

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 2022

OPINION

LEGISLATION

LAW NO. 8/X/2022, OF 16 MAY 2022

With the new Law that defines the general regime for the prevention and control of smoking, the Cape Verdean Government undertakes another effort to ensure better protection of the public health, adapting measures to prevent and reduce tobacco consumption, nicotine addiction and exposure to smoke.

This is indeed a valuable public health measure. Not only because we are living an epidemiological transition situation, but also because this is one of the most effective vehicles to prevent some of the death causes among the Cape Verdean population: cardiovascular diseases, respiratory infections, and tumors.

Among other measures foreseen in the Law, it should be highlighted the prohibition of minors of eighteen years old in activities related with tobacco products, such as, tillage, industrial and agriculture activities, transportation, and promotional activities of such products. Additionally, the Law also forbids the use of tobacco in closed and semi closed spaces, for collective use, so as to protect employees.

Even though the Law does not foreseen, explicitly, any sanction to employees (but only to users or holders of establishments where it is forbidden to smoke), the Labor Code foresees, among other duties, the employees duty to (i) follow the employers instructions concerning the work execution, except if such instructions are contrary to their rights and guarantees; (ii) observe the hygiene and security measures in the workplace; and (iii) to fulfill with all obligations foreseen in the law, collective work regulations or labor contract.

Despite the employers may, amongst other measures, issue internal rules about the prohibition to smoke in the workplace or adapt their internal rules of procedure to this new reality, we understand that concerning employees who breach any rule foreseen in Law 8/X/2022, of 16 May 2022 during their work hours and in their workplace, the employers may initiate a disciplinary procedure for breach of employee's labor duties.

The Law, that will entry into force on 23rd October 2022, also prohibits, among other measures, the advertising, promotion and sponsorship of tobacco products or tobacco brands, regulates the places where tobacco is sold, introduces the need for a license for the sale and marketing of tobacco, and introduces a prohibition for smoking in closed and semi closed workplaces.

DECREE-LAW 24/2022 OF 30 JUNE

It is the third amendment to Decree-Law no. 58/2020, of 29 July 2022, which establishes the Legal Regime of Compulsory Insurance for Work Related Accidents and Professional Illnesses.

Due to the strong repercussions felt in the Cape Verdean economy, generated by the pandemic, as well as the conflict between Ukraine and Russia, it was considered that the conditions for the then scheduled entry into force of this Decree-Law on the 1 July 2022 were not met.

As such, this diploma amends Decree-Law no. 58/2020, of 29 July 2022, establishing as the new date of entry into force 1st January 2023.

CASE LAW

Sotavento Court of Appeal - Judgement 80/2022

Retirement calculation; allowance; timetable exemption; omission; discount; abuse of right.

In this case, the Plaintiff, employee, requested that his retirement pension should be calculated according to the time of service, with reference to the normal retribution, including all benefits monthly paid to him, including “diuturnidades” (seniority allowance), complementary retribution, timetable exemption and Christmas allowances.

In this sense, it was analyzed if the Plaintiff was entitled to receive a retirement pension which also includes the benefit paid to him by means of allowance for being exempt from fixed work schedule, even though he had not paid social security contributions on that amount.

The Court considered undoubtful that the Social Security scheme is heavily dependent on the payment of contributions by its beneficiaries and that the extent of social rights is in part dependent on the compliance with that same obligation to pay.

Taking into consideration that allowance for being exempt from fixed work schedule is included in the concept of remuneration, and that the Court correctly analyzed articles 70 and 87 of the Staff Regulations, the Defendant had the obligation to make the respective deductions.

The Court of Justice considered that, even without any training in Law, the union leaders could not ignore the fact that the Defendant, as an employer, had the obligation to enlist the employees in the Social Security, as well as to pay the respective contributions.

Furthermore, it is the Court’s understanding that the silence by the employee does not create any legitimate expectation to the employer. Hence, the Court considered that there are no facts that allow to conclude that the Plaintiff acted contrary to the principle of good faith by demanding such benefits, despite not having performed the social security contributions that had to perform.

For these reasons, the Court considered that there were no grounds to sustain any abuse of right on the part of the Plaintiff, and decided to uphold the understanding of condemning the Defendant to correct the retirement pension, recognizing that the allowance for being exempt from fixed work schedule should be included in the calculation of the retirement pension, demanding, however, that all due contributions for the Social Security, concerning the requested period, are duly performed (employee and employer).

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