

Labor Newsletter Cape Verde

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

AUGUST 2023

OPINION

Amendment of the legal framework concerning paternity and maternity leave.

It was published in the official gazette Law 32/X/2023, of 4 August (hereinafter “Law 32/X/2023”), which amends some legal provisions concerning maternity and paternity leaves foreseen in the Labor Code.

Thus, and in accordance with Law 32/X/2023, article 271 of the Labor Code now stipulates that the maternity leave will be of 90 days, instead of 60 days.

In similar terms, it was also increased the paternity leave which duration is now 10 mandatory working days, to be taken immediately after the birth of the child, instead of 2 justified work absences after the birth of the child.

As stated in the preamble of Law 32/X/2023, the paternity leave aims to end a discriminatory situation between civil servants of the Cape Verdean State and other employees. Under the new Legal Framework for Public Employment, approved by Law 20/X/2023, of 24 March, civil servants are now entitled to a paternity leave of 10 mandatory working days, being such regime extended to all employees of the private sector, in accordance with paragraph 2 of article 271 of the Labor Code.

With the approval of Law 32/X/2023, the Parliament intended to grant the paternity leave to all employees, promoting equal opportunities to all men and women, not only concerning employment, and working conditions, but also concerning paternity leave.

JURISPRUDENCE

Court of Appeal of Sotavento – Ruling N.º 55/2023

Claim value and appeal admissibility

As per the ruling under review, the Claimant requested for the dismissal carried out by the Defendant to be deemed as null and void, requesting the Defendant to be ordered to pay him the monthly base salary due for the period of 1 year, plus salaries until reinstatement, as well as overdue and unpaid vacation days. In the Claim, the Claimant also requested to be paid a compensation for non-pecuniary damage.

According to the Claimant’s arguments, the dismissal was not preceded by any disciplinary procedure, and that it was carried out in a manner that considers degrading and inhuman. The Claimant further claims that has always been an exemplary employee and that has never committed any disciplinary offence during his employment relationship.

The Defendant replied arguing that the Claimant was repeatedly absent from work, having even been imposed a disciplinary sanction of 5 days for not having reported the disappearance of a television, a disappearance of which he was aware and to which he was obliged to report.

The Defendant further argued that the Claimant had abandoned his job position. When the latter requested to enjoy a vacation period, he did not wait for such request to be approved by his superior and only resumed his professional activities 1 month after the supposed end of that period. However, upon his return, the Claimant did not justify the work absences. During the Claimant's vacation period of leave, and since it had not been approved and to the fact that the Claimant failed to resume his professional activities in a timely manner, the Defendant initiated the respective disciplinary procedure. Due to his absences and because his whereabouts and address were unknown, the Defendant published the initiation of the disciplinary procedure in a newspaper. In view of these acts, the Defendant argues that the Claimant abandoned his job position, and that the dismissal should therefore be considered lawful.

The Court ruled that the dismissal of the Claimant was null and void and ordered the Defendant to reinstate the Claimant and, if opposed such reinstatement, the Defendant should pay the Claimant the amount of CVE 300,000\$00, as well as the salaries since the termination date until the date of his reinstatement.

Given that the Defendant was not in agreement with the ruling issued by the Court, the Defendant appealed but the same was not admitted by the Sotavento Court of Appeal.

Before the Court, the parties agreed that the value of the lawsuit was CVE 450,000\$00 and, in accordance with article 287 of the Civil Procedure Code, the value of the claim shall be as agreed by the parties. Article 587 of the Civil Procedure Code stipulates that an appeal against a ruling may be submitted in cases where the value of the ruling exceeds the jurisdiction of the Court. Accordingly, and considering that Law 88/VII/2011 of 14 February stipulates that the district court's jurisdiction is set at CVE 500,000\$00, and taking into consideration that the parties agreed that the value of the claim was CVE 450,000\$00, the Sotavento Court of Appeal did not accepted the appeal.

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