

LEGAL FRAMEWORK

For Employment in Mozambique

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Produced by:



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1. Introduction

This booklet comprises part of a series which is aimed at assisting investors, both new and existing, in opening, developing and operating their business in Mozambique. The booklet, available in Portuguese and English aims to provide an easy to follow guide based on Law nº 23/2007 of 01 August and related legislation.

It has been developed by ACIS (Sofala Commercial & Industrial Association in conjunction with SAL & Caldeira Advogados e Consultores, Lda., with the support of GTZ APSP (*Ambiente Propício para o Sector Privado*).

Where relevant the points made in the booklet are footnoted with references to the specific legislation mentioned. Much of the legislation you will need to support the information given below is available in both Portuguese and English from ACIS, and other booklets in the Legal Framework series are available from ACIS' website www.acisofala.com.

As we prepared this booklet, we found ourselves at times disagreeing over what was proper procedure in respect of certain matters. We learned that that was because, in some cases, the same matters were handled slightly differently in different areas of the country. Although the sources of law governing labor matters are national, local interpretation can generate distinct local practices. We took as our point of departure practice in Sofala Province.

While we have tried our best to be accurate, we may have made some mistakes and we certainly made some omissions. Also, law and public administration are dynamic subjects, and it is very likely that, in the near future, some law or regulation described herein will be changed. We hope to correct the mistakes and supply the omissions in further versions of the manual, so please do tell us of any that you find. In the meantime, prudence compels us to disclaim liability for any errors or omissions. In specific matters and cases of doubt, readers would do well to consult legal counsel.

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2. Glossary of terms

Please find below a list (not exhaustive) of some of the terms you will encounter when dealing with labor issues.

Alvará	Company trading license.
Assinatura Reconhecida	Signature on a document compared to that in an identity document and stamped as correct by the Notary .
Autorização de Trabalho	Work authorization issued by Ministry of Labor to foreign employees. Ordinarily valid for 2 years.
BI	Mozambican Identity Card. Every Mozambican worker must have a current one.
Caderneta de Controle Sanitário	Health and Safety Inspection Book. Purchased then stamped by CHAEM . Must be available for inspection at company offices.
Cartão de Contribuinte	ID card provided by the National Social Security Institute (INSS) to each worker containing an individual number. A copy should be kept in the worker's personnel file.
Cartão de Desemprego	Provincial Labor Department registration document. Every new employee must have one.
Certidão de Quitação	Declaration issued by either the Ministry of Finance or INSS stating that a company is not in breach of its duty to pay taxes or social security. These documents are required for applications for work permits.
CHAEM	Provincial Health Department which inspects company premises for health and safety reasons prior to company opening, and carries out health checks on new employees. This department can inspect company premises at any time.
Cópia autenticada	Copy of a document compared to the original and stamped as correct by the notary
DIRE	Foreigners' Registration Document, or residence permit issued on the basis of Autorização de Trabalho . Issued by Provincial Immigration Departments and renewable annually
Folha de Salário	Pay Schedule. This must be completed in duplicate with the worker signing both copies and also receiving a take home breakdown of his individual salary. The schedule must contain all deductions and is submitted monthly to the Provincial Labor Department by the 10 th .
Horário de Trabalho	Work schedule form outlining the hours between which the company will be open, approved by Provincial Labor Department and displayed at company offices
INSS	National Social Security Institute. All workers pay 3% deducted at source, to which the employer adds a 4% contribution. Payments must be made monthly by the 10 th .
IRPS	Personal income tax deducted at source from all employees listed on the pay schedule (national and foreign) payable by the employer by 20 th of month. Paid according to tax brackets.
Notary	The Provincial Registry and Notary Department, responsible for registration of companies, preparation of certain legal documents, authentication of signatures and documents, etc.
NUIT	Individual tax number applied for on a form Modelo 05.
Plano de Ferias	Company leave schedule prepared annually in accordance with the Labor law and displayed at company offices.
Processo Individual	Personnel File. Purchased at the official stationers, one must be held for each new employee, and should contain a photo, contract, cartão de desemprego , health certificate issued by CHAEM , as well as copies of any promotions or disciplinary processes etc.
Procuração	Power of Attorney, prepared by the notary , available in different "strengths" allowing the mandated party to carry out either broad or limited functions on behalf of shareholders or the company.
Relação Nominal	List of all employees (national and foreign including shareholders) on the company pay schedule including details of salary, grade, level, qualification etc. renewed annually, and displayed at company offices.

Seguro Colectivo	Workers insurance which must be paid by all companies for all employees and which covers work related accidents and other items not covered by INSS .
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3. Overview of the Constitutional and Statutory Framework

For the purposes of this booklet, labor legislation in Mozambique includes:

- (i) the Constitution of the Republic of 2004 (the “Constitution”);
- (ii) international conventions to which Mozambique is a party;
- (iii) the Law n° 23/2007 of 01 August, (the “Labor Law”);
- (iv) Law n° 8/98 of 8 July (the “Law 8/98” in effect until 30 October 2007);
- (v) other laws and regulations, some of which predate the Labor Law but remain in effect, others of which are subsequent to the Labor Law and, usually in the form of decrees, that specifically regulate matters in that law; and
- (vi) Sector-specific legislation touching on labor questions.

The last category, including, for example, health and safety regulations in such areas as mining and petroleum products handling, is beyond the scope of this booklet.

The Constitution prohibits involuntary servitude except in the context of and as regulated by the penal code.¹ It provides that all workers have a right to a fair wage, rest and vacation, and to a safe and hygienic work environment.² Workers may be dismissed only in the cases and under the terms established by law. Workers have the right to organize in professional groups and unions, as regulated by law;³ they have a guaranteed right to strike, and lock-outs may not be used against them.⁴

None of these general principles, widely if not universally accepted, are controversial in Mozambique. When workers and managers differ about the framework of the law, the instrument of reference is usually the Labor Law rather than the Constitution.

4. Overview of the Judicial and Administrative Framework

The judicial framework for labor relations in Mozambique is set out Law n° 18/92 of 14 October (the “Labor Courts Law”). The Labor Courts Law formally created the labor courts foreseen as distinct judicial institutions under Article 167, paragraph 1, clause g) of the Constitution.

The Labor Courts Law provides for district and provincial labor courts.⁵ The qualifications generally applicable for judges and court officials in the courts of general jurisdiction apply to the Labor Courts.⁶

The jurisdiction of the Labor Courts covers “labor questions as well as those arising from occupational illness and workplace accidents,”⁷ as well as questions arising from administrative

¹ Constitution, Article 84, paragraph 2.

² Ibid.: Article 85, paragraphs 1 and 2.

³ Ibid.: Article 86.

⁴ Ibid.: Article 87.

⁵ Labor Courts Law, Article 1.

