

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.

NOVEMBER 2022

OPINION

LEGISLATION

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

On 23rd October 2022 it entered into force Law No. 8/X/2022, of 16 May, a new legislation that defines as a rule the prohibition of smoking in closed and semi-closed places, as well as on public transport.

The law, approved in March, aims at applying in Cape Verde the best international practices and guidelines regarding tobacco consumption, protecting passive smokers, thus reducing the harmful effects to health. Hence, it aims to establish tobacco consumptions prohibitions in closed and semi-closed spaces, with the intention to be used as collective spaces, to protect the employees, tourists and general population from environmental tobacco smoke or second-hand tobacco, avoidable polluting, of internal air.

Despite the above mentioned, the employers may, by its own initiative, establish and provide alternative spaces for smoking employees, as long as such places are dully identified.

Now, one month after the entry into force of this Law, it is essential to follow the evolution of its application, and, more importantly, the monitoring of compliance with these rules, since the good will of this diploma will be worthless if it is not properly enforced.

CASE LAW

Sotavento Court of Appeal - Decision 96 /2022

Lay-off; refusal of payment; suspension of the employment contract

The Plaintiff, an employee of a Company, was exercising his functions in another Company under a secondment agreement. The Company where he was working intended to terminate the secondment agreement. Following this intention, a termination agreement was signed on 18 May 2022, ending the secondment effects on 30 June 2022.

Until 30 June 2022, the Company to which the employee had been assigned to wanted him to be under the layoff regime until the end of the secondment agreement, due to financial difficulties. This suspension of the contract was agreed in the termination agreement, entered between the employee and the Company to which he was assigned, which stipulated that the latter would go on layoff regime, with the employee only receiving 70% of he's remuneration, 35% of which would be paid by each company.

However, when the Company to which the employee was assigned communicated and asked the original employer Company to apply the layoff regime, it refused and also refused to pay the 35% of remuneration to the employee.

In view of this unfounded refusal, in the understanding of the Company where the employee was assigned, since it considered that the requirements were met, it had to pay only 35% of the employee's remuneration until the date of termination of the secondment agreement (i.e. until 30 June 2022), claiming that the employee was not under the layoff regime because the employer did not want him to stay and it was, therefore, the original employer's responsibility to pay the remaining outstanding remuneration to the employee.

As he was not reimbursed for the missing amount (35%), the Plaintiff brought an action against the Company to which he was assigned, so that the same company was condemned to pay the remainder of his total remuneration.

The Appeal Court, after appeal, decided that the Plaintiff was only entitled to 70% of his remuneration, as the existence of the agreement to suspend the employment contract (which effectively occurred) was not in question, and therefore only this amount was in cause. Nevertheless, the Company where the employee was assigned was ordered to pay the remaining 35% owed by the original employing Company.

The Court pointed out that the Company to which the employee had been assigned could not have left the employee unprotected by only paying 35% of his remuneration, knowing that the employing Company would not pay its share. Instead, it should have ensured the payment of 70% of the retribution to the employee, and subsequently exercised its possible right of recovery in relation to the 35% from the employing Company.

28 November 2022

For more information on this newsletter please contact:

MAFALDA OLIVEIRA MONTEIRO Mafalda.Monteiro@mirandalawfirm.com
NUNO GOUVEIA Nuno.Gouveia@mirandalawfirm.com
PAULA CALDEIRA DUTSCHMANN Paula.Dutschmann@mirandalawfirm.com
PEDRO BORGES RODRIGUES Pedro.Rodrigues@mirandalawfirm.com

© Miranda & Associados, 2022. Reproduction is authorised, provided the source is acknowledged.

WARNING: The texts contained in this newsletter are provided for general information purposes only, and are not intended to be a source of advertising, solicitation, or legal advice; thus, the reader should not rely solely on information provided herein and should always seek the advice of competent counsel.

This Labor Newsletter is distributed free of charge to our clients, colleagues and friends.

If you do not wish to continue receiving it, please reply to this e-mail.