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The International Comparative Legal Guide to:

Employment & Labour Law 2017

7th Edition

A practical cross-border insight into employment and labour law

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Country Question and Answer Chapters:

EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Employment & Labour Law*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of labour and employment laws and regulations.

It is divided into two main sections:

Two general chapters. These chapters discuss the implications of Brexit on UK employment law, as well as global employment standards and corporate social responsibility.

Country question and answer chapters. These provide a broad overview of common issues in labour and employment laws and regulations in 35 jurisdictions.

All chapters are written by leading labour and employment lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Elizabeth Slattery and Jo Broadbent of Hogan Lovells International LLP for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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Chapter 4

Angola


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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The Angolan Constitution establishes in its Chapter III (Economic, Social and Cultural Rights, and Duties) a number of fundamental rights and principles, such as the right to work, freedom of association (trade unions) and the right to strike.

Additionally, the General Labour Law (Law No. 7/15, of 15 June 2015) is the main statute that governs all aspects of employment relationships in Angola. The recruitment and hiring of foreign non-resident employees are mainly regulated by Decree No. 5/1995, of 7 April 1995, and Decree No. 6/2001, of 19 January 2001.

Collective Labour Law is governed by the Law on the Right to Collective Bargaining (Law No. 20-A/92, of 14 August 1992), the Trade Union Law (Law No. 21-D/92, of 28 August 1992) and the Strike Law (Law No. 23/91, of 15 June 1991).

Furthermore, collective bargaining instruments, individual agreements and labour customs of each profession, sector or company are also sources of employment law.

There are also international conventions that apply to Angola, which affect employment relationships.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

All employees are protected by Angolan Labour Law. Nevertheless, there are specific regulations applicable to certain types of employees, such as domestic employees.

The main factor of distinction between employees in Angola, besides the type of agreement entered into with the employer, is nationality, as there are specific legal provisions applicable to foreign employees. In fact, Angolan labour law sets out two categories of employee:

- national and foreign resident employees; and
- foreign non-resident or expatriate employees, who are subject to complex immigration restrictions and specific recruitment and hiring rules.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

As a rule, an employment agreement does not have to be in writing. Nevertheless, there are some cases where a written employment agreement is required, such as employment agreements entered into with foreign employees, internship agreements, employees hired to render work on vessels or domestic employees.

The employment relationship may be governed by specific clauses set forth in the employment agreement, provided that they do not undermine any statutory obligations and do not offer less protection to the employee than the General Labour Law. Additionally, employment agreements must contain the following information: (i) full names and addresses of the parties; (ii) the employee's professional classification and professional occupational category; (iii) place of work; (iv) weekly duration of regular work; (v) amount, means and period of salary payment, and details of additional payments; (vi) hiring date; (vii) place and date of the agreement; and (viii) signatures.

1.4 Are any terms implied into contracts of employment?

Yes, all employment relationships implicitly include the employer's obligation to provide work, to pay for the work and to provide a safe working environment for its employees. As for the employee, every employment agreement implies that the employee will carry out the work and be loyal to his employer.

Additionally, employment agreements are always subject to an implied probation period, unless the parties choose to reduce or exclude it, in writing.

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

The General Labour Law sets forth minimum mandatory employment conditions, which the employment agreements have to comply with, such as minimum wages, holidays, termination of employment agreements and maximum working hours.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

Collective bargaining may take place both at company and industry level, and cannot establish employment conditions that may breach mandatory provisions of the law. However, in practical terms, there are very few collective bargaining agreements in force.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

The Angolan Constitution recognises the freedom of association (*liberdade sindical*) in order to defend individual and collective interests of employees. However, the Trade Union Law (Law No. 21-D/92, of 28 August 1992) does not set down any rules or procedures for union recognition by employers.

As soon as a union is incorporated and registered with the Ministry of Justice and has affiliated employees, it may represent employees. The law sets out no minimum or maximum percentage of employee representation.

