

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.

FEBRUARY 2023

OPINION

WHAT TO EXPECT ABOUT THE NEW LEGAL FRAMEWORK FOR THE INSTALLATION, MANAGEMENT AND OPERATION OF TOURIST RESORTS AND ACCOMMODATION.

By means of Decree-Law No. 45/2022 of 7 October (“**Decree-Law**”), the Cape Verdean Government seeks to create legal conditions for increasing the quality of tourism services in its territory, contributing to the competitiveness of that sector in the global market. Being this sector of paramount importance for the Cape Verdean economy, this Decree-Law aims to contribute to its growth, while not neglecting the sustainable development of the sector, quality, culture and human rights.

One of the aspects on which Decree-Law focuses is the professional training of employees in the tourism sector. Thus, in this way, sub-paragraph I of paragraph 2 of article 11 imposes the obligation on tourist accommodation establishments to “*promote continuous training of employees, as a guarantee of the quality of the services provided.*”

We can conclude from this legal provision that the continuous training of employees is not an autonomous objective but goes a little further: through continuous professional training, not only are the employees of that sector provided with more skills to develop their knowledge, but that knowledge will also contribute to the improvement of services to be provided to consumers, in this case tourists, fostering the attractiveness of Cape Verde in the global tourism sector. In accordance with the Decree-Law, the Government acknowledges that it is not enough for Cape Verde to have only unique natural attractions to attract tourists, namely beaches and weather conditions, but also to have a high quality of services provided by tourism operators so that it is also a distinctive element of that sector.

It’s important to mention that Legislator’s focus on professional training is not limited to the tourism sector. In fact, the Labor Code (“**LC**”) of Cape Verde contains several provisions on this topic, always with the aim of promoting the professional skills of employees. Among the various rights that Article 36 establishes for the benefit of employees, the legislator has established the right to “*benefit from professional training granted by the company.*”

The legal framework on professional training not only imposes obligations on the employer in this issue. It sets forth a duty of professional training to employees, encouraging them to “*watch over their professional training, striving to acquire the necessary knowledge with a view to the systematic and permanent improvement of their professional performance*”. In fact, the LC provides for the sanctioning of employees who culpably fail to comply with their obligations related to their professional training.

It is thus evident that the Cape Verdean Government focused in promoting the training of employees, but these employees must also actively seek opportunities to increase their technical and professional knowledge.

JURISPRUDENCE

Court of Appeal of Sotavento – Ruling N.º 1191 de 2022

Computation of retirement pension; timetable exemption allowance.

In the ruling under review, the Claimant employee requested that the amounts received by him, as timetable exemption allowance, be included in the computation of his retirement pension. The Claimant argued that the amount of the retirement pension should be computed by taking into consideration the benefits paid monthly to the employee on a permanent basis, thus including that allowance. The Claimant further argued that the employer, in a similar situation that occurred in the past, included the timetable exemption allowance in the computation of the retirement pension of an already retired employee.

In its Statement of Defense, the Defendant employer acknowledged that the Claimant was entitled to the timetable exemption allowance, but that he never deducted any amount from that allowance for the computation of the retirement pension. According to the Defendant's arguments, the amount of the retirement pension to be received by the Claimant could only include an amount over his exemption allowance if those amounts had been previously discounted during the Claimant's employment. Given that that deduction was not made, the retirement pension does not include those deductions.

The Defendant further argued that the Claimant never proceeded with the discount, nor expressed his interest in such discount. In its Statement of Defense, the Defendant clarifies that the employees are covered by a private social security system, which is based on the principle of group solidarity. The private system grants protection to the employees to the extent to the contributions previously made. Given that the Claimant did not deduct the amounts related to the timetable exemption allowance, it is not fair that he now wishes to receive that amount, thus breaching that fundamental principle.

The Defendant suggests that the Claimant should not focus on the amount that he should receive as retirement pension, but rather on the assumptions of the same: determination of the reference remuneration; deductions and calculation of the pension.

In its Ruling, the Labor Court ruled in favor of the Claimant, thus ordering the Defendant to recompute the amount of the retirement pension to be received by the Claimant, taking into consideration the amounts paid as timetable exemption allowance. Subsequently, and after an appeal by the Defendant against that decision was filed, the Court of Appeal of Sotavento unanimously rejected the Defendant's appeal as unfounded, thus clarifying the rule that to calculate the pension it needs to taken into account all regular and periodic installments, even if the employer did not performed any discounts over the same.

UPCOMING LABOR OBLIGATIONS

Display of the personnel's chart

Until 31 of March, employer must display in a location easily accessible and visible to the employees the personnel's chart, which should be sent, along with three copies, either in computer support or by accessing a database, with updated data regarding the previous month of February, to the General Labor Inspectorate in the Municipality of Praia for employees whose workplace is located on the islands of Sotavento (Maio, Santiago, Fogo and Brava), or to the Regional Delegation of the General Labor Inspectorate in São Vicente, for employees whose workplace is located on the islands of Barlavento (Santo Antão, São Vicente, Santa Luzia, São Nicolau, Sal and Boa Vista).

The personnel chart shall contain for each of the company's employees, among other information, their full name, professional category, basic salary and other benefits, date of admission and scheduled holiday period.

10 February 2023

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