INFORMATION GUIDE

WORDING OF CLAUSES OF COLLECTIVE LABOUR AGREEMENT INSTRUMENTS IN THE PROSPECT OF GENDER EQUALITY AND NON-DISCRIMINATION

GOVERNO DE PORTUGAL

CITE
COMISSÃO PARA A IGUALDADE NO TRABALHO E NO EMPREGO

Collective labour agreement Instruments, namely those resulting from bargaining processes, are an important instrument of consolidation of the legal rules on equality and non-discrimination, both through the possibility of agreement regarding clauses which forbid discriminating practices, by enhancing what is established in the law, and, through, for example, putting in place *positive measures,* specially agreed on to fight widespread situations of professional segregation in admission, training and career progression.

On the other hand, if agreement on the clauses regarding balance is done in a framework of incentive to sharing parental leave, time off for breastfeeding/ lactation, child-care leave and the equal use of a flexible or reduced working hours so that it can act as a catalyst for attitude changes and invert the so-far persistent trend to regulate balance in a feminized approach - which all in all is a way of deepening inequality – it can act as an efficient means to promote the sharing of responsibility between men and women.

In the same sense, the bargaining of clauses which induce parental leave exclusively for male workers may strongly contribute to overcome enduring gender prejudice at different levels for both men and women. Collective agreement is also the privileged forum for taking a stand on salary disparities, where together social partners can identify and discuss the elements lying at the basis of salary differences and come up with a process to eliminate those differences.

For all this, collective bargaining can be a great opportunity to promote equality between men and women in labour and employment, and it should not be wasted. It is thus essential for those involved in the bargaining of collective contracts and agreements to deepen their knowledge of gender equality issues.

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After more than one year of regular trialogues at the Comissão para a Igualdade no Trabalho e no Emprego - CITE (Commission for Equality in Labour and Employment) with the purpose of appraisal of collective bargaining provisions

with regards to their compliance with equality between men and women in Labour Agreement Instruments for bargaining and arbitral decisions, under article 479 of the Labour Law and article 9 of Law Decree nº76/2012, of 26 March, over 200 Collective Labour Agreement Instruments and two arbitral decisions have been assessed, of which 24 reasoned opinions, consisting of 70 clauses, have been endorsed to the public prosecutor's office.

During 2011, CITE was notified of two rulings given in a special litigation process (art. 162 of the Labour Law) by the Lisbon Labour Court, following reasoned opinions issued by the Commission. In the current year (2012) another two rulings have been notified. Every ruling given so far has considered the flagged clauses null and void as they are potentially discriminatory and illegal by the tripartite working group operating at CITE.

As to the assessed clauses, which have not been considered illegal or discriminatory but on which there has been a tripartite deliberation attesting to some degree of formal inadequateness regarding the legislation in force in the fields of gender equality or parenting, CITE has produced and referred recommendations on 17 Collective Labour Agreement Instruments to the contracting parties (concerning the inadequacy of 52 clauses). The parties were invited to promote the changes required to adapt to those clauses. So far, most parties have made arrangements to accept the recommendations made by CITE and change the corresponding Collective Labour Agreement Instruments.

The current information guide is the result of that work which has vented the acknowledgement of the fact that most irregularities and noncompliances are recurrent in several bargaining Collective Labour Agreement Instruments and Arbitral Decisions, proving that their occurrence can be effectively prevented.

Without meaning to limit the freedom and willingness of the parties, this guide is designed to act as an instrument to prevent irregularities and support the promotion of equality between men and women in labour and employment, in the wording of clauses of Collective Labour Agreement Instruments.

I

Under i) and j) article 3, Law Decree nº 76/2012, of 26 March, the legal assessment of clauses of Collective Labour Agreement Instruments, designed to fight gender discrimination, under article 479 of the Labour Law[1], is CITE's (Commission for Equality in Labour and Employment) prerogative[2].

It is a prerogative recently assigned to CITE which came into force only on 1st December 2010 (Law Decree nº 124/2010, of 17 November, later repealed by Law Decree nº 76/2012, of 26 March). This prerogative was first put into actual practice in April 2011, on unanimous approval of the methodology to be followed, from the representatives of the entities which are part of the group for the legal appreciation of the clauses contained in the Collective Labour Agreement Instruments[3].