⁶ Ibid.: Articles 5, 6 and 7.

regulation of labor and social security, including appeals from fines imposed by the Labor Inspectorate.⁸

Claims under the Labor Law may be presented in writing or verbally to the Labor Court and there written down.⁹ This measure is intended to make the Labor Courts more accessible to workers, who tend to be less literate and have fewer means with which to press a claim. Labor procedure in general is deliberately simpler than civil procedure, for similar reasons.¹⁰ In general, the Code of Labor Procedure applies, but the Labor Courts have considerable latitude in applying procedures simpler still than those foreseen in that code in order to give effect to the principle of procedural simplicity.¹¹

Labor Courts are supposed always to seek to conciliate the parties where possible before finally adjudicating their dispute.¹²

Except as otherwise provided in the law, the statute of limitations on labor claims is six months from the date either of the parties became aware of the facts underlying the claim.¹³

Until the Labor Courts begin to function, the courts of general jurisdiction continue to exercise jurisdiction in labor matters.¹⁴ In fact, this provision remains very much in effect. As of this writing, no Labor Courts as such exist in Mozambique. In Maputo and Beira, there are sections of the provincial courts (two in Maputo and one in Beira) that are reserved exclusively for labor questions. Recently, the Ministry of Justice has begun to recruit and train administrative staff for the Labor Courts.

The administrative framework for labor relations in Mozambique is determined by a few instruments. In addition to the Labor Law itself, discussed in relevant detail below, and Decree n° 7/94 of 9 March, establishing the Consultative Labor Council, Ministerial Diploma n° 88/95 of 28 June ("DM 88/95") supplies the organic structure of the Ministry of Labor. At the central level, the Ministry of Labor has the following units:

- National Directorate of Labor
- National Directorate of Planning and Labor Statistics
- Labor Inspectorate
- Department of Migratory Labor
- Department of Administration and Finance
- Department of Human Resources
- Office of Studies, and
- Office of the Minister.¹⁵

The roles and responsibilities of each are set forth in Ministerial Diploma 88/95 and correspond roughly to their titles. Of these units, the most directly involved in the day-to-day

⁷ Ibid.: Article 8, paragraph 1.

⁸ Ibid.: paragraph 2.

⁹ Ibid.: Article 16, paragraph 1.

¹⁰ Ibid.: Article 21, paragraph 2.

¹¹ Ibid.: Article 31, paragraphs 1 and 2.

¹² Ibid.: Article 20, paragraph 1.

¹³ Labor Law, Article 56, paragraph 1. This is the new default statute of limitations. The Labor Law expressly repeals Article 16, paragraph 2 of the Labor Courts Law. See Labor Law, Article 272, paragraph 2.

¹⁴ Labor Courts Law, Article 28.

¹⁵ Ministerial Diploma 88/95, Article 2, paragraph 1.

mediation of the relationship between labor and management is the National Directorate of Labor.

The Ministry of Labor also performs a supervisory role for a number of related but legally distinct institutions, namely:

- National Institute for Social Security (INSS)
- National Institute for Employment and Professional Training (INEFP)
- School of Labor Studies (*Instituto Alberto Cassimo*).¹⁶

The INSS is discussed in further below. INEFP is responsible, among other matters, for operating technical training centers. The Department of Migratory Labor has recently been delegated the responsibility for approving applications for the right to work by foreign workers. However since this department does not in fact exist in many provinces, this role is currently assumed by the Provincial Labor Departments.

There are also subordinate collegial bodies in the Ministry of Labor. These are:

- the Coordinating Council, and
- the Consultative Council.¹⁷

The former, under the direction of the Minister, is responsible for the coordination of the activities of the Ministry.¹⁸ The latter, also under the direction of the Minister, is responsible for analyzing and issuing opinions with respect to “fundamental questions of the activity of the Ministry.”¹⁹

5. General Principles of the Labor Law

The interpretation and application of the Labor Law are subject to the principles of the right to work, stability in employment and position, change of circumstances and non-discrimination on the basis of sexual orientation, race or HIV-positive status.²⁰

Whenever there is a contradiction between a rule in the Labor Law and other instruments that govern labor relations, the content that results from interpretation in accordance with the principles defined in the Labor Law shall prevail.²¹

The deliberate violation of any principle defined in the law makes null and void the corresponding act, without prejudice to the civil and criminal liability of the violator.²²

For the purpose of ensuring protection of workers’ dignity, the Labor Law grants workers certain rights.

¹⁶ Ministerial Diploma 88/95, Article 2, paragraph 2.

¹⁷ *Ibid.*: Article 12.

¹⁸ *Ibid.*: Article 13, paragraph 1.

¹⁹ *Ibid.*: Article 14, paragraph 1.

²⁰ Labor Law, Article 4, paragraph 1

²¹ *Ibid.*: paragraph 2.

²² *Ibid.*: paragraph 3.

These include the worker's right to privacy. This obliges the employer to respect the personal rights of the worker and, in particular, the right to privacy in the worker's personal life.²³ Thus, the employer may not reveal to third parties information related to the personal life of the worker, including details of her family, romantic or sex life, state of health or religious and political beliefs.²⁴

The Labor Law also grants protection for personal data. It prohibits the employer from obliging the worker, at the time of contracting or thereafter, to supply information regarding his private life except when particular requirements inherent to the professional activities so require, whether by law or custom in the profession. In such cases, the employer must supply the basis for the request in writing. Thus, a worker's personal data obtained under a duty of confidentiality as well as information the release of which would violate the worker's privacy right may not be given to a third party without the consent of the worker unless otherwise required by law.²⁵

Employers may not use devices that monitor workers from a distance (e.g. closed-circuit television cameras) for the purpose of monitoring workers' performance; provided, that such devices may be used for the purpose of protecting people and property and when doing so is part of the production process. In such cases, the employer must inform the worker as to the existence and purpose of such devices.²⁶

Under the Labor Law, workers' personal correspondence, carried out by any means of private communication and, specifically, electronic messages, is considered inviolable except as expressly provided otherwise by law. However, the employer may establish rules and limitations on the use of information technology in a company, including the use of e-mail and Internet access or, in the alternative, may completely forbid their use for private purposes.²⁷

5.1 Protection of Maternity and Paternity

The Labor Law²⁸ ensures working mothers and fathers certain rights in respect of maternity, paternity and childcare. The exercise of such rights depends on prior information being given to the employer regarding the worker's circumstances, and the employer may require that proof be supplied.

During pregnancy and after birth, the Labor Law ensures to women certain rights in respect of the tasks they may be assigned given their state of health, protection of their dignity and the right to return to their posts.²⁹

The Labor Law grants women workers maternity leave of 60 consecutive days. Maternity leave may begin 20 days before the probable date of birth, and the days remain consecutive whether the worker carries to term or gives birth prematurely. This is in addition to regular leave. If the woman or her child is hospitalized during the period after the birth, the maternity

²³ Ibid.: Article 5, paragraph 1.

²⁴ Ibid.: paragraph 2.

²⁵ Ibid.: Article 6, paragraphs 1 and 3.

²⁶ Ibid.: Article 8, paragraphs 1 and 2.

²⁷ Ibid.: Article 9, paragraphs 1 and 2

²⁸ Law 8/98, Article 74 et seq.

²⁹ Labor Law, Article 11.

leave is considered to be suspended for as long as the hospitalization continues; provided, that the employer is timely informed.³⁰

Fathers have the right to paternity leave of one day, every two years, to be taken on the day immediately following the birth. The working father who wishes to take paternity leave must inform his employer, in writing, either before or after the birth.³¹

6. Sources of Law and Codes of Conduct

The main sources of law in labor matters are:³²

- the Constitution of the Republic;
- normative acts (e.g., laws and decrees) of the Assembly of the Republic and the Government;
- international conventions and treaties to which Mozambique is party;
- collective regulatory instruments. These take various forms, including contracts of adhesion and arbitral awards in voluntary arbitration.³³

Secondary sources of Labor Law include labor customs in each profession, sector or company that are not contrary to law or good-faith principles except to the extent that individual or collective bargaining agreements render them inapplicable.³⁴

Companies are free to adopt codes of conduct; provided, that like internal regulations, such codes are not considered sources of law.³⁵ The Labor Law does not define “codes of conduct.”

