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Labor Newsletter
ANGOLA

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OPINION

The Revision of the Angolan General Labor Law

On 25 May 2023, the Angolan Parliament approved the proposed revision of the General Labor Law approved by Law no. 7/15 of 15 June ("GLL"). The guiding principles of the said revision of the Angolan GLL include the fact that after approximately 7 years of its validity, the need to bring it into conformity with constitutional principles, as well as with some international conventions ratified by the Angolan State, and which govern the fundamental institutions of Labor Law, within the framework of the country's socio-economic reality, is still being raised.

It should also be noted that, despite the GLL having originated from a specific social and economic reality, the requirements arising from the rule of law claim for a revitalization of Angolan labor law, fundamentally marked by changes in the paradigm of the formation, validity and termination of labor relations.

With the revision of the GLL, it is intended to densify the axiological-normative content of the foundations and structuring principles of the Rule of Law, in order to monitor the effective realisation with the fundamental rights, freedoms and guarantees of citizens, in the light of the Constitution of the Republic of Angola in the field of employment relations, providing a greater Human dignity, Justice, Equity, Freedom and Solidarity.

Thus, it is expected a greater dignity for the contractual parties during the constitution, validity and termination of the employment relations, as well as, a relationship developed based on a legal framework measured by the autonomy of the parties throughout the employment relations.

Main changes

Elimination of the criteria of Micro, Small, Medium and Large Companies

The GLL uses this criteria to define distinct rules for limited term employment contracts, differentiated remuneration standards in some legal allowances and differentiated compensation amounts in case of termination of the employment contract. The draft revision eliminated this criteria on the basis of very debatable equality arguments between economic agents.

New rules on Limited term contracts – The Most Relevant Amendment

The GLL defines very broad terms for limited term contracts, which vary between 5 years for Large Companies and up to 10 years for Micro, Small and Medium Companies.

With the new law the new rule will be to use employment contracts for unlimited period of time, and it will only be possible to use Limited term contracts when companies have a temporary justification to do so within the reasons listted by law in an exhaustive way.

The maximum duration of contracts will vary from 6, 12 to 36 months, and the draft version of the new law even mentions 60 months in cases of opening of establishments or new activities.

The shortening of the deadlines for fixed term hiring, its implications and what companies should do to cope with this problem is the topic of a podcast (only available in English language) enclosed to this number of our Labour Newsletter.

Limited term employment contracts will now mandatorerly have to be set out in writing, and the exhaustive reasons listed in the law must be expressly and fully set out in the contract.

If the Limited term employment contract is not put in writing, it will be presumed to be the employer's responsibility, and will be deemed to have been entered into for an unlimited term.

This is a sensitive point of the revision, which will certainly be subject to amendments in the final version of the statute.

Increased requirements for disciplinary dismissals with just cause and for objective reasons

In the case of disciplinary procedures, the draft revision provides for two new sanctions, temporary downgrading and suspension from duties with loss of pay.

In the dismissals due to objective reasons, a compulsory phase of information and consultation of employees' representative bodies will be introduced, as well as a greater administrative control of the processes by the labor authorities.

Both processes will be the object of a more detailed regulation, increasing the setting of conditions of formal validity of the processes, which will necessarily expose the companies to increased risks of invalidity of dismissals with the consequent reintegration of the employees.

The preliminary project foresees the reduction to above 5 (five), the number of employees to be dismissed so that the dismissal for objective reasons is considered collective, contrary to those above 20 workers, foreseen in the GLL.

Other amendments

- Compensation for economic and moral damages may know be imposed on employer in every case of illegal or invalid termination;
- Introduced new types of special employment contract, namely: **Remote work Contract, Commuting Employment Contract, Sports Employment Contract, and Employment Contract for fiduciary positions**, and the elimination of the of the Works or Task Contract type.
- New rules on the status of **working students**;
- Greater regulation of **personality rights in the employment relation**, namely freedom of expression and opinion, physical and moral integrity, the safeguarding of privacy and the protection of personal data;
- There will be a norm that foresees the termination with just cause concerning the employer in cases of **harassment**;
- The use of **remote surveillance equipment** in the workplace will be regulated.
- Flexible working hours will be introduced, and the right of workers with family responsibilities to opt for these working hours will be recognised;
- Substantial increase of **parental leave** after birth.

PODCAST

The New General Labour Law and the Ongoing Fixed Term Employment Contracts

Please listen to this podcast on the most complex topic arising from the amendment to the GLL. The new GLL will entail a comeback to the former regime only allowing fixed term employment contracts in the exceptional circumstances set out in the law under a closed standard of cases, and the contract must mention the specific underlying reason for its limited duration according to such circumstance.

In addition to the new rules mentioned above, the new GLL will encompass a reduction in the maximum terms for the hiring on a fixed term basis that will be applicable to all ongoing contracts.

In this podcast, moderated by Nuno Gouveia, Elieser Corte Real and Adail Cardoso, respectively co-Head and Managing Associate of our Employment and Litigation practice group, analyze the rules approved by the new GLL on this topic, as well as what companies should do to adapt themselves to these new rules and, moreover, what they should do to cope with the shortening of the maximum deadlines for fixed term duration.