2.2 What rights do trade unions have?

Trade unions have the right to: (a) conclude collective bargaining agreements under the law; (b) exercise the right to collective bargaining in accordance with the provisions of law; (c) conduct within the framework of current legislation all forms of struggle to seize the interests of employees; (d) issue preliminary opinion on legislative measures relating to the employees' interests; (e) ensure compliance with labour legislation and collective bargaining agreements and report violations of employees' rights; (f) promote the defence of employees' individual and collective rights; (g) provide economic, social, cultural and professional services to their members, or establish institutions for this purpose; (h) promote trade union meetings; (i) request information necessary to proceed with the trade union's interests; (j) issue opinion on internal regulations ruling on management of human resources, particularly when related to working hours, wage policy and protection of employees regarding health and social security; and (k) post information within the company's premises that may be important for the employees.

Additionally, employees are entitled to four paid working days per month to perform duties of a trade union's executive body. Union delegates are also entitled to time off amounting to four or five hours per month (depending on the company's size) to proceed with trade union-related matters.

2.3 Are there any rules governing a trade union's right to take industrial action?

Yes. The right to strike is set forth in Angolan Law. Law No. 23/91 of 15 June 1991 sets forth the provisions that govern the necessary proceedings to implement a lawful strike.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

The Trade Union Law sets down no rules or procedures for setting up works councils. Nonetheless, pursuant to the freedom of association, the employees are free to create works councils (hereby taken as representative committees at company level).

Therefore, employees have the right to create, in each company, works councils to promote the defence of individual and collective interests and rights of employees. As soon as the works council is incorporated and has affiliated employees, it may represent employees before the employers.

The law does not set forth a minimum or maximum percentage of employee representation. The election of governing bodies or representatives of a works council must be made according to the rules set forth in the respective by-laws, freely approved by its members.

Works council members are also entitled to time off amounting to four or five hours per month (depending on the size of the company) to proceed with their rights or responsibilities as employee representatives.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

The Angolan legal framework only provides for rights of trade unions and not for works councils. Therefore, there are no circumstances that may prevent employers from proceeding without obtaining a works council agreement.

2.6 How do the rights of trade unions and works councils interact?

Works councils and trade unions operate by different principles and objectives, with different frameworks. Specifically, trade unions have a specific set of rights, which does not happen with works councils.

2.7 Are employees entitled to representation at board level?

No, they are not.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Yes. The Angolan Constitution establishes that all citizens have the same social dignity and are equal before the law and that no-one shall be privileged, benefited, harmed, deprived of any right or exempted from any duty because of descendancy, sex, race, language, territory of origin, religion, political or ideological convictions, education, economic situation or social status. Moreover, the General Labour Law also foresees the same general prohibition of discrimination, including protection against discrimination based on marital status and union representatives.

3.2 What types of discrimination are unlawful and in what circumstances?

Discrimination based on the situations mentioned in question 3.1, either direct or indirect, is unlawful. Direct discrimination occurs whenever an employee is treated less favourably than another employee in a comparable situation, and due to one of the reasons set out above. Indirect discrimination takes place when, in an apparently neutral provision, criterion or practice, an employee is put at a particular disadvantage.

3.3 Are there any defences to a discrimination claim?

Facing a discrimination claim, the employer may claim before the competent authorities that the different treatment is justified, and, therefore, does not constitute an unlawful form of discrimination.

Defence against discrimination claims may differ depending on whether the employee sued over direct or indirect discrimination. Against direct discrimination claims, the employer may argue, for instance, that the nature of the activity or the context of its performance requires a different treatment. This argument invokes the principle that what is different ought to be treated differently. Against indirect discrimination claims, defence is possible when the employer argues the pursuit of a certain justifiable goal – this may be deemed successful, provided that the given different treatment is necessary, adequate and proportional to the pursued objective.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Employees may enforce their discrimination rights before the competent authorities. However, employers may always settle both before and after the procedure is initiated.

3.5 What remedies are available to employees in successful discrimination claims?

Successful discrimination claims entitle employees to: (i) compensation for both material and non-material damage; (ii) reinstatement (in the case of termination of an employment agreement); or (iii) compensation for the termination of their employment agreements (should it be the case).