Higher sources of law prevail over lower sources except when the latter, without contradicting the former, establish more favorable treatment for workers.³⁶

With limited exceptions, the provisions of the Labor Law may only be derogated by collective regulatory instruments and employment contracts when these establish more favorable treatment for workers.³⁷

7. Subjects of Labor Law

All persons capable of labor relations are subjects of labor laws. These include, among others, minors, handicapped persons, workers who are also students and foreigners.

³⁰ Ibid, Article 12, paragraphs 1, 2 and 4.

³¹ Ibid.: paragraphs 5 and 6.

³² Labor Law, Article 13, paragraph 1.

³³ Ibid.: Article 15.

³⁴ Ibid.: Article 13, paragraph 2.

³⁵ Ibid.: Article 14.

³⁶ Ibid.: Article 16, paragraph 1

³⁷ Ibid.: Article 17, paragraphs 1 and 2

7.1 Minors

An employer may only employ a minor who is at least 15 years old and then only with the authorization of such minor's legal representative.³⁸ Employment must be preceded by medical exam to determine the minor's physical robustness, mental health and aptitude for the job.³⁹

7.2 Handicapped Persons

Employers are encouraged to take measures to facilitate the employment of handicapped persons. Such persons enjoy the same rights and have the same responsibilities as other workers.⁴⁰

7.3 Workers who are also Students

When authorized by an employer to attend a course to improve her skills, a worker who is also a student has the right to be absent from work during the period that exams are held, without loss of pay. For the purpose, she must inform the employer at least seven days in advance. Keeping this right depends on achieving passing grades.⁴¹

7.4 Foreigners

Employers, whether national and foreign, may employ a foreigner by authorization of the Minister of Labor or an agency to which she delegates powers, on application.⁴²

Employers may also employ, by simple communication to the Minister of Labor or an agency to which she delegates powers, up to the number of foreigners permitted under the following quotas:

- a) in large firms, up to 5% of the total number of workers;
- b) in medium firms, up to 8% of the total number of workers;
- c) in small firms, up to 10% of the total number of workers.⁴³

The definition of large, medium and small firms is given in Section 8, below.

In respect of investment projects approved by the Government that stipulate a number of foreign workers greater or lesser than the quota indicated above, no authorization is required. It is sufficient in such cases to inform the Minister of Labor within 15 days of the arrival of such workers in the country.⁴⁴

³⁸ Ibid.: Article 26, paragraph 1

³⁹ Ibid.: Article 24, paragraph 1.

⁴⁰ Ibid.: Article 28, paragraphs 1 and 2.

⁴¹ Ibid.: Article 29.

⁴² Ibid.: Article 31, paragraph 4 together with Article 33, paragraph 2.

⁴³ Ibid.: Article 31, paragraphs 4 and 5

⁴⁴ Ibid.: paragraph 6.

There are, nevertheless, certain conditions and restrictions on the hiring of foreigners. A foreigner may be hired only if he has the academic or professional qualifications necessary for the position and there are no Mozambican citizens with such qualifications or their number is insufficient.⁴⁵

Foreigners who enter Mozambique on diplomatic, courtesy, official, tourism, visitors, student or business visas may not be employed. Moreover, foreign workers, with temporary residence, may not remain in Mozambique after the contract period based on which they entered the country has expired.⁴⁶

7.4.1 Procedures For Contracting Foreign Employees

The process of contracting foreign employees is provided by Law n.º 23/2007 of 01 August (the Labor Law), and Decree n.º 55/2008 of 30 December (the Regulation on the Mechanisms and Procedures for Hiring of People of Foreign Nationality).

7.4.1.1 Means of Employment of Foreigners

Under the terms of the Mozambican Labor Law, there are two means of employing foreigners in Mozambique:

- (a) *Obtaining the authorization of the Minister of Labor*: authorization is granted by the Minister of Labor on a case-by-case basis if the following prerequisites are met: (i) there are no Mozambican employees qualified to do the particular job; or (ii) the number of qualified Mozambican employees is insufficient to meet the demand.⁴⁷ Authorization is also the required approach in cases of “specialized technical assistance” including such contexts as employment in NGOs, scientific research and teaching, among others.
- (b) *Communication to the Minister of Labor*, communication is the proper means in the following circumstances:
 - i. The number of foreign employees meant to be contracted is within established quotas,⁴⁸ namely:
 - 5% of the total number of employees in large enterprises (i.e. more than 100 people);
 - 8% of the total number of employees in medium-sized enterprises (between 11 and 100 people); and
 - 10% of the total number of employees in small enterprises (10 or fewer people).

⁴⁵ Ibid.: Article 33, paragraph 1.

⁴⁶ Ibid.: Article 32, paragraphs 1 and 2

⁴⁷ Note that the authorization system is meant to be used only once the quota to which the company is entitled, as discussed above in 1.1, (b), is exhausted. It is also important to note that the hiring of managers, agents and representatives of employers is done under the quota system and, alternatively (once the quota is exhausted), under the authorization system.

⁴⁸ Note that, the above-mentioned quota corresponds to the number of foreign employees that a Mozambican employer is allowed to have without seeking authorization from the Minister of Labor.

- ii. There is specific provision in the prospective employer's investment contract with the Government of Mozambique for an explicit percentage of foreign employees greater or lesser than the percentages set forth above.⁴⁹
- iii. The prospective employee is to be hired for a short-term assignment, i.e., for a period up to 30 days, consecutive or interspersed. Under the terms of Decree 55/2008, foreigners may work in Mozambique for up to 30 days (consecutive or interspersed) per calendar year by means of communication from the Mozambican employer (understood here to mean a Mozambican company or the foreign parent of a Mozambican company) to the Minister of Labor. Such 30-day period can be extended, for up to two further 30-day periods, on application to the Minister of Labor. The extension is at the discretion of the Minister of Labor.⁵⁰

Finally, it is important to remember that there is no impediment to an employee of a foreign company visiting Mozambique to conduct business as distinct from assuming employment.

7.4.2 Required Procedures and Documents

7.4.2.1 Authorization of the Minister of Labor

General contracting:

In instances in which the authorization of the Minister of Labor, referred to in 7.4.1.1 (a) above, is sought, the following procedures must be observed and documents supplied:

- (a) The prospective employer must submit an application in the prescribed form addressed to the Minister of Labor, at the relevant provincial department of labor. Such application must contain the following information:
 - From the company: name, headquarters and area of activity;
 - From the employee: name, passport number, country of birth, function to be exercised in Mozambique, indication of the period during which he or she is going to work in Mozambique and indication of the company's number of employees, detailing the number of national and foreign employees.
- (b) Three original copies of the employment agreement, which may not exceed 24 months;
- (c) Academic or professional qualification certificate and a further document confirming his or her professional experience. In the event the academic certificate was obtained outside Mozambique, a certificate of equivalence to be issued by the Ministry of Education and Culture (the application for which entails a distinct process);
- (d) Declaration (*certidão de quitação*) to be issued by the Mozambican tax authority stating that the company is not in breach of its duty to pay any taxes;

⁴⁹ Note that if the employer is located in an Industrial Free Zone (*Zona Franca Industrial*), the special rules on hiring foreigner for such zones, set forth in Decree n.º 75/99 of 12 October, is applicable. Under that decree, the quota is 15% of the total of the workforce.

