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DRC: Law & Practice

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Liedekerke

DRC



Law and Practice

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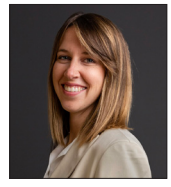
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Liedekerke has a labour and employment department that is one of the largest employment teams within a full-service law firm in Belgium, and which is recognised as a leading practice. With a team of nine lawyers – including three partners – it advises and assists clients in all matters touching on labour and employment law. With offices in Brussels, London, Kinshasa and Kigali, and as part of the Lex Mundi global network, the firm can offer seamless services wherever its clients choose to do business. Clients include Belgian, foreign and multinational corporations that are active in numerous industry sectors, such as energy, IT, automotive, retail, hotel, food and logistics. The labour and employment department advises public administrations and has particular experience in (international) transfers of undertaking, collective dismissal and reorganisations, closures, trade union negotiations, compensation and benefits, discrimination law, social crimes and employment fraud, etc.

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1. Employment Terms

1.1 Employee Status

The status of white-collar or of blue-collar workers, whilst often differentiated in other countries, does not exist as such under Congolese law. In fact, the Congolese Labour Code refers from time to time to white-collar or to blue-collar workers but does not make any distinction in the applicable rules. This means that the same rules will apply to all workers of an undertaking, regardless of whether the activity they perform is more manual (blue collar) or intellectual (white collar).

Congolese law contemplates only one kind of employment status, that of "worker". The terms "white-collar worker" and "blue-collar worker" have no legal definition.

Despite the fact that Congolese law does not distinguish between white-collar workers and blue-collar workers, it nevertheless makes a distinction between seven categories of workers:

- ordinary labourer;
- skilled worker;
- semi-qualified worker;
- qualified worker;
- highly qualified worker;
- foreman; and
- middle management.

These seven categories entail the application of some specific rules, mostly with regard to salary scales.

1.2 Employment Contracts

Types of Employment Contracts

Under Congolese law, an employment contract entered into for a definite period of time is a contract concluded with a fixed term, or for a specific work, or in order to replace a temporarily unavailable worker. Where the contract does not fit into one of the categories described in **1.1 Employee Status**, it qualifies as an employment contract of indefinite duration.

Generally speaking, as regards working conditions, workers employed under a fixed-term contract may not be treated less favourably than comparable permanent workers solely on the ground that they are hired for a fixed period (or a specific task, or in order to replace a temporarily unavailable worker), unless difference in treatment is justified by objective reasons. Where justified, their rights may be determined in proportion to the duration of the contract.

Specific rules apply to fixed-term contracts (eg, succession of fixed-term contracts). Specific rules also apply to what is called "daily labour" under Congolese law; that is, contracts concluded on a day-by-day basis. Where such contracts are concluded for more than 22 days of work within a period of two months, the worker will be deemed to have been hired for an indefinite term.

Requirements

Congolese employment law is somewhat ambiguous as to whether there is a requirement to have contracts in writing. It seems that the legislature has left room for oral contracts since the current Labour Code (2002) mentions that a contract that is not in writing will be deemed to have been concluded for an indefinite period of time. However, a Ministerial Decree that pre-dates the current Labour Code of 2002 and was confirmed by a Ministerial Decree of 2011 requires that employment contracts be in writing. In any case, it is strongly recommended that fixed-term employment contracts be in writing

in order to avoid any reclassification as open-ended (indefinite) agreements.

When in writing, the employment contracts must include at least the following:

- the name of the employer;
- the employer's identification number at the National Social Security Institute (INSS);
- surname, given name, post-name(s) and gender of the worker;
- the worker's identification number at the INSS and, where appropriate, the order number assigned by the employer;
- the date of birth of the worker or, failing that, the presumed year thereof;
- the worker's place of birth and nationality;
- the worker's family situation;
- surname, given name, or post-name(s) of the spouse;
- surname, given name and date of birth of each dependent child;
- the nature and modalities of the work to be performed;
- the amount of the agreed remuneration and other benefits;
- the work place;
- the duration of the commitment;
- the duration of the notice period (dismissal);
- the entry into service date;
- the place and date of conclusion of the contract; and
- the ability to work duly certified by a doctor.

