as is the case with any other freedom.

V. European case law

Judgment of the European Court of Human Rights of September 3, 2020

Transfer of teacher on disciplinary grounds resulting from text the teacher wrote is not considered contrary to the right to freedom of expression if, considering the circumstances and the duty of discretion imposed on teachers, this measure is considered proportional considering the teacher's behavior

In this case, an individual who had taught Islamic religious studies at several schools in a French-speaking community in Belgium since 1987 was transferred, as a disciplinary consequence of observations he had made in an open letter, which was published in newspapers. The letter focused on the attacks on the Charlie Hebdo newspaper in Paris in January 2015.

In February 2015, a teacher sent an open letter to the press, commenting on reports in certain sections of social media about his alleged role in the disturbances at the school where he taught in Brussels, where he also expressed opinions about homosexuality and the media. The disturbances had taken place in the wake of the terrorist attacks on the Charlie Hebdo newspaper and had taken the form of student attacks on another teacher at the same school who had defended Charlie Hebdo, as well as violence against a student who had refused to sign a petition against that teacher.

In October 2017, noting that the teacher's observations had violated his duty of discretion, the government of the French-speaking Community ordered that he be transferred to a school in La Louvière, as a disciplinary measure. In a May 2019 ruling, the Conseil d'État (Council of State) dismissed the employee's request for the order to be overturned.

Based on article 8 (right to respect for private and family life) and article 10 (freedom of expression) of the European Convention on Human Rights, the teacher then appealed the disciplinary measure that had been imposed on him by the European Court of Human Rights.



The court considered the teacher's claim that he had felt the need to react to certain accusations against him. However, it considered that this, in itself, was insufficient to supersede his duty of discretion and the requirement that he show moderation in exercising his right to freedom of expression, given the specific context in which his observations had been made. This was particularly true because the comments and statements had not been a spontaneous reaction during an oral exchange, but had taken the form of written statements that had been widely published and were therefore accessible to his students, which could have compounded tensions at the school where he worked.

The court stressed that the observations were incompatible with the teacher's duty of discretion, as a teacher, particularly considering the tense atmosphere in his school following the attacks on Charlie Hebdo.

Taking into account the potential impact of the observations on his students, the court considered that the disciplinary transfer of the teacher to another school about 50 kilometers from the previous school, where he had a full teaching schedule, was not disproportionate; and, therefore, it upheld the transfer decision.



Contact

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

Lisbon

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

Oporto

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

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