

### OPINION

#### HAS RETIREMENT COMPENSATION BEEN TOTALLY ELIMINATED?

One of the General Labor Law's (approved by Law No. 7/15, of 15 June 2015 – "GLL") guiding principles is the global reduction of the labor costs and its adjustment to the employer's dimension. Said guiding principle is notably reflected in the new rules applicable to the payment of overtime work compensation and also in the new regime for payment of compensation due to the termination of employment relationships. Like other innovative matters governed by the current GLL, the differentiating criterion is applied taking into account the employer's dimension, which is determined in accordance with the concepts of Large, Medium, Small and Micro-Companies, as per the provisions established by Law No. 30/11, of 13 September 2011, and the Presidential Decree No. 43/12, of 13 March 2012.

However, one of the issues that causes more controversy is the one regarding the compensation due to employees for old-age retirement.

The previous GLL, approved by Law No. 2/00, of 11 February 2000, established in its Articles 218 and 262, that an employee who reached the legal age for retirement – 60 years for the ordinary retirement and 50 years for early retirement (only possible for job positions deemed as laborious or consuming) – and terminated his employment contract for said reason, would be entitled to receive a seniority compensation corresponding to 25% of his monthly base salary at the retirement's date for each year of service. Said situation was considered by the GLL as a termination of the employment relationship due to objective reasons, as set forth by its Article 212.1(b).

The current GLL, notably Article 199.1(c), still qualifies the employee's retirement as a termination by expiry. Nonetheless, the GLL's chapter regarding the termination of the employment relationship does not foresee any identical provision to Article 218 of the 2000 GLL. Within this context, Article 202 of the current GLL only sets forth that it is admissible the hiring of a retired employee and that the termination of his employment contract does not require any special formality.

The main question on this topic shall thus be: has the current GLL entirely eliminated the compensation or has it only approved its elimination for the future?

The answer to the abovementioned question is not simple, as it depends on complex rules of legal interpretation and also to the employer's practices and internal regulations or even to a collective agreement provision. The only criteria defined by the current GLL are reflected in Articles 313 and 314, which allow us the interpretation that the previous GLL was entirely revoked and that the current GLL would have come into force (90 days upon its gazetting) without any safeguard regarding the accrued seniority.

## JURISPRUDENCE

**Timeframe to challenge a disciplinary penalty different from termination** (Sentence issued by the 2nd Section of the Luanda Labor Provincial Court, of 12 August 2016):

In this first instance decision, already *res judicata*, the Luanda Labor Provincial Court was asked to rule on the issue related to the expiry of the right to challenge a disciplinary penalty of temporary demotion with reduction of base salary applied under the previous General Labor Law, approved by Law No. 2/00, of 11 February 2000. The Court decided to qualify the 30-day timeframe foreseen by Article 63.1(c) of said law as an expiry deadline for the filing of an appeal against disciplinary penalties that entail the subsistence of the employment relationship and, consequently, different from disciplinary termination, deeming the defenses raised by the employer as well-founded.

## LABOR LEGAL NEWS

Order no. 475/16, of 18 October 2016 was enacted, thus approving the Sindicato dos Trabalhadores da Indústria Petrolífera e Afins de Luanda ("STIPAL")'s By-Laws. The Order confirms the conclusion of STIPAL's incorporation process, as well as its legal capacity to operate as a union in the Luanda province.

## UPCOMING LABOR OBLIGATIONS TO BE TAKEN INTO ACCOUNT:

- Prepare and submit to the MAPTSS' Provincial Delegation the annual report regarding the activities carried out by the internal services of Hygiene, Health and Safety at Work and the Committee on Prevention of Work Accidents, until 31 December 2016.
- Up until 31 January, prepare and submit to the MAPTSS' Provincial Delegation and to the competent Court the report of work accidents and professional diseases occurred in the preceding annual semester. The report must be prepared in accordance with the form approved in appendix to Decree No. 53/05, of 15 August 2005.
- Up until 31 January, prepare and post in a visible place with easy access for employees, the vacations' annual schedule.
- Preparation and submittal of the list of remunerations to the National Institute for Social Security (companies with more than 20 employees are required to submit it electronically) and payment of contributions until the 10th day of the following month.

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