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[1] A legal standard which sets a time frame following the publication of the collective labour agreement instrument or arbitral decision in a compulsory or necessary arbitration procedure for CITE to assess the legality of the standard in the fields of equality and nondiscrimination and if there are cases of discriminatory provisions, CITE refers them to the prosecutor at the court with jurisdiction for assessment. If it is concluded that there is an illegal provision, a judicial declaration of voidness is declared by the prosecutor regarding that disposition. That judicial ruling is published in the Bulletin of *Labour and Employment*.

[2] CITE (Commission for Equality in Labour and Employment), is a tripartite collegiate body, with administrative autonomy and legal personality, whose mission it is to pursue equality and non-discrimination between men and women in labour, employment and vocational training, and cooperate in the application of legal provisions and conventions in the matter, as well as those regarding parental protection and strike a balance between professional activity and family and personal life, in the private sector, in the public sector and in the cooperative sector. This Commission, which operates as a national equality mechanism, consists of the following members:
a) A representative of the ministry with jurisdiction over the employment area, who presides;
b) A representative of the ministry with jurisdiction over the Equality area;
c) A representative of the ministry with jurisdiction over the Public Administration area;
d) A representative of the ministry with jurisdiction over the Solidarity and Social Security area;
e)Two representatives of each union who sit on the Social Consultation Committee;
f) A representative of each employers' association who sit on the Social Consultation Committee.

[3] Article 9Equality in collective bargaining
1 —For the purpose of the provision in article 479 of the Labour Law, confirmed by Law n.º 7/2009, of 12 February, CITE meets every month to assess the legality of provisions concerning

Whenever the assessment group comes to a resolution, passed by at least a majority of votes, concerning Collective Labour Agreement Instruments, as to their non-conformity with the provisions of the regulation, a 60-day time limit is given to the parties to make the necessary changes to the Collective Labour Agreement Instruments or AD. If that time runs out and the parties have not deposited the necessary changes, a **reasoned opinion** is sent to the state public prosecutor's office with local jurisdiction to declare the nullity of the clauses at issue.

As to the clauses which are not considered illegal but in which there seems to be some unconformity with the regulation, or outdated terminology which might give rise to doubts concerning respect for the equality and non-discrimination principle between men and women, or parenting, the President of CITE has the power to make **recommendations** to the contracting parties and invite them to make the necessary changes to adapt those clauses to the law.

II

The assessment of Collective Labour Agreement Instruments, published in the Bulletin of Labour and Employment, carried out by the CITE shows that:

a) There are still many clauses currently in force which are "outdated" with reference to the current law, which were drawn under previous legal regimes now repealed (some of them very old);

b) There are laws which continue to be published but were designed

equality and nondiscrimination in collective bargaining work regulation instruments or in an arbitral decision in a mandatory or necessary arbitration procedure

2 — The following members sit in monthly meetings on equality in collective bargaining :

a) The president of CITE;

b) One representative of each entity represented in CITE;

c) One representative of the department responsible for labour relationships of the ministry with jurisdiction in the employment area ;

d) One representative of the department in charge of inspection in the labour area;

e) Experts in the areas of equality and nondiscrimination between men and women at work and in the job and collective bargaining, up to a maximum of four, invited by the president.

based on century old understandings, today regarded as biased and representing blatant discrimination;

c) There is a group of clauses adopted as "benchmark" clauses, which repeatedly emerge in different Collective Labour Agreement Instruments, but have the effect of spreading illegality because they are not in accordance with the law.

III

Below, some recurrent examples of errors, unconformities or obsolescence under the law are listed. They were detected and identified between April 2011 and September 2012.

In regard to each one of them, a wording suggestion is made. This is not designed to limit or condition contractual freedom and should be understood as the minimum applicable according to the law.

Example A

"CHAPTER ...

Special rights

Female labour

Besides this Collective Employment Agreement (CEA) for most of the workers covered by it, working women are guaranteed the following rights (...)

a) When their child is born, working women are entitled to 120 or 150-day consecutive ordinary parental leave.

Working women

Besides the provisions in this Collective Employment Agreement for most of the workers covered by it, working women are guaranteed the following rights (...)"

a) When their child is born, working women are entitled to 120 or 150-day consecutive ordinary parental leave."

What has been considered not to comply with the law in this kind of clause?

Parenting is a general regime, applicable both to men and women, and so it should not be in a chapter designed for minority groups or groups wrongly considered vulnerable. This is an issue which should be treated in a separate chapter, stating workers' exclusive rights, as well as the possibility to share.

Cataloguing parenting as working women's specific right *(female labour)*, and not as rights sharable by both parents, means the discrimination against working men who are also parents, and that is an administrative infraction under article 24 of the Labour Law, and it also breaches the parenting regime under art. 33 et seq. of the same law.

