

EMPLOYMENT AND SOCIAL SECURITY BULLETIN

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Amendments to the legal framework for the entry, stay, departure and removal of foreigners from Portuguese territory

On August 26 they entered into force the amendments to the legal framework for the entry, stay, departure and removal of foreigners from Portuguese territory, approved by the Law no. 18/2022. As far as employment related matters are concerned, we highlight the following:

1. New visa for job seeking

New type of visa with the following features:

- Allows its holder to enter and stay in Portuguese territory for the purpose of looking for a job;
- Maximum duration of 120 days, with possible renewal for an additional 60 days period and allows one entry in Portugal;
- Enables its holder to render a professional activity under an employment contract until the visa's expiration date or the granting of the residency permit;
- Upon expiration of the visa, if no employment relationship was initiated nor the subsequent administrative process was started, the holder of the visa must leave the country and may only apply again for this visa once a period of one year has elapsed over the expiry date of the previous one.

2. Temporary stay and residence visas for foreign citizens looking to work from Portugal to foreign employers or clients.

- The temporary stay visa allows the entry and stay in Portuguese territory for a period of less than one year in order to remotely render a professional activity under an employment contract or as self-employed person, to a legal or natural person with domicile or headquarters located abroad;
- The residence visa may be granted to both employees or self-employed persons for the remote performance of a professional activity to a legal or natural person with domicile or headquarters located abroad;

3. The procedure to issue visas to nationals of CPLP countries was streamlined

When the visa applicant is a national of a State where the Agreement on Mobility among the CPLP (Portuguese Speaking Countries Community) Member States is in force, a simplified procedure is applicable, which comprises, namely:

- The SEF's prior opinion is not required;
- The relevant services directly and immediately check the Schengen Information System ("SIS") database;
- The issuance of the visa may only be denied if a prohibition for the entry or stay is recorded in the SIS.

4. Possibility of performing a professional activity while the residence permit procedure is pending

In those situations in which, for reasons not attributable to the applicant, the application for residence permit is pending, the applicant may undertake a professional activity.

5. Possibility of performing a complementary professional activity for citizens holding a research, study, internship or voluntary residence permit

Those who hold a residence permit for research, study, internship or volunteering may render a professional activity, under an employment contract or as self-employed person, provided that such activity is complementary to the one underlying the issuance of the visa.

Posting of working schedules for mobile employees – amendment to the Government Order no 7/2022

It was published on August 30 the Government Order no 216/2022 which amended the Government Act 7/2022 on the conditions for posting the working schedules for employees assigned to operating vehicles. It was postponed until February 28, 2023, the deadline for employees to choose for any of the modalities foreseen in articles 3rd and 4th subparagraphs a), c) and d) of the mentioned Order.

Legal Alerts

Extension Orders

The following Extension Orders (“EO”) were published:

- EO of the amendments to the collective bargaining agreement (“CBA”) executed between the Associação Portuguesa de Hospitalização Privada – APHP and FESAHT – Federação dos Sindicatos da Agricultura, Alimentação, Bebidas, Hotelaria e Turismo de Portugal and other. The extension is not applicable to employees unionized at the Sindicato dos Trabalhadores e Técnicos de Serviços, Comércio, Restauração e Turismo – SITESE. The new salary scale and monetary clauses are applicable as from April 1, 2022;
- EO of the amendments to the CBA executed between AES – Associação de Empresas de Segurança and Federação dos Sindicatos da Indústria e Serviços – FETESE and other. The extension is not applicable to employment relationships in which employees unionized at the Federação dos Sindicatos de Transportes e Comunicações – FECTRANS, at CESP – Sindicato dos Trabalhadores do Comércio, Escritórios e Serviços de Portugal and at the Sindicato dos Trabalhadores da Aviação e Aeroportos – SITAVA are parties, and to employers represented by the Associação Nacional das Empresas de Segurança – AESIRF. The monetary clauses are applicable as from April 1, 2022;
- EO of the amendments to the CBA executed between AES – Associação de Empresas de Segurança and the Sindicato dos Trabalhadores e Técnicos de Serviços, Comércio, Restauração e Turismo – SITESE. The extension is not applicable to employment relationships in which employees unionized at the Federação dos Sindicatos de Transportes e Comunicações – FECTRANS, at CESP – Sindicato dos Trabalhadores do Comércio, Escritórios e Serviços de Portugal and at Sindicato dos Trabalhadores da Aviação e Aeroportos – SITAVA are parties and to employees represented by Associação Nacional das Empresas de Segurança – AESIRF. The new salary scale and monetary clauses are applicable as from April 1, 2022;
- EO of the CBA executed between the Associação Portuguesa de Escolas de Condução – APEC and the Federação dos Sindicatos de Transporte e Comunicações – FECTRANS. The new salary scale and monetary clauses are applicable as from November 1, 2021;
- EO of the amendments to the CBA executed between Associação Portuguesa das Indústrias de Cerâmica e Cristalaria – APICER and the Sindicato dos Trabalhadores das Indústrias de Cerâmica, Abrasivos, Vidros e Similares, Construção Civil e Obras Públicas – SINTICAVS (ceramic industry- factory employees). The extension is not applicable to employees unionized at unions represented by the Federação Portuguesa dos Sindicatos da Construção, Cerâmica e Vidro – FEVICCOM. The new salary scale and monetary clauses are applicable as from May 1, 2022;
- EO of the amendments to the CBA executed between GROQUIFAR – Associação dos Grossistas de Produtos Químicos e Farmacêuticos and the Federação de Sindicatos da Indústria, Energia e Transportes – COFESINT and others (pharmaceutical products). The extension is not applicable to employers represented by NORQUIFAR – Associação Nacional dos Importadores/Armazenistas e Retalhistas de Produtos Químicos e Farmacêuticos nor to employees affiliated in unions belonging to the Federação Intersindical das Indústrias Metalúrgicas, Químicas, Elétricas, Farmacêutica, Celulose, Papel, Gráfica, Imprensa, Energia e Minas – FIEQUIMETAL. The new salary scale and monetary clauses are applicable as from April 1, 2022;
- EO of the CBA executed between OGMA – Indústria Aeronáutica de Portugal, S.A. and the Sindicato dos Trabalhadores da Aviação e Aeroportos – SITAVA and others. The new salary scale and monetary clauses are applicable as from April 1, 2022;
- EO of the amendments to the CBA executed between GROQUIFAR - Associação dos Grossistas de Produtos Químicos e Farmacêuticos and the Federação Intersindical das Indústrias Metalúrgicas, Químicas, Elétricas, Farmacêutica, Celulose, Papel, Gráfica, Imprensa, Energia e Minas – FIEQUIMETAL (pest management and environmental health). The new salary scale and monetary clauses are applicable as from April 1, 2022;
- EO of the amendments to the CBA executed between Associação Empresarial do Alto Tâmega – ACISAT and FEPCES – Federação dos Sindicatos do Comércio, Escritórios e Serviços. The territorial scope of the extension includes the municipalities of Boticas, Chaves, Montalegre, Ribeira da Pena, Valpaços and Vila Pouca de Aguiar. The new salary scale and monetary clauses are applicable as from April 1, 2022;
- EO of the amendments to the CBA executed between AES – Associação de Empresas de Segurança and the Sindicato dos Trabalhadores de Serviços de Portaria, Vigilância, Limpeza, Domésticas e Actividades Diversas – STAD and other. The extension is not applicable to employees represented by the Federação dos Sindicatos de Transportes e Comunicações – FECTRANS, by CESP – Sindicato dos Trabalhadores do Comércio, Escritórios e Serviços de Portugal and by the Sindicato dos Trabalhadores da Aviação e Aeroportos – SITAVA and to employers represented by the Associação Nacional das Empresas de Segurança – AESIRF. The new salary scale and monetary clauses are applicable as from April 1, 2022;

