

Labor Newsletter

CAPE VERDE

FEBRUARY 2021



OPINION

Law 113/IX/2021, of January 8 - extension of the simplified regime for suspension of employment contracts introduced by Law 97/IX/2020, of July 23

In accordance with the new law that regulates the simplified regime for the suspension of the employment contract (“**Layoff**”), this fourth period - considering that the third terminated on 31 December of last year - maintains the payment of 70% of the employees’ compensation, reducing, however, the burden for the companies, which this time is reduced to 25% (previously it was supported in equal parts between the companies and the Social Security).

In such a troubled period for the economy, it is admirable that the Cape Verdean Government increased the support to companies, namely to those that, by legal imposition and/or due to the sanitary conditions of the main countries that send tourists, cannot operate, establishing that this measure “*applies to employers of private nature and their employees, in the tourism sector, events and related activities, aiming to maintain jobs and to mitigate business crisis situations*”, due to COVID-19 pandemic.

With this amendment, which produced retroactive effects as from 1 January of this year, the employer can suspend the employment contract “*of all or some employees, based on market difficulties or economic reasons arising from the epidemiological situation caused by covid-19*”, but “*provided that it has had an abrupt and sharp drop of at least 70% of its turnover*”.

In addition, companies may still resort to the mechanism introduced by the previous Law, which consists in a partial suspension of the employment contract, entitling companies to request their employees to provide work even if for a reduced period of time compared to their normal working time (up to a maximum of 40% of their normal working time).

The Government admitted in early January, in the Parliament, that the economic recovery in Cape Verde during 2021 would be slow, and that the Government wanted to facilitate employees’ access to unemployment benefits as a measure to mitigate the economic impact caused by the COVID-19 pandemic.

According to Government data, the number of employees covered by the simplified regime for suspension of employment contracts has been decreasing over the past three periods in which this regime was in force during 2020, having covered approximately 38.000 employees.

As the Cape Verdean Government points out, it is expected a very slow recovery of tourism during the first half of 2021. Considering that companies linked to the tourism sector do not have any turnover for practically a year (and it is expected to be more than a year) along with the lack of more support measures for companies, it is urgent that the Cape Verdean Government creates new support packages for companies, otherwise companies will not survive to COVID-19 pandemic and, consequently, it will increase the unemployment in Cape Verde.

CASE LAW

Supreme Court of Justice – Decision 72.2016

Fixed term employment contract; unlimited term employment; wrongful dismissal.

In this case, the employee requested that the contract signed between him and the Defendant to be recognized as an unlimited term employment contract. The employee considered that the dismissal carried out by the Defendant was illegal, and therefore null and void, since it was not preceded by a disciplinary proceeding. The Defendant claimed that the employment contract had expired.

It was proven by the Court that an *“employment contract for a fixed term”* was signed between the employee and the Defendant, on the 16 September 2010. The said contract stated that it *“shall commence on the 20 September 2010, and shall remain in effect during the term of the contract entered into between the employee and the Defendant for the completion of the Lacacão road construction project on the Boa Vista Island, and may be terminated by either party upon 10 days’ prior notice”*.

The employee also signed a discharge statement, whereby he *“declares that he has already received from the Defendant all credits to which he is entitled in the context of the termination of the employment relationship that existed until the 20 March 2015, or payable by virtue thereof, and that as a result he gives a discharge, with nothing further to be claimed from each other”*.

In addition to this fact, the Defendant sent the employee a communication dated of 24 February 2015, which came to the employee’s knowledge on the same day, according to which it *“terminated the employment contract with this company, which termination will be effective as of 6 February 2015, on which date the employee will cease to perform any and all employment duties for the company”*.

The Court considered that the use of the literal expression *“next day” (6 February 2015)* could lead to the idea that there was a manifest oversight in that communication, and that it should read *“6 March 2015”* where it says *“6 February 2015”*, which would lead to the conclusion that the contractual termination was exercised in a timely manner, that is, with the ten days’ prior notice, thus terminating the employment contract.

However, although admitting that the contractual termination was timely sent, the Court considered another proven fact: that after the end of the construction work on the aforementioned Lacacão road on Boa Vista Island (or at least on one of its sections), the employee would have continued to work for the Defendant, it having been demonstrated that the employee still worked for the Defendant during the months of March and April in the *“Casa Para Todos”* project.

Therefore, although admitting the timely and consequent validity of the termination, having the employee continued to work for the Defendant during the months of March and April 2015, i.e., after the end of the work for which the employee was initially hired, and because he continued to work for the Defendant, it was considered that the fixed-term employment contract was then considered to be an unlimited term employment contract, since the initial basis for the contract no longer existed, following the end of the construction of the Lacacão road, or at least of one of its sections.

For these reasons, the Court considered that the termination of the unlimited term employment relationship between the Defendant and the employee, was illegal, since it occurred without the allegation and demonstration of just cause.

LABOR OBLIGATIONS TO BE TAKEN INTO ACCOUNT

Posting of the Personnel Chart

Companies must prepare a personnel chart and post it at an easily accessible and visible place for the employees until 31 March with updated HR data in relation to February. The personnel chart must also be filed (along with three copies, or via a digital file or database access) with the General Inspectorate of Labor at the Municipality of Praia, in relation to the employees whose workplaces are located in Sotavento Islands (Maio, Santiago, Fogo and Brava), or the General Inspectorate of Labor Regional Delegation of São Vicente, in relation to the employees whose workplaces are located in Barlavento Islands (Santo Antão, São Vicente, Santa Luzia, São Nicolau, Sal and Boa Vista).

The personnel chart must describe in relation to each employee, amongst other information, the full name, professional category, base salary and other remuneration benefits, date of hiring and scheduled vacation periods.

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