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Employment 2021

Angola: Law and Practice
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ANGOLA

Law and Practice

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1. INTRODUCTION

1.1 Main Changes in the Past Year

In the past 12 months, Angola's employment law has not undergone substantial change. In fact, the main changes occurred between 2015 and 2018. Although this is not directly related to employment law, it is important to stress that immigration law with connection to work visas and residence permits has recently been altered (see **5. Foreign Workers**).

1.2 COVID-19 Crisis

During the pandemic, Angola did not create any temporary regimes to assist companies through this period. In fact, employers have been obliged to apply the General Labour Law (*Lei Geral do Trabalho*, or GLL – approved by Law No 7/15, 15 June 2015) to control and cope with this crisis (except for absences due to prophylactic isolation or COVID-19 infection).

The measures adopted were mainly related to risk groups, workplace safety and improvement of employees' income. For risk groups, it was established that those employees were released from being physically present at their place of work and, when the necessary conditions were met, they had the possibility of working from home (teleworking). Since last December, the parties (ie, employers and employees of risk groups) may create, by agreement, regimes that allow their physical presence. Other measures related to employees' income were applied for a few months; however, such measures have already ceased. Concerning workplace safety, preventative measures (eg, masks, safe distancing and contingency plans) have been adopted to decrease the risk of contagion and guarantee a safe workplace.

2. TERMS OF EMPLOYMENT

2.1 Status of Employee

The regime in Angola does not make any distinction between blue-collar and white-collar workers. Notwithstanding that, there are two categories of individual workers: employees and self-employed contractors.

The self-employed develop their activity by autonomously executing their activity under a service agreement with respect to Civil Code dispositions. Employees perform their activity under an employment agreement with respect to GLL dispositions and special regulations. Depending on the type of work performed, employees can be subject to specific labour regimes as well as employment contracts (with different rights and duties).

Regarding other employee statuses, the law also regulates a temporary employee (ie, employees are hired by temporary agencies and subject to a specific contract called a temporary employment agreement). Moreover, they must be hired by a duly certified company and their employment agreement must comply with the regime set forth in Presidential Decree No 31/17, February 22nd. These employees may be assigned to other companies (as a user undertaking employee) if the necessary conditions are met. In extreme situations, non-compliance with the presidential decree may determine that such temporary worker be considered as a user undertaking employee with an indefinite employment agreement.

2.2 Contractual Relationship

Under the GLL, there are different types of employment agreements, such as indefinite employment agreements and fixed-term/uncertain-term employment agreements.

Fixed-Term and Uncertain-Term Employment Agreements

Fixed-term employment agreements may be successively renewed for equal or different periods of time up to a maximum limit of five years. For medium, small and micro companies, this limit is increased to ten years.

When those maximum limits expire (and if the employer did not communicate their termination), the fixed-term agreement will be deemed as an indefinite employment agreement.

Employment Agreement Form and Requirements

Unless the law expressly determines that a written form shall be adopted (eg, in the case of an employment agreement celebrated with non-resident foreign employees, an apprenticeship contract and a temporary employment agreement), the parties are free to choose the form of employment agreement.

When written, the employment agreement must comply with the models set forth in Presidential Decree No 40/17, March 6th, and include the following terms in the employment agreement:

- full name and usual address of the parties;
- professional classification and occupational category of the employee – in accordance with the approved occupational qualifier;
- employee's workplace;
- weekly duration of worktime;
- amount, method and timing of the salary payment, and reference to supplementary or additional benefits, as well as those granted in kind, with an indication of the respective amounts and how they are calculated;
- date of effectiveness;
- place and date of execution of the agreement; and
- signature of both parties.

In addition to the model and term requirements, the parties are free to set forth other written clauses (eg, non-competition clauses), as long as they comply with the law.

2.3 Working Hours

Working Time Limits

According to the GLL, unless otherwise set forth in the applicable legislation, the normal working hours may not exceed the following limits: 44 hours per week and eight hours per day.

However, these limits can be reduced by collective bargaining or by law, if the working conditions are considered disruptive, exhausting, dangerous or involve risk to an employee's health. Despite the reduction in working hours, the employee's salary may not be reduced, nor does it imply unfavourable work conditions.

Daily Rest

Employees are entitled to a 45–90-minute break for rest and lunch, to avoid doing more than five consecutive hours of normal work. Employees also have the right to ten or more rest hours between the end of one working day and the beginning of another. Employees are entitled to a minimum of one rest day per week, generally on Sunday.