The draft contract must be drawn up in French and submitted to the worker at least two working days before it is signed. Signed copies must be given to the employer, the worker and the authority empowered to endorse the contract.

The employer is required to submit the contract to the National Employment Office (*Office National de l'Emploi*) for approval within 15 days from the date of signature of the contract. Failure to do so entitles the worker to terminate the employment contract at any time, without having to comply with a notice period. The worker can also claim damages. In the event the National Employment Office refuses to approve the agreement, the latter ends automatically.

1.3 Working Hours

Legal Working Time Limits

Maximum legal working time may not in any case exceed 45 hours per week and eight hours per day. These hours do not include the time required for the worker to travel to or from the place of work, unless this time is inherent to the work.

Possibility of Flexible Arrangements

Flexible (mutual) arrangements regarding working time are admitted, provided, however, that any hour performed beyond the maximum working hours per day/week will fall under the rules regarding overtime.

Part-Time Contracts

The Congolese Labour Code does not specifically address part-time contracts but there is, in this firm's view, no legal restriction to the signing of a part-time contract. In this case, it is advisable to have a written contract. The general rules of the Congolese Labour Code will apply to part-time contracts.

Overtime

Hours worked in excess of the legal working hours will be considered overtime and the worker will then be entitled to overtime pay.

The overtime pay amounts to a percentage of the corresponding salary:

- 30% for each of the first six hours worked in excess of the statutory weekly working time or the period considered equivalent;
- 60% for each of the following hours; and
- 100% for each hour of overtime performed on the weekly day of rest.

1.4 Compensation

Minimum Wage Requirements

Since 1 January 2019, the daily minimum wage in the DRC has been equal to CDF7.075 for an ordinary labourer function. This minimum wage has not been modified since then.

The tension *salariale* (ratio) between the ordinary labourer wage and the middle management wage is one to ten.

Thirteenth Month and Variable Remuneration

The Congolese Labour Code does not include any provisions regarding the thirteenth month, nor any specific provision regarding bonuses. Collective bargaining agreements concluded at the company level or the sectoral level may include specific provisions regarding variable remuneration. In addition, the parties to an employment contract may always negotiate their working conditions and the employer may always grant a thirteenth month and/or bonuses, having in mind that workers belonging to the same category of employment should receive the same benefits in order to avoid discrimination issues.

Government Intervention in Salary Increase

Nothing is mentioned in the Congolese Labour Code regarding government intervention in compensation.

1.5 Other Employment Terms

Vacation

Under Congolese law, the employer has the obligation to grant vacation and vacation pay to the workers. The right to vacation pay arises at the end of each year of service counted from date to date. The worker cannot renounce their vacation rights.

The vacation period must be fixed by mutual agreement at a convenient moment for both parties and fall no later than six months after the right arose. The duration of the vacation period varies in accordance with the age of the workers. For workers aged 18 and over, the vacation period must at least be equal to one working day per full month of service. For workers below the age of 18, the period is at least equal to one and a half working days per full month of service. These durations are increased by one working day for every five years of occupation with the same or a substituted employer.

Vacation pay is equal to the corresponding remuneration, all benefits included, as on the day on which they leave for holiday.

Required Leaves

Maternity leave

Maternity leave under Congolese law consists of a suspension of the employment contract during 14 consecutive weeks, of which a maximum of eight weeks can be after the delivery and six before it. During this period, the mother is entitled to two thirds of her pay (benefits included). The employer may not terminate the employment contract during this period.

While a mother is breastfeeding her child, she is entitled to two half-hour rests a day to allow her to breastfeed. These rest periods shall be remunerated as working time.