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

Besides special protection given to pregnant employees and new mothers (until one year after childbirth), all employees are granted the same protection regarding discrimination, regardless of the type of employment agreement.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

The employee is entitled to three consecutive months of paid maternity leave equal to 100% of the employee's salary, with an additional period of four weeks in the case of a multiple birth. In case the company does not have daycare on its premises, maternity leave may be extended up to four weeks, upon communication to the employer, without payment of salary.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

Employees on maternity leave shall be entitled to remuneration, paid by the employer, which shall be reimbursed by Social Security afterwards.

4.3 What rights does a woman have upon her return to work from maternity leave?

Upon her return to work from maternity leave, the employee shall have the same rights as before the maternity leave. Moreover, during pregnancy and until one year after resuming work, the employee is entitled to protection against termination, unless she commits a serious disciplinary offence that determines the immediate impossibility of maintaining the employment relationship.

Pregnant employees and new mothers, until 15 months after childbirth, may terminate the employment agreement for duly proven health reasons with a notice period of one week. Until 15 months after childbirth, employees are also entitled to be absent from work for one day per month to take care of their child and accompany her health status.

4.4 Do fathers have the right to take paternity leave?

No, only women are entitled to parental leave. Fathers are only entitled to one day of absence for the birth of each child.

4.5 Are there any other parental leave rights that employers have to observe?

While breastfeeding, the mother is entitled to daily leave, in two distinct periods of 30 minutes each, in the case that the child is kept on the premises of the company or work centre.

In the case that the child is not kept on the company's premises, the employee may extend her lunch hour by one hour or, alternatively, she may reduce her normal work hours (at the beginning or at the end of the working day), without loss of remuneration or any benefits, during the whole period of feeding, up to one year.

Furthermore, female employees may enjoy one additional vacation day for each child under 14 in their care.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Yes, the employee is entitled to time off from work, for up to one day a month, during pregnancy and until 15 months after childbirth, to provide child care.

On the other hand, the General Labour Law establishes that employees have the right to eight paid days per year of justified absence in case of illness or accident of a member of the respective family aggregate, within which children under 18 years old are included. The duration of absence may be extended upon the employee's request. However, absences resulting from such extension shall not be remunerated.

Furthermore, female employees may also request to work part-time (in the case that she has family responsibilities), with a respective salary reduction, and are also entitled to special conditions on working hours.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

As a rule, on a business sale, by asset transfer, the position of the employer on the employment agreements is automatically transferred to the buyer.

Nevertheless, the business sale may determine the termination of the employment agreement provided that the employee gives notice of his/her intention to terminate the employment agreement within the period of 22 days following the transfer.

The sale of shares does not have any direct impact on the employment agreement.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

In the event of a business sale, the buyer takes the position of the seller in the employment agreements and is legally assigned to the rights and obligations arising from the employment relationship. As such, the conditions resulting from the collective bargaining agreement applicable to the seller (former employer) shall be maintained by the new employer.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

The new employer must serve a written notice to the relevant employees' representative body (i.e. a union committee) or, in its absence, directly to the employees, 22 business days prior to the transfer, informing the employees that they must claim their credits up to the second day prior to the date scheduled for the transfer. No additional consultation or information is required before the employees' representatives.

If the abovementioned procedure is complied with, the buyer (new employer) will only be liable for the credits matured during the 12 months prior to the transfer of business, and the seller shall be jointly liable during 12 months for the non-claimed credits as well as for those that are outstanding prior to transfer. If the buyer fails to comply with the aforesaid procedure, no limitation shall apply and it is liable for all outstanding credits. In any case, the seller shall be joint and severally liable with the new employer for the obligations incurred by the latter towards the employees within the 12 months following the transfer.

Within the period of 15 days following the transfer, the buyer shall inform and consult with the General Labour Inspectorate in respect of the date and reasons for the business sale, as well as its predictable consequences regarding the employees.

5.4 Can employees be dismissed in connection with a business sale?

In principle, a business sale cannot determine the dismissal of the employees covered by the transfer. However, the business sale may provide the employer (either the seller or the buyer) with structural, economic or technological grounds for a redundancy.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

In general, the new employer is required to provide the same terms and conditions of employment to the relevant employees, as established in the respective employment agreements. However, employers may amend existing employment agreements by mutual agreement, provided that such agreement does not breach the general rules. Other changes in terms and conditions of employment may be possible under the general provisions of the law.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

In general, termination by serving notice to the employee is not allowed. However, for fixed-term employment agreements (with a term greater than three months), the employer must serve the employee with 15 working days' notice before the agreement expires.

