

Labor Newsletter

ANGOLA

January 2018

OPINION

HIRING OF FOREIGN EMPLOYEES AND THE PRACTICAL CONSOLIDATION OF THE NEW REGIME

Following the legislative amendment to the duration of fixed-term employment contracts of expatriate employees carried out by Presidential Decree No. 43/17, of 6 March 2017 (Regulation on the Performance of Professional Activity by Non-Resident Foreign Employees), as amended by Presidential Decrees No. 79/17, of 24 April 2017 and No. 151/17, of 4 July 2017, the time elapsed since then has allowed us to make an initial assessment of the practical application and consequences of these changes, although there is still no actual consolidated practice and thus is not possible to ensure that the authorities will adopt a uniform procedure.

Effectively, in spite of the fact that it was understood that there were no longer minimum and maximum duration limits for the employment contracts entered into with foreign non-resident employees and that the periods of maximum duration of fixed-term employment contracts for national employees – set out in Article 17 of the General Labor Law (10 years for micro, small and medium-sized companies and 5 years for the rest) -, the authorities still advise companies to exercise caution when defining the maximum term for employment contracts, in particular that the initial duration of 36 months is not exceeded.

The information provided by the immigration authorities regarding the issuance of work visas is towards the possibility of issuing visas with the same validity as the underlying employment contract, namely allowing the possibility to set out terms beyond 1 year. The work visa's renewal beyond the initial validity can still be done directly in-country.

Regarding the employment contracts registration in the Employment Center of the employer's area of activity, the information conveyed is that it must occur within 30 days after the professional activity has started and every time the employment contract is renewed beyond the initial duration. As for the registration fee, according to Decree No. 43/17, of 6 March, it shall correspond to 5% of the total monthly remuneration established in the employment contract, i.e. basic salary and compulsory and optional allowances. However, there are still cases in which the Employment Centers calculate the referred fee taking only into account the monthly base salary, as provided in the previous regime approved by Decree No. 5/95, of 7 April 1995.

In summary, the practical consolidation of the regime for hiring foreign non-resident employees is still an ongoing process, so companies should take some caution when entering into employment contracts, in particular regarding the initial term for hiring each individual.

JURISPRUDENCE

Moral Damages in Cases of Unfair Dismissal (Judgment issued by the 1st Section of the Labor Chamber of Luanda Provincial Court, on 21 December 2017)

The present case consisted in a Special Appeal following the disciplinary dismissal of several employees by the defendant a company. This dispute is of major importance regarding two points: firstly, regarding the jurisdiction of the Labor Courts to try claims for the compensation of moral damages arising from unfair dismissal; and, secondly, regarding the effective legality and trial of these claims.

On the first point, and contrary to the majority of the jurisprudence known to us so far, the Court has declared itself competent to decide on the claims for compensation of moral damages arising from the unfair dismissal. It was considered that there was a connection between that claim and the main plea related to the unfair dismissal and the subsequent employee's reinstatement.

Regarding the second topic, the Court considered that, although the unfair dismissal may in abstract give cause to potential moral damages, such plea depends on an actual claim and proof of actual and relevant damages suffered by the worker in the general terms of law and of its connection with the unfair dismissal itself, as the Court considers that the indemnities provided for in the General Labor Law compensate any damage that may be generated by that fact.

This decision is of considerable importance since, apart from being a deviation from the main line of jurisprudence, which considers that claims of moral damages pertain to the jurisdiction of the Civil Courts, it clarifies that the unfairness of a dismissal does not result directly in any moral damages, forcing the worker to argue and demonstrate the actual existence of such damages.

LABOR LEGAL NEWS

- **Executive Decree No. 662/17, of 12 December 2017** – Defines the rules for the implementation of Visa Exemption Agreements for ordinary visa holders entered into by the Republic of Angola, South Africa and Mozambique. In accordance to said agreements, national citizens of each signatory country are exempt from obtaining a previous entry visa for business travels and tourism. The exemption conditions vary according to the country in question.
- **Executive Decree No. 667/17, of 14 December 2017** – Approves the Regulations of the Social Security Inspectorate Office.
- **Presidential Order No. 307/17, of 21 December 2017** – Creates an Interministerial Working Group with the aim to analyzing and updating the Oil Sector Organization Readjustment Model, coordinated by the Ministry of Mineral Resources and Petroleum.
- **Presidential Decree No. 12/18, of 15 January 2017** – Approves the Organic Statute of the Ministry of Mineral Resources and Petroleum. Repeals the Presidential Decree No. 103/14, of 14 May 017 and Presidential Decree No. 176/14, of 25 July 2017, as well as any legislation that contravenes the provisions of the present Diploma.

UPCOMING LABOR OBLIGATIONS TO BE TAKEN INTO ACCOUNT

- 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 of the following month.
- Keep updated, fill in and send to the Employment Center competent for the area, until 30 of April of each year, a Nominal Record of Employees, according to the official form, with the information up to March of the corresponding year.
- Companies pertaining to the oil sector that have entered into a Program Contract with the Ministry of Natural Resources and Petroleum must prepare and submit to said Ministry's National Directorate for the Promotion of Angolanization, until 31 of March, a detailed report on the balance of the implementation of the Human Resources Development Plan regarding the previous year. Companies should use the digital platform provided by the National Directorate for the Promotion of Angolanization for this purpose.

For more information, please contact:

JAYR FERNANDES

Jayr.Fernandes@mirandaalliance.com

ELIESER CORTE REAL

Elieser.Real@mirandaalliance.com

NUNO GOUVEIA

Nuno.Gouveia@mirandaalliance.com

© Miranda Alliance, 2018. Reproduction is authorised, provided the source is acknowledged.

WARNING: The texts contained in this newsletter are provided for general information purposes only, and are not intended to be a source of advertising, solicitation, or legal advice; thus, the reader should not rely solely on information provided herein and should always seek the advice of competent counsel.

This Labor Newsletter is distributed free of charge to our clients, colleagues and friends. If you do not wish to continue receiving it, please reply to this e-mail.