Incapacity to work
Where the worker is unable to provide their services as a result of sickness or accident, they are entitled to two thirds of their remuneration (benefits included) and to the full family allowances, throughout the period of suspension of the contract.

Occasional Leave
The Congolese Labour Code provides for the following occasional leave:

- worker's wedding – two working days;
- delivery of the wife – two working days;
- death of spouse or of a first-degree relative – four working days;
- child's wedding – one working day; and
- death of a relative – two working days.

These days are not deductible from the legal minimum vacation and cannot be split. The employer must only pay for occasional leave up to a maximum of 15 working days per year.

Confidentiality and Non-disparagement
Except for the general prohibition of disclosure of trade or business secrets, nothing is provided in respect of limitations on confidentiality or non-disparagement agreements under the Congolese Labour Code. Employers are therefore free to include such clauses in the employment contracts or settlement agreements, although it is not very frequent in practice. There is, however, a confidentiality obligation for workers' representatives who gain knowledge of confidential information in the course of their duties.

Employees' Liability
The Congolese Labour Code specifies three situations in which a worker can be held liable, entitling the employer to claim compensation. The first situation relates to the damage caused to the employer's goods and the equipment made available to the worker (although the worker cannot be held responsible for normal wear and tear on the equipment). The employer may also claim financial compensation for damage resulting from a worker's disclosure of the company's trade or business secrets, or from an act of unfair competition. Finally, the worker can be held liable in the case of termination due to a serious breach by the worker: the employer may claim compensation from the worker for the damage directly caused by the worker's gross negligence.

Disciplinary sanctions can also be imposed on workers, depending on the seriousness of the fault committed whilst performing the contract:

- blame;
- reprimand;
- lay-off, with a maximum of two times 15 days a year, where such a measure is provided for either in the employment contract, a collective bargaining agreement or the company work rules;
- dismissal with notice; or
- dismissal for a serious cause.

2. Restrictive Covenants

2.1 Non-competes
Congolese law prohibits non-compete clauses, except under the following strict cumulative conditions:

- the contract is terminated by the employer for serious cause attributed to the worker, or by the worker without serious cause attributable to the employer;
- the worker has such knowledge of their employer's clientele or business secrets that

they could cause serious harm to their former employer;
- the prohibition must relate to the type of activities carried out by the worker at the employer's premises; and
- the duration of the clause may not exceed one year.

The non-compete clause may provide for a contractual penalty to be imposed on the worker who violates the clause.

The Code does not provide for a maximum amount. It merely states that, at the request of the worker, the competent court may reduce the penalty to a reasonable amount, should it be considered excessive.

It is a common practice to include a non-compete clause in employment contracts of workers who could effectively compete with their former employers after the end of their employment contract. Generally, the provision of a penalty amount that does not exceed the equivalent of 50% of the remuneration corresponding to the non-compete period is recommended.

2.2 Non-solicits

Nothing is set out in the Congolese Labour Code regarding non-solicitation clauses. It is, however, advisable to include such a clause, usually applicable for a standard period of 12 months following the termination of the employment contract.

The present authors' firm has never come across such a clause, save under the more standard form of a non-compete clause.

3. Data Privacy

3.1 Data Privacy Law and Employment

Nothing related to privacy is mentioned in the Congolese Labour Code. Generally speaking, privacy is mentioned in the Congolese Constitution. Although not expressly stated, it may reasonably be assumed that this provision could be interpreted as applicable within the work sphere.

In addition, there are a few scattered provisions relating to privacy, such as the Ministerial Order of 8 October 2015, which states: "The processing of personal data concerning job-seekers must be kept secret and respectful of privacy. Processing of personal data concerning job-seekers means the collection, storage, combination and communication of all information about them."