Case Law Highlights

COLLECTIVE BARGAINING AGREEMENT (“CBA”) – EXTENSION ORDERS – LIMITS TO THE BROADENING OF THE SCOPE OF APPLICATION OF A CBA

Judgement of the Supreme Court of Justice from 06/22/2022 – Process 1842/19.9T8FAR.E1

In our March 2022 Bulletin, we highlighted a judgement of the Évora Court of Appeals that addressed the question of the limits to the broadening of the scope of application of a CBA, specifically whenever they are at stake companies affiliated to an employers association in an economic area of activity where several CBAs are potentially applicable. In such judgement, the Court ruled that even if a Government Extension Order is issued, the CBA that under such Order could potentially be applicable to the employees, may not be deemed applicable in a company that is affiliated to an employers association that has executed another CBA. The Court sustained that allowing such type of extension would amount to a violation of the principles of contractual autonomy and freedom, of legal certainty (so that a predictable employment framework exists) and, not least, of subsidiarity (from which it flows that Government Extension Orders can only be enforced when there are no potentially applicable negotiated CBAs).

In the Supreme Court’s Judgement identified above, the understanding adopted by the Évora Court of Appeals was confirmed. One can read on the Judgement’s summary that:

- I – An extension order may not determine the application of a CBA to employees who are not unionized at the union that executed the agreement but that are unionized in another union.
- II – Any other solution would go against the principle of freedom of affiliation in unions, understood as the freedom to either join or not to join a specific union.
- III – Furthermore, the right to execute collective bargaining agreements by the competing union(s) could also be at risk, as such understanding could hinder the latter’s right to negotiate an autonomous CBA with the employer or the employers association.
- IV – Also, an extension order may not determine the application of a CBA to employers affiliated in an employers association which is not the one that executed such CBA. Otherwise, the right (and freedom) to negotiate and execute CBAs would be infringed.
- V – One should also take into consideration that an extension order may only be issued (and may only be enforceable) regarding employment relationships that are not covered by a negotiated CBA (subsidiarity principle).

MEAL ALLOWANCE – MODIFICATION OF THE PAYMENT METHOD

Judgement of the Supreme Court of Justice from 07/14/2022 – Process 15770/20.1T8LSB.S1

The Supreme Court looked at a situation in which a company changed the way it paid the meal allowance to its employees from a monthly payment in cash to the granting of a so-called “meal-card” which could be used by the employees in the payment of meals in restaurants or purchases in supermarkets. An union filed the lawsuit against the company sustaining that the payment of the meal allowance by meal-card is an invalid payment method since what is foreseen in the applicable CBA is the granting of an amount in cash. Therefore, the change on the payment method could only be achieved by agreement with the employees or the union.

The Supreme Court of Justice ruled that the understanding sustained by the union would only have legal grounds in case the meal allowance could be considered as part of the employees’ salary. Within this context, the Court backed its ruling on the legal standard according to which the amounts that are due to employees concerning meal allowances are not deemed as salary unless such amounts, in the part exceeding those that could be considered normal, are defined in the employment contract or should be considered as part of the employees’ salary as a result of common practice. The Court ruled that, in those cases in which the meal allowance should not be considered as part of the employees’ salary, the rule of payment in cash is not applicable (please see articles 276th paragraphs 1 and 3 and 258th, paragraph 4 of the Labour Code) and, as a consequence, the change on the payment method does not require the employees’ not the union(s)’ agreement.

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