⁵⁰ In practice, the Ministry of Labor usually requires that the foreign employee performing work on a short-term assignment enter the country under a business visa.

- (e) Declaration (*certidão de quitação*) to be issued by the National Institute of Social Security (INSS) stating that the company is not in breach of its duty to pay any social security contributions;
- (f) Opinion of the Labor Union Committee (which must expressly refer the “pertinence” of the request for the admission of the foreign employee); and
- (g) Proof of payment of the fee equivalent to 10 minimum (monthly) salaries for the applicant’s sector of activity (to be paid before submitting the application to the Ministry of Labor).

Contracting “specialized technical assistance”:

In instances in which the authorization of the Minister of Labor, referred to in second part of 7.4.1.1 (a) above, is sought, the procedure described above (in General Contracting) must be observed. In addition, however, the employer must attach to the application a positive opinion (*parecer*) of the entity that oversees the sector concerned.

7.4.3 Communications to the Minister of Labor

Contracting within the established quotas:

In instances of communication to the Minister of Labor, referred to in 7.4.1.1 (b) (i) above, the following procedure must be observed and documents supplied:

- (a) The prospective employer must submit an application in the prescribed form addressed to the Minister of Labor, at the relevant Provincial Department of Labor indicating the level of implementation of the quota reached after the admission of the prospective employee;
- (b) A letter of the company to the Minister of Labor (standard form) communicating the admission of the employee and the level of implementation of the quota (two copies);
- (c) Three original copies of the employment agreement, which may not exceed 24 months;
- (d) Declaration (*certidão de quitação*) to be issued by the Mozambican tax authority stating that the company is not in breach of duty to pay any taxes;
- (e) Declaration (*certidão de quitação*) to be issued by the National Institute of Social Security (INSS) stating that the company is not in breach of duty to pay any social security contributions;
- (f) Certified copy of the legally-required employee’s list (*relação nominal*) of the year preceding the admission of the foreign employee duly stamped by the National Institute of Social Security (INSS), in respect of the first communication made;
- (g) Certified copy of the Passport or Identification Document for Residence of Foreigners (DIRE);

- (h) Proof of payment of the fee equivalent to three minimum (monthly) salaries for the applicant's sector of activity; and
- (i) The investment project (if applicable).

Contracting within established contractual quotas:

In instances of communication to the Minister of Labor, referred to in 7.4.1.1 (b) (ii) above (established quotas in the employer's investment contract with the Government of Mozambique), the procedure and documents are the same as described above for contracting within established quotas. In addition, however, the employer must attach to the application a copy of the approved investment contract which provides the permitted quota.

Short-term work assignment:

In case of the communication to the Minister of Labor referred to in 7.4.1.1 (b) (iii) above (i.e., short-term work assignment), the procedure described below must be observed:

- (a) The prospective employer must submit a letter in the prescribed form communicating to the Minister of Labor: the identity of the employee; his or her qualifications; reason for hiring; tasks to be performed and precise indication of the start and end dates of the short-term employee's work in Mozambique;
- (b) Copy of the prospective short-term employee's passport; and
- (c) Copy of the prospective short-term employee's visa (which, in practice, must be a business visa).

It bears mention that the burden of ensuring the legality of the foreign worker (in terms of work and residence) falls on the employer, and the employer is obliged to inform the Ministry of Labor when the employment agreement terminates.

8. Types of Companies

The classification of companies as small, medium and large is consequential under the Labor Law. Under it:

- a large company is one that has more than 100 employees;
- a medium company is one that has more than 10 and up to 100 employees; and
- a small company is one that has up to 10 employees.⁵¹

As seen above, company size has consequences in respect of contracting foreigners. As we will see below, it is also consequential in respect of the prerogative to use certain forms of contract.

⁵¹ Ibid.: Article 34.

9. Forms of Employment Contract

Chapter III of the Labor Law governs individual, as distinct from collective, labor relations. Under Chapter III, there are two forms of contract for full-time employment:

- the indeterminate period contract (*contrato por tempo indeterminado*); and
- the fixed term contract (*contrato a prazo*), which may be:
 - for a period certain (*a prazo certo*), or
 - for a period uncertain (*a prazo incerto*).

These are not interchangeable options.

The motivating principle of contracts as defined by Chapter III is of worker protection. Unless a contract specifically states to the contrary, the presumption made in any dispute is in the worker's favor.

For example, when a person is carrying out a task for which he is paid and is doing so without the explicit objection of the "employer", or when the "worker" depends economically on the "employer," it is presumed that the relationship is one of employment.⁵²

An employment relationship does not have to be written down in order to be valid. The responsibility for having a written agreement is with the employer, and the rights of the worker are in no way affected by this contract being unwritten.⁵³ However, labor contracts for tasks that are executed immediately or that last less than 90 days need not be reduced to writing.⁵⁴

A labor contract must be signed by both parties and must contain the following clauses:

- identification of the employer and the worker;
- professional category, tasks or activities agreed;
- workplace;
- duration of the contract and conditions for its renewal;
- amount, form and periodicity of remuneration;
- date on which performance under the contract shall begin;
- in the case of fixed term contracts (*contratos a prazo*), the term and the justification for the form of contract;
- date of signature of the contract and, in the case of a fixed term contract for a period certain, its termination date.⁵⁵

It bears note that unless the contract expressly stipulates the date of its commencement, it is deemed to commence on the date on which it was signed.

9.1 Fixed Term Contracts

⁵² Ibid.: Article 19, paragraph 1.

⁵³ Ibid.: Article 38, paragraph 6.

⁵⁴ Ibid.: Article 38, paragraphs 1 and 3

⁵⁵ Ibid.: Article 38, paragraph 1, clauses a through h).

Fixed term contracts may only be used for specific and non-permanent tasks. The maximum duration of any fixed term contract is two years. All contracts that are not for an explicit fixed period are considered indeterminate period contracts. Fixed term contracts may be renewed twice; provided, that special, more liberal rules apply to small and medium companies.⁵⁶

Contracts that do not explicitly indicate their duration are presumed to be indeterminate period contracts; provided, that the employer may seek to prove otherwise with reference to the nature of the tasks to be performed under the contract.⁵⁷

The temporary tasks for which fixed term contracts may be used are:

- replacement of a worker who, for whatever reason, is temporarily unable or unavailable to work;
- tasks meant to address exceptional or abnormal increases in production, as well as seasonal activities;
- tasks that are not part of the permanent needs of the employer;
- carrying out works, projects or other defined temporary activities, including civil construction, public works and industrial repairs on a construction contract basis (*regime de empreitada*);
- services complementary to such works, projects or other temporary defined activities, namely, subcontracting and outsourcing; and
- non-permanent activities.⁵⁸

When the term of any fixed term contract, with a maximum number of permitted renewals, is exceeded, that contract is taken to be an indeterminate period contract.⁵⁹

Small and medium companies have the right freely to enter into and renew fixed term contracts during the first 10 years of activity.⁶⁰

Fixed term contracts for periods uncertain are only admissible in cases in which it is not possible to foresee with certainty when the event or circumstances that justified use of that form of contract in the first place will end.⁶¹

9.2 Free service and retainer contracts

The Labor Law permits the use of what may liberally be called “free service contracts” and “retainer contracts” (*contratos em regime livre e de avença*). Free service contracts may be used in situations where the activities or tasks in question do not fill the normal working period but are carried out simultaneously with it. Retainer contracts may be used for activities or tasks that are neither part of the normal production chain nor require a full day’s labor.⁶²

9.3 Temporary Work Contracts

⁵⁶ Ibid.: Article 40, paragraph 1, Article 42 paragraph 1,

⁵⁷ Ibid.: Article 41, paragraph 2.

