

FLASH

March 2019

LABOUR LAW

Notes on the deadlines for the employer to carry out a dismissal with just cause and for the employee to exercise the right to terminate the contract on specific grounds.

[Pedro Furtado Martins](#) and [Nuno Pais Gomes](#) have published in [Revista de Direito e de Estudos Sociais](#) a study under the title 'Notes on the deadlines for the employer to carry out a dismissal with just cause and for the employee to exercise the right to terminate the contract on specific grounds', in which they analyse a number of questions raised by this matter.

First, contrary to the prevailing view, the authors understand a distinction should be made between those deadlines, as they concern different procedures.

Regarding the time limit for the start of the disciplinary procedure laid down in article 329, 2 of the Labour Code, the authors analyse the concept of 'knowledge of the infringement', regarded by the legislator as a time reference point. Moreover, they address matters such as the identification of the respective author, who needs to know about the infringement, and how the infringement is reported to whom may exercise disciplinary action.

With regard to the time limits to terminate the employment contract on specific grounds laid down in article 395, 1 of the Labour Code, the so-called immediate facts should be distinguished from the facts with a continuous nature. In the same way, the illicit behaviour that is ground for the termination should be distinguished from the effects that can flow from it. In the case of continued behaviour, it is commonly assumed the limitation period doesn't begin while the illicit behaviour doesn't come to an end. However, once the illicit behaviour has come to an end and the respective damages have been repaired, there are no longer grounds for a termination with just cause, at least in most cases. In such situations, there is no reason for the termination to come up, since an illicit behaviour no longer exists. Consequently, the authors understand one may argue that whenever the employer puts an end to the illicit behaviour and repairs the respective damages it's not accurate to state that the limitation period of 30 days for the employee to terminate the contract starts running from that moment on, since the grounds for a termination based on just cause no longer exist.

In essence, the authors state the reversal in the employer's behaviour shouldn't be the time reference point from which the limitation period for the employee to terminate the contract based on just cause starts running. In fact, the fulfilment of the employer's obligation, although late in arriving, provided it is accompanied by the reparation of damage, affects negatively the demonstration of the impossibility to sustain the employment relationship.

Finally, regarding repeated immediate infringements by the employee, the authors address the prevailing view according to which it isn't possible, under a logic of an overall assessment, to still take disciplinary action against infringements that are more than 60 days old.