Labor Newsletter

ANGOLA

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OPINION

FIXED TERM EMPLOYMENT CONTRACTS: NEW OPTIONS AVAILABLE TO EMPLOYERS

One of the main innovations introduced by the General Labor Law ("GLL"), approved by Law No. 7/15, of 15 June 2015, was the definition of a new statutory regime applicable to fixed term employment contracts.

The legislative amendment was quite radical. Under Law No. 2/200, of 11 February 2000, fixed term employment contracts were subject to the general requirement of written form. However, contracts entered into in order to meet occasional and specific tasks, seasonal work or urgent tasks did not require a written contract. In addition to this formal requirement, the former law limited the conclusion of fixed term employment contracts to a dual substantial requirement and deadline: firstly, the hiring of an employee under a fixed term employment contract was only possible if based on one of the supporting reasons exhaustively listed by the law, and such reason had to be stated in the text of the contract; secondly, the maximum duration period was also stated in the law, ranging from 6 to 36 months, depending on the particular case (for example, an employment contract grounded on the starting of a new business could go up to a maximum term of 36 months).

The 2015 GLL approved an entirely different model. Indeed, the new regime foresees as admissible the entering into of employment contracts for an unlimited or fixed term according to the nature of company's business, dimension and economical capacity and also on the functions for which the employee is hired. In other words, the legal restriction to the limited term hiring based on an exhaustive list of admissible grounds was abandoned as this factually left out other cases which could justify the temporary hiring of employees. Consequently, a new system whereby the company can evaluate and carry out the temporary hiring of employees based on its business status and the specific functions of the employee is now in force: it shall suffice for the employer to qualify an operational need as temporary in order for the hiring to be entirely lawful.

The other key innovation is linked to the maximum duration of fixed term employment contracts. The new GLL uses the statutory criteria of Large, Medium, Small and Micro-Companies to differentiate. Accordingly, in Medium, Small and Micro-Companies, fixed term employment contracts may be entered into for a maximum duration of 10 years or a shorter period and successively renewed until the aforementioned 10-year limit is reached. Regarding Large Companies (i.e., the ones outside the scope of the Law on Micro, Small and Medium-Sized Companies, enacted by Law No. 30/11, of 13 September 2011, regulated by Presidential Decree No. 43/12, of 13 March 2012), the maximum duration is only 5 years. Therefore the law grants greater flexibility for the management of employment relationships for companies with a smaller dimension.

The question left open by the legislator is the succession of fixed-term contracts in time. From a practical point of view, the situation applies to all cases where there are fixed-term contracts concluded under the provisions of the 2000 GLL but whose renewal or maximum duration would be reached under the provisions set forth by the 2015 GLL. The issue is whether the more flexible conditions and extended terms set out in the 2015 GLL could be applicable.

The 2015 GLL is silent on this issue. The general rule on the succession of laws in time is that a new law does not apply retroactively to contracts in force unless such is expressly stated in the letter of the new law. This means that the general rules on interpretation seem to indicate that the 2000 GLL is the applicable law to past contracts that are still in place. However, this is highly sensitive for, in practical terms, an employer may be faced with the need to implement the expiry of "old" fixed term employment contracts even if it still has the exact same operational needs, which is entirely contradictory with the statutory policy of employment stability.

The answer to this issue rests with the courts. Nonetheless, a legislative intervention regarding this particular issue, notably through a clarifying provision, would be welcomed as in the months ahead it may become an extremely relevant practical issue with direct impact in the labor market.

UPCOMING LABOR OBLIGATIONS TO BE TAKEN INTO ACCOUNT:

- Preparation and submittal of the list of remunerations to the National Institute for Social Security (companies with more than 20 employees are required to submit it electronically) and payment of contributions until the 10th day of the following month.

- Preparation and submittal by the companies pertaining to the oil sector which have concluded a Program Contract with the Ministry of Petroleum of the Annual Human Resources Development Plan until 31 October. The Plan must be submitted to the Ministry of Petroleum National Directorate for the Promotion of Angolanization in accordance with the official templates approved.

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