

Labor Newsletter

Cape Verde

MAY 2021



OPINION

LAW 126/IX/2021, OF 23 OF APRIL 2021 - 70% LOSSES AND BANK OF CAPE VERDE NOTICE

The latest simplified regime of employment contract suspension, approved by Law 126/IX/2021 of 23 April 2021, entered immediately in force on the date it was gazetted, but with retroactive effects as of 1 April 2021.

The law comes in a context in which the National Institute of Statistics of Cape Verde issued data that indicates that there have been losses in the tourism sector higher than 70%, in comparison with 2019, being the application scope restricted to “private companies and employees of the tourism sector and related activities, events, industries and exporting services” with the purpose “to maintain jobs and mitigate business crisis situations”.

The Bank of Cape Verde (BCV) issued an alert during last April about the problems surrounding the economic growth targets for 2021, stating that they may even be in jeopardy with the “extemporaneous” withdrawal of support measures for businesses and families to mitigate the crisis caused by the pandemic.

The statement is made in a report issued by BCV, during the period that the simplified regime of employment suspension, in force since April 2020, was extended by the Government.

In that report, BCV states that the “failure to immunize as expected the population of the country’s main partners,” namely the markets that issue tourists (which points out as being essentially Northern Europe, Spain and the United Kingdom) - a sector that guarantees 25% of the GDP - and “a worsening of their health situation, combined with a worsening of the internal health situation, could make the anticipated recovery in tourist demand unfeasible”.

Without making an optimistic forecast for the recovery of the tourism industry in Cape Verde, this entity continues saying that “associating to that risk an increase in the financial difficulties of the State, resulting from possible delays in the disbursement of budget aids associated with the démarches of reorganization of structures resulting from the elections, as well as the untimely withdrawal of the support measures to businesses and families, including the simplified ‘layoff’, GDP growth could be around 3% in 2021”.

After a year of economic recession in the country with values that stabilized at 14.8% of GDP in 2020, the BCV forecast for 2021 points to an increase in the economic activity around 5.8%. It should be noted that government data indicates that 37.681 employees have benefited from the layoff regime and although they have not received 100% of their salary, it has been assured 70% of such amount, thanks to the efforts of the companies and INPS.

Since the previous layoff period, which was the fourth since the measure came into force in April 2020, the companies’ contribution to the employees’ payment was reduced, conditioning its granting to 70% losses in revenue, having as calculation reference the year of 2019 (before the pandemic). This regime maintained the payment of 70% of the employees’ salary, but reduced the employers’ burden from 35% to 25% of that amount.

Moreover, employers are still entitled to request to their employees under the simplified regime of employment contract suspension, to perform their work under a part-time regime (40% of the monthly hours or proportional to the type of contract).

In the words of Cape Verde's Minister of Justice, at the conference where she presented Law 126/IX/2021, of 23 April 2021, "The gradual return to normality is underway, with hopes redoubled after the arrival of the covid-19 vaccines to Cape Verde and the anticipated start of the vaccination plan".

However, if on one hand it will be necessary that the markets that issue tourists are able to ensure their own vaccination plans, for the growth of the tourism sector, it will also be necessary that Cape Verde presents security guarantees, so that these tourists feel safe, as well as measures to support the employers, otherwise we will see insolvency procedures being initiated.

CASE LAW

Sotavento Appeal Court – Decision of 12/03/2018

CONCEPT OF RETRIBUTION; EMPLOYERS' DIRECTIVE POWER; DISMISSAL WITH JUST CAUSE FOR FACT ATTRIBUTABLE TO THE EMPLOYER; CONCEPT OF JUST CAUSE.W

An employee claimed just cause for termination of his contract due to an act imputable to the employer, which termination was challenged. The worker claimed, in sum, that he was receiving a function allowance of CVE 30.000\$00 that was withdrawn by unilateral decision of the employer. Additionally, the employee also claimed that for a period of two months he was not paid any salary. On the other hand, the employer claimed that there was a change in the employee's functions since he moved from a more complex function to a less complex function and that this function did not involve the payment of this allowance. The employer also claimed reasons of internal organization and cost containment for withdrawing this allowance. As for the alleged delay in the salary payment, the employer assumed that the salaries were not paid until the last day of the respective month, as usually, but were paid

during the first days of the following months to which they were related.

The Court understood that, in relation to the function allowance, it was in question a benefit with retributive nature, which means that the unilateral decision of the employer to withdraw this allowance was illegal.

On the other hand, and more importantly, the Court ruled that there was no just cause for the termination of the employment contract by the employee due to the employee's wrongful conduct to terminate the contract. For this purpose, the Court based itself on the notion of just cause presented by the Law for just cause purposes for dismissal by the employee, and therefore did not consider to be proven that the facts imputable to the employer, and which presided over the employees' decision to unilaterally terminate the employment contract, had produced consequences so serious as to make it immediately and practically impossible for the employment relationship to continue, making it unreasonable, in concrete terms and in accordance with the rules of good faith, for the employee to remain bound to his employer.

Although the Court considered that the service order issued by the employer to withdraw the allowance and to change the employees' functions was illegal, the employee did not act well by not having claimed against the illegitimate orders and waited, consequently, for a reaction from the employer. As this conduct did not take place, the Court understood that the contractual situation of the employee was not changed and, therefore, did not consider to be just cause for the termination of the contract by the employee initiative.

LABOR OBLIGATIONS TO BE TAKEN INTO ACCOUNT

Until 23 May 2021 - Delivery of the communication under the simplified regime of employment contract suspension to DGT, under Law 126/IX/2021, of 23 April 2021.

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