Suggested wording:

CHAPTER ...

Parenting

Clause ...

Parenting Protection

When their child is born, a working mother and father are entitled to 120 or 150-day leave, which can be shared between them, except for the 6 weeks following childbirth, which only the mother qualifies for ...

Example B

"Justified absences

Justified absences are those which are previously or subsequently authorized by

the employer and those motivated by:

- the birth of a child up to two consecutive days

- the birth of a child: one day."

What has been considered not to comply with the law in this kind of clause?

The father's absences (and the mother's) when their child is born, are considered leave not absences under article 43 of the Labour Law.

Leave, along with time off, is different from absence, with different legal effects, both at payment and at length of service level under the Labour Law. Absences – art. 248 et seq.; leaves – art. 65.

Integrating this absence due to leave in the "absence" clause also represents a breach of the principle of emergency of the absence legal regime, concerning both their causes and the number of absences permitted for each rationale, which goes against article 250 of the Labour Law. Bearing the emergency nature of the absence regime in mind, the granting of absences following the birth of a child cannot be bargained, but the same is not applicable to leave.

Note: A similar norm was declared void by the Lisbon Labour Court, on 09.11.2011, in lawsuit nº2306/11.4TTLSB.

SUGGESTED WORDING:

Absences from work resulting from parental leave should be placed in the part of the Collective Labour Agreement Instruments concerning parental regime and the so-called leaves.

Example C

"Parental leave:

- The father is entitled to a five-weekday leave, consecutive or unsequential, in the first month following the birth of his child;"

What has been considered not to comply with the law in this kind of clause?

It refers to a leave period which is shorter than the current provision in the Labour Law: 10 days mandatory leave. It does not mention the mandatory nature of parental leave the father qualifies for exclusively, 5 of which to be taken immediately after childbirth. This way it breaches article 43 of the Labour Law.

Note: A similar norm was declared void by the Lisbon Labour Court, on 02.12.2012, in lawsuit nº2996/11.8TTLSB.

SUGGESTED WORDING:

The father is entitled to a mandatory 10-weekday leave to be taken during the 30 days following childbirth, 5 of which consecutively and immediately after parturition.

Example D

"Absences are considered justified when they are previously or subsequently authorized by the employer, as well as those due to:

- Spouse or partner's parturition, for 5 days;

- Spouse's parturition, in the following weekdays, in consecutive or unsequential order,"

What has been considered not to comply with the law in this kind of clause?

Exercising the father's parenting rights only depends on his being a parent and not on any kind of formality regarding his marital, social or any other relationship with the mother.

Besides, this clause also mistakes the concept of "leave" for "absence", which, as said above, breaches the principle of emergency of the absence regime. Likewise, the length of the leave periods is outdated under the provision of article 43 of the Labour Law, besides not complying with the principle of equality established in the Portuguese Republic Constitution (article 13).

SUGGESTED WORDING:

There can be no reference to the marital or any other relationship existing between the parents.

As said above, this absence from work should be placed in the part of the Collective Labour Agreement Instruments concerning parental regime and so-called leaves, and their length should comply with the provisions in the Labour Law.

Note: Similar norms have been declared void by several judgements passed by the Lisbon Labour Court (lawsuits nº2996/11.8TTLSB, nº2983/11.6TTLSB)

Example E

"Protection of parenting

Women are entitled to be absent:

- Up to 2 days every month during physiological cycles and payment is optional (…)

Female work

- Time off work, at request, up to two days a month with optional payment;"

Working women's special rights

Two days unpaid release per month, when requested and if strictly necessary, during worker's menstrual cycle."

What has been considered not to comply with the law in this kind of clause?

In keeping with the principle of equality and non-discrimination, women cannot be granted time off/absence "during physiological cycles" without objective reasons, which can be parenting or others. This kind of clause is not considered a positive action measure (art. 27 of the Labour Law), as it is not intended to guarantee the exercise of the rights provided by the law, in equality terms.

Indeed, this kind of clause, without prejudice to the acknowledgement of the historical framework in which they were conceived, may even contribute to deepen cultural models and treatment which discriminate against working women when compared to men.

In this case, working women are granted the right to miss work two days a month in a clause concerning parenting rights without setting a relationship between missing work and parenting.

On the other hand, this kind of clause may embody a breach of the emergency absence regime, according to the provision in article 250 of the Labour Law.