Special Working Time Schedules

The GLL also sets out special working time schedules, namely for shift work, availability regimes and alternating between working time and rest time.

Regarding shift work, an employer may establish fixed shifts or rotating shifts. Depending on the regime, different working time limits and compensation may be applicable.

Employers whose work centres render permanent services to the community – eg, communication, transportation, water and energy trans-

portation and distribution – or companies with a continuous service or production that must maintain regular and normal equipment and installations performance may resort to the availability regime. Under this regime, an employee must be at an employer's disposal for a period not exceeding the normal working time (in fact, the employee must indicate their physical location). For these days, the employee has the right to receive special remuneration of between 5% and 20%, depending on the type of employer (micro, small, medium or large company).

With regard to the regime of alternating between working time and rest time, this consists of working a maximum of four weeks followed by an equal rest period. This regime is subject to special rules and limits. Unlike other special working time schedules, this regime does not imply the payment of compensation.

Working Schedule Exemption

If agreed with the employer, employees with management or monitoring functions or who render direct assistance to the employer may not be subject to the above-mentioned working time limits. It is not mandatory to have this in written form; however, if the employer intends to apply this regime to employees whose activity is developed outside the work centres in variable locations, a written agreement must be drafted. Despite this regime, employees have the right to a weekly rest day, bank holidays and a complimentary rest day.

Overtime Regulations

Overtime hours are allowed if they result from an imperative need for production or services (such as prevention and elimination of consequences related to accidents, natural events, or force majeure situations; or an unpredicted and temporary work increase). In general, this regime is subject to the following limits: two hours per day, 40 hours per month and 200 hours per year. Employers must pay an enhanced hourly rate for each overtime hour, which depends on the number of overtime hours and the type of employer (micro, small, medium or large company).

Part-Time Regime

An employee's activity that is conducted during no more than five hours per day or four hours per night is considered as part-time work. An employer and an employee must agree on this regime and it must be set in writing. This regime should be available to employees with family responsibilities, with a diminished working capacity, and employees who are enrolled in middle and graduate education. Despite the reduced salary, these employees are entitled to the same rights, guaranties and working conditions as a full-time employee.

2.4 Compensation

Minimum Wage

The GLL provides that employees have the right to a minimum wage. According to Presidential Decree No 89/19, March 21st, the minimum wage is AOA21,454.10 per month. However, depending on the economic group in which an employer is integrated, an employee may receive a higher wage. Thus, the commerce and extractive industry must comply with a minimum wage of AOA32,181.15 per month; the transportation, services and transformative industry must comply with a minimum wage of AOA26,817.63 per month; and agriculture must comply with a minimum wage of AOA21,454.10 per month.

Vacation Allowance

The GLL also prescribes that an employer must pay a vacation allowance (a minimum of 50% of the base wage corresponding to the vacation period) and Christmas allowance (minimum of 50% of the wage salary). Employment agreements or collective bargaining may set forth a higher amount.

Other Benefits

Besides a base wage, employers usually grant other benefits (some may be perceived as remuneration, while others are considered an act of discretion), such as meal allowances, seniority payments, bonuses, subsistence allowances, residence allowances and family allowances.

Remuneration

Due to this freedom on defining the amounts paid, the GLL considers all economic payments (including bonuses) that an employee receives from an employer with regularity and periodicity (presumption) as remuneration. In this case, the employer has the burden of proof to preclude this presumption.

Except for the minimum wage, the government does not interfere with the definition of compensation schemes. Nonetheless, the GLL has strict rules regarding remuneration, including several limitations to salary reductions and credit compensations.

2.5 Other Terms of Employment

Vacation Period and Pay

Employees are entitled to a paid vacation period of 22 working days per year. The GLL sets out specific vacation rules regarding the admission and termination year.

Employed women with underage children are entitled to one additional vacation day per child under the age of 14.

Maternity Leave

Employees (ie, employed women) are entitled to maternity leave (a maximum duration of three months that may begin up to four weeks prior to childbirth), which is set out in specific legislation. In the case of a multiple birth, the leave is extended by four weeks. The father is entitled to one day's paid absence. According to the above-mentioned legislation, the employer is primarily responsible for this payment (called a "maternity grant"). To receive these grants, employees must have paid six months of social contributions, registered as consecutive or interpolated, within the previous 12 months. These maternity grants are equivalent to the average of the two highest monthly remunerations within six months prior to the beginning of maternity leave. Holiday allowances and other non-regular bonuses are not included in such average.

