Labor Newsletter

ANGOLA

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OPINION

WORK ACCIDENTS AND OCCUPATIONAL DISEASES REPORT – CAVEATS AND PREVENTIVE APPROACH

The legal Regime on Work Accidents and Occupational Diseases, approved by Decree No. 53/05 of 15 August, qualifies as work accident the sudden event that occurs in the performance of work and causes the employee any damage or personal injury resulting in partial or total disability, temporary or permanent for work, or even death. The law extends this concept to a point that, for example, accidents occurred during the normal or usual commuting to and from the workplace, regardless of the means of transportation used, also qualifies as a work accident. On the other hand, occupational diseases are the medical conditions listed in the codified index annexed to said Decree that entail the alteration of normal health condition for reasons related to the work activity in employees who are usually exposed to factors that could produce diseases and exist in the working environment or in certain professions or occupations.

Pursuant to Decree No. 53/05, employers are obliged to transfer to an Angolan insurance company the liability arising from work accidents and occupational diseases regarding all employees, apprentices and trainees, after the date in which the respective employment contract enters into force.

An essential duty imposed by Decree No. 53/05 on employers is the report of any work accident or occupational disease to the insurance company and labor authorities, which is subject to very strict regulations and with highly harmful consequences for the employer in case of non-compliance.

In fact, in case of a work accident, the employer must participate to the insurance company within the period established in the insurance policy and to the Provincial Directorate of the INSS all accidents verified, within seven days, using the appropriate form for the effect. The employer is responsible for the consequences of a late participation of the accident, and the insurance company is entitled to be reimbursed for the sums it had improperly paid.

Regarding occupational diseases, the medical and paramedical staff from health services is obliged to participate to employers all clinical cases where occupational diseases are presumed to exist and the participations must be made to the insurance company and to the competent Provincial Directorate of the INSS. Decree No. 53/05 does not expressly regulate the deadline for participation in cases of suspicion of occupational disease, and its regulations are normally contained in the general conditions of insurance policies.

The law does not clarify, however, the concept of 'suspicion of occupational disease' for effects of immediate participation by the employer to the respective insurance company. Due to this imprecision and the uncertainty that implies in the management of similar cases, we believe that in all cases in which there are any doubts about

the existence of an occupational disease, the employer should use the utmost diligence, participating it immediately to the insurance company in order to the employee be submitted to medical examinations for the detection of occupational diseases as soon as possible.

Otherwise, the employer's inaction may be used as an argument by the insurance company to reject any liability and, consequently, in that case, the employer shall be responsible for all costs arising from the employee's occupational diseases, notably the payment of the potential lifetime pensions and medical and medicine assistance to the employee.

JURISPRUDENCE

Fine due to cancellation of registration of employment contracts entered into with foreign non-residents. Principle of proportionality (Ruling issued by the Civil, Administrative, Tax and Customs Section of the Supreme Court, on 20 March 2018)

The present case consisted of a Judicial Appeal of an Administrative Act. Part of this dispute and the conclusion reached by the Court are of particular importance inasmuch as, for the first time, a court has clarified the precise scope of the obligation to cancel the registration of employment contracts executed with foreign non-resident employees, as well as the way of action of the General Inspectorate of Labor.

The Court took the view that the obligation established in Article 7 of the repealed Decree 5/95, of 7 April 1995, nowadays correspondent to Article 8 of Presidential Decree 43/16, of 6 March 2016, must be construed along with Articles 13 and 25 of the Employment Law (Law 18-B / 92, of 24 June 1992), according to which "employers shall also communicate, within 30 days, the termination of all foreign non-resident employees to the regional divisions (...) ". According to the Court, the law only seeks the mere communication to the competent employment center as the offense is easily repairable and consequently open to preventive and pedagogical action by the labor authorities in compliance with the principle of proportionality.

Therefore, the failure to inform the employment center of the cancellation of the registration of employment contracts entered into with foreign non-residents must first of all be the object of pedagogical action by the labor authorities. The latter are required to make recommendations to employers in order for them to remedy this type of infringement and apply the legal fines only in the event that the recommendations are not complied with.

This decision is of major importance because it clarifies that the relevant offense must firstly be the object of an educational approach by the labor authorities, instead of a fine provided for by law (Article 10 of the repealed Decree 5/95 and Article 16 of the current Decree 43/16) being immediately applied to employers.

LABOR LEGAL NEWS

- **Presidential Decree no. 150/18, of 19 June** – Amends the first paragraph of Annex I as referred to in article 2, paragraph 1, as referred to in paragraphs 1 and 3 of article 3, both of Presidential Decree No. 56/18 of 20 February, which establishes the exemption regime and procedures for simplifying administrative acts for granting tourist visas;

- **Law no. 10/18, of June 26** – Establishes the new private investment regime, notably the new principles and rules designed to facilitate, promote and accelerate private investments in the Country, introducing significant changes in this area.

UPCOMING LABOR OBLIGATIONS TO BE TAKEN INTO ACCOUNT

- Prepare and submit the payroll payment forms to the INSS (companies with more than 20 employees are required to submit it electronically) and proceed with the payment of the contributions until the 10th of the following month.

- Submit to the insurer company, with whom company had taken out the mandatory workman compensation insurance, of a copy of the payroll reflecting salaries and additional taxable remuneration paid each month to the employees authenticated by the General Inspectorate of Labor. The insurance policy may have specific rules on this topic, which must be confirmed by each company.

- File with the competent court, on a semester basis, four copies of a map, on the approved form, listing the work accidents of the employer's responsibility reported in the previous semester.

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