Moreover, all cases of redundancy give the employee the right to be given a notice period of 30 or 60 days, depending on whether the dismissal impacts less than 20 employees or 20 or more employees, respectively.

Termination during the trial period is not required to comply with a notice period.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Although the Angolan Labour Law does not expressly and formally recognise the concept of "garden leave" during an employee's notice period, the employer may release the employee from the performance of work, provided that he/she agrees so, without loss of pay.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

The employer may only dismiss an employee when there are objective or subjective reasons related to the company or to the employee, respectively. In both cases, a formal procedure must be followed, otherwise, the termination of the agreement shall be deemed unlawful. The employees may challenge the dismissal by filing a claim with the competent authorities.

An employee is treated as being dismissed if the employer unilaterally terminates the employment relationship.

Except for cases of employees under special protection, no consent from third parties may prevent the termination of an employment agreement.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

Yes, some categories of employees have special protection against dismissal, namely, pregnant employees, new mothers until one year after childbirth, union representatives or former union representatives, miners, former combatants and employees with reduced capacity equal or superior to 20%. In some of these cases, the General Labour Inspectorate's approval may be required.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

1. The employer can dismiss an employee for reasons related to the individual employee when there is cause for dismissal, i.e., fault in the

conduct of the employee, which due to its seriousness precludes the possibility of maintaining the employment relationship. The General Labour Law allows dismissal with cause in the following cases:

(a) unjustified absences from work that directly determine damage or serious risks to the company, or where the number reaches 12 days in each year, or three days in a month, regardless of damage or risk;

(b) failure to comply with the work schedule more than five times in a month;

(c) illegitimate disobedience to orders given by hierarchical superiors;

(d) repeated uninterest in diligently complying with the obligations inherent to his/her functions;

(e) physical violence, insults or other offences, within the company over a co-worker, employers and respective representatives or superiors;

(f) serious and disturbing indiscipline at work;

(g) theft, robbery, embezzlement, deception and other frauds in the company or during the work;

(h) breach of professional secrecy or trade secrets and other cases of disloyalty leading to a serious loss for the company;

(i) intentional or neglectful damage to the premises, equipment and instruments, or to production, that cause reduction or interruption of the production process or involve serious damage to the company;

(j) abnormal reductions of productivity or quality in the work performance, considering the objectives pre-established and the usual performance;

(k) active or passive bribery and corruption related to work or to the property or interests of the company;

(l) inebriation or drug addiction with a negative impact on work; or

(m) lack of observance, with fault, of the rules of safety and health at work.

In this case, the employee is only entitled to the credits arising from the termination of the employment agreement.

2. The employer will be entitled to dismiss for business-related reasons based on market, structural or technological reasons (redundancies).

Upon redundancy procedures, the employee is entitled to a compensation which depends on both the employee's length of service and the company's size, as follows:

(i) for large-sized companies, the compensation corresponds to the basic salary at the termination date, multiplied by the number of years of seniority with the limit of five, increased by 50% of the said basic salary multiplied by the number of years of seniority in excess of the said limit;

(ii) for medium-sized companies, the compensation corresponds to the basic salary at the termination date, multiplied by the number of years of seniority with a limit of three, increased by 40% of the said basic salary multiplied by the number of years of seniority in excess of the said limit;

(iii) for small-sized companies, the compensation corresponds to two basic salaries at the termination date, increased by 30% of the said basic salary multiplied by the number of years of seniority in excess of the two-year limit; and

(iv) for micro-sized companies, the compensation corresponds to two basic salaries at the termination date, increased by 20% of the said basic salary multiplied by the number of years of seniority in excess of the two-year limit.