The GLL and special legislation also predict a possible pre-maternity leave; ie, leave in the case of high-risk pregnancies, duly certified by a competent entity, with a maximum duration of 180 days. In this situation, the employer is also responsible for paying this leave, the amount of which corresponds to 60% of the maternity grant (using the same calculation formula).

Although the employer is first responsible for such payments, it is possible to be reimbursed by the social security services if requirements are met (including the submission deadline).

In special cases (eg, birth delay, abortion, stillbirth), the leave's duration and requirement may be altered.

Employees are also entitled to additional maternity leave (up to four weeks) if the necessary conditions and procedure are duly satisfied. However, this is unpaid leave.

Childcare

During pregnancy or 15 months after labour, employees are entitled to one day of absence per month for childcare – this absence is paid.

Employees are also entitled to eight working days per year for child assistance – this absence is also paid. If an employee wishes to extend this limit, this may be agreed with the employer, but the extra period will be unpaid.

Sick Days

In the case of sickness, employees are entitled to the following rights:

- medium and large companies – for the first two months, an employer must pay 100% of the base wage to an employee; between the third and 12th month, an employer may be obliged to pay 50% of the base wage; and
- small and micro companies – an employer is obliged to pay 50% of the base wage for 90 days; after that, the employment agreement expires if the ill-health situation prevails.

Confidentiality

Employees are forbidden from releasing any information regarding an employer's organisation, methods and production techniques, and the employer's business. Moreover, employees must be loyal to an employer, by not negotiating and working solo or through third parties in competition with an employer's activity. Nonetheless, it is usual for an employer to add a confidentiality clause to the employment agreement.

Employee Liability

Employees are not, in general, liable for losses or injuries. Nonetheless, the GLL sets out strict rules for employers, including in terms of insurance. In the event of injury, an employer will respond with regard to all the breaches that cause the accident.

3. RESTRICTIVE COVENANTS

3.1 Non-competition Clauses

Employers may set forth a non-competition clause in the employment agreement. However, this non-competition clause must meet the following criteria:

- the non-competition limitation may not last more than three years after the employment agreement's termination date;
- the clause must be set forth on a written employment agreement or written addendum;
- the activity in question must be liable to cause real damages to the employer and be considered as unfair competition; and
- a salary must be granted to an employee, during the limitation period, and the amount must be indicated on the employment agreement or addendum (this amount must take into consideration significant expenses in an employee's professional training).

If one of the above-mentioned criteria fails, the clause will be considered as invalid and, therefore, an employee will not be subject to any limitation following termination of the employment agreement. These restrictive covenants are only applicable if an employee's activity is liable to cause real damages (not future or possible damages) and it is considered as unfair competition. Unfair competition will be analysed from a legal perspective to determine the legality of the clause.

3.2 Non-solicitation Clauses – Enforceability/Standards

Concerning non-solicitation clauses in relation to employees or customers, the GLL does not directly set forth the possibility of incorporating this type of clause into the employment agreement. Nonetheless, it is important to analyse it case by case to determine its legality.

4. DATA PRIVACY LAW

4.1 General Overview

Law No 22/11 of 17 June 2011 – the Personal Data Protection Law – was enacted in 2011 and establishes the applicable legal rules for the processing of personal data.

In general terms, the law applies to the processing of personal data, which is any information that is able to address and/or uniquely identify a data subject – eg, a consumer, a client, an employee – whatever its nature or means, including image and sound. As an example, information such as name, age, address, telephone number, email address, photographs and others are deemed personal data under the provisions of the Personal Data Protection Law.

As a result, a person shall be regarded as identifiable if they can be identified, directly or indirectly, in particular, by reference to an identification number or a combination of elements specific to their physical, physiological, mental, economic, cultural or social identity.

The Angolan Data Protection Agency (APD), officially established only in late 2019, is the competent regulatory authority whose broad scope of attributions include the supervision, monitoring, control, audit and enforcement of the Personal Data Protection Law.

Some of the main features of the Personal Data Protection Law are:

- the requirement for the consent of the data subject for the data controller to undertake the processing of their personal data, under a specific purpose and means of processing as determined by law;
- the requirement for prior notification and/or prior authorisation for the processing of personal data;
- the applicable restrictions to the movement and exportation of personal data; and
- the enforcement framework for lack of compliance with the regulations contained therein.

As for the specific case of employment relationships – ie, regarding the employer and the employee – under the applicable legal provisions, should the employer be qualified as a data controller or data processor, this will be subject to the applicable provisions and restrictions contained therein.

