

Labor Newsletter

ANGOLA

FEBRUARY 2021



OPINION

The balance between the right to strike and the economic sustainability of the employer

The employment relationship between employer and employee is made up of interests which are quite often on opposite sides. For this reason, Article 51 of the Constitution of the Republic of Angola and Law No. 23/91, of 15 June 1991, provides for the employees' right to strike so that they may enforce their rights in extreme situations, react to cases of violation of the law and pursue their claims.

The right to strike is not, however, an absolute right, and several requirements, formalities and limitations to such right are applicable under the law. The law further states that the strike must be preceded by the presentation to the employer of a list of the employees' claims and by an attempt to solve the conflict through an agreement, which means that a strike may only be adopted as a last resort.

In addition, the Law on the Right to Collective Bargaining (Law No. 20-A/92, of 14 August 1992) establishes that as long as collective bargaining agreements are not terminated with prior notice, companies, union organizations that have entered into said agreements and employees covered by them must refrain from adopting any behavior that may jeopardize compliance therewith, notably, pursuing collective actions and strikes with the purpose of modifying or altering such agreements. Indeed, the law favors dialogue and negotiation between employer and employees instead of the immediate resort to strike due to the consequences and losses that this may cause.

It has recently been noted that the courts are now more sensitive to these issues, enforcing compliance with

collective bargaining agreements in force and safeguarding the economic viability of the employer, since the losses suffered by the employer as a result of an unlawful strike may ultimately imply the closure of the company and the loss of the employees' jobs.

Considering the current economic situation, as well as both employer and employees' interest in maintaining job positions, the dialogue and negotiation phase assumes greater relevance as an alternative to strike, as the latter might trigger losses for both the employees and the employer.

JURISPRUDENCE

Suspension of unlawfully declared strike (Judgment issued by the Luanda Labor Court, 9 December 2020)

The case consisted on an injunction procedure where the employer, an oil contractor company, requested i) a provisional declaration of the illegality of the strike; ii) the union to refrain from carrying out any actions that contributed to the implementation or mobilization of the strike; and iii) in case of strike, the union staff to be required to leave the company's facilities and refrain from carrying out any actions likely to harm the safety of people, the surrounding environment or damage the facilities.

The Court considered that, at the time the strike was declared, a collective bargaining agreement was in force, which was violated with the strike declaration and that there was a serious probability of the existence of an employer's right which could seriously and irreparably be jeopardized.

For these reasons, the Court decided to partially defer the injunction request, having ordered the union to refrain from any actions related to the implementation and mobilization for the strike, thus deciding to suspend the strike declaration.

This decision is of particular importance because a Court decided to suspend a strike declared and carried out by a union, considering that it violated the Law on the Right to Collective Bargaining and the Strike Law, and that it might cause potential and serious damages to the employer and, consequently, to the employees themselves.

LABOR LEGAL NEWS

- **Presidential Decree No. 39/21, of 9 February 2021** – Updates measures to prevent and control the spread of the SARS-CoV-2 and COVID-19 viruses, as well as the rules for the operation of public and private services, social facilities and other activities during the Public Calamity Situation.
- **Executive Decree No. 3/21, of 5 January 2021** – Determines that the documents related to the stay of foreign citizens in national territory, notably Residence Permit, Refugee Card, Investor Visa, Work Visa, Temporary Stay Visa and Study Visa, expired as from 28 February 2020 remain valid until 28 February 2021.
- **Jointly Executive Decree No. 270/20, of 24 November 2020** - Approves the Legal Regime Applicable to the Fee charged by the Migration Services (SME).
- **Presidential Decree No. 299/20, of 23 November 2020** - Approves the Legal Regime on Social Protection in Old Age within the Mandatory Social Protection System.
- **Presidential Decree No. 300/20, of 23 November 2020** - Approves the Regulation of Professional Internships for Citizens Trained in the Education and Teaching and Professional Training System.
- **Presidential Decree No. 301/20, of 23 November 2020** - Defines and regulates the Social Security Mediation Activity and its exercise.
- **Presidential Decree No. 295/20, of 18 November 2020** - Establishes the Mandatory Social Protection Legal Regime for Employees in Low Income Generating Economic Activities, notably agricultural, fisheries and small economic activities.

UPCOMING LABOR OBLIGATIONS TO BEAR IN MIND

- 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 by the 10th of the following month.
- Keep updated, fill in and send to the Employment Center competent for the area, until 30 of April of each year, a Nominal Record of Employees, according to the official form (RENT form), with the information up to March of the corresponding year.
- Companies pertaining to the oil sector, which have entered into a Program Contract with the Ministry of Mineral Resources, Petroleum and Gas, must prepare and submit to said Ministry's National Directorate for the Promotion of Angolanization and Value Chain, until 31 of March, a detailed report on the balance of the implementation of the Human Resources Development Plan regarding the previous year. Companies should use the digital platform provided by the National Directorate for this purpose.

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