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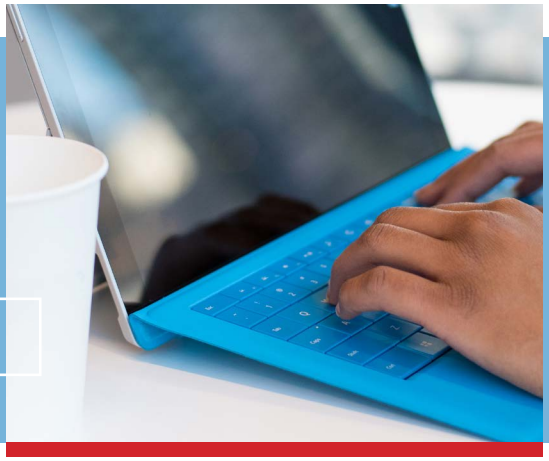
Labor Newsletter
ANGOLA

NOVEMBER 2022



OPINION

The Right to Disconnect in Angola

One of the most debated topics in the world of labor currently is the one concerning what has come to be called the "right to disconnect". In fact, although the beginning of the discussion of this topic dates from late 2014, the legal regulation of this right and what it actually means to be "connected" or "disconnected" in the context of the employment relationship was triggered by the effects of the pandemic on the way of working, given the massive use of technological means of communication in combination with widespread remote working from the employee's domicile.

The origin of the right to disconnect can be found in France, where in 2014 and 2015, following serious cases of employees' burnout due to excessive pressure and volume of work, two companies in the technology and telecommunications sectors concluded two collective labor agreements regulating the need and right of employees to disconnect from work. The rationale behind these collective labor agreements was to provide the possible balance between professional and personal life, the prevention of physical and mental health of employees, the prevention of cases of moral harassment and, believe it or not, the increase of productivity through the granting of effective periods of personal time to employees.

Therefore, in 2016, the French government, through the Minister of Labor El Khomri, proposed in the French National Assembly an amendment to the Labor Code with the intent of "approving rules that would adapt the norms on normal working hours to the digital era". Despite the good intention, the truth is that the final solution of the law in France was rather vague: only companies with 50 or more employees and that have a collective labor agreement in force must include provisions in such instruments regulating the right to disconnect; otherwise, and in the absence of a collective labor agreement, it was imposed on such companies the duty to approve an internal regulation on this matter, subject to mandatory information and prior consultation of the employees, as well as the general obligation to provide professional training to the employees on the reasonable use of electronic means of communication.

The country that followed this discussion most closely was Portugal, where the right to disconnect was considered a consequence of the legal rules on working hours and that the use of electronic means of communication does not preclude the employee's right to rest. However, the final solution in this country's law was identical to the one in France, with the same vague reference of the regulation of the right to disconnect to collective labor agreements and internal regulations.

After the whole pandemic period and all the experience lived with the massive phenomenon of remote work and the use of technological means of working, we can say without any hesitation that the most advanced country in the world in this matter is Angola. In fact, earlier this year it was approved Presidential Decree No. 52/22 of 17 February, which regulates the exercise of the labor activity under telework regime. This decree outlines with some detail the rules on the of service on a remote basis and the contents of employment contracts or specific agreements on this matter.

However, regarding the right to disconnect, the option of the national lawmaker was to expressly regulate this issue, having established in Article 11 of the new statute the duty of the telework employee to respect normal working hours, and the duty to be completely available for contacts concerning the employee's function by all means of communication and work tools assigned by the employer. But, on the other hand, Article 13(1) of the Presidential Decree under consideration has established the employer's obligation to "respect the employee's privacy, the employee's personal and family rest and rest periods, and guarantee the right to professional disconnect".

Therefore, Angola is the first country in the world to expressly regulate the right to disconnect, which is linked to privacy and the rights to rest and not to use the electronic means of communication that the employee would be obliged to use during working hours.

