

Labor Newsletter

CAPE VERDE

NOVEMBER 2020



OPINION

The new (and last?) layoff regime under Law No. 103/IX/2020, of 20 October 2020

On the last 29 October, it was published in the official gazette Law No. 103/IX/2020, which undertakes the first amendment to Law No. 97/IX/2020, of 23 of July 2020, which sets forth exceptional and temporary workplaces protection measures within the COVID-19 pandemic through the simplified suspension regime of the employment contract.

Upon two simplified regimes for the suspension of employment relationships, the last measures offer new features comparing to the early regimes, highlighting, as we will see, the possibility of the employees to perform their work, even if partially compared to the normal work schedule, resembling to partial layoff regime existent in other jurisdictions with Lusophone matrix.

Therefore, it has now been inserted Article 10-A to the law previously in force, under which the employer has the power to request the provision of work to the employee covered by the regime for suspension of the employment relationship, up to the limit of 40% of its monthly or pro rate working time, according to his/her type of employment contract.

This request must be preceded of information given to the employee regarding the working time to be provided, having the employer the obligation to keep a written record of such work and such record must also contain the employee's signature.

The provision of work, besides binding the employee and the employer to the conventional employment contract rights and duties, does not grant any other retributive right to the employee besides the 70% retribution benefit already in force in the prior layoff regimes.

It was urgent a different regime (than the regime that was previously in force) that aimed at the revitalization of companies' activities, but, nonetheless, such regime comes up in a moment in which the touristic activity, which represents, according to 2019 data, 21.9% of Cape Verde's GDP, is completely stalled since April 2020.

The hospitality industry, as well as all the other industries that are linked to the tourism sector, do not have any source of income since April of the current year, and no measures have yet been approved that effectively end the undergoing situation in Cape Verde.

Moreover, these companies are bound to bear 35% of its employees' salary since April without any return, while they keep all the inherent expenses to inalienable services, such as the supply of water and electricity as well as the need to secure their debts to suppliers.

This Law shall be in force until 31 December 2020, but if it is not closely monitored by effective support policies to the companies in order to safeguard their sustainability as well as the maintenance of workplaces, we do not foresee anything else than the companies decay and, consequently, that of the Cape Verde economy.

CASE LAW

Barlavento Court of Appeal – Decision of 17/01/2019

Workplace abandonment; compensation by lack of prior notice; wrongful dismissal.

This case involved the assessment of an employee's situation that, without formally report to its employer, decided not to attend its workplace and did not provide any justification to such effect.

On 16 November 2014 the employee fainted on its workplace, being rescued on spot and conducted to the hospital. On the following day, the employee returned to its workplace and delivered a letter to its employer along with a medical certificate, which laid down a request to change its work tasks and, in case the request was not attended, that she ought to remain at the workplace waiting for orders. However, after that day, the employee did not return to work and had not provided any work since 17 November 2014.

Besides not justifying its absence, the employee no longer informed the employer about its whereabouts and, as such, this last did not paid any salary since such date.

About 3 months after the first absence, the employer sent a notice to the employee in which deemed the labor contract to be terminated from the date of the first unjustified absence, fact that was challenged by the employee as she claimed that her dismissal was wrongful on the grounds that it had not been preceded by a disciplinary procedure.

The Court ruled in favor of the employer, considering that neither the disciplinary procedure nor the notice were required, since unlike the other Portuguese-type of laws, the Cape Verdean legislation does not mandate that any notice has to be made to the employee, unless the employer intends to obtain a compensation due to the lack of prior notice.

DEADLINES AND ALERTS

Deadline to communicate the intention to apply to the regime for suspension of employment contracts under Law No. 103/IX/2020, of 29 October 2020 – since the law has come into force on 30 October 2020, the deadline to carry out the communication is 30 November 2020.

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