Moreover, the Personal Data Protection Law sets out specific provisions applicable to the private and co-operative sectors, as they will be subject to the said provisions and to any other provisions set forth in special and/or specific regulations applicable to certain business sectors.

Accordingly, in the private and co-operative sector, personal data also includes the following types of files:

- employee files;
- occupational health files;
- customer management files;
- input and output registers; and
- video surveillance files.

In conclusion, and in light of the above-mentioned legal criteria, personal data provisions, requirements and restrictions are also one of the many concerns when addressing matters related to employment relationships from a data privacy perspective.

5. FOREIGN WORKERS

5.1 Limitations on the Use of Foreign Workers

Foreign employees are divided into two groups:

- foreign employees who have a temporary or permanent residence permit (called resident foreign employees); and
- foreign employees who require a working visa to develop their activity in Angola (called non-resident foreign employees).

Resident Foreign Employees

These employees have the right to live and work in Angola without substantial limitations (depending on the type of residence visa, employees may be subject to institutional proceedings such as renewing their permits). Due to this specific status, these employees receive the same treatment as Angolan employees, including the GLL's dispositions (with the necessary adaptations).

Non-resident Foreign Employees

Non-resident foreign employees are foreign citizens with a technical and scientific professional qualification that gives them skills Angola is lacking. They are hired abroad to perform their activity in Angola for a certain period. These employees are subject to a special regime that sets out different formalities and obligations. First, it is important to stress that non-resident foreign employees need to hold a work visa to enter and work in Angola. Without that visa, these employees cannot develop their activity in Angola. In fact, the GLL expressly prescribes that if a foreign employee does not have a working visa, the employment contract is null, but the employer will still be obliged to pay compensation to the employee.

Several requirements must be met by an employer to be able to hire these employees.

According to Presidential Decree No 43/17, March 6th, 70% of a company's workers are expected to be made up of a "national labour force", meaning Angolan workers and resident foreign employees, while 30% of the company's employees may be non-resident foreign employees. This means that an employer's workforce must comply with these limits.

Furthermore, an employee must comply with the following requirements:

- be of legal age under Angolan legislation and the corresponding foreign law;
- have a technical or scientific professional qualification;
- be physically and mentally fit, as evidenced by a medical examination in the country of employment;
- not have a criminal record, proved by a document issued in the country of origin; and
- not have acquired Angolan nationality.

Regarding the terms of the employment agreement, it must regulate all the mandatory terms that are mentioned in the said presidential decree.

5.2 Registration Requirements

Aside from the normal proceedings related to working visa applications, an employer must register the employment agreement entered into with a non-resident with the Ministry of Labour (employment centre) and such request must be submitted with a "copy of the passport with the page of the working visa" and the employer's occupational qualifier.

This registration may be executed up to 30 days after the starting date of the professional activity. With regard to the deadlines applicable to the Ministry of Labour's decision upon the presentation of the relevant application, the regime does not provide any rule.

For each registration, a fee is due that corresponds to 5% of the value of one month's remuneration, as set out in the relevant contract.

6. COLLECTIVE RELATIONS

6.1 Status/Role of Unions

The Trade Union Law (*Lei Sindical*), approved by Law No 21-D/92, of 28 August 1992, sets out

a formal proceeding, including registration, that must be followed to constitute a union and for it to acquire legal personality.

This law also gives employees the right to organise trade unions, without any discrimination, and, therefore, the right to freely exercise activities related to unions.

Other union rights provided by the aforementioned law include:

- the right to enrol in a union;
- the right to cease that enrolment and to pay monthly fees to the affiliate trade union;
- the right to participate in trade unions;
- the right to be elected for their governing bodies; and, in particular,
- the right to carry out trade union activities at the workplace.

If employees are elected as union representatives or union delegates, they are entitled to specific rights, such as justified absences. Those absences must be paid if they are within the limits indicated in the GLL. Further employee absence, over the limit indicated in the GLL, may still be justified, but will be unpaid.

A union has a significant role to protect and guarantee employees' rights.

The GLL prescribes a mandatory consultation/duty to inform the union's representative in some situations (eg, regarding internal regulations, disciplinary measures, employment agreement termination procedures, and modification of the work period).

6.2 Employee Representative Bodies

By contrast with trade unions, employee representative bodies do not have legal personality and, therefore, they are perceived as a company body.