Provisions regarding privacy are therefore not abundant in the DRC. In addition to these few provisions, the international standards – such as the *Organisation pour l'harmonisation en Afrique du droit des affaires* (the Organisation for the Harmonisation of Corporate Law in Africa, or OHADA) rules and those of the International Labour Organization – will apply.

4. Foreign Workers

4.1 Limitations on Foreign Workers

Generally speaking, the Congolese Labour Code sets out that it is prohibited for a foreign or a Congolese company to have more than 15% of its total workforce be foreign workers. A Ministerial Decree of 2005 sets out the quota for the occupation of foreign workers, which varies per sector and per category of employment. The quota is generally around 2% of the total number of workers of each considered category of per-

sonnel (general classification of jobs, foremen and managers) in the undertaking.

4.2 Registration Requirements for Foreign Workers

Foreigners willing to work in the DRC must be in the possession of a work permit, which will be delivered by the National Commission for the Employment of Foreigners.

5. New Work

5.1 Mobile Work

There are no regulations in the DRC on mobile working, known as teleworking. Companies are therefore free to grant and to organise telework as they deem appropriate. In practice, companies will include provisions regarding telework in their work rules and/or in the employment contracts. It may also be orally agreed upon between the employer and the employee.

5.2 Sabbaticals

There are no regulations on sabbatical leave in the DRC. Sabbaticals are also very rare in practice.

5.3 Other New Manifestations

There are no specific regulations in this respect in the DRC.

6. Collective Relations

6.1 Unions

Role of Unions

Workers and employers have the right to form unions whose sole purpose is the analysis, defence and development of their professional interests and the social, economic and moral progress of their members. The representation of workers in undertakings is ensured by an elected trade union delegation.

Every worker or employer, without distinction of any kind, has the right to join or to leave a professional organisation of their choice. Workers enjoy an appropriate protection against all acts of discrimination tending to prejudice their freedom of association. In this respect, it is prohibited for any employer to subject an employment relationship to any limit based on an affiliation or non-affiliation to any professional organisation and to dismiss a worker or otherwise cause them harm because of their affiliation to a professional organisation and/or participation in trade union activities.

Status of Unions

As to formalities, trade unions must register with the Ministry of Labour and Social Security, and draft articles of association. The Congolese Labour Code states a specific procedure to be followed to set up trade unions.

Trade unions are considered legal entities. Registered trade unions may form a union, confederation or federation.

6.2 Employee Representative Bodies

Competences of the Employees' Representative Bodies

Generally speaking, the scope of competence of the delegation extends to all working conditions in the undertaking. More specifically, the union delegation:

- is consulted in respect of the work schedules, the general criteria for hiring, dismissing or transferring workers, the remuneration and the in-house work rules;

- is informed by the employer at least every six months about the undertaking's economic and social situation;
- participates in the solving of disciplinary issues within the undertaking;
- is allowed to propose any measure it considers necessary in the event of failure that could seriously disturb the functioning of the undertaking; and
- is allowed to propose/take measures to ensure technical safety and hygiene in the workplace, and to safeguard the health of all persons in the undertaking or establishment.

In addition, each delegate is individually competent to:

- submit to the employer any individual complaint that has not been directly addressed concerning working conditions and the protection of workers, the application of collective agreements and professional classification;
- ensure the application of the requirements relating to the health and safety of workers, and propose all appropriate measures in this regard;
- be consulted in respect of discipline at work; and
- transfer to the Labour Inspectorate any complaint or claim concerning the legal or regulatory requirements for which the Inspectorate is in charge and that the union delegation has been unable to sort out.

As to their role, the members of the trade union delegation are supervised, trained and monitored in their trade union activities within the undertaking by their respective professional organisations.

Institution of the Employees' Representative Bodies

The Congolese Labour Code provides that the representation of workers in undertakings or establishments of any kind is ensured by an elected delegation. The mandate of the delegates is for three years and is renewable. The latest elections took place in 2018.