So, unless there is a justification to explain the temporary creation of a positive action measure, the right for only working women to be absent from work is illegal, as it discriminates on the grounds of gender and should not be included in Collective Labour Agreement Instruments.

SUGGESTED WORDING:

Elimination of the clause.

Example F

" Absence, for the purpose of antenatal consultation, up to one day a month, without loss of pay;

Pregnant working women are entitled to miss work to attend antenatal appointments, for as long as necessary and justified, whenever possible outside working hours. Working men are entitled to accompany pregnant women in three antenatal appointments, duly evidenced.

Working men are entitled to accompany pregnant women in two antenatal appointments, duly evidenced.

What has been considered not to comply with the law in this kind of clause?

In this example, the concepts of absence and leave are mistaken once again, and the time frame when leave can occur is wrongly set, as it ignores the provision in article 46 of the Labour Law.

On the other hand, the terminology used may imply the need of a marital relationship (whatever it may be) between the parents, which is not consistent with the Labour Law, the Civil Code and the Constitution.

There should be reference to the father's right to accompany the mother in three antenatal appointments, under article 46 of the Labour Law, and this right does not depend on the parents' marital relationship.

There are no legal restrictions to granting the father the right to more than three releases.

Note: A similar norm was declared void by the Lisbon Labour Court, on 04.11.2012, in lawsuit nº195/11.3TTLSB.

SUGGESTED WORDING:

The father is entitled to three releases to accompany the working mother to antenatal appointments.

Example G

"Maternity leave following stillbirth or miscarriage and other pregnancy termination situations provided in the law will have a 14-day minimum duration and a maximum of 30 days (…)

- In miscarriage or stillbirth cases, this leave is 30 days."

What has been considered not to comply with the law in this kind of clause?

Under the law, stillbirth leave is not regarded as pregnancy termination leave, but as ordinary parental leave.

Pregnancy termination leave (abortion) applies whatever the circumstances in which it occurs, and not only when it is miscarriage, under article 38 of the Labour Law.

SUGGESTED WORDING:

In the case of pregnancy termination, working women are entitled to between 14 and 30 days leave, according to medical recommendation.

Example H

"Working women's special rights

- During pregnancy, women performing tasks which are incompatible with their condition, namely tasks implying great physical effort, trepidation, contact with toxic substances or uncomfortable positions and inappropriate transport, should be transferred, at their request or on medical advice, to tasks that do not affect them, without prejudice to the their statutory pay;

- The right not to perform tasks which are incompatible with their condition namely tasks implying great physical effort, trepidation, contact with toxic substances or uncomfortable positions during pregnancy and up to six months

after parturition on medical advice;

- Not to perform tasks clinically not recommended for their condition, without prejudice to their statutory pay, during pregnancy and up to three months following parturition;"

What has been considered not to comply with the law in this kind of clause?

It should be noted that it is the employer's duty to "*assess the nature, degree and length of the exposure of working women who have recently given birth or who are breastfeeding, so as to determine any risk to their safety and health and the repercussions on their pregnancy or breastfeeding, and the measures which should be taken*", without workers having to take any initiative (request) or get a prescription or medical recommendation. Under article 62 of the Labour Law, employers are responsible for taking the initiative in order to determine the repercussions on the pregnancy or lactation, and take the necessary measures to avoid the workers' exposure to risks. The burden falls on the employer and not on the workers.

In the same sense, section III of chapter V of Law nº 102/2009, of 10 September, which approves the legal framework on safety and health at work, where it is established which activities are forbidden or conditioned for pregnant workers, recent or lactating mothers.

So, it is the employers' legal duty, both as far as risk assessment is concerned generally for all workers, and for pregnant, recent or lactating mothers.

SUGGESTED WORDING:

It is the organization's duty to ensure the appropriate conditions as far as safety and health are concerned in every aspect related to work and guarantee the necessary training and information, and consultation of the workers and their representatives.

The employer must assess the nature, degree and length of the exposure of the worker that is pregnant, that recently gave birth or that is lactating, so as to determine any risk for their safety and health, and the repercussions on pregnancy and lactation, and inform the worker of the results of that assessment as well as the protection measures to be taken.

Example I

"Workers with one or more children under 12 may have the right to work part-time or to have a flexible working regime by agreement between the parties. "

What has been considered not to comply with the law in this kind of clause?

Under nº 3 of article 127 of the Labour Law, it is the employers' duty to provide workers with working conditions which favour the balance between professional and family life.