⁵⁸ Ibid.: Article 40, paragraph 2.

⁵⁹ Ibid.: Article 42, paragraph 2.

⁶⁰ Ibid.: paragraph 3.

⁶¹ Ibid.: Article 44.

⁶² Ibid.: Article 21. Cf. Article 6 of the Law 8/98.

The Labor Law, in its Articles 79 to 83, permits a form of outsourcing. An employer may have in his service, by means of a utilization contract (*contrato de utilização*) between the employer and a licensed private employment agency (*agência privada de emprego*), workers on the staff of such agency.

A utilization contract (*contrato de utilização*) is fixed term contract entered into between the licensed private employment agency and the user (i.e. the company buying labor services) by means of which the former makes temporary workers available to the latter.⁶³

In their turns, the worker and the licensed private employment agency enter into a temporary work contract by means of which the worker agrees temporarily to make his labor available to the user.⁶⁴

Utilization contracts are only admissible in limited cases, the following of which bear particular mention:

- direct or indirect substitution of an absent worker or one unable, for any reason, to work;
- vacancy of a position, when the process of recruitment is ongoing;
- seasonal or other activities whose annual production cycle is irregular as a structural matter, including agriculture, and agro-industry and related activities;
- exceptional increases in company activity;
- carrying out of a work project or other temporary defined activity including construction, public works, industrial setup and repairs on a construction contract basis (*regime de empreitada*) or for one's own account, including related activities;
- private security, maintenance, sanitation, cleaning, food service and other services that are complementary or social in nature and that are part of the ongoing activity of the employer;
- development of projects including conception, research, management and monitoring when not part of the ongoing activity of the employer;
- launch of a new activity the period of which is uncertain, as well as startup of a new company or new business unit (in this last case, the utilization contract must be for a limited period).⁶⁵

Frequently Asked Questions

1. Can employers that invest in training workers (existing or new) bond those workers?

There is no explicit provision in the law for bonding workers who have received training. However, the goal of ensuring that workers who receive training at the employer's expense do not leave the firm before it has enjoyed some benefit from its investment can be met, in part, by designing appropriate rules in the labor contract or the internal regulation of the firm. For example, a rule whereby the employee must pay directly for some of the training he receives, and have that amount reimbursed gradually by the employer over the course of some years of further employment, can encourage an employee to remain and apply what he has learned.

⁶³ Ibid.: Article 81, paragraph 1.

⁶⁴ Ibid.: Article 80, paragraph 1.

⁶⁵ Ibid.: Art. 82, paragraphs 1 and 2.

9.4 Special Work Regimes

The Labor Law calls for more special work regimes than the Law 8/98. Specifically, there will be special regimes for domestic work, work in the home, mining, ports, merchant marine, rural, artistic, sports, private security, construction, and free service and retainer contracts. Many of these are yet to be specially regulated.⁶⁶

9.4.1 Domestic Work

The Domestic Workers Regulation was introduced through Decree 40/2008 of 26 November. The legislation is drafted in a simple and easy to use manner. The regulation takes into account the economic capacity of the employer, leaving certain aspects of the work relationship open to negotiation, based on mutual respect, trust and agreement.

The regulation does not establish a minimum wage for domestic staff. However note that the basis for this provided in the introduction to the law is the economic capacity of employers. Therefore if an employer can be shown to have greater economic capacity an argument could potentially be put forward for paying a higher wage, perhaps linked to existing minimum wages in the formal employment sector.

The regulation also allows for the inclusion of domestic workers in the INSS system, with domestic workers are being considered as “self employed” for the purpose.⁶⁷ This means that there is no requirement for the employer of the domestic worker to contribute to INSS on their behalf.

The following provides a brief summary of the domestic employment regulation:

The regulation does not apply to domestic workers paid by for-profit entities such as companies. Therefore if company staff have their domestic staff paid for as part of their employment package such domestic staff are considered to fall under the Labor Law and are company employees not domestic employees for the purpose.⁶⁸

The decree provides a description of the type of work a domestic worker, employed under this regulation, may be expected to do. It does not include the work of guards who are employed directly rather than through a guard company.⁶⁹ Clarification is awaited on this matter.

The decree prohibits the employment of minors (under the age of 12 completely and between 12 and 15 only with permission of the parent or guardian).⁷⁰

Section I of the decree deals with contractual obligations. While the contract does not have to be reduced to writing (article 6, paragraph 1) the recognition that a contract exists between the parties creates an obligation on the employer to ensure that the terms of the contract are met. Therefore where possible employers should reduce these contracts to writing. The contract can then usefully provide a clear record of the start (and where relevant termination) dates and

⁶⁶ Ibid.: Article 3. Cf Article 3 of Law 8/98.

⁶⁷ Decree 40/2008, Article 10, clause e) and Article 26, paragraph 6.

⁶⁸ Decree 40/2008, Article 2, paragraph 4.

⁶⁹ Decree 40/2008, Article 3.

⁷⁰ Decree 40/2008, Article 4.

any specific contractual items agreed (such as remuneration, work schedule and so on). The regulation provides a simple model contract which can be used for the purpose.

Contracts can be for a fixed or indeterminate period. Fixed-term contracts can only be entered into for a maximum duration of two years, and can be renewed twice. If the domestic worker remains in service after the date of termination of the fixed term contract, said contract is considered to be renewed automatically. The same rules as apply in the Labor Law, with respect to indemnity are expected to apply in this regulation.⁷¹

Contracts may be agreed with or without food or lodging. In this case up to 25% of the salary may be given in kind, as food or lodging for example.⁷² Contracts may be full or part time.⁷³

Contracts are subject to a probation period of maximum of 90 days during which time either party may terminate the contract immediately without explanation or indemnity.⁷⁴

Among the obligations of the employer are to provide medical assistance for work-related accidents or professional illness and pay the relevant indemnities in such cases⁷⁵ (such indemnities are presumed to be those found in the Labour Law itself).

Disciplinary procedures are another area where the regulation is simple and easy-to-use.⁷⁶ There are only three types of disciplinary procedure – verbal or written warning and dismissal.⁷⁷ Both dismissal and a written warning must be in writing, and it is also good practice to keep a written record of a formal verbal warning.

Note also that Article 22 allows for unjustified absences to be deducted from leave but not if these absences are the subject of a disciplinary procedure, therefore it is likely a good idea to keep a record of all actions (such as reducing leave due to unjustified absence) that can be considered disciplinary.

