IN-DEPTH

Employment Law

ANGOLA

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In-Depth: Employment Law (formerly The Employment Law Review) is an insightful global survey of the employment law frameworks and related developments in key jurisdictions around the world. It analyses the most consequential current issues faced by employers, including recent case law, legislative and regulatory changes and best practices.

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Angola

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Summary

Introduction

The Angolan employment law framework is very protective of the employee's position, especially considering the constitutional limitations. As such, for economic and social reasons, some legal regimes (e.g., employment agreements for a definite or an indefinite term) and legal restrictions under Angolan employment law were simplified and revoked to promote employment opportunities. However, in the past year, after public discussion on the labour framework, the same legal regime and restrictions that were simplified have suffered considerable changes with the new General Labour Law, approved by Law No. 12/23 of 27 December 2023 (New GLL), which revoked the Angolan General Labour Law, approved by Law No. 7/15 of 15 June 2015 and rectified by Rectification No. 15/15 of 2 October 2015 (GLL). The new GLL will enter into force at the end of March 2024 and will regulate the core regimes to be applied to the employment relationship. Other laws regulating specific regimes (such as temporary agency work, accidents at work, employment contract paradigms, collective negotiations and strikes) may also be applicable.

The labour courts and appeal courts (if the necessary requirements are met) are competent to try employment conflicts. This regime is regulated by several decrees, some of which are long-standing. The Inspectorate-General of Labour is responsible for the enforcement of law on labour matters through several mechanisms, such as inspections, requests for information and administrative offence proceedings. Other administrative entities may also act for the employer, depending on the matter in question.

Year in review

In 2023, developments in Angolan employment law were dominated by the effects of the alterations to the occupational qualifier regime[2] and the publication of the New GLL.

Regarding occupational qualifiers, the legislation clarifies which companies are obliged to implement the regime and its legal requirements, and provides models and examples. A transitional period exists during which companies that already have qualifiers in place or that are now obliged to develop this instrument can adapt or create it. The companies tried to adapt their organisations to requirements set in the occupational qualifier regime.

In relation to the new GLL, this general labour law intends to revert some legal solutions of core systems, such as employment contracts (e.g., the reintroduction of fixed-term contracts with the indication of motif and predicted special employment agreements), termination of employment contracts (e.g., alteration of the requirements of certain modalities of dismissal and review of the dismissal consequences) and other rights and duties related to the execution of the contract (e.g., alteration of the work schedule, absences and disciplinary power).

Significant cases

In 2022, most court decisions were reached during the preliminary phase as these mainly involved the analysis of the fulfilment of employers' formal requirements, particularly in cases relating to dismissal with just cause. With the new GLL and the implementation of the occupational qualifiers, the number of court cases is expected to rise, especially considering that the new GLL has predicted additional formalities that will objectively restrict the employer's power when hiring and dismissing employees.

Basics of entering into an employment relationship

i Employment relationship

According to the new GLL, a written employment contract is required only for specific situations (e.g., fixed-term employment agreements, employment agreements entered into with foreign workers). The parties may amend or change the employment agreement through a written agreement. The terms of employment (other than those that provide for essential conditions for the employee) may be altered, provided that they comply with the legal framework.

However, if written, the employment agreement must contain the following details:

1. full identification of all parties to the contract;
2. professional classification and occupational category of the role;
3. workplace;
4. weekly working time;
5. amount of salary, method and payment period, as well as reference to supplementary or complementary salary allowances or payments in kind, with an indication of the respective amounts or calculation formula;
6. date of commencement of work;
7. place and date of signing the contract; and
8. signature of both parties.

Considering the new GLL, new proposed templates for employment contracts may be published.

Employment agreements for fixed term are permitted under the new GLL, but they are subject to maximum durations. In contrast with the previous general labour law, the new GLL requires an underlying reason for the employment agreement to be considered valid, which is seen with Article 15 of the new GLL, for example:

1. replacement of temporarily absent employees;
2. temporary or exceptional increase of the company's normal activity due to an increase of tasks, orders, market reason or seasonal reasons;

3. execution of urgent works, the launch of a new activity with an uncertain duration, the beginning of a new labour activity; and
4. execution, direction and supervision of constructions.