The National Data Protection Regime

Data protection is always a topic present in the management of every company human resources.

In this podcast, also moderated by Nuno Gouveia, João Luis Traça, head of our Intellectual Property and Data Protection practice group, analyses the national data protection regime with a particular focus on the rules and procedures that companies must comply on the theme of data protection and processing, including the applicable regulatory duties on this topic.

JURISPRUDENCE

Reinstatemet – Expiry must be *ex officio* Declared by the Court (Uniformization of Jurisprudence – Supreme Court Ruling no. 1/23, of 22 June 2023)

In a very clarifying ruling to uniform jurisprudence, the Supreme Court was called upon to rule on the potential opposition of judgments between three previous rulings issued by its Labor Chamber in cases no. 159 (1557/10, 162 (1504/10) and 772/06 on the essential question of whether or not the expiry of the right to take legal action regarding the exercise of the right to reinstatement must be known ex officio by the Court.

Under the terms of Article 303 of the General Labor Law, the employee's right to judicially request reinstatement in cases of individual or collective dismissal expires within one hundred and eighty (180) days as from the day following the dismissal. The main topic under discussion in the Uniformization Ruling in question was whether or not compliance with the 180-day period for exercising the right to judicially claim reinstatement should be considered and declared by the Court even if the parties do not raise this issue expressly in the proceedings.

The Supreme Court referred in its decision that Article 303 of the General Labor Law "*is one of the most important – perhaps even the most important – in terms of the consequences of dismissal, as it is based on it that the effectiveness of rights related to reinstatement, compensation and interim wages or ongoing wages (those payable as from the date of dismissal to the date of the decision) will be assessed. What is meant by this is that, after concluding that the dismissal is invalid, one begins to trace the path to bring about the respective consequences, the first being, as is known, reinstatement. Therefore, it will be necessary to refer to the first page of the proceedings to verify the date of filing. That is, verifying the date on which the employee filed the case (at the Public Prosecutor's Office - in cases where this is done - and at the Court Registry, in other cases). If it is verified that the employee filed an appeal or brought the action*

of labor conflict within a period of 180 (one hundred and eighty) days from the day following the day on which the dismissal occurred, reinstatement is possible. Therefore, all the other consequences mentioned above may also occur. However, if the employee has arrived at the Labor Justice bodies after a period of 180 (one hundred and eighty) days counting from the day following the day on which the dismissal was verified, there is no room for reinstatement. Even if the party taking advantage of it does not invoke it".

In the opinion of the Supreme Court, "*the expiry of the right of action for reinstatement must be declared ex officio by the Court's as it is a matter that is non-disposable since it is a matter excluded from the availability of the parties, under the terms of Article 333, no. 1, of the CC. In fact, even if the employee does not want to be reinstated or the employer is unable to do so, due to extinction of the work post, for example, the Court must fictionalize the reinstatement in order to bring about the remaining consequences of the invalidity of the dismissal. Thus, if the employee contests the dismissal more than 180 days after the day following the dismissal, even if there are grounds for declaring his invalidity, the Court should not condemn the employer to reinstate the employee and, consequently, he will also not be entitled to receive interim or ongoing salaries and, finally, he will not be entitled to compensation. That is, the Court decides in favour of the employee, however, because he resorted to the Court late, he leaves here "empty handed"*".

The unanimous conclusion of the Supreme Court was to establish jurisprudence in the sense that "*the expiry of the right of action for reintegration must be ex officio declared by the Court*".

This decision is extremely important in cases of dismissal, as it clarifies that the employee's right to take legal action to claim his reinstatement is subject to an expiry period of 180 days from the day following the day of dismissal, with the elapsing of that period to always be ex officio declared by the Court, in the sense of forcing the judges to extract consequences from the inertia of the employee in exercising the referred right within the legally foreseen period.

LABOR LEGAL NEWS

- Presidential Decree no. 65/23, of 3 March of 2023 - Approves the Organic Statute of the National Institute for Employment and Professional Training. Revokes the Presidential Decree n.º 233/21, of September 22, and all the legislation that contradicts what is stated in the present Decree.

- Presidential Decree no. 66/23, of March 6 of 2023 - Approves the Organic Statute of the Ministry of Public Administration, Labor and Social Security. Revokes all legislation that contradicts what is stated in the present Decree, namely Presidential Decree no. 220/20 of August 27th.

- Presidential Decree no. 67/23, of March 7 of 2023 - Establishes the Incentives to Public Employees and Administrative Agents Linked to the Organs and Services of the State's Local Administration. Revokes all legislation that contradicts the provisions of this Decree, namely Decree no. 12/03, of 8 April.

- Joint Executive Decree no. 77/23, of 29 May 2023 – Approves the sources for financing the Social Fund of the Employees from the Transportation Sector.

- Executive Decree no. 79/23, of 31 May 2023 – Approves the Regulations on the Enlistment, Technical and Regulatory Advisory, Monitoring Supervision and Manaement of the Mutualist Solidarity Fund.

UPCOMING LABOR OBLIGATIONS TO BE CONSIDERED

- Calculate and remit Personal Income Tax ("PIT") levies with the payment of the PIT reporting to June 2023 until the last working day of the following month.

- 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.

For more information, please contact:

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