A domestic worker who abandons their workplace without warning is to pay indemnity to their employer. Note that in this context abandoning the workplace has a specific definition and specific burdens of proof which differ slightly from those in the Labor Law.⁷⁸

The normal working period for domestic workers is 9 hours per day, to a maximum of 54 hours per week. Where lodging is provided the work time is only considered that period where the person is working, not the time when they are “on site”. The work schedule must be agreed (and could, as a matter of good practice be included in the contract) and must include breaks and meal time which must total at least 30 minutes of the full time worked. The domestic worker must have one full day off per week. If the person works on this day then they must be given a day off in lieu or paid for the day.⁷⁹

⁷¹ Decree 40/2008, Article 7.

⁷² Decree 40/2008, Article 25, paragraph 2.

⁷³ Decree 40/2008, Article 8.

⁷⁴ Decree 40/2008, Article 9.

⁷⁵ Decree 40/2008, Article 13.

⁷⁶ Decree 40/2008, Article 14.

⁷⁷ Decree 40/2008, Article 17.

⁷⁸ Decree 40/2008, Article 16.

⁷⁹ Decree 40/2008, Articles 18-21.

Domestic workers have the right to paid leave as indicated in the regulation. Unjustified absences may be deducted from leave, as long as the unjustified absences have not given rise to a separate disciplinary action. As a matter of good practice employers would do well to keep a record of leave, unjustified absences and any leave reduction resulting from such absences. Leave can be “sold” but domestic workers must take at least 5 days leave per year. Domestic workers have the right to public holidays, unless it is agreed that they should work, in which case they must be paid for the day or given a day off in lieu.⁸⁰

Article 24 addresses justified and unjustified absences. In addition to those aspects listed in the regulation the employer may concede additional rights or these may be established by law. Note that unjustified absences are unpaid and may also **either** result in disciplinary action **or** be deducted from leave. Once again, employers would do well to keep a record of all unjustified absences, and deductions both financial and from leave.

Domestic workers may be paid in cash or kind, as long as at least 75% of the salary is cash, while the remainder can comprise accommodation and/or food. In cases where indemnity is payable this must be paid in cash. Payment should be made at the end of the month unless otherwise agreed and can be based on an hourly, daily, weekly or monthly rate. Leave pay must be equivalent to what the domestic worker would have earned had they been at work during the leave period. On payment the employer may ask the employee to sign for the salary. In practice employers would do well to include payment calculations (as well as details of any in-kind payments) in the original contract and to use a simple pay slip or wage book where the salary and any discounts are recorded and signed for. The employer is not responsible for deducting any withholding tax and paying this over on behalf of the domestic worker – the domestic worker is therefore in this sense self-employed.⁸¹

If the employer decides to terminate the work contract with cause this must be done based on a written disciplinary procedure.⁸² The domestic worker, finding their situation compromised by any of the circumstances listed in the regulation (including their employer moving house) also has the right to rescind the contract with cause. Indemnity is payable in certain cases, either by the worker or the employer.⁸³

Domestic workers have the right to request a work certificate at the end of their employment. The certificate may **only** contain the names of employer and employee and the period during which the employee was employed. Any additional in the certificate must be requested in writing by the employee.⁸⁴

Compliance with this regulation is to be ensured by the Labour Inspectorate and, where this is not represented, by local government (e.g. district administration). The authorities can only intervene based on a specific complaint lodged by a domestic worker.

9.5 Probationary Periods

The maximum probationary periods for new workers are as follows:

⁸⁰ Decree 40/2008, Articles 22 & 23.

⁸¹ Decree 40/2008, Article 25.

⁸² Decree 40/2008, Article 15

⁸³ Decree 40/2008, Articles 30 & 31.

⁸⁴ Decree 40/2008, Articles 32 & 33.

a) for the fixed-period contract:

- 90 days for contracts longer than one year;
- 30 days for contracts between six months and one year;
- 15 for contracts up to six months;
- 15 days for fixed-period contract for periods uncertain projected to last for 90 days or more.

b) for indeterminate period contracts:

- 90 days for most workers; but
- 180 days for medium and higher level technicians and employees in positions of management and direction.⁸⁵

During each such period, unless the contract provides otherwise, a newly hired worker can be dismissed without cause and without severance; provided that the worker receives at least seven days' written notice of dismissal.⁸⁶

Probationary periods can be reduced by collective regulatory instruments or individual labor contracts.⁸⁷

If the contract is silent on the subject of probationary periods, the law presumes the parties intended not to have one.⁸⁸ For that reason, it is essential for employers to remember to stipulate the existence of the probationary period and its duration.

Checklist

Fixed period contract:

- Maximum duration per contract = 2 years
- Maximum number of renewals = 2, though small and medium companies may renew them freely during the first 10 years of activity.
- Days probation =
 - 90 days for contracts longer than one year;
 - 30 days for contracts between six months and one year;
 - 15 for contracts up to six months;
 - 15 days for fixed period contract for periods uncertain projected to last for 90 days or more.
- Leave = one day per month in the first year; two days per month in the second year in 30 days per year from the third-year on.
- Termination = Severance based on time left until end of contract

Indeterminate period contract:

- Maximum duration = indeterminate
- Maximum number of contracts = not applicable

⁸⁵ Labor Law, Article 47.

⁸⁶ Ibid.: Article 50, paragraphs 1 and 2.

⁸⁷ Ibid.: Article 48, paragraph 1.

⁸⁸ Ibid.: paragraph 2.

- Days probation =
 - 90 days for most workers; but
 - 180 days for medium and higher level technicians and employees in positions of management and direction
- Leave = one day per month in the first year; two days per month in the second year in 30 days per year from the third-year on
- Termination = highly variable. See severance tables, below. The severance regime for the employees hired when Law 8/98 was in effect will remain in effect for certain periods in respect of employees with rights vested thereunder.

10. Hours, Wages and Incentives

10.1 Hours

Working hours, or the normal working period, is governed by Chapter III, Section IX of the Labor Law. As a general rule, the work week is no longer than 48 hours and the work day no longer than eight hours.⁸⁹

A number of exceptions to this rule exist. The work day can be extended to nine hours if an extra half-day of rest is given.⁹⁰

In addition, through collective bargaining agreements, a working day of 12 hours may be established; provided, that the working week does not exceed 56 hours. This limit does not include exceptional or extraordinary work undertaken as a result of force majeure.⁹¹ In any case, the average of 48 hours of work per week should be measured with reference to hours worked during a maximum period of six months, compensating the worker through reduction of the hourly, daily or weekly schedule.⁹²

Industrial establishments, other than those that operate in shifts, may keep a 45-hour work week over five days.⁹³

The Labor Law permits further flexibility in the work period if the type of work is intermittent, if it requires the worker only to be present, or requires some preparation outside ordinary hours of service.⁹⁴

The Labor Law foresees that productivity improvements may lead to a reduction in the hours worked by the employees, especially in the case of tasks that are physically or mentally taxing. Wages may not be reduced in this situation, either by the increase or decrease in the number of hours worked.⁹⁵ Such changes may be made directly by the Ministry of Labor and the sectoral line ministry or by means of a collective bargaining agreement.⁹⁶

⁸⁹ Ibid.: Article 85, paragraph 1.

⁹⁰ Ibid.: Article 85, paragraph 2.

⁹¹ Ibid.: Article 85, paragraph 3.

⁹² Ibid.: Article 85, paragraph 4.

⁹³ Ibid.: Article 85, paragraph 6.

⁹⁴ Cf, Labor Law, Article 86, paragraph 1 and Law 8/98, Article 29, paragraph 1.