For such purpose: (i) a large-sized company should be considered a company hiring more than 200 employees and/or an annual turnover above USD 10,000,000; (ii) a medium-sized company should be considered a company hiring between 100 and 200 employees and/or with an annual gross turnover between USD 3,000,000 and USD 10,000,000 USD; (iii) a small-sized company should be considered a company hiring between 10 and 100 employees and/or with an annual gross turnover between USD 250,000 and USD 3,000,000; and (iv) a micro company should be considered a company hiring a maximum of 10 employees and/or with an annual gross turnover that does not exceed USD 250,000.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

In order to dismiss an employee with cause, the company has to follow a disciplinary procedure (comprising a call for an interview, the interview and a final decision), with grounds in the employee's culpable behaviour which, due to its seriousness and consequences, makes it immediately impossible for the employment relationship to subsist.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

In the case of an unlawful dismissal, employees may claim:

(a) damage caused by the dismissal;

(b) reinstatement in the company;

(c) salaries accrued between the termination date and the date on which the ruling became *res judicata*, or the date on which the employee was hired by another company, capped by: (i) six months of basic salaries for large-sized companies; (ii) four months of basic salaries for medium-sized companies; and (iii) two months of basic salaries for small-sized and micro companies; or

(d) if the reinstatement is not possible or the employee refuses to be reinstated, a compensation which depends on the size of the company and the employee's length of service, as follows: (i) 50% of the employee's basic salary multiplied by the number of years of seniority for large-sized companies; (ii) 30% of the employee's basic salary multiplied by the number of years of seniority for medium-sized companies; (iii) 20% of the employee's basic salary multiplied by the number of years of seniority for small-sized companies; and (iv) 10% of the employee's basic salary multiplied by the number of years of seniority for micro-sized companies. The compensation above cannot be less than three months' salary for large and medium-sized companies, two months' salaries for small-sized companies and one month's salary for micro-sized companies.

6.8 Can employers settle claims before or after they are initiated?

Yes, employers may settle claims before and after the claims are initiated.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

Where an employer dismisses less than 20 employees at the same time, the dismissal is still an individual redundancy.

Collective redundancies (dismissals of more than 20 employees, grounded on market, structural or technological reasons) follow a procedure almost identical to the individual ones. One main difference is the fact that the General Labour Inspectorate has 22 working days to perform any due diligence or investigation, as opposed to the 15 working days set forth for individual redundancies.

Another difference is the notice period that has to be given to the employee: in collective redundancies, the notice period is 60 days, as opposed to the 30 days' notice period given within individual redundancies.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Only the courts are competent to declare a dismissal unlawful. In the event that the court finds the dismissal unlawful, the employee will be entitled to compensation, and/or reinstated in the company.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

The Angolan Law recognises both non-competition agreements and permanence covenants.

7.2 When are restrictive covenants enforceable and for what period?

With the employee's consent, it is possible to establish a non-compete obligation for a period of up to three years following termination, provided that the following requirements are met:

(i) The non-compete clause is included in a written employment agreement or an addendum thereto.

(ii) The activity in question may cause real damage to the employer and is deemed unfair competition.

(iii) The employee is paid compensation during the restricted period, and the amount of compensation is stated in the agreement or an addendum thereto.

As per the permanence covenant, the employee shall be obliged not to terminate his agreement, for a period not exceeding one year for professional development training and three years for higher educational training, as compensation for expenses made by the employer in connection with his vocational training. The employee may be released from such obligation by paying the expenses made by the employer.

7.3 Do employees have to be provided with financial compensation in return for covenants?

As per the above, non-competition agreements depend on the payment of a compensation during the restricted period. The amount of compensation is stated in the agreement or an addendum thereto. The compensation should be determined taking into account the costs incurred by the employer with training.

7.4 How are restrictive covenants enforced?

A restrictive covenant must be set forth in writing and its enforceability depends on the content of the clause. Permanence covenants are automatically applicable. Non-compete clauses may be automatically enforced after the termination of the employment agreement.

Upon violation of restrictive covenants, legal action may be taken, and the party that failed to comply with the covenant may be sentenced to pay damages.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

Data protection affects the employment relationship, since management powers of the employer are limited by the rights and guarantees of the employees; in particular, the right to privacy and the relevant personal data-related rights.