Articles 55 and 56 specify that, when there are children up to the age of 12, employers can only refuse a flexible or part-time working schedule if there are overriding requirements for the operation of the organization or if it is impossible to replace the workers. So, the example above does not comply with the law as it implies that working a flexible or part-time schedule depends on an agreement.

Note: A similar norm was declared void by the Lisbon Labour Court, on 04.11.2012, in lawsuit nº195/11.3TTLSB.

SUGGESTED WORDING:

Workers with children under 12 are entitled to work a flexible or part-time schedule, unless there are overriding requirements for the operation of the organization that prevent it, or if it is impossible to replace the worker.

Example J

"Workers with family responsibilities

In order to enable women to work when they have family responsibilities, employers will seek to create, support and cooperate with social interest institutions, namely nurseries, nursery schools, and similar establishments when

the size of the organization justifies it.

Married and not legally separated women are considered to have family responsibilities, as well as those who, in spite of not being in these conditions, have a household under their responsibility."

What has been considered not to comply with the law in this kind of clause?

This example is wrongly formulated regarding the objective of the protection of the balance between professional and family life and the sharing of family responsibilities, as it is based on two misunderstandings with no legal basis. The first is that the balance basis is to facilitate work instead of articulating professional and family life. The second is that only "*working women*" justify the creation of balance means/mechanisms, and exclude men from this universe.

Under the Labour Law, balance mechanisms are used by male and female workers, and there should be no prevalence of one gender over the other. Incidentally, balance between family and professional life must be regarded as an efficient way to attempt to guarantee gender equality at work and in the job, as long as it is applied for men and women on an equal footing. Balance must be regarded as a need felt by men and women and not just women.

On the other hand, the purpose of the second example is to define who is considered a woman with family responsibilities. The definition is narrow because, on the one hand, it does not include men and men may also have family responsibilities, and on the other hand, because it seems to rank women: married, unmarried partners and others. In fact, married women and unmarried partners, and also those whose household depends on them, are referred to. What actually emerges from the law and the Constitution is that any parent (mother or father) has a right to balance, under the conditions set by the law.

So, when it exclusively refers to "*working women"*, this example discriminates against working men who are parents and who obviously also have family responsibilities, and it goes against article 24 of the Labour Law and the principle of equality in the Constitution of the Portuguese Republic.

SUGGESTED WORDING:

In order to make the balance between professional and family life easier, employers will seek to create, support or cooperate with social interest institutions, namely nurseries, nursery schools and similar establishments.

Employers should provide workers with working conditions that favour the balance between their professional activity and their family life.

Fathers and mothers with children under 12 are considered as having family responsibilities.

Example K

"The following worker categories are not compelled to do overtime work:

- Pregnant women or women with children up to 12 months of age;

- Pregnant women or women with children up to 10 months of age;"

What has been considered not to comply with the law in this kind of clause?

Only women with children up to 12 months of age are referred to as being exempted from overtime work. No mention is made of fathers in the same circumstances. This is a breach of article 59º, nº 1 of the Labour Law.

On the other hand, there is no reference to the exemption of lactating women, while breastfeeding, as long as it is necessary for their health or that of the child.

Sometimes there are clauses with a 10-month limit, which does not comply with the law either, under the provision of article 59, nº 1 of the Labour Law.

SUGGESTED WORDING:

The following workers are not compelled to do overtime work:

- Pregnant workers and workers (men or women) with children up to 12 months of age;

- Lactating workers if necessary for their health and that of the child.

Example L

"Working women are entitled to 120 consecutive unpaid days' maternity leave, 90 of which must be taken immediately after the childbirth and the remaining 30 may be taken totally or partially before or after childbirth.

- At the time of childbirth, a 90-day leave paid at a rate set by social welfare that cannot be deducted for any purpose. In the case of miscarriage or stillbirth, leave will be reduced to 30 days in the same conditions. After the 90-day period referred to above, workers can request for up to a year's additional but unpaid leave to assist their children with the guarantee of re-entry in the organization without loss of any right or benefit;

- At the time of childbirth, a 90-day leave, 60 days of which are to be taken immediately after childbirth and the remaining 30 days can be taken consecutively or separately, during the pregnancy period or while they are entitled to lactation allowance paid by social welfare, and an allowance supplement they have a right to, so as to be paid an amount equivalent to their net pay;"

What has been considered not to comply with the law in this kind of clause?

Ordinary parental leave is a right both parents qualify for, except parental leave for which only the father qualifies and the 6-weeks' mandatory leave after childbirth and the noncompulsory 30 days' leave before childbirth for which only mothers qualify.