⁹⁵ Labor Law, Article 86, paragraphs 2 and 4.

⁹⁶ Ibid.: paragraph 3.

In general, employers are free to set the work schedule, in accordance with legal and conventional limits, but must first consult with the relevant union representatives. The work schedule must be approved by the Ministry of Labor and displayed in a prominent place.⁹⁷

Allowance must be made for workers who are also studying or who have reduced capacity to work.⁹⁸

Workers must be permitted a break no shorter than 30 minutes and no longer than 2 hours; break periods may be lengthened as part of collective bargaining agreements.⁹⁹

10.2 Exceptional work, overtime and night work

The Labor Law distinguishes between exceptional work and overtime work.

Exceptional work is work performed on a day that would otherwise be a weekly day of rest or a public holiday. In this case, the worker is entitled to a full day of rest (if five hours or more have been worked) or a half day of rest, within the following three days.¹⁰⁰

Overtime work is time worked over and above the ordinary hours of the working day.¹⁰¹ Workers may work up to 96 overtime hours per quarter; may not work more than 8 overtime hours per week; and may not exceed 200 overtime hours in a year.¹⁰²

Night work is work that takes place between 20:00 and the beginning of the work day the following day. Collective bargaining agreements may define the period more strictly. Shift work is excluded from the definition of night work.¹⁰³

In companies which have continuous operations as well as in those which have a normal operating period longer than the maximum limits established for the working day, shift work must be used. The duration of each shift may not exceed the maximum time limits for work established by law. In any event, work organized in shifts must follow the general rules on limitation of the working period.¹⁰⁴

For the rules governing remuneration for these different types of hours worked, see below.

10.3 Time off

Time off from work is also regulated in the Labor Law. One full day per week must be a day of rest. Normally, that day is Sunday.¹⁰⁵

⁹⁷ Ibid.: Article 87, paragraphs 2 and 3.

⁹⁸ Labor Law, Article 87, paragraph 4.

⁹⁹ Ibid.: Article 88, paragraphs 1 and 2.

¹⁰⁰ Ibid.: Article 89, paragraphs 1 and 4.

¹⁰¹ Ibid.: Article 90, paragraph 1

¹⁰² Ibid.: Article 90, paragraph 3.

¹⁰³ Ibid.: Article 91.

¹⁰⁴ Ibid.: Article 92.

¹⁰⁵ Ibid.: Article 95, paragraph 1

Legal or public holidays are also considered time off from work. Clauses of an individual labor contract or collective bargaining instrument that do not recognize public days or that establish other days in place thereof are invalid.¹⁰⁶

If a legal or public holiday falls on a Sunday, the time off from work it confers falls on the following Monday.¹⁰⁷

The Labor Minister, and only the Labor Minister, may declare a full- or part-day holiday known as a *tolerância de ponto*. This must be announced with at least two days' notice. The declaration of a *tolerância de ponto* allows the worker paid leave for the duration of the *tolerância de ponto*.¹⁰⁸

Workers are also entitled to paid vacation. This is addressed in Section 11 below.

Frequently Asked Questions

1. Can a *tolerância de ponto* be declared by anyone other than the Minister of Labor?

No. Only the Minister of Labor has the power to declare *tolerâncias de ponto*,

2. May employees work on a *tolerância de ponto* if they are paid voluntary overtime?

Yes. While employees cannot be obliged to work when a *tolerância de ponto* has been declared (except in respect of activities that "by their nature cannot be interrupted," per Article 97, paragraph 3 of the Labor Law), by analogy to "exceptional work," i.e., work performed on a weekly rest day, extra rest day or public holiday (Article 89, paragraph 1), they may work if remunerated accordingly.

10.4 Payment for Work

Wages are regulated by Chapter III, Section XI of the Labor Law and by the Ministerial Order that establishes the minimum wage in any given year (discussed further below). Remuneration is composed of salary and any periodic, direct or indirect payments in cash or kind.¹⁰⁹ Any payment made in kind may not amount to more than 25% of the overall salary.¹¹⁰

Overtime work is paid at the rate of the normal hourly rate of the worker's base salary plus 50%, for overtime hours up to 20:00 (i.e., 1.5 times the normal rate), and at the rate of the worker's base salary plus 100% for overtime hours between 20.00 and the start of the following work day,(i.e., double the normal rate).¹¹¹

Exceptional work is paid at a rate of the worker's base salary plus 100% (i.e., double the normal rate).¹¹²

¹⁰⁶ Ibid.: Article 95, paragraph 2.

¹⁰⁷ Ibid.: , Article 96, paragraph 3.

¹⁰⁸ Ibid.: Article 97.

¹⁰⁹ Ibid.: Article 108, paragraph 2.

¹¹⁰ Ibid.: Article 113, paragraph 1, clause a).

¹¹¹ Ibid.: Article 115, paragraph 1.

¹¹² Ibid.: Article 115, paragraph 2.

Night work is paid at the normal hourly rate for the same work undertaken during the day plus 25%.¹¹³

The Labor Law allows for a number of additional payments based on exceptional conditions or results and operation of contract.¹¹⁴ These include commonly occurring payments, such as transportation subsidy and a premium for night work, to less frequently made ones, such as seniority bonus, productivity bonuses, bonuses for work in difficult conditions and participation in the firm's equity capital.¹¹⁵

Participation in the firm's equity capital is directly analogous to employee stock option plans (ESOPs) in other jurisdictions.

The Labor Law allows piece work and hourly work as well as a mixture of the two.¹¹⁶

Piece work is no longer based on rigid criteria and is less difficult to adopt than it was under Law 8/98.¹¹⁷

Piece work is therefore more flexible and is done as a function of concrete results obtained, with payment determined based on the nature, quantity and quality of work produced. This mode of remuneration may be used when the nature of the work, business custom, the type of activity or a previously established rule allow for it.¹¹⁸

Remuneration for hourly work is in accordance with the time effectively worked.

Mixed remuneration is calculated as a function of both time and productivity.¹¹⁹

Wages must be paid on a regular basis, whether weekly, biweekly or monthly.¹²⁰ Wages must be paid in cash; provided, that up to 25% of an employee's wages may be paid in kind if so agreed with the worker, using goods appropriate to the circumstances of the worker and her family and valued at prices current in the region.¹²¹

The only deductions permitted from an employee's wages are for Social Security, other payments to the State (such as IRPS, personal income tax), as a consequence of disciplinary action taken by the employer, or as a result of a judicial order (e.g. child support).¹²² The total amount withheld from any payment of salary must never exceed one third of the amount due.¹²³

¹¹³ Ibid.: Article 115, paragraph 3.

¹¹⁴ Ibid.: Article 109, paragraph 1.

¹¹⁵ Ibid.: paragraph 2.

¹¹⁶ Ibid.: Article 110, paragraph 1.

¹¹⁷ Article 51, paragraph 2 of Law 8/98 defined situations in which piece work could be used. These criteria no longer exist in the Labor Law.

¹¹⁸ Labor Law, Article 111.

¹¹⁹ Ibid.: Article 110, paragraph 2, Article 111 and Article 112.

¹²⁰ Ibid.: Article 113, paragraph 1, clause c).

¹²¹ Ibid.: Article 113, paragraph 2..

¹²² Labor Law, Article 114, paragraph 2.

