

Labor Newsletter Cape Verde

A photograph of a person's hands holding a stack of three books. The top book is blue, the middle one is yellow, and the bottom one is red. The person is wearing a white sleeveless top. The background is dark.

AUGUST 2021

OPINION

LAW 1/X/2021, OF 6TH OF AUGUST - EXTENSION OF THE SIMPLIFIED LAYOFF REGIME TO PUBLIC COMPANIES

Parliament recently approved the latest amendment to the Law that, since April 2020 approved the simplified regime for the suspension of employment relationships (“**Layoff**”).

Having the previous regime ended on 30th of June and considering that there is no massive return of tourists to Cape Verde due to the pandemic, it was concluded that it is still necessary to extend once more and until 30th of September, the Layoff regime.

Similarly to the previous Law, it was maintained the need of the companies to demonstrate a 70% drop of revenues when compared to the same period in 2019, even though it was discussed in Parliament the possibility to reduce this percentage to 40% in order to extend this regime to more companies.

It is important also to note that Law 1/X/2021 of 6th of August, is also applicable to *companies with majority or exclusively public capitals, as long as with the express authorization of the government, and to their employees, in the tourism and related activities, events, industry and export services sectors.*

However, it is also necessary to consider impact of the Layoff regime in the Instituto Nacional de Previdência Social (“**INPS**”) cash-flow as it pays 45% of employees’ salaries, being the remaining 25% paid by employers.

Although the Layoff is considered a *lesser problem* to INPS when compared to the effects of potential mass dismissals that could originate the payment of unemployment benefits, Cape Verdean institutions are starting to show concerns with the impact that successive Layoff measures may have in the future.

According to the data presented by the Government concerning the past year, Cape Verde had an unemployment rate of approximately 14.5% during 2020, even though the original forecast was of approximately 20%.

Additionally, because of the pandemic and the absence of tourism in Cape Verde (the main economic driving force), the economic recession reached 14.8% in 2020.

Nevertheless, according to INPS April report, 4.857 employees were under the Layoff regime, a decrease when comparing with the 5.538 registered in March.

It is also important to mention that April was the month with lesser employees under the Layoff regime, being May 2020 the month with the higher number of employees under this regime (16.034).

Taking into consideration such data, is Cape Verde before the beginning of a potential economic recovery since some hotels are opening or will Cape Verde verify an increase of insolvencies procedures since some hotels are still closed?

JURISPRUDENCE

Barlavento Court of Appeal - Decision of 15/05/2020

EMPLOYMENT CONTRACT; SERVICES AGREEMENT; CONSTITUENT ELEMENTS OF THE EMPLOYMENT CONTRACT.

The case consists in an action brought by the General Manager of a company who claimed that she had been unfairly dismissed by her employer after she had been sent a letter terminating the relationship between them.

The company considered that the legal relationship established between it and the Director-General could not be seen as an employment contract, considering that the duties performed by the Director-General, the degree of autonomy inherent to them and their nature, did not allow the legal situation in question to be characterized as an employment relationship under the terms of article 26 of the Labor Code. This is particularly true when one compares the position of the General Manager to the analogous position of the Directors of Public Limited Liability Companies, and when one analyzes the regime underlying service provision contracts, especially in the form of a mandate.

The Court ultimately recognized the existence of an employment contract, considering that sufficient evidence of employment was present to justify the existence of an employment relationship, in particular the fact that there was a work schedule, albeit with some freedom in starting and ending times, the fact of receiving a fixed salary, with the right to typical employment subsidies (lunch and transport allowance, Christmas allowance, etc.), the use of company resources and means of production, the existence of a fixed place of work and, most importantly, the existence of legal subordination.

LABOR OBLIGATIONS

Decree-Law 49/2021, of 30th of June, 2021

Extends the date on which Decree Law no. 58/2020, which created the Legal Regime of Insurance for Work Related Accidents and Professional Illnesses, shall come into force.

According to this diploma, the regime foreseen in Decree-Law no. 58/2020 will only come into force on the 1st of July, 2022, thus giving companies one more year to adapt to this new regime.

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