

Labor Newsletter

ANGOLA

June 2017

OPINION

STATUTORY RULES ON EXPATRIATES ARE NOW CLEARER

Presidential Decree No. 79/17, of 24 April of 2017 (“PD 79/17”), amended Articles 2, 7 and 10 of the general rules on labor local content and the hiring of foreign non-resident employees, which had been recently approved through Presidential Decree No. 43/17, of 6 March 2017 (“PD 43/17”).

One of the most relevant changes relates to the duration of employment contracts entered into with expatriate employees. Accordingly, under the new terms set forth by Article 7 of PD 79/17, the duration of the employment contract can now be freely agreed between the employer and the employee, being subject to a maximum of two renewals. This provision needs to be harmonized with various immigration statutes that still refer 36 months as the maximum duration for this type of contracts.

The abovementioned provisions as approved by PD 43/17 raised a significant controversy, notably regarding the payment of the non-resident expatriate employees’ salaries. Nonetheless, PD 79/17 came to clarify said uncertainties which the companies faced during the first months of entry into force of PD 43/17. Accordingly, PD 79/17 clarified that the amount and the currency of payment of the expatriate employees’ salaries may be freely agreed upon between the parties under the General Labor Law’s principles. The payment of the salaries may take place in the currency agreed between the parties, which can be a foreign currency. Said solution seemed, until the entry into force of this Diploma, expressly prevented, being the national currency the only one accepted. It was further foreseen that in the case of salaries paid in cash, all payments must be mandatorily processed through a finance institution.

Furthermore, with the entry into force of DP 79/17 on 24 April of 2017, the issue related to the remuneration limit for expatriates which could only consist in monthly base salary and additional benefits that, whether in cash or in kind, could not exceed 50% of the monthly base salary set out in the relevant employment contract, was removed.

However, despite these amendments and taking into account the principles of equal treatment between national and expatriate employees, the Central Bank of Angola may, still, approve particular foreign exchange rules and limits for non-resident expatriate employees.

JURISPRUDENCE

Invalidity of Subpoena Due to Lack of Certain Formalities (Ruling issued by the 2nd Section of the Labor Chamber of Luanda's Provincial Court)

In this case, the Defendant Company was summoned to reply to a statement of claim referring to a labor dispute, which was accompanied by a copy of the order mandating the Defendant to be subpoenaed and of the initial Court Costs payment form. However, in the copy of the order delivered several formalities foreseen by law and mandatory in order for said act to be valid, were omitted. Accordingly, it was verified that it was neither mentioned in said copy that the Defendant could present its defense nor the consequence of not presenting it. Furthermore, the copy of the subpoena was not even signed by the bailiff and did not contain the date in which said act was performed. The Defendant raised the invalidity of summons through a preliminary motion in its statement of defense. Nonetheless, a few months later, the Defendant received again, in its head office, the same statement of claim, through a bailiff, deeming that said act was a Court's error and was surprised with a new order scheduling a date and time for a preliminary hearing.

The Court ruled in favor of the Defendant, deeming its subpoena as null and void due to the aforementioned irregularities. Accordingly, it was decided to invalidate the subpoena and every subsequent act carried out in the proceedings, being only safeguarded the statement of claim and the documents attached thereto. It was also ruled that the Defendant should be served with a new subpoena.

This ruling is of an extreme relevance, since it confirms the need of regularly serving the Defendants with subpoenas within the context of labor disputes in order to entirely protect their rights to a proper defense.

LABOR LEGAL NEWS

- **Presidential Decree No. 79/17, of 24 April 2017** - Amends Articles 2, 7 and 10 of Presidential Decree No. 43/17, of 6 March 2017, which regulates the hiring of foreign non-resident employees.
- **Presidential Decree No. 91/17, of 7 June of 2017** - Sets the statutory national minimum wage at 16,503.30 Kwanzas and updates the minimum wage to be paid in each of the main economic sectors. This statute repeals the former Presidential Decree No. 144/14, of 9 June 2014.
- **Presidential Decree No. 93/17, of 7 June** - Increases the amounts paid as mandatory social protection pensions, updating the amounts previously defined by various statutes.

UPCOMING LABOR OBLIGATIONS TO BE TAKEN INTO ACCOUNT:

- Prepare and submit the list of remunerations to the National Institute for Social Security (companies with more than 20 employees are required to submit said list electronically) and payment of contributions by the 10th day of the following month.
- Submit of copy of the list of remunerations paid monthly to the employees, certified by the General Inspectorate of Labor, to the insurance company until June 30 (the insurance policy may have specific provisions on this duty).
- Prepare and submit the report on work accident occurred during the previous half year to the Labor Chamber of the Provincial Court until June 30.

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