

## **Religion in the workplace**

### **A. The legal framework**

#### **1. Does the law protect employees from discrimination on grounds of religion?**

The Portuguese Constitution (articles 13 and 41) as well as the Portuguese Labour Code (articles 22 and 23) prohibit employers from discriminating against an employee or job applicant on the basis of religion. The law prohibits employers from treating individuals differently because of their religion.

In addition, Law no. 16/2001, of June 22<sup>nd</sup>, governs the freedom of religion. Article 14 of this law provides that employees are entitled to suspend their work on the days of rest, festivities and during the periods determined by the religion to which they adhere.

The employee must make a request to his employer in order to exercise this right.

Such request is not subjected to a specific format and the employer is bound to grant the referred right.

The employee is also obliged to work on a flexible regime and to fully compensate the absence in question.

Moreover, the law requires the church or religious organisation to which the employee belongs to send to the competent Portuguese Government's member/department in the preceding year, a list of such days and periods in the coming year.

Although our law is not explicit, it is our understanding that the employer is entitled to refuse the request if the above-mentioned conditions are not duly met.

#### **2. Definition of religion**

Portuguese law does not provide any definition of religion. Despite of the referred, some Portuguese authors consider that a belief in a supernatural entity is inherent to the concept of "religion". Therefore, we should conclude that, for the purposes of the Portuguese law, "religion" must include belief systems focused on the existence of a god or gods.

The number of believers is not a decisive criteria to ascertain or to define a religion. It could be only considered as such for the purposes of definition of a "Portuguese established religious community".

#### **3. Is the employer required to accommodate an employee's religious beliefs?**

There are no legal provisions in Portuguese law which specifically require the employer to provide an employee with a reasonable accommodation for his religious beliefs, such as providing premises for a religious practice. The Labour Code only contains provisions regarding non-discrimination on the basis of religion.

However, the Law no. 16/2001 (mentioned in part 1 above) could be seen as creating a form of burden on the employer to allow employees to take time off during working hours in accordance with their religious beliefs. *Is this correct?*  
Yes

#### **4. Enforcement and claims**

The Portuguese Labour Inspection is the public authority which is charged with enforcing labour law (including the compliance of non-discrimination provisions of the Labour Code as well as labour provisions of Law no. 16/2001).

The Inspection's actions may occur either on the basis of an employee's claim (the majority of the actions) or by the Inspection's sole discretion.

In its action, the Inspection may impose fines due to non-compliance of labour law (including the non-compliance of non-discrimination provisions).

Despite of the above, the employee is entitled to bring a lawsuit against the employer concerning the referred matters. Any compensation (awarding damage) due to the employee in such terms is solely granted by the court, *i.e.* the Inspection cannot intervene in such a procedure.

If the employer practices any discrimination based on religion or breaches any employee's rights under Law no. 16/2001, the employee is entitled to recover damages. Article 363 of the Labour Code provides that if one of the parties (employer or employee) breaches its duties, it becomes liable towards the other party for all damages caused. These damages include also non-pecuniary damages such as damages for distress (moral damages).

At present in Portugal there are no particular issues to point out regarding the individual aspects of exercise of freedom of religion, notably from a labour law perspective. It is worth bearing in mind that the Roman Catholic religion is dominant in Portugal and other religions have very small numbers of believers in comparison to the number of catholic believers. There is currently no case law regarding this matter, nor any statistics concerning claims about this matter before any public entity.

In our opinion and taking in consideration the Portuguese culture and habits, we do not anticipate any change on this situation. Currently, the immigrant workers in Portugal (notably Brazilian, African, Russian and Ukrainian citizens) do not raise any particular issues concerning freedom of religion.

The most part of the Brazilian citizens as well as of the African citizens (mainly the citizens who came from the former Portuguese colonies – Mozambique, Angola and Cape Verde) who work in Portugal are Roman Catholic.

The Russian and the Ukrainian citizens are mainly Orthodox Catholics. Orthodox Church (as other religions) is free to develop its religious activities in Portugal.

#### **B. The law in context**

#### **5. Time off for prayer/annual leave for religious festivals**

As explained in part 1 above, Law no. 16/2001 entitles an employee to suspend his work on the days of rest, festivities or other periods determined by the religion to which he adheres.

The majority of public holidays in Portugal are linked to Catholic festivities and there have been no significant cases of breach of Law no. 16/2001 regarding employees taking absence from work in accordance with their Catholic beliefs.

In terms of other religions, the entitlement to take absence from work is equally provided for under Law no. 16/2001. There have been no known instances of employers failing to comply with these legal provisions when duly requested by their employees.

Law no. 16/2001 applies to any form of absence (suspension of work in any period determined by the religion as described above).

## **6. Dress codes**

As far as we are aware, there have not been raised issues concerning dress code impositions.

The analysis of legal consequences regarding dress code impositions should be made on a case by case situation in order to assess if there is/is not discrimination.

Generally, freedom of religion includes also the right to externally express (notably in what concerns the individual's appearance – including his/her manner of dressing) the individual's religious beliefs.

Notwithstanding, such right is not absolute, *i.e.* it can be limited vis-à-vis other rights which are also set forth in the Constitution and on ordinary law.

Concerning labour organization (notably regarding the workplace and work guidelines), authors recognize the legitimacy to impose dress codes when it is linked to the specific work performance.

In fact, in cases where

- a) safety, hygiene and public health situations are involved;
- b) the interests and rights of the employer (as well as the interests and rights of the employee's colleagues) connected to the regular functioning of the labour organization or related to the compliance of the work performance (considering the nature of the activity and the context of its performance) need to be guaranteed;

it is legitimate to impose dress codes since we are facing an objective reason which is the decisive criteria to limit an eventual freedom of dressing right.

Please refer to the examples below:

- a) it is not discrimination to impose a dress code for airline attendants, mechanics, restaurant waitresses, cooks, bus drivers, police officers or firemen;
- b) it could be considered as discrimination the imposition of dress code for people who perform administrative tasks (for example in a lawyers' office).<sup>1</sup>

## **7. Dismissal on religious grounds**

There are no specific prohibitions in what concerns termination of employment by reason of an employee's religion. In fact, termination of employment follows very

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<sup>1</sup> It is curious that people notice when a Muslim woman wears a veil but not when a Catholic woman wears a crucifix. Both artefacts are the expression of a religious belief, although the crucifix is not used only as a religious artefact but also as an aesthetic ornament.

strict requirements in Portugal and the employer is only entitled to dismiss an employee either with fair cause or due to objective reasons (collective dismissal, dismissal due to job termination).

If the employer dismisses an employee due to his/her religion, the employee is entitled to challenge such dismissal and to claim for compensation or reinstatement.

## **8. Harassment on religious grounds**

There is a general principle concerning prohibition on religious harassment set forth in the Portuguese Constitution (articles 13 and 41) as well as in the Portuguese Labour Code (articles 22 and 23) when reference is made to the prohibition of employers from discriminating against an employee or job applicant on the basis of religion.

In addition, article no. 2.<sup>o</sup> of Law no. 16/2001 refers that an individual cannot be persecuted by his/her religious beliefs.

Taking into consideration such principle, employers are prevented from harassing any employee based on religion. The non-compliance with such principle constitutes a breach of the employment contract and entitles the employee to claim compensation for damages from the employer.

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