



Update

Momentum



Labour

November 11, 2015

THE RETURN OF THE 35-HOUR WEEK IN THE PUBLIC SECTOR

Law No. 68/2013, of August 29, which was published in 2013, increased the duration of standard working hours in the public sector from seven to eight hours a day, and from thirty-five to forty hours a week. This increase was based on the attempt to align the public and the private sectors, and also to bring this regime close to the ones of the rest of the European Union. Along with the abovementioned extension to working hours, this law also established that this extension "is mandatory in nature and supersedes any special laws and instruments of collective labour regulation".

By the time it entered into force, this law was ruled unconstitutional by the public sector unions, namely because this change introduced another hour of daily work without the respective increase in remuneration.

However, only on October 7 of this current year did the Constitutional Court declare the rules unconstitutional, transferring the legitimacy to enter into and conclude collective agreements as a public employer from the Ministers of Finance and of Public Administration to local authorities.

This decision, which arises after the request for successive review of constitutionality presented by the Portuguese Court of Auditors, bases the declaration of unconstitutionality on a flagrant violation of the principle of local autonomy enshrined in Article 6, § 1 of the Constitution of the Portuguese Republic. With this decision, the Constitutional Court grants local authorities the possibility of implementing the 35-hour working week, without prior authorization from the Government responsible for the Treasury and Public Administration, allowing said local authorities to act as public employer, autonomously against the State.



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As a result of this decision, and if the 35-hour week becomes the common choice, it seems clear that the division between local administration employees, working 35 hours, and central administration employees, working 40 hours, may lead to an infringement of the principle of equality.

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