The employment agreement is subject to a maximum duration, which is determined by one of the above-mentioned underlying reasons. The maximum duration of the employment agreement may vary from 6 to 60 months (in some cases, the new GLL provides the possibility of an exceptional extension authorised by the Inspectorate General of Labour).

ii Probationary periods

Although the GLL allows for probation periods, the actual duration depends on the type of contract and employee. If the employment agreement is for an indefinite period, the probation period will be:

1. up to 60 days, in general;
2. up to 120 days; and
3. up to 180 days if the employee is performing management functions. Again, for the increases of 120 and 180 days, a written agreement is required.

If the employment agreement is for a fixed term, a written agreement is required, and the parties may foresee a probation period of up to 30 days.

During the probation period, either party may terminate the employment agreement without giving any notice, paying an indemnity or providing a justification.

iii Establishing a presence

A foreign company must be officially registered to carry out business in Angola and, subsequently, to hire employees. Without prejudice, a foreign company may hire a service provider to carry out a particular service; however, to hire employees through an agency or third party, the foreign company must also be registered. The legislation is not clear about whether a permanent establishment may hire employees, in particular because it may be difficult for the relevant authorities to retain the requisite taxes and social contributions.

However, if a company is hiring employees, it must comply with the labour legislation and minimum requirements (e.g., paying a minimum wage as established by the Angolan state and holding a labour accident insurance policy) and the tax and social contributions regimes. Taxes due and other contributions are retained by the employer, which is responsible for reporting and withholding these amounts.

Restrictive covenants

Even though the GLL allows for non-compete clauses, several requirements must be fulfilled for the clause to be considered valid and effective. Pursuant to Article 85 of the new GLL:

1. the period of validity of a non-compete obligation cannot be more than three years after termination of the employment agreement;
2. the non-compete clause must be stated on the employment agreement or an addendum;
3. the employee's activity must cause real damage to the employer to be considered as unfair competition; and
4. regarding the compensation system, the employee shall be granted with a salary during the non-compete period, the amount of which shall be stated on the non-compete clause.

Regardless of any express provision of a non-compete clause, while working for an employer the employee is bound by a duty of loyalty not to negotiate with any competitor of the employer or to work in competition with the employer's company.

Wages

i Working time

The new GLL provides for a maximum working period but this can ultimately depend on the type of working schedules applied to a certain employee. In general, working time cannot exceed 44 hours per week and eight hours per day. Special regimes regarding working time may be put in place if the necessary requirements are met.

As a general rule, overnight work cannot exceed eight hours per day. If an employee works for at least three hours between 8pm and 6am the following day, it is deemed to be night-time work. The GLL provides for reasonable exceptions to these general rules.

ii Overtime

According to the GLL, overtime work can only be performed if the legal requirements are met. Overtime work shall arise only from urgent requirements in production or services.

When overtime is permitted, the following maximum limits must be observed:

1. two hours per day;
2. 40 hours per month; and
3. 200 hours per year.

Employees will be paid an enhanced hourly rate for each hour of overtime. This hourly rate depends on the number of overtime hours worked and the type of employer.

Foreign workers

There are two types of foreigners to which different regimes are applied. Those who hold:

1. a temporary or permanent residence permit (designated as resident foreign employees); and
2. a valid working visa (non-resident foreign employees) to whom a special regime must be applied.

The term 'non-resident foreign employees' applies to foreign citizens with a technical and scientific professional qualification that is lacking in Angola. Because these employees are hired abroad, they are subject to a special regime as provided by Presidential Decree No. 43/17 of 6 March 2017 and can only perform their activity in Angola for a certain period.

Among other requirements, the aforementioned Decree prescribes that only 30 per cent of a company's employees may be non-resident foreign employees.