As to their institution, the minimum number of delegates is fixed as follows:

- from ten to fewer than 20 workers – one delegate;
- from 20 to fewer than 100 workers – three delegates;
- from 100 to fewer than 500 workers – five delegates;
- from 500 to fewer than 1,000 workers – nine delegates; and
- more than 1,000 workers – nine delegates plus a further delegate per 1,000 additional workers.

In undertakings in which there are fewer than ten workers, one of the workers may be appointed to represent the other workers.

Election of delegates

The members are elected. Any worker – without distinction as to gender, marital status, nationality or age – may be elected provided that the worker meets the eligibility criteria (inter alia, being at the service of the employer for at least six months). Delegates are elected by the personnel of the employer (there are also some particular conditions).

Elections are organised by the employer, which will first consult the trade union(s) represented in the establishment and the outgoing delegation, if any, on the elections and will take due account

of any observations made by them. The election date must be announced at least three weeks in advance and 15 days before the date of the poll; the employer must draw up and post a list of the workers who do not meet the voting conditions. Should the employer fail with respect to a procedural aspect, it is the Labour Inspectorate that will set the date and, if necessary, organise the elections.

The lists of candidates must be filed not later than six working days before the date fixed for the poll.

The poll

The poll will be composed of one or two rounds as the case may be: for the first round, only the trade union or unions legally registered and whose field of activity extends to the undertaking may present candidates. Each list must indicate the name of the organisation filing the list and bear the signatures of its qualified representatives. The poll is closed if the number of valid votes cast is greater than half of the number of registered voters. If not, the election is deemed null and void, and a second ballot is to be held.

The second ballot

For the second ballot, voters may, in conjunction with the trade union, propose new candidates. To be valid, a list filed by electors must bear the names and signatures of a number of electors at least equal to three times the number of delegates to be elected by the electoral college. The election process is closed after the second ballot, irrespective of the number of votes cast.

6.3 Collective Bargaining Agreements

General Principles

The collective bargaining agreement is a written agreement on the conditions and the employment relationship between one or more employers or one or more employers' organisations and one or more workers' organisations. It can be concluded either at a sector or at a company's level. This agreement establishes the individual and collective relations between employers and workers within undertakings and settles the rights and duties of the contracting parties. In any company to which the collective bargaining agreement applies, the latter must be posted in the premises, in a place highly visible and easily accessible to workers.

Collective bargaining agreements may mention provisions more favourable to workers than those of the applicable law but may not derogate from the mandatory legal provisions. The provisions of a collective agreement prevail over provisions set in individual employment contracts and the in-house work rules. To be valid, a collective bargaining agreement must include some mandatory provisions set out in the Congolese Labour Code, such as its date, object and the names and capacities of the contracting parties.

It is drafted in as many originals as there are parties and must be signed by all the contracting parties. Six additional originals are subject to the visa of the Labour Inspectorate. One copy of the agreement is then filed at the clerk's office of the labour court and one copy will be sent to the Ministry of Labour and Social Security for publication in the Official Gazette (*Journal Officiel*). Where a collective agreement has been published in the Official Gazette, the Minister of Labour and Social Security, on the Minister's own initiative or at the request of a trade union, may extend all or some of its provisions to all employers and workers pertaining to the same professional and territorial sector.

The provisions of a collective agreement apply to all workers of the categories concerned employed in the undertaking(s) covered by the

agreement, unless otherwise provided for in the collective bargaining agreement.

Remedies in Case of Breach

Breach of the agreed obligations stated in a collective bargaining agreement entitles the parties to an action for damages, the terms and limits of which may be stipulated in the collective bargaining agreement.

7. Termination

7.1 Grounds for Termination

Any dismissal must be motivated by a valid reason. According to the Congolese Labour Code, a valid reason is a reason based on:

- acts committed at the workplace by the worker whilst performing their tasks;
- acts committed outside the workplace but linked to the performance of the tasks; or
- the operational needs of the undertaking.