Employees elected as trade union representatives are entitled to specific rights, such as justified absences. Those absences must be paid if they are within the limits indicated in the GLL. However, if those employees exceed the absence limits, even though the absences are justified, they will be unpaid.

Again, the GLL prescribes a mandatory consultation/duty to inform the union representative in some situations (eg, regarding internal regulations, disciplinary measures, employment agreement termination procedures, and modification of the work period).

6.3 Collective Bargaining Agreements

The Collective Negotiation Law (*Lei sobre o Direito de Negociação Colectiva*), approved by Law No 20-A/92, of 14 August 1992, sets out that collective agreements must be negotiated between companies with more than 20 employees and representative bodies that act on employees' behalf, including unions. If a company has employees who are represented by two or more unions, it must create a collective commission with the purpose of representing the interests of all the employees and being part of the negotiations to reach a bargaining agreement. However, if companies do not have employees who are already represented by a union, the employees may establish an ad hoc commission elected for that purpose.

Once the parties have reached an agreement and a collective bargaining agreement is drafted, it will be applicable to the signing companies and their employees (in general, it will also be applicable to employees who were admitted after the execution of the collective bargaining agreement).

A bargaining agreement's conditions may be extended through the following.

- An adherence agreement; ie, companies and representatives with legitimacy to negotiate and sign collective agreements may adhere to those that already exist. The adequate mechanism is an adherence agreement by which the later and the original signing parties agree on such accession. However, this adherence agreement may not modify the original agreement's content.
- An accession order; ie, the government (through its ministerial intermediaries) may order the extension of the collective agreement to all companies and their employees that act in the same activity sector and that have an economic and social identity or resemblance through an accession order issued at the parties' request or at their own initiative.

Collective bargaining agreements may not violate any imperative legal disposition, or predict any conditions less favourable than those set forth in the applicable legislation or tax regimes and price formation, nor may they inhibit an employer's organisational and directional powers. Furthermore, these bargaining agreements will be directly executed in all their regulated matters, unless an employment agreement sets out more favourable conditions.

These agreements play an important role in the employer and employees' relationship.

7. TERMINATION OF EMPLOYMENT

7.1 Grounds for Termination

The Angolan constitution and the GLL set out the right to be employed and to work, as well as employment stability, so the grounds for termination are expressly prescribed in the applicable law. The parties are forbidden from using other termination forms that are not set forth in the applicable law (including the GLL).

Therefore, regarding grounds for termination (besides dismissal for serious cause – ie, dismissal with just cause – and see **7.4 Termination Agreements**), an employer may resort to dismissal on objective grounds and to collective redundancies.

Individual Dismissal on Objective Grounds

Individual dismissal on objective grounds is based on the need to extinguish or substantially transform jobs due to proven economic, technological or structural reasons, involving the reorganisation or internal conversion, reduction or termination of activities. These grounds are required from the beginning of the dismissal; ie, an employer may only resort to this type of dismissal once the above-mentioned grounds are met (which must be prior to the beginning of the formal procedure).

Aside from complying with these grounds, this type of dismissal is subject to other restrictions; eg, the number of employees included in such dismissal. This form of dismissal may only be used if an employer intends to terminate 20 or fewer employment agreements. If an employer intends to terminate more than 20 employment agreements, it should resort to a collective redundancy.

With regard to the compensation due to employees in the event of individual dismissal on objective grounds, it is calculated, considering the type of company and the number of years the individual has served the company, under the following terms:

- large companies – one base wage for each year of seniority up to a maximum limit of five, plus 50% of the base wage multiplied by the

number of years of service to the company that exceed that limit;
- medium companies – one base wage for each year of seniority up to a maximum limit of three, plus 40% of the base wage multiplied by the number of years of service to the company that exceed that limit;
- small companies – two base wages plus 30% of the base salary multiplied by the number of years of service to the company that exceed the limit of two years; and
- micro companies – two base wages plus 20% of the base wage multiplied by the number of years of service to the company that exceed the limit of two years.

Furthermore, when determining an employee's seniority (ie, the number of years they have served the company), one year of service to a company will also mean a fraction of three or more months.

This type of dismissal must be preceded by a formal procedure that includes a communication phase and execution phase (a notice period of 30 days prior to the termination date, which is subject to the GLL requirements and limitations). The Inspectorate-General of Labour may intervene after receiving the mandatory communication sent by the affected employer and through enquiries for clarification of the situation.

Collective Redundancy

Collective redundancy may be used when the extinction or transformation of jobs is determined by duly proven economic, technological or structural reasons involving reorganisation or internal conversion, or reduction or termination of activities that affect the employment of more than 20 employees.