The employer must register the employment agreement and pay the respective fee. Furthermore, when submitting the company's annual report or employee's nominal register (known as RENT), the employer must also submit, if applicable, an annex containing a register of foreign employees (in which the following data is required: name, remuneration, admission date, contract duration, authorisation date, country of origin and the entity that issued the visa). The payment of taxes or local benefits varies, depending on the specific situation of the employee.

Global policies

According to the new GLL, companies with more than 50 employees are required to approve internal regulations (to be written in the local language) regarding the following matters:

1. work performance and discipline;
2. safety, health and hygiene in the workplace;
3. indicators of employees' performance of their work;
4. remuneration system;
5. working hours of the various sectors of the company or work centres; and
6. control of employees' arrival, departure and movements within the company, surveillance and control of production.

During the preparation of these regulations, the company is required to consult employees' representative bodies, which have 20 working days in which to respond with their opinions.

Any regulations that concern performance and discipline, remuneration systems, work performance or safety, health and hygiene in the workplace must be sent by the employer to the Inspectorate-General of Labour for information and registration. If the authority detects any irregularity, it must initiate the necessary measures for it to be rectified.

When the regulations are approved, they must be published and displayed in the workplace, in a place that is accessible to employees, for their information. The regulations will not enter into force until 30 days after publication. They are then legally binding on both employer and employees.

Parental leave

The new GLL provides that female employees are entitled to maternity leave during and after pregnancy.

The employee is entitled to maternity leave of three months (except in the case of a multiple birth, for which the duration can be extended to four months), which can begin four weeks before the expected delivery date. Maternity may begin four weeks before the due date;

however, the remaining period must be taken after this date. The allowance will be regulated by a specific official document, which has not yet been published.

Pre-maternity leave (i.e., prior to maternity leave, as defined above) may be granted, but only if a pregnant woman is unable to perform any labour activity because of a high-risk pregnancy and must be confirmed by the national public health authority. The duration cannot exceed 180 days.

An employee may extend the statutory maternity leave by requesting complementary leave for a maximum period of four weeks to monitor the child. The additional period is unpaid and may be taken only if written notice (in which the amount of time to be taken must be indicated) is given to the employer. During the period of pregnancy and up to 12 months after delivery, the employee is entitled to be absent for one day per month, without the loss of pay, for medical monitoring and childcare.

Finally, during pregnancy and up to 12 months after childbirth, the employee is protected against dismissal, except in the event of a disciplinary infraction that endangers the employment relationship and makes it impossible to maintain.

The new GLL provides that male employees have the right to one day's leave in the event of the imminent or actual birth of a child, without loss paid. Male employees are also entitled to an additional seven working days of unpaid leave, whether consecutive or interpolated.

Translation

The employment documents must be drafted in the local language and, if not the same, the employee's native language. The purpose of this is to ensure that the employee understands the obligations and conditions and can therefore be legally bound by them. Notwithstanding the forgoing, the employment documents to be sent or submitted to an administrative authority must be drafted in the local language.

Employee representation

According to the Trade Union Law, approved by Law No. 21-D/92 of 28 August 1992, if employees are elected as union representatives or union delegates, they are entitled to specific rights (such as justified absences (paid or unpaid) and additional protection, in respect of dismissal).

Under the new GLL, a company is obliged to consult or inform the union's representative in certain situations (e.g., disciplinary measures). The company must consult and inform the employee representative body in certain situations (e.g., change of working period, internal regulations and dismissal procedures).

Under Angolan law, employee representative bodies do not have legal standing, despite being perceived as a company body and their representatives being entitled to the same rights and duties as trade union representatives.

Data protection

i Requirements for registration

The Angolan Data Protection Agency (APD), officially established in late 2019, is the competent regulatory authority for the enforcement of the Personal Data Protection Law, which entered into force in 2011.

In general, the Law regulates the processing of personal data, regardless of the nature or means of processing, including the name, age, address, telephone number and email address of employees. The Law sets out the following requirements:

1. the consent of the data subject (employee) must be obtained by the data controller prior to processing personal data, provided the specific purpose and means of processing is permitted by law;
2. prior notification or prior authorisation for the processing of personal data;
3. applicable restrictions on the movement and transfer of personal data; and
4. the enforcement framework for non-compliance with the regulations contained in the Law.