Some potential reasons are flagged in the Code as invalid:

- affiliation or non-affiliation to a union, or participation in union activities outside the working hours, or, with the employer's consent, during the working hours;
- soliciting, exercising or having exercised a worker representation mandate;
- filing a complaint or participating in proceedings against an employer for alleged violation of the law, or bringing an action before the competent administrative authorities;
- race, colour, gender, marital status, family responsibilities, pregnancy, childbirth, religion, political opinion, national or social origin, ethnic group, HIV status; and
- absence from work during maternity leave.

Termination Formalities

Any termination must be notified in writing by the party who takes the initiative to the other party. Where termination is at the employer's initiative, the letter of notification must expressly state the reason for dismissal. There is no motivation regime a posteriori.

Termination of an indefinite employment contract without a valid reason entitles the worker to reinstatement. Failing this, the worker will be entitled to damages fixed by a labour court (with a maximum amount equivalent to 36 months of the worker's remuneration).

Any dismissal based on the operational needs of the company, establishment or service is subject to a specific procedure (complying with a hierarchy of dismissals, informing workers' representatives, verifying compliance with the procedure by the Labour Inspectorate, etc).

Where the employer is considering dismissing on grounds related to the worker's ability or conduct, the employer must, before any decision is taken, allow the person concerned to present a defence.

Collective Redundancies

A Departmental Order sets out a specific procedure to be followed in the case of collective redundancies (called "massive" redundancies in Congolese law).

A lay-off is to be considered collective if, within a period of one month, it leads to the departure of at least:

- three workers for an enterprise that employs no more than ten workers, four workers for an enterprise that employs at most 20 workers;

- ten workers for an enterprise that employs between 21 and 100 workers;
- 30 workers for an enterprise that employs between 101 and 500 workers;
- 50 workers for an enterprise that employs between 501 and 1,000 workers;
- 100 workers for an enterprise that employs between 1,001 and 2,000 workers;
- 200 workers for an enterprise that employs between 2,001 and 4,000 workers;
- 250 workers for an enterprise that employs between 4,001 and 6,000 workers; and
- 300 workers for an enterprise that employs more than 6,000 workers.

To be valid, a collective dismissal needs to be justified either by economic reasons or by the operational needs of the enterprise.

A specific procedure must be followed:

- seeking prior authorisation for the dismissal from the Minister of Labour and Social Welfare;
- consulting the union delegation; and
- following a hierarchy of dismissals where the redundancies are based on economic grounds.

Specific obligations could also be imposed by a collective bargaining agreement concluded at a sectoral and/or the company level.

7.2 Notice Periods

General Rules Regarding Notice Periods

Notice cannot be given during the periods of suspension of the employment contract, except in the following cases:

- sickness or accident, except in the case of an accident at work or occupational disease – the employer may terminate the employment contract after six uninterrupted months of inability, in which case, the employer must pay a termination indemnity corresponding to the notice period due for the termination of open-ended employment contracts;
- exercise of public office or civic obligations – the employer may terminate the employment contract after 12 months' suspension and pay the severance indemnity provided for in the employment contract or in the collective bargaining agreement;
- force majeure – either party may terminate the employment contract after a two-month suspension without compensation; and
- worker's imprisonment – the employer may terminate the employment contract without compensation after three months' suspension or if the worker is subsequently sentenced to a penalty of penal servitude of more than two months.

The termination of the employment contract must be notified in writing by the party taking the initiative to the other party. Where the termination takes place at the initiative of the employer, the letter of notification must expressly state the ground for the termination.

Duration of the Notice Period

The termination of the contract must be notified in writing by the party who takes the initiative to the other party.

Unless the parties or the collective agreement stipulate a longer period, the notice period is equal to 14 working days as from the day after the notification, where the notice is given by the employer to a personnel member of the general classification of jobs. This period is increased by seven working days per full year of continuous service, counted from date to date. For foremen, the notice period is equal to one month,

increased by nine working days per full year of continuous service, counted from date to date. For managers, the notice period is equal to three months, increased by 16 working days per full year of continuous service, counted from date to date.

