Labor Newsletter

ANGOLA

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OPINION

WHAT IS THE MAXIMUM DURATION OF AN EXPATRIATE EMPLOYMENT CONTRACT?

Since the enactment of Presidential Decree No. 43/17, of 6 March 2017 (Regulations on the Hiring of Foreign Non-Resident Employees – "PD 43/17"), the rules on duration of fixed-term employment contracts of expatriates have been successively amended by Presidential Decree No. 79/17, of 24 April 2017, that revised PD 43/17, and the most recent Presidential Decree No. 151/17, of 4 July 2017 ("PD 151/17").

As of the approval of PD 151/17, the maximum term of 36 months was eliminated by means of revocation of Article 75.1 of the Visa Law Regulations (approved by Presidential Decree No. 108/11, of 25 May 2011) and no new express rule has been established on the maximum duration of an employment contract entered into with an expatriate employee. Consequently, due to the inexistence of a specific rule on the contract´s term, the point now for debate is to determine whether or not the Angolan authorities will follow a flexible approach, allowing the parties to freely define the maximum term of the contract (despite being subject to the limitation of two renewals) or apply the general rules set forth by the General Labor Law on fixed term employment contracts.

The flexible approach has a direct basis in the amended version of PD 43/17, however if one takes the General Labor Law as the default labor statute that applies to all employment relationships on a complimentary basis, then the conclusion would be that the maximum terms allowed are 10 years for Medium, Small and Micro-Sized companies and 5 years for the remaining companies, including renewals. This issue is of extreme relevance and the silence of the law causes a heated debate on how to harmonize the existing statutes.
Therefore, until the application of the new legal framework is better consolidated by the labor and judicial authorities, we recommend companies to be cautious when defining the term of an employment contract to be entered into with an expatriate employee, notably by considering the limitation of two renewals.

JURISPRUDENCE

Illegal Termination and Discontinuance of Length of Service (Judgement issued by the 2nd Section of the Labor Chamber of Luanda's Provincial Court, on 26 May 2017)

This case amounts to an allegedly unfair dismissal lawsuit following the termination by redundancy of a manager by the defendant company. This case is relevant since it dealt with two important issues: the first that was addressed related to the plaintiff's claim that his work post had not been extinguished since the defendant company reallocated his functions to an employee with a similar position and a lower salary. The second issue analyzed was to determine whether or not the fact that the plaintiff had been previously terminated in 2007 by

a company pertaining to the same company group and subsequently hired for the same position on late 2008 by another company of the same group amounted to continuous service for purpose of assessing his seniority.

As to the first issue, the court concluded that no actual loss of the plaintiff's work post had occurred. Consequently, the decision taken was that the defendant company could not terminate the employee for lack of factual basis for redundancy, since the reallocation of functions to a lower level position did not meet the statutory rules for redundancy, which is a mandatory requirement under Article 230 of the General Labor Law approved by Law 2/00, of 11 February 2000. The same rational could be thus applicable under the current General Labor Law.

With regard to the second issue, the decision was that the re-hiring of the plaintiff by a different company of the same company group did not qualify as continuous service for seniority purposes, since the defendant company had its own individual structure, premises and supervisors. The plaintiff's seniority was only considered as of 2008 for compensation purposes.
This ruling is of an extreme relevance as it gives us for the first time an in-sight on how the labor courts address the legal issues of individual redundancy and re-hiring of former employees, on which no actual case law existed.

LABOR LEGAL NEWS

- **Presidential Decree No. 151/17, of 4 July 2017** - Amends Article 75.1 of Presidential Decree 108/11, of 25 May 2011, that approved the Visa Law Regulations, thereby establishing new rules on work visa duration.

- **Presidential Decree No. 152/17, of 4 July 2017** - Approves the Nationality Law (enacted by Law 2/16, of 15 April 2016) Regulations, setting out the rules and procedures for the acquisition, loss and reacquisition of Angolan nationality.

- **Executive Decree No. 364/17, of 26 July 2017** - Approves the Internal Regulations of the National Institute for the Training of Education Technical Personnel.

- **Presidential Decree No. 189/17, of 18 August 2017** - Approves the Organic Regulations of the Migration Service.

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.

- For companies engaged in the oil industry with a Program Contract in force, prepare and submit the 2018 Human Resources Development Plan ("PDRH") to the Ministry of Petroleum by 31 October. Pursuant to the most recent information released by the Ministry of Petroleum's National Directorate for the Promotion of Angolanization, the 2018 PDRH must be submitted via the digital platform SIASP, already in use for the issuance of prior opinions regarding entry visas applications for the oil sector personnel. The PDRH must be prepared using the official forms approved by the Ministry of Petroleum and cover the national and expatriate personnel's recruitment and training objectives, and also the goals for the nationalization of the workforce for 2018.

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