The employer, if qualified as a data controller or data processor, will be subject to the above provisions and restrictions. Nonetheless, in the private and cooperative sectors, the term 'personal data' may also include information contained in employee files, occupational health files, customer management files, arrival and departure registers and video surveillance files, if permitted by law.

Regarding all data that is considered to be personal, the company must ensure adequate technical protection and prevent the display of this information and, in some cases, take measures to prevent any non-authorised person from having access to the data. For instance, only the company doctor is permitted to have access to employees' medical (and thus confidential) data.

The new GLL has a specific chapter relating to personality rights, which includes an additional protection of personnel data, medical exams, surveillance means at the employer's disposal, confidential messages and access to information.

ii Cross-border data transfers

Cross-border data transfers may only occur if the destination country has a certain level of security and must first be notified to the APD, as the entity responsible for authorisation. If the destination country does not comply with the required level of security, the transfer may still occur if certain legal requirements are met, including the issuance of an authorisation by the APD and the employee's consent.

iii Sensitive data

The term 'sensitive data' applies to personal data concerning philosophical and political beliefs, union or political party affiliation, religious faith, private life, racial or ethnic origin, health and sexual life, including genetic data. See also Section XII.i in respect of medical data. The Personal Data Protection Law sets out specific requirements for processing sensitive data, including a prior authorisation by the APD.

iv Background checks

The legislation is not clear about the possibility of background checks, including credit checks or criminal records. Nonetheless, it is possible that reference to criminal records may be required for applicants in some professions. Medical examinations may also be required, although the medical data cannot be released to the employer. Only details regarding a person's aptitude for the work to be performed may be provided.

v Electronic signatures

Although Angola already has a specific decree about electronic signatures and the probative value of documents signed using this method, the necessary technical requirements are still under development. Therefore, this regime has not yet been applied to any documents, including labour documents.

Discontinuing employment

i Dismissal

An employer can only dismiss an employee with subjective or objective cause. The employer may terminate the employment agreement with just cause (by following the disciplinary procedure and applying a disciplinary sanction) or on objective grounds for economical, technological or structural reasons (see Section XIV).

A dismissal for a subjective cause can only be considered valid if the disciplinary matter is considered sufficiently serious, or when the reason for the infraction is objectively imputable and can be objectively verified, that it is considered no longer possible to maintain the employment relationship. The new GLL sets out the disciplinary offences that may constitute just cause for dismissal. Hence, the employer must prove, as a minimum, the employee's obligations and respective infringement, the severity of the infringement and the employee's intention in committing the infringement. The procedure to be applied in these circumstances entails a summons to a hearing, a hearing and a decision phase. The procedure may be extended, depending on the category of the employee. However, under the new GLL, certain categories of employees are protected against dismissal: employees who are, or have served as, a union leader; union delegates or members of the body representing employees; women entitled to maternity protection (see Section IX); former combatants; minors (aged 14 years or above); and disabled employees with 20 per cent or more disability. Note that, under the new GLL, additional procedural rules may be applied to these employees, including the obligation to request from the Inspectorate-General of Labour a technical opinion regarding possible dismissal.

When dismissing an employee for a subjective cause, the employer is not required to give the employee notice or pay any indemnity. However, if the dismissal is ruled null by the court (because of an infringement of the necessary formalities, such as not sending a competent summons for a hearing, which must contain a description of the facts that constitute the disciplinary offence) or if the court rules that the dismissal is unfounded (e.g., the employee's conduct was not sufficiently serious to justify the dismissal or the disciplinary offence did not make it impossible to maintain the employment relationship), the employer must reinstate the employee and pay the salaries due as of the date of dismissal until reinstatement, within certain limits.

If the employee chooses to receive an indemnity (instead of being reinstated) or if the reinstatement is not possible, the employer must pay an indemnity.