The notice period to be given by the worker is equal to half the notice period that the employer should have given if the employer had taken the initiative of termination. It may in no case exceed this limit.

Collective bargaining agreements concluded at sectoral and/or the company level may provide for different notice periods that are more favourable to the workers.

Parties' Obligations During the Notice Period

During the notice period, the employer and the worker remain bound by all their contractual obligations. During the same period, the worker is entitled to one paid day off per week in order to find a new position.

Indemnity in Lieu of Notice

Termination of an open-ended contract without notice or without full observance of the notice period will entail the payment of an indemnity in lieu of notice, corresponding to the remuneration and benefits in kind that the worker would have received during the (part of the) notice period that was not granted.

Specific Procedure in Dismissals for Economic Grounds or for a Reason Linked to the Conduct or Ability of the Worker

There is a specific procedure to follow in the case of a dismissal based on economic grounds. The employer must inform the workers' representatives and the Labour Inspectorate, which will verify the grounds for dismissal and compliance with the mandatory procedure.

For a dismissal based on the conduct or on the ability of the worker, it is imperative that the latter must be allowed to defend themselves against the reproaches made before any decision is taken.

Specific Procedure in Dismissals of a Workers' Representative

The dismissal of a workers' representative must be pre-approved by the Labour Inspectorate.

7.3 Dismissal for (Serious) Cause

General Principles

A party is deemed to have committed serious misconduct when the rules of good faith do not allow it to require the other party to continue to perform the contract.

The employer commits serious misconduct when they seriously breach the obligations of the contract, in particular in the following cases:

- they are guilty of an act of dishonesty, sexual or moral harassment, intimidation, assault, serious insult or tolerate similar acts by other workers;
- they intentionally cause the worker material damage during or in connection with the performance of the contract;
- the safety or health of the worker is exposed to serious dangers or when the employers' morality is at risk;
- they unduly apply reductions or withholdings to the worker's remuneration; or
- they persist in not applying the legal or regulatory provisions in force.

The worker commits serious misconduct when they seriously breach the obligations of the contract, and in particular when they:

- are guilty of an act of improbity, sexual or mental harassment, intimidation, assault or serious verbal abuse of the employer or their workers;
- intentionally cause the employer material damage during or in connection with the performance of the contract;
- are guilty of immoral acts during the performance of the contract; and
- jeopardise the safety of the company, the work or personnel through recklessness.

The party to the contract deciding to put an end to the employment contract for serious cause committed by the other party must notify the other party in writing of their decision within 15 working days after having gained knowledge of the facts it invokes.

For the purpose of investigation, the employer may, within two working days after having gained knowledge of the facts, notify the worker of the suspension (for a maximum of 15 days) of their duties. The notification in writing may be sent either by registered letter through the post office or delivered to the person concerned with acknowledgement of receipt, or, in the event of refusal, in the presence of two witnesses.

Consequences

The employment contract will be immediately terminated, without notice. The party terminating the employment contract for serious cause committed by the other party may seek further compensation (damages) before courts.

7.4 Termination Agreements

Any employment contract may be terminated by a mutual consent agreement. There are no specific requirements involved. There are no statutory requirements for enforceable releases or other limitations on termination agreement terms.

7.5 Protected Categories of Employee

There is no specific regime of protection; eg, entitling the workers to a certain compensation (lump sum) for a dismissal that would have been based on a protected criteria. However, the Congolese Labour Code includes some provisions that aim to protect some categories of workers against dismissal (for instance, women during their maternity leave). The Congolese Labour Code also lists some criteria that are invalid reasons for dismissal (see **7.1 Grounds for Termination**).