This dismissal is very similar to individual dismissal on objective grounds, including the terms of compensation and its calculation (see above).

With regard to procedure, this type of dismissal must be preceded by the procedure laid down in the GLL, including a communication phase and execution phase (notice period of 60 days prior to the termination date, which is subject to the GLL's requirements and limitations). Once more, the Inspectorate-General of Labour may intervene after receiving the mandatory communication sent by the affected employer and through enquiries for clarification of the situation.

Furthermore, an employer may hold meetings with an employee's representative bodies to exchange information and knowledge and subsequently send the respective conclusions to the Inspectorate-General of Labour.

7.2 Notice Periods/Severance

During a trial period, either party may terminate the employment agreement without requirement of notice, compensation or justification.

Regarding the specific regime of notice periods, the GLL sets out the possibility of employees and employers resorting to a notice period, depending on the cause of termination.

Employers

In general terms, employers cannot terminate agreements except for in situations expressly predicated in the applicable law. In some cases, employers may be obliged to comply with notice periods and severance payment on top of giving notice (see **7.1 Grounds for Termination**, in which individual dismissal on objective grounds and collective redundancies are addressed).

Concerning a fixed-term employment agreement, if it has a duration longer than three months, employers must communicate the end of such fixed-term agreement 15 working days prior to the final date of the initial term or the renewal in force. In lieu of notice, an employer is

obliged to pay a severance (ie, a salary amount that corresponds to the missing notice period).

Employees

Employees must send written notice to an employer within 30 days of the date on which they intend to leave the company. In lieu of notice (partial or total), an employee is obliged to pay a severance (ie, a salary amount that corresponds to the missing notice period). If an employer refuses to let an employee work during the notice period, the employee will be obliged to pay a severance (ie, a salary amount that corresponds to the notice period that was refused by the employer). However, if an employee terminates with cause (eg, based on the employer having breached the contract), no notice period is required, and an indemnity may be due depending on the cause for termination.

7.3 Dismissal For (Serious) Cause (Summary Dismissal)

Dismissal for disciplinary reasons (or with just cause) must be based on a serious disciplinary offence by an employee or on the occurrence of objective and verifiable reasons that make it impossible to maintain the employment relationship. The law lists several situations that could cause termination on disciplinary grounds (eg, unjustified absences exceeding three days a month or 12 a year, or, regardless of their number, that cause serious losses or risks to the company; failure to comply with the work schedule more than five times per month; drunkenness or drug addiction with negative repercussions on the work; and serious and recurrent disobedience of legitimate orders and instructions given by immediate superiors and the person responsible for organising and maintaining the work centre or company operations).

Formal Procedure

This dismissal must be preceded by a formal procedure, as the infringement of any formality may affect the validity of the dismissal.

Summons

In general terms, within 22 working days after gaining knowledge of an offence and who is responsible, an employer must send a summons for a hearing (adequate for the employee to exercise the right to reply to the accusations made by the employer), which must include the following:

- a detailed description of the facts that underpin the accusation;
- the day, hour and location of the hearing, which must take place within ten working days following delivery of the summons; and
- the information that the employee may be accompanied to the hearing by up to three witnesses or supportive people (who may, but do not have to, belong to the company or its representative bodies).

With this summons, an employer may suspend an employee, if their presence is considered inconvenient. This suspension does not affect an employee's right to receive a monthly wage. If the employee was elected to union bodies or representative bodies (within the company), the suspension must be communicated to such bodies.

Hearing

During the hearing, an employer or its representative must explain the grounds for the application of the disciplinary measure (in this case, dismissal) and hear the explanations or justifications given by the employee, as well as the arguments invoked by the people assisting in the hearing. The GLL sets out several procedures to be observed by the employer in the event of the

absence of an employee (or their representative) during the hearing.

Dismissal

The disciplinary measure understood as dismissal cannot be decided earlier than three working days or later than 30 days after the date of the hearing. The dismissal must be communicated to the employee within five days of the decision being made, through the applicable means. The communication must include the facts of the accusation and its consequences, the hearing's result and the final decision regarding punishment. If the employee was elected to union bodies or representative bodies (within the company), a copy of the above-mentioned decision must be sent to such bodies.

Additional formalities may be required when an employee belongs to a specific category (see **7.5 Protected Employees**).