Here, ordinary parental leave is inaccurately announced. It has the length of 120 or 150 days and it can be shared, as both father and mother qualify for it.

On the other hand, the option to take unpaid leave after parental leave has no practical use in the light of the current law, if the option to take supplementary

parental leave (art. 51 LL) (subsidized) and child care leave (art. 52 LL) by both parents is considered.

Parental leave in the case of miscarriage and stillbirth has been addressed in a chapter of its own of this guide.

Reference is also made to *lactation allowance* which has not been in force since the end of the 80s, without prejudice to the establishment by the parties of the same net pay, in which case the employer will complement the social security allowance, which is obviously not illegal.

Note: A similar norm was declared void by the Lisbon Labour Court, on 04.11.2012, in lawsuit nº195/11.3TTLSB.

SUGGESTED WORDING:

Working mothers and fathers are entitled to ordinary parental leave, which they can share after childbirth, without prejudice to the mother's exclusive ordinary parental leave and the father's exclusive ordinary parental leave.

Example M

*"**Breastfeeding**"*

Two half-hour periods or one one-hour period a day without loss of pay for lactation purposes, during a year after childbirth, except when there is a nursery at the organization premises for the workers' children, in which case it will be reduced to the time actually required.

What has been considered not to comply with the law in this kind of clause?

Schedule arrangements for breastfeeding should be based on the child or mother's interest in the case of breastfeeding, and the child, mother and/or father's interest in the case of lactation.

That means, it is up to the mother and/or father to determine when they will take time off for breastfeeding/lactation, according to the child's interest, under the

provision of article 47 of the Labour Law, and time taken off for breastfeeding and lactation is an unconditional right.

SUGGESTED WORDING:

A mother, who is breastfeeding a child, is entitled to take two one-hour periods off per day, according to the child's best interest, unless a different arrangement is settled with the employer.

In case breastfeeding is not required, either parent has the right to take two one-hour periods a day off, according to the child's interest until the child turns one, unless a different arrangement is made with the employer.

Example N

"Holiday leave interruption

— In case workers fall ill or give birth during their holiday leave, it is interrupted and the remaining leave is considered not taken.

— Holiday leave will be resumed after the end of the sickness period and in the case of childbirth, after the end of parental leave, unless there is a different arrangement between the employer and the workers and without prejudice to other workers' rights.

— In the previous case, if the number of days yet to be taken are in excess of the number of days between the resumption of holiday leave and the end of the civil year during which it happens, holiday leave will be taken in the first three months of the subsequent civil year.

— If the situation which determines the interruption of holiday leave is still ongoing after the first three months of the subsequent civil year, workers will be entitled to a pay which is equivalent to the unused leave.

What has been considered not to comply with the law in this kind of clause?

Holiday leave is interrupted for the purpose of taking off parental leave but also due to clinical risk during pregnancy, pregnancy termination or adoption.

In all these cases, the remaining leave is taken after the return from parental leave even if it happens the following year, under the provision of article 65, nº 3, a) of the Labour Law, *i.e*, even if it occurs after the end of the first quarter of the following year.

Note: A similar norm was declared void by the Lisbon Labour Court, on 09.11.2011, in lawsuit nº2306/11.4TTLSB.

SUGGESTED WORDING:

Parental leave, in any of its forms - leave due to clinical risk during pregnancy, leave due to pregnancy termination and leave due to adoption - suspends the ongoing holiday leave and the remaining days should be taken after it is over, even if it occurs in the following year.

Example O

Fathers also have a right to unpaid leave for a length of time equivalent to what mothers would be entitled to..., except the days already taken off by mothers..., in the following cases:

Mother's physical or psychological incapacity, and as long as the situation continues;

Mother's death;

Parent's joint decision.

What has been considered not to comply with the law in this kind of clause?

Either parent is entitled to take the leave which was not taken by the other, if physical or psychological impediments or the death of the parent on leave occur, under the provision of article 42, nº 1 of the Labour Law.

Joint parent decision for one of them to take the remaining leave arises from the fact that both qualify for ordinary parental leave and so it can be shared. However, the father and mother's exclusive leaves are guaranteed.

Note: A similar norm was declared void by the Lisbon Labour Court, on 09.11.2011, in lawsuit nº2306/11.4TTLSB.

SUGGESTED WORDING:

Fathers and mothers are entitled to take the other's remaining leave in the event of:

- Physical or psychological incapacity of the parent on leave and for the length of time the situation continues;
- Death of the parent who is on leave.

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