The parties may enter into an agreement, of which the terms and conditions are settled case by case, at any time.

ii Redundancies

The new GLL still does not foresee any lay-off regime (as a temporary suspension or because of a reduction of work). However, the new GLL provides for suspending the employment agreement for reasons relating to the employer's activity or causes not relating to the employee (such as calamities, accidents or other situations of force majeure-), for dismissal on objective grounds or collective redundancies. The suspension of an employment agreement must follow the requirements and procedure laid out in the new GLL, including notification to the Inspectorate-General of Labour.

Dismissal for objective grounds or redundancies must be based on the need to discontinue or substantially transform certain jobs for proven economic, technological or structural reasons, involving the reorganisation or internal conversion, reduction or termination of activities. Whatever the reason, the situation must exist prior to the beginning of the dismissal and respective procedure.

Additional requirements must be observed by the employer, such as the definition of selection criteria and the number of employees to be dismissed, which are key to the type of dismissal to be carried out. If an employer intends to terminate up to five employment agreements, it must initiate a procedure for dismissal on objective grounds. If an employer intends to terminate more than five employment agreements, it must resort to a collective redundancy. Compensation is due to employees affected by both types of dismissal. Calculation of the amounts due take account of the type of company and the number of years the employee has served with the company, within certain limits.

The formal procedure for dismissal on objective grounds entails a notification phase (including to the Inspectorate-General of Labour) and an execution phase (namely, a notice period of 30 days prior to the termination date, which is subject to the GLL's requirements and limitations). Additionally, the Inspectorate-General of Labour may be called on to intervene after receiving the mandatory notification from the employer.

The procedure for collective redundancies is laid down in the new GLL and entails a notification phase and an execution phase (namely, a notice period of 60 days prior to the termination date, subject to the new GLL's requirements and limitations). Again, the Inspectorate-General of Labour may intervene after having received the mandatory

notification. Furthermore, the employer may schedule meetings with the employees' representative bodies to provide information and data about the situation, and it may submit the conclusions arising from those meetings to the Inspectorate-General of Labour.

Finally, some categories of employees, such as employees' representatives, women under maternity protection, former combatants, minors (aged 14 years or more) and employees with a disability equal to 20 per cent or more, may benefit from special protection (e.g., further notifications or binding opinions to be issued by the Inspectorate-General of Labour).

Transfer of business

The new GLL regulates the labour regime applicable in the event of a business transfer in the form of employer modification, in of the event of a change in the legal situation of the employer.

According to the new GLL, a change in the legal situation of the employer may consist of merger, split, business acquisition, lease cession or any other modifications foreseen by the law. This modification does not constitute cause for termination. In fact, the employees maintain their seniority and category and continue to perform their tasks. All employment relationships are transferred directly to the new employer, including any contracts already terminated.

Under the new GLL, the former employer must notify the employees' representative body or, in its absence, the employees about the transfer and respective motifs, date of effects, consequences for the employees and the measures envisaged for them.

The former and the new employer are both responsible for any obligations if the employment agreement existed at the time of the transfer. Within 22 working days of the transfer taking place, the employees have the right to terminate their employment agreement with notice.

The new employer is also obliged to maintain the same work conditions established in a collective bargaining instrument or internal practice, without prejudice of the alterations permitted by the law.

The new employer must notify the Inspectorate-General of Labour within 15 working days of the transfer.

Outlook and conclusions

We anticipate that the crucial issue in 2024 will be the new GLL, which will try to distance itself from the GLL that was approved in 2015 by being globally more favourable and predicting relevant restrictions to hiring and dismissing employees, as well as redefining certain rights and duties related to the execution of work on a day-to-day basis.

Endnotes

1 Daniela Sousa Marques is an international consultant at ALC Advogados and a principal associate at Morais Leitão, and Catarina Levy Osório is a founding partner at ALC Advogados and a partner at Morais Leitão. Back to section

2 An occupational qualifier is a required internal management tool for employers with more than 10 employment roles with different functions. Back to section

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