As per the above, it is paramount to assess whether a collection of personal data or certain restrictions to the employee's privacy are suitable, adequate and justified to achieve legitimate and specific purposes and do not breach any legal rule.

Pursuant to the General Labour Law, the employee has the right to be treated with consideration and respect. It is commonly accepted that this includes respect for his or her private life and personal communications.

Law No. 22/11, of 17 June 2011, which approved Personal Data Protection Law, is applicable to the private sector.

On the other hand, the Constitution provides that "private means of communications" cannot be breached without a judicial order to that effect.

With regard to the transfer of data, please be advised that any international transfer of data to an adequate country is subject to notification to Data Protection National Agency. On the other hand, the data transfer to a non-adequate country is subject to authorisation of said agency, in case such transfer complies with certain requirements.

A country is deemed adequate by a decision issued by the Data Protection National Agency.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

The employee shall have the right to obtain from the employer, without constraint and without excessive delay or expense, confirmation as to whether or not data relating to the same is being processed and information as to the purposes of the processing, the categories of concerned data and the recipients or categories of recipients to whom the data are disclosed, as well as the communication of the data undergoing processing and of any available information regarding their source. Also, employees must be informed of the existence and conditions of their right of access and right to rectify. Therefore, employees do have the right to obtain copies of personal information that is being held by the employer, under the conditions above described.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

Pre-employment checks must be carried out with extreme caution. From a personal data standpoint, criminal records, privileged relationships, conflicts of interest by job applicants and medical examinations cannot be processed without job applicants' consent.

Other background checks and enquiries must be based on the need of the employer to confirm an employee's suitability for the job. The employer must adhere to non-discriminatory principles and ensure that the employee's personal information is processed under the applicable data protection laws.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

The General Labour Law is virtually silent on this matter. However, it can be argued that the employer may set forth rules for the use of the company's equipment, including IT equipment and tools. On the other hand, the employee must act in accordance with the instructions and orders of the employer, preserve and make proper use of work tools, and execute tasks, taking into account productivity improvements.

Nonetheless, taking into account the employees' right of privacy, dignity and integrity, the monitoring of employees' emails, telephone calls and use of the employer's computer system may be deemed unlawful when related to private purposes.

Additionally, control of movements of the employees during their free and personal time may also be deemed inadmissible.

As a result, the implementation of such type of monitoring must be carefully analysed and assessed on a case-by-case basis. In certain cases, said monitoring may require the prior notification to the Data Protection Agency.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

There are no rules that specifically address the protection of employees' social media or the monitoring of employees' social media accounts. Nevertheless, general principles such as the constitutional right to privacy, dignity and integrity do not allow the employer to intrude into employees' social media accounts without authorisation.

On the other hand, taking into account some duties of the employee (notably the duty of loyalty), employers may regulate off-duty conduct to the extent that it has a detrimental impact on the employment relationship, including in the cases where the employee may disclose confidential company information or other content which might harm the reputation or interests of the company or respective co-workers.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

Labour disputes fall under the jurisdiction of the competent provincial labour courts.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

Before filing a lawsuit in court, employment disputes must pass through:

- a conciliation before the Public Attorney's Office with the competent provincial labour court;
- a mediation before the General Labour Inspectorate; or
- a voluntary arbitration.

As soon as the claim is filed with the court, the employee and the employer are given notice to attend a conciliatory hearing with the purpose of reaching an agreement. The judicial phase begins only if no agreement is reached. Court fees must be paid by the employee in order for a claim to be submitted. Nevertheless, in certain situations, the employee may be exempted from this payment, for example, when represented by the public prosecutor's office. A trade union's legal department may also represent employees, the latter paying court fees instead of the employee.

9.3 How long do employment-related complaints typically take to be decided?

The timescale for completion of the procedure varies on a case-by-case basis and also depends on the court's workload. The average timescale for first-instance proceedings is two years.

9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

Yes, an appeal may be filed with the Court of Appeals by either the employer or the employee. An additional appeal to the Supreme Court is possible, but is subject to complex requirements. The timescale for these procedures varies on a case-by-case basis, depending on the court's workload.

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FCB
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