Appeal

If the employee asserts that they did not commit the acts of which they are accused, that dismissal is disproportionate considering the accusation or level of guilt, or that the dismissal is null or abusive, the employee may appeal to the court. The GLL expressly defines nullity and abusive causes, which include infringement of some procedure formalities, discriminatory motives and employee claims against working conditions and violation of rights. The referred-to appeal must be brought within 180 days of the termination date (ie, the effective dismissal date).

7.4 Termination Agreements

The GLL sets out the possibility of signing termination agreements. Fixed-term, uncertain-term and indefinite employment agreements may be terminated by agreement. However, a termination agreement is subject to some conditions. For example, it must be written and signed by both parties; otherwise, it will be considered null and void.

Furthermore, the termination agreement must contain the parties' identification, an express declaration of the employment termination and dates of execution and termination, as well as other stipulations that the parties agree on, as long as they do not violate the law (eg, waive clauses within the limits prescribed by the GLL).

One of the most important clauses is the compensation clause. If the agreement provides for compensation to the employee, it must indicate its payment date. Furthermore, unless the parties expressly agree that the compensation includes labour credits, the compensation amount will not include labour credits that are due on termination or because of such termination.

Termination agreements are usually definitive, in the sense that they are not usually challenged.

7.5 Protected Employees

Depending on the type of dismissal, particular categories of employees may be under specific protection, such as employees' representatives, women under maternity protection (ie, those who are pregnant or up to one year after childbirth), former combatants (status defined in special legislation), minors (aged 14 years or more), and employees with a disability equal to, or more than, 20%.

In general terms, this protection may consist of sending further communications (not authorisations), binding opinions issued by the Inspectorate-General of Labour, or other special limitations.

8. EMPLOYMENT DISPUTES

8.1 Wrongful Dismissal Claims

When referring to wrongful dismissal, it is important to address the different wrongful dismissal claims set forth in the GLL.

Wrongful Dismissal Related to Disciplinary Dismissal

Nullity of dismissal

Regarding dismissal with just cause, it is possible to request a judicial declaration of the nullity of the dismissal or unfounded dismissal. Each declaration has its grounds and consequences.

Nullity of dismissal may be ruled by the labour court if the employer did not comply with a specific formality procedure or if the grounds for dismissal are related to the employee's political, ideological or religious views, union affiliation, or discrimination issues. In general terms, when a dismissal is considered null, the employer will be obliged to reintegrate the employee and pay the salaries and benefits due since the dismissal date with the following limits:

- six months for large companies;
- four months for medium companies; and
- two months for small and micro companies.

Unfounded dismissal

The grounds for unfounded dismissal are related to other grounds, such as an employee did not commit the acts of which they are accused, or the dismissal is disproportionate considering the accusation or the level of guilt. If the dismissal is ruled as unfounded, the employer may be obliged to reintegrate the employee under the conditions that the employee previously had, or to indemnify the employee. This indemnification is set out considering the following terms:

- large companies – 50% of the base wage multiplied by the number of years of service with the company prior to the dismissal date, with a minimum limit of three base wages;
- medium companies – 30% of the base wage multiplied by the number of years of service with the company prior to the dismissal date, with a minimum limit of three base wages;
- small companies – 20% of the base wage multiplied by the number of years of service with the company prior to the dismissal date, with a minimum limit of two base wages; and
- micro companies – 10% of the base wage multiplied by the number of years of service with the company prior to the dismissal date, with a minimum limit of one base wage.

Regardless of the employer's conviction (to reintegrate or to indemnify the employee – please refer to the previous paragraph), the employer is forced to pay the base wage due since the dismissal date until the employee is rehired or the res judicata date (if it is prior to being hired), with the following limits:

- six months for large companies;
- four months for medium companies; and
- two months for small and micro companies.

Abusive dismissal

Besides these declarations, the dismissal may be considered abusive if an employee presents any claim against working conditions and violation of rights or exercise of rights applied to union or representative bodies. In this situation, if the labour courts rule the dismissal as abusive, the employer will be required to pay the following compensation:

- large companies – one base wage for each year of seniority up to a maximum of five years, plus 50% of the base wage multiplied by the number of years of service with the

company exceeding that limit and an additional sum of five base wages;
- medium companies – one base wage for each year of seniority up to a maximum of three years, plus 40% of the base wage multiplied by the number of years of service with the company exceeding that limit and an additional sum of five base wages;
- small companies – two base wages plus 30% of the base salary multiplied by the number of years of service with the company exceeding the limit of two years; and
- micro companies – two base wages plus 20% of the base wage multiplied by the number of years of service with the company exceeding the limit of two years.

