

DOMESTIC WORK IS NOW REGULATED

From the end of 2016, domestic work will be subject to rules that will have an impact on the way domestic workers are hired and on the issue of social protection of these workers. Until now, domestic workers have worked without any regulation of their rights.

From the end of 2016, domestic work will be subject to rules that will have an impact on the way domestic workers are hired and on the issue of social protection of these workers. Until now, domestic workers have worked without any regulation of their rights.

Presidential Decree no. 155/16 of 9 August, begins by defining “domestic work” as “any situation in which a person undertakes, in return for pay, to provide another, on a regular basis, under the direction and authority of the latter, work destined to meet the personal or specific needs of a household (...)” (“RJTD”). The legislation goes even further and lists some of the types of work from cleaning and tidying the house, to gardening and transport services for the household. The result is that the legislation, considers domestic workers to be not only the ones commonly known as “maids”, but also gardeners and drivers.

However, the following are excluded from the application of the RJTD, even if they do domestic work: domestic partners, relatives in the ascending or descending line, brothers and sisters, sons- and daughters-in-law, stepfathers and stepmothers, mothers- and fathers-in-law of the employer, and anyone who works on an occasional basis. For this reason, they are not considered to be domestic workers for any legal purposes.

The legislation goes even further and lists some of the types of work from cleaning and tidying the house, to gardening and transport services for the household.

THE DOMESTIC WORK CONTRACT

Domestic work contracts, which may only be entered into with people over the age of 18, may be made for a fixed-term or without a fixed term, and they may be full-time or part-time. The type of contract is documented by completing the domestic worker's work record, followed by registration at the National Institute of Social Security. Failure to fill in the work record does not invalidate the contract.

Whenever the domestic work includes meals and accommodation, the contract must be made on a full-time basis. However, domestic work contracts with accommodation between a single, divorced or widowed employer and a worker of the opposite sex are prohibited.

When no term is specified in the domestic work contract, it will have a maximum term of 10 years. At the end of the 10-year period, the contract will convert automatically into a permanent contract. Nevertheless, the contract may be made for shorter periods that are successively renewable. The trial period is up to 60 days and, before the end of this period, either one of the parties may terminate the contract without warning or allegation of just cause, and no compensation will be payable.

The rules on pay make reference to the provisions of the General Employment Law, specifically articles 155 to 183. The salary may be paid in cash or in-kind, but any payment in kind is limited to a maximum amount of 20% of the total value. The employer must prepare a salary receipt to be signed by the worker.

The domestic worker will be subject to medical examinations and, at the time of signing the contract, must produce a medical certificate confirming his or her ability to do the work.

When no term is specified in the domestic work contract, it will have a maximum term of 10 years. At the end of the 10-year period, the contract will convert automatically into a permanent contract. Nevertheless, the contract may be made for shorter periods that are successively renewable.

MEAL, REST AND HOLIDAY PERIODS

The period for meals and rest may not be less than one hour a day and, in the case of live-in domestic workers, this period must be at least two hours a day. In this case, the employer must also ensure that the worker has at least eight hours' rest at night, which may not be interrupted except for serious reasons that are not regular in character, or for reasons of force majeure.

As a rule, the weekly rest day is Sunday. The domestic worker also has the right to the mandatory public holidays, under the terms and conditions set out in the General Employment Law.

In relation to holidays, article 23 makes reference to the provisions of the General Employment Law. The domestic worker has the right to 22 working days' holiday, as well as the right to holiday and Christmas bonuses under Article 158 of the General Employment Law.

The rules on absences make reference to the provisions of articles 143 to 154 of the General Employment Law.

SUSPENSION OF THE DOMESTIC EMPLOYMENT CONTRACT

The contract can be suspended on the grounds that the worker is unable to provide or the employer is unable to receive the work for a period exceeding 8 successive days. The suspension can begin before this, once it becomes certain that the impediment will last for longer than the above period superior.

The facts causing the suspension that are not imputable to the worker are set out in article 189(b), (c) and (e) of the General Employment Law.

The payment of the salary varies depending on whether the reason for the suspension relates to the employer or to the worker. When the suspension is due to the employer, the domestic worker has the right to receive 1 month's base salary. In the case of part-time contracts, the payment will be made in accordance with whether the payment period established is weekly or every two weeks. If the suspension is due to the worker, he or she immediately loses the right to the salary.

In relation to the effects of the suspension, the RJTD makes reference to the provisions of article 190 of the General Employment Law.

The contract can be suspended on the grounds that the worker is unable to provide or the employer is unable to receive the work for a period exceeding 8 successive days. The suspension can begin before this, once it becomes certain that the impediment will last for longer than the above period superior.

TERMINATION OF THE DOMESTIC EMPLOYMENT CONTRACT

The provisions of articles 198 and following of the General Employment Law apply to the termination of the domestic employment contract. However, the RJTD provides that the parties may terminate the employment relationship unilaterally, at any time, in the event of a mutual loss of trust or failure to comply with the contractual obligations. Besides this, if one of the grounds for dismissal for just cause set out in article 206 of the General Employment Law exists, the employer may terminate the employment relationship, without a disciplinary procedure. In this case, the facts that formed the grounds for the termination must be registered on the control chart. Even if there is just cause, the domestic worker will always have the right to compensation calculated as follows:

- 1 base salary if the contract lasts up to 6 months;
- 2 base salaries if the contract lasts between 7 and 15 months;
- 3 base salaries if the contract lasts between 16 and 36 months;
- 4 base salaries if the contract lasts between 37 and 60 months;
- 5 base salaries if the contract lasts for at least 60 months.

SOCIAL PROTECTION OF THE DOMESTIC SERVICE WORKER

To be included in the social security protection system, the employer and the worker must be registered with the National Institute of Social Security. Registration is the responsibility of either the employer or the worker. Registration must be completed within 30 working days of the start of work, and if the domestic worker is in more than one employment relationship, he or she is required to contribute under each of the contracts.

The social security contribution rate is 6% for the employer and 2% for the domestic worker. The employer has to pay the contribution after deducting it from the worker's salary. Under these arrangements, domestic workers now benefit from protection in the event of invalidity, old age or death.

TEMPORARY PROVISION OF DOMESTIC WORKERS

Presidential Decree no. 155/16 of 9 August dedicates a chapter to the "Temporary Provision of Domestic Workers", which governs the legal-employment relationship between the "employment agency", the "user" and the "worker". This decree reiterates the need for prior licensing of companies whose corporate object is the provision of domestic services by the Ministry of Public Administration, Employment and Social Security. This matter was already regulated by Presidential Decree 272/11 of 26 October.

The provisions of articles 198 and following of the General Employment Law apply to the termination of the domestic employment contract. However, the RJTD provides that the parties may terminate the employment relationship unilaterally, at any time, in the event of a mutual loss of trust or failure to comply with the contractual obligations.

This newsletter was prepared by a multidisciplinary team made up of lawyers from GLA – Gabinete Legal Angola and lawyers from PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics. The contents of this Newsletter may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please send an email to geral@gla-advogados.com.

Apartado 10572, Rua Marechal Brós Tito, 35-37, Piso 13, Fracção B, Edifício Escom, Luanda, Angola
T. (+244) 935 147 570 . F. (+244) 222 443 388 . E. geral@gla-advogados.com . www.gla-advogados.com