It is prohibited for an employer to dismiss a worker or otherwise prejudice them because of their affiliation to a professional organisation and/or participation in trade union (delegation) activities. It is also prohibited to dismiss a worker for their union (non-)affiliation, or participation in union activities outside working hours, or, with the employer's consent, during working hours. Damages can be claimed (a maximum 36 months of remuneration).

8. Disputes

8.1 Wrongful Dismissal

Grounds for a Wrongful Dismissal Claim

The Congolese Labour Code flags some invalid dismissal grounds:

- affiliation or non-affiliation to a union, or participation in union activities outside the work-

ing hours, or, with the employer's consent, during the working hours;
- soliciting, exercising or having exercised a worker representation mandate;
- filing a complaint or participating in proceedings against an employer for alleged violation of the law, or bringing an action before the competent administrative authorities;
- race, colour, gender, marital status, family responsibilities, pregnancy, childbirth, religion, political opinion, national or social origin, ethnic group, HIV status; and
- absence from work during maternity leave.

In the event that a dismissal is based on one of these grounds, it will be deemed abusive. The list is non exhaustive, meaning that an employer must be careful when dismissing an employee and make sure that it has a valid ground for dismissal.

Consequences of a Wrongful Dismissal

Termination of an employment contract of an indefinite term without a valid reason entitles the worker to reinstatement. Failing this, the worker will be entitled to damages fixed by a labour court (with a maximum amount equivalent to 36 months of the worker's remuneration).

8.2 Anti-discrimination

The Congolese Labour Code states two particular discrimination issues: pregnancy and affiliation to a union delegation. As to pregnancy, it cannot be a source of discrimination in employment. In particular, it is prohibited to require a woman who applies for employment to submit to a pregnancy test or to present a certificate attesting the state of pregnancy, except for work that is totally or partially forbidden to pregnant or breastfeeding women, or that involves a recognised or significant risk to the health of the woman and the child.

As to the workers' representatives, they enjoy an appropriate protection against all acts of discrimination that aim to impair their freedom of association. In this respect, it is prohibited for any employer to subject an employment relationship to a (non-)affiliation to any professional organisation and to dismiss a worker or otherwise cause that worker any harm because of their affiliation to a professional organisation and/or participation in trade union activities.

Nothing is mentioned in the Congolese Labour Code regarding the burden of proof. It may reasonably be assumed that, without any specific rule thereof, it is the worker who invokes discrimination who must prove that they are effectively a victim of discrimination.

The worker could claim compensation before courts.

8.3 Digitalisation

There are no regulations in the DRC on the digitalisation of employment disputes. There is no possibility of recording or conducting court proceedings via video.

9. Dispute Resolution

9.1 Litigation

There are no specialised employment forms and class actions are not available as such. In the DRC, individual disputes are not admissible before the labour court unless they have first been submitted to the conciliation procedure, at the initiative of one of the parties, before the local Labour Inspectorate. Parties can always be assisted by a lawyer.

9.2 Alternative Dispute Resolution

Under the OHADA Treaty and OHADA Uniform Act on Arbitration (Article 2, indent 1), "Any natural or legal person may resort to arbitration with respect to any rights that may be freely disposed of."

It has been judged by the Appeal Court of Abidjan, Ivory Coast, that conflicts relating to the performance or termination of the employment contract may be subject to arbitration in the OHADA countries (Appeal Court of Abidjan, order number 1435, 27 March 2003 (short proceedings)). However, this decision has been criticised because "arbitration is not compatible with the mandatory rules of employment law".

The OHADA Common Court of Justice (CCJ) found in a judgment of 28 April 2016 that the CCJ has no jurisdiction on disputes in relation to labour law. Hence, the matter is debatable. One can, however, reasonably consider that a worker is free to resort to arbitration, once the dispute has arisen (but not before).

It is worth noting that a uniform act on employment law is expected but still under discussion (which first started in 2006). This uniform act will probably address this topic.

9.3 Costs

A prevailing employee cannot be awarded attorney's fees.

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