In the case of abusive dismissal related to claims against working conditions and violation of rights, the parties may agree to immediate reintegration plus salaries due from the dismissal date until reintegration, or the payment of five times the amount of salary that the employee did not receive.

Individual Dismissal on Objective Grounds

Regarding individual dismissal, if the dismissal is ruled by the labour court as unfounded, the employee has the right to be reintegrated and to receive the salaries due since the dismissal date with the following limits:

- six months for large companies;
- four months for medium companies; and
- two months for small and micro companies.

If an employee does not want to be reintegrated or if an employer refuses to reintegrate, the employee is entitled to receive the compensation due on dismissal, an indemnity set forth in the GLL, and the salaries due since the dismissal date with the above-mentioned limits.

Collective Redundancy

With regard to collective redundancies, if the dismissal is ruled wrongful by the labour court, the employer will be required to reintegrate and to pay the salaries due since the dismissal date until res judicata with the above-mentioned limits. If an employee refuses to be reintegrated or the reintegration is not possible, the employee is entitled to receive the compensation due on dismissal, an indemnity set forth in the GLL and the salaries due since the dismissal date with the above-mentioned limits. Some invalidity causes may increase the amount of the indemnity.

8.2 Anti-discrimination Issues

Anti-discrimination issues may be related to age, employment, professional career, salary, duration and other labour conditions, race, colour, gender, citizenship, ethnic origin, civil state, social condition, religious or political ideas, union affiliation, family relationship with other employees, and language.

As briefly mentioned throughout this article, the GLL expressly sets out that some discriminatory actions – once brought and confirmed by the labour courts – may result in an employer's obligation to pay an increased indemnity.

With regard to discriminatory actions not set forth by the GLL, the general rules will be applicable, and each case must be carefully examined to anticipate difficulties related to burden of proof and the damages that may be demanded and acknowledged by the court or other settling mechanism.

9. DISPUTE RESOLUTION

9.1 Judicial Procedures

Under the GLL, some labour disputes may be settled only by the labour courts, such as nullity of dismissal and wrongful dismissal (including

dismissal with just cause, individual dismissal on objective grounds or collective redundancies). The labour courts are specialised forums that are competent to settle all labour disputes.

It is not mandatory that parties be represented by an attorney. In fact, an employee is not usually represented by an attorney and that is one of the reasons why employees are exempt from paying any fees to the labour courts, which are fully borne by the employer.

Although class actions are a possibility, it is more common to have two or more employees present their claim before the same court and in the respective claim form since their claim is based on the same facts (eg, recognition of a legal or contractual right/relation).

Losing parties may appeal to superior courts depending on the outcome of the first-instance ruling.

9.2 Alternative Dispute Resolution

Employees may resort to alternative dispute resolution – such as mediation, conciliation and arbitration – to settle extrajudicial labour disputes.

The most-used form of alternative dispute resolution is conciliation. The conciliation procedure must be held by Public Prosecution with the support of the Inspectorate-General of Labour. The claim may be presented by the employer or employee, indicating mandatory information. The parties are summoned to appear in a hearing, during which they can reach a settlement to be put on record. If the parties do not reach an agreement or reach a partial agreement, the Public Prosecution office will draft the necessary record and present the case to the labour courts within five working days after the hearing date.

Concerning arbitration, the parties may agree to submit their disputes to arbitration, although this mechanism is not typically used in this situation. However, if they resort to arbitration, they may not use another alternative dispute resolution method. The GLL expressly sets out the arbitration procedure, including the formal proceeding, mandatory elements that must be addressed in the final decision and causes of annulment.

9.3 Awarding Attorney's Fees

Attorney's fees must be integrated in the fee's value that will be reimbursed to the winning party at their request. Since it is not mandatory to be represented by an attorney in labour suits, at least in the first instance, the referred-to request is usually overruled. Furthermore, employees are exempt from paying any fees in the labour courts, which are fully borne by the employer.

ALC Advogados is a leading law firm recognised for its excellent work, its capacity for innovation and ethical values, and its ability to combine local knowledge with international experience. The lawyers at ALC Advogados have solid academic training and vast experience in several legal areas and activity sectors, which allows them to advise clients with a high degree of technical expertise and responsiveness. The firm is a member of the Morais Leitão Legal Circle, an international network of law firms with a presence in Cabo Verde, Mozambique, Portugal and Angola, which allows the team to develop its work in partnership with the other member offices and to offer its national and foreign clients specialised resources.

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