

Labor Newsletter

ANGOLA

January 2019

OPINION

SOCIAL SECURITY CONTRIBUTIONS AND THE POSSIBILITY OF BONUS OPTIMIZATION

The new Legal Framework for Social Security Contributions for Employees, approved by Presidential Decree No. 227/18, of 27 September 2018, came into force on 26 December 2018 and will apply to all payrolls processed as of that date. The new statute implies a significant broadening of the taxable amount, since the base salary and other remuneration components will now, as a rule, be subject to contributions to the Social Security system.

There is, however, some room for debate and controversy: the General Labor Law foresees that occasional and voluntary gratuities not related to the performance of work, or which constitute a bonus or recognition for good work, are not considered as remuneration if they are attributed on an individual basis.

This means that these types of bonuses, which are not paid to employees on a regular basis, are expressly excluded by the General Labor Law from the concept of base salary or remuneration complement. However, the Legal Framework for Social Security Contributions for Employees is silent on this matter and it is therefore not clear whether such bonuses are subject to Social Security contributions. The main reason for the controversy is that the concept of “remuneration” used in the new framework seems to follow the same rules and principles of labor legislation.

Consequently, the definition and structure of bonuses attributed to employees by companies may be of relevance to determine whether or not said bonuses are subject to Social Security contributions. For that reason, any type of bonus policy or scheme currently in place should be analyzed to assess whether there is room for optimization in terms of Social Security contributions, especially by virtue of its definition and/or the relevant conditions for eligibility and form of payment.

JURISPRUDENCE

Compensation due to Fixed-Term Employees in case of Unlawful Dismissal. Principle of *pacta sunt servanda* (Supreme Court Ruling of 31 October 2018)

The case in question consisted of an appeal against a first-instance decision which had deemed as lawful the dismissal with just cause of a fixed-term employee. The Supreme Court reversed the initial decision and declared the termination as unlawful due to lack of just cause, but rejected the employee’s claim to receive full compensation for unlawful dismissal under the General Labor Law, as well as vacation and Christmas allowances and remuneration corresponding to the fourteen month.

The General Labor Law does not provide any rules regarding the payment of compensation in cases of unlawful dismissal of fixed-term employees. The conclusion reached by the Supreme Court is therefore of particular importance inasmuch as, for the first time, it decided that in the event of dismissal of a fixed-term employee as a result of a disciplinary process declared unlawful due to lack of just cause, the employer is required to pay the employee only the remunerations and allowances due until the date of the fixed term set out in the employment contract.

This jurisprudence provides a solution to the heated debate on how the General Labor Law would apply to similar cases. The Supreme Court decided that there was no obligation to pay any other compensation in this case and therefore the principle of *pacta sunt servanda* should apply, which means that there is no obligation to pay any compensation and/or reinstate the employee, but only to pay him the outstanding remuneration due until the date of termination of the fixed-term employment contract.

NEW LEGISLATION

- **Executive Decree No. 10/19, of 10 January 2019** – Establishes the Luanda Provincial Services of the National Institute for Social Security;
- **Executive Decree No. 11/19, of 10 January 2019** – Approves the procedures for obtaining a license for engagement in the activity of temporary assignment of employees;
- **Executive Decree No. 5/19, of 8 January 2019 (Ministry of Mineral Resources and Petroleum)** – Approves the Internal Regulations of the Inspectorate Office of the Ministry of Mineral Resources and Petroleum;
- **Presidential Decree No. 20/19, of 14 January 2019** – Approves the new Immigration Consular Fees;
- **Presidential Decree No. 21/19, of 14 January 2019** – Approves the general schedule for Immigration Consular Fees.

UPCOMING LABOR OBLIGATIONS TO BEAR IN MIND

- Prepare and submit payroll payment forms to the INSS (companies with more than 20 employees are required to submit the forms electronically) and pay contributions by the 10th of the following month.
- Prepare and submit to the Employment Center for the area, by 30 April of each year, a Nominal Record of Employees, according to the official (RENT) form, with information up to March of the corresponding year.
- Companies in the petroleum sector that have entered into a Program Contract with the Ministry of Mineral Resources and Petroleum must, by 31 March, prepare and submit to said Ministry's National Directorate for the Promotion of Angolanization and Value Chain a detailed report on the balance of the implementation of the Human Resources Development Plan in respect of the preceding year. Companies must use the digital platform provided by the National Directorate for this purpose.

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