The rules in consideration are a major step in the regulation of the subject and a strong position taken by the national lawmaker. The big question is to know how companies and the labor market will adapt to this new reality and rules, notably considering the high percentage of the active population that is involved in subsistence agricultural activities and other activities of an informal nature, as well as the high unemployment rate throughout the national territory. What is clear is that the law-maker's initial message was assertive: the rules on working hours apply and are fully binding on the employee, but outside these mandatory coordinates, the rights to privacy and rest are imperative.

PODCAST

The Right to Disconnect in Angola

This podcast was developed with support of

ELA Employment Law Alliance

JURISPRUDENCE

Regularization of an Invalid Disciplinary Procedure – Offsetting of Employer's Credits (Sentence of the 1st Section of the Labor Chamber of the Provincial Court of Luanda, from 5 October 2022, Case No. 279/18-A)

The case in question was initiated by an employee who claimed for his dismissal to be declared as null, as well as that the employer should be condemned to pay credits relating to a housing credit granted during the employment relationship which, in his understanding, had been unlawfully offset by the employer after termination against the amount of the total contributions at that time to an individual savings plan.

The main argument for the application for a declaration of nullity of the dismissal used by the employee was that of the lack of a detailed allegation of the facts on which the employer based the disciplinary decision in the note of offence, which, in the employee's understanding had essentially caused prejudice to the exercise of his right of defense in the course of the disciplinary proceedings. These arguments were disputed by the employer, being its main line of argument that the employee, regardless of the more or less precise contents of the note of office, had demonstrated in the course of the disciplinary hearing a perfect knowledge of the facts and of the disciplinary offences with which he had been charged, and hence had properly exercised his defense during the disciplinary proceedings.

After a heated debate, the position which was accepted by the Court was that of the employer. It was ruled that, with regard to the nullity of the disciplinary proceedings alleged by the employee due to insufficient description of the facts and infractions which were imputed to him in the note of offence: "Furthermore, it is common doctrine that during the interview or in his defense, if the employee demonstrates knowledge of the facts whose lack of objectivity he has been denouncing, said defect is remedied, as there is no curbing of his defense", which led to the Court confirming the validity and lawfulness of the employee's dismissal.

With regard to the second claim, the Court also rejected the employee's thesis that all offsetting of credits in the context of the employment relationship would be unlawful, considering that the direct discount of the housing credit against the value of the savings accumulated by the employee in the plan was lawful, not only because it occurred after termination of employment, but also because such compensation was not based on salaries but rather on an accessory benefit, specifically an individual savings plan managed by the employer.

This decision has the merit of clarifying two very controversial issues in practice and thus being an important guideline to follow in identical cases.

LABOR LEGAL NEWS

- **Presidential Decree no. 208/22, of 23 July 2022-** Creates the National Institute of Qualifications and approves the respective Organic Statute. Revokes all legislation that contradicts the provisions of this Decree

- **Presidential Decree no. 210/22, of 23 July 2022 - Establishes the legal framework of the National Qualifications System -** NQS and defines its main instruments, namely the National Qualifications Framework - NQF and the National Qualifications Catalogue. Revokes all legislation that contradicts the provisions of this Presidential Decree.

- **Executive Decree no. 253/22, of 24 of July 2022 - Approves the Organic Statute of the Talatona Integrated Technological Training Centre -** CINFOTEC Talatona. Repeals Executive Decree no. 237/08, of 6 October 2022, and all legislation that contradicts the provisions of this Decree.

- **Law no. 26/22, of 22 August 2022 -** Civil Servants Legal Framework. Repeals Law no. 17/90, of 20 October, and other legislation that contradicts the provisions of this Law.

- **Dispatch no. 4544/22, of 30 September 2022 (Ministry of Justice and Human Rights) -** Determines that the Trade Union of Construction, Transport, Industry and Similar (SICTIA)'s By-Laws will be published.

UPCOMING LABOR OBLIGATIONS TO BE CONSIDERED

- 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 day of the following month.

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