

Labor Newsletter

ANGOLA

March 2017

OPINION

NEW RULES ON EXPATRIATE EMPLOYEES' REMUNERATION PACKAGE: MONTHLY BASE SALARY + 50% LIMIT

Presidential Decree No. 43/17, of 6 March 2017 ("PD 43/17"), approved new rules on personnel levels and the hiring of foreign non-resident employees, repealing the former legal regimes approved by Decree No. 5/95, of 7 April 1995, and Decree No. 6/01, of 19 January 2001.

One of the new rules set forth in the statute is its Article 10, stating that for expatriate employees "*remuneration is paid in Kwanzas, while additional benefits and other allowances paid directly or indirectly in cash or in kind may not exceed 50% of basic salary*".

This is clearly a provision that has a dual nature in terms of labor and foreign exchange. The implications of the new rule are twofold in relation to remuneration of expatriate employees:

- (i) Remuneration must be paid in Kwanzas. The law does not make it clear whether this rule will limit the possibility of the employer paying the expatriate employee's remuneration directly into his/her home-country bank account and in foreign currency. This aspect will require additional clarification, but a new order on this topic from the Angolan Central Bank ("BNA") can be expected shortly.
- (ii) Remuneration may only consist of the monthly base salary and additional benefits which, whether in cash or in kind, cannot exceed 50% of the monthly base salary set out in the relevant employment contract. This will imply the immediate need for employers to review expatriate employees' remuneration packages in order to ensure compliance with the applicable maximum limit, which is typically addressed in international instruments related to secondment. There is still a high degree of uncertainty about what allowances and benefits are relevant for the purposes of calculating the 50%.

Any breach of Article 10 of PD 43/17 is subject to a fine of between 5 and 10 times the company's average monthly salary per infringement, per employee. This is certain to be accompanied by new foreign exchange rules and limits, to be defined by BNA.

MANDATORY JOB QUALIFIER FOR REGISTRATION OF EMPLOYMENT AGREEMENTS WITH EXPATRIATES

Under Decree No. 70/01, of 5 October 2001, the employer is required to prepare a job qualifier and submit it to the General Inspectorate of Labor for approval. The job qualifier is a set of mandatory internal regulations on: (i) existing positions; (ii) the hierarchy of same; (iii) the functions pertaining to each position; (iv) the skills and qualifications required for each profession and position; (v) the main rules on career progression; and (vi) employees' salaries. Basically, this statute imposes on employers the obligation to inform the labor authorities of the organization of their human resources ("HR").

Many companies in Angola do not have an approved job qualifier. Failure to meet this requirement is subject to a significant fine ranging from between 10% and 15% of the company's total payroll. Nevertheless, compliance with this rule has so far only been checked by the authorities during occasional audits of the employer's HR documentation and procedures. However, this has also changed with the approval of Presidential Decree No. 43/17, of 6 March 2017.

According to the new rules, the registration of employment agreements entered into with expatriate employees entails the submission of a copy of the job qualifier, approved by the General Inspectorate of Labor, with the Employment Center for the employer's area of activity.

The authorities now have at their disposal additional means to enforce the companies' obligation to have an approved job qualifier, forcing them to prepare and submit it for approval so that their workforce comprises expatriate employees that are working legally in the country.

Apart from the penalties set forth in the law, failure to register employment agreements has immigration implications. Proof of registration of agreements is required for foreign exchange purposes and also by the Immigration Service at the time expatriate employees apply for renewal of their work visas. Failure to have an approved job qualifier will, then, imply a refusal by the authorities to register employment agreements, which in turn will make it impossible to transfer salaries abroad and to renew work visas.

JURISPRUDENCE

Failure to attempt conciliation implies the nullity of lawsuit proceedings (Ruling issued by the Supreme Court on 23 February 2017):

The Supreme Court was asked to rule on the nullity of an award handed down by the Cabinda Provincial Court on the basis of the plaintiff's failure to comply with the procedural requirement to file the statement of claim with the Public Attorney's office and request the scheduling of an attempt at conciliation. This is a mandatory step prior to the commencement of any individual labor dispute, under Article 307.1 of the former General Labor Law (Law No. 2/00, of 11 February 2000) and Article 274 of the current General Labor Law (Law No. 7/15, of 15 June 2015).

The Court decided that the hearing to attempt conciliation is a prior and mandatory measure, presided over by the Public Attorney's Office, which must take place before any labor lawsuit is filed with the competent Labor Court so that the parties may potentially settle the dispute. The ruling thus deemed the proceedings null and void.

LABOR LEGAL NEWS

- Presidential Decree No. 29/17, of 22 February 2017 – Approves the list of occupations that women are prohibited or restricted from doing, repealing Joint Executive Decree No. 172/10, of 14 December 2010.
- Presidential Decree No. 30/17, of 22 February 2017 – Approves the list of occupations that minors are prohibited or restricted from doing, repealing Joint Executive Decree No. 171/10, of 14 December 2010.
- Presidential Decree No. 31/17, of 22 February 2017 – Approves new Regulations on the Temporary Placement of Employees and the execution of temporary employment agreements, as well as a new regulatory framework applicable to temporary employment agencies, repealing the previous regime approved by Presidential Decree No. 272/11, of 26 October 2011.

- Presidential Decree No. 40/17, of 6 March 2017 – Approves model fixed-term and unlimited-term employment agreements, establishing the minimum content of both such agreements. The statute repeals the former models approved by Executive Decree No. 80/01, of 28 December 2001.
- Presidential Decree No. 43/17, of 6 March 2017 – Approves the general rules on personnel levels and new rules on the hiring of foreign non-resident employees, repealing Decree No. 5/95, of 7 April 1995, and Decree No. 6/01, of 19 January 2001. The new regime consolidates many of the former rules set out by Decree Nos. 5/95 and 6/01. However, a large set of amendments were approved.

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.
- Prepare and submit a Nominal Record of Employees (RENT form) by 30 April, in respect of personnel data for March.
- Prepare and submit to the Ministry of Petroleum's National Directorate for Human Resources, by 31 March, an Annual Progress Report or Implementation Status Report, which is a detailed report on the implementation of development plans for human resources relating to the preceding year.

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