¹²³ Ibid.: Article 114, paragraph 4.

In the event an employer is insolvent or declared bankrupt, workers who are owed salary are classified as privileged creditors in relation to any other unsecured, general creditors; only the State has higher priority.¹²⁴

10.5 Minimum Wage

The minimum wage is set annually, usually as the result of a tripartite negotiation between the Government, representatives of the private sector and the unions in the Labor Consultative Committee (the *Comissão Consultiva de Trabalho*, or "CCT," discussed further in Section 22, below).¹²⁵ Different minimum wages are set for eight different sectors, including agriculture, industry, financial services, non-financial services, construction, and fisheries. The determination of which sector companies fall into is not clearly defined by legislation, and continues to be a matter of debate for companies in areas such as agro-processing.

Annual minimum wage increases only apply to those workers earning the minimum wage. The salaries of workers earning above minimum wage are not increased by the same percentage as the minimum wages increased, or at all as a matter of law.

11. Vacation and Leave Time

Vacation and leave time are governed by Chapter III, Section X of the Labor Law. Mozambique is also party to two relevant ILO conventions: Convention n° 14 on weekly rest periods in industrial establishments, and Convention n° 52 on paid annual leave.

The Labor Law introduces an innovation in respect of vacation time. Under this law workers have the right to:

- one day of vacation for each month of effective service during the first year of work;
- two days of vacation for each full month of effective service during the second year of work;
- 30 days of vacation of leave for each full year of effective service from the third year.¹²⁶

Vacation time includes weekends and is 30 consecutive days and not 30 working days.¹²⁷ In the event a national holiday falls on a vacation day, that day is not counted as vacation.¹²⁸

The same is true if the employee falls ill during the vacation: the period of illness is not counted as vacation when the illness duly certified during the vacation and the employer is informed immediately. The employee may resume vacation on recovering from the illness unless the employer establishes another time at which the vacation may be resumed.¹²⁹

¹²⁴ Ibid.: Article 120, paragraph 1.

¹²⁵ Under the terms of Article 108, paragraph 5 of the Labor Law, the Government, after consultation with the CCT sets national minimum wage (or wages) for groups of employees whose employment conditions warrant that measure.

¹²⁶ Labor Law, Article 99, paragraph 1.

¹²⁷ As with the time periods mentioned in Article 56, paragraph 4 of the Labor Law leave is calculated based on calendar days. An exception to this is the six days of vacation an employee is required to take when both employee and employer agree to trade accumulated vacation for additional remuneration, under Article 98, paragraph 3.

¹²⁸ Labor Law, Article 102, paragraph 1

¹²⁹ Ibid.: Article 102, paragraphs 2 and 3.

Note that the vacation time for workers on fixed term contracts of more than three months and less than one year corresponds to one day for each full month of effective service.¹³⁰

Employers may in exceptional circumstances “purchase” a certain amount of the employee’s vacation time, meaning that the worker will remain at work and be paid for his time, if mutually agreed by the parties. However, the worker must take at least six vacation days.¹³¹

It is important to reiterate here that the Labor Law expressly states in Article 56, paragraph 4 that all time periods mentioned in the law are consecutive calendar days unless otherwise specified.

Frequently Asked Questions

1. Is compulsory group leave permitted?

Yes. The Labor Law states in Article 100, paragraph 3 that where the nature and organization of work and the conditions of production make it necessary or possible, the employer may, after consulting the relevant trade union body, decide that all employees shall take their leave at the same time.

2. May leave be carried from one year to the next?

Yes. According to Article 101, paragraph 1, the employer may postpone all or part of an employee’s leave until the leave period in the following year, provided that no more than 60 days of leave may be accumulated in any one year (Article 101, paragraph 3).

3. Vacation is accumulated based on the employee’s “effective service.” How is “effective service” calculated?

“Effective service” is the aggregate of the following elements: (1) the time during which the employee is effectively performing services for the employer or is at the disposal of the employer, (2) public holidays, (3) weekly days of rest, (4) vacation days, and (5) justified absences (Article 99, paragraph 2 and Article 84, paragraph 2).

11.1 Justified absences

As did Law 8/98, the Labor Law permits workers to be absent from their posts for a variety of reasons; these forms of leave are classified as “justified absences.”¹³² Each such category, and the maximum number of days permitted in each case, per year, is as follows:

- a) five days, for marriage;¹³³
- b) five days, for the death of the employee’s spouse, father, mother, children, step children, siblings, grandparents, step father or step mother;¹³⁴

¹³⁰ Ibid.: Article 99, paragraph 3.

¹³¹ Ibid.: Article 98, paragraph 3.

¹³² Cf. Labor Law, Article 103, paragraph 1 and Law 8/98 Article 43

¹³³ Ibid.: Article 103, paragraph 3, clause a).

¹³⁴ Ibid.: Article 103, paragraph 3, clause b).

- c) two days, for the death of the employee's parents-in-law, uncles, aunts, cousins, nieces, nephews, grandchildren, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law;¹³⁵
- d) in cases where the worker cannot work through no fault of his own, such as through illness or accident;¹³⁶
- e) when employees, as parents, accompany their own children or other minors under their care who are admitted in hospital;¹³⁷
- f) periods of convalescence for female employees, in cases of abortions up to 7 months prior to their due date;¹³⁸
- g) maternity leave (60 days, which may begin up to 20 days before the due date);¹³⁹
- h) Breastfeeding for two daily periods of half an hour each, or a single period of one hour, for up to one year after the birth of the child;¹⁴⁰ and
- i) other absences previously or subsequently authorized by the employer, such as for participation in sporting or cultural activities.¹⁴¹

Any absence not covered by one of the foregoing reasons is considered unjustified.¹⁴²

In order to be justified, even when covered by the situations listed in paragraph 3 of Article 103, the employer must be informed of the reason for the absence in accordance. Given that the Labor Law in its Article 106, paragraph 2 states that "the use of a justification which is proven to be false may be the basis for a disciplinary proceeding," it may be presumed that when one of the legally justified reasons for absence is given, the employer may check that the reason given is genuine.

Justified absences must, wherever foreseeable, be communicated at least two days in advance.¹⁴³ Where this is not possible the employer must be informed as soon as possible after the event.

Justified absences do not, in principle, result in the loss of remuneration, seniority or vacation time of the employee.¹⁴⁴

Frequently Asked Questions

1. Are workers eligible for 5 days' justifiable absence for each death of a close relative, even if the deaths occur during the same year?

Yes. The rule is five days' justifiable absence for the death of each of a spouse, parent, child, step-child, sibling, grandparent or step-parent. (Article 103, paragraph 3, clause a).

11.2 Sick leave

¹³⁵ Ibid.: Article 103, paragraph 3, clause c).

¹³⁶ Ibid.: Article 103, paragraph 3, clause d).

¹³⁷ Ibid.: Article 103, paragraph 3, clause e).

¹³⁸ Ibid.: Article 103, paragraph 3, clause f).

¹³⁹ Ibid.: Article 12 paragraph 1.

¹⁴⁰ Ibid.: Article 11, paragraph 1, clause c).

¹⁴¹ Ibid.: Article 103, paragraph 3, clause g).

¹⁴² Ibid.: Article 103, paragraph 4.

¹⁴³ Ibid.: Article 103, paragraph 5.

¹⁴⁴ Ibid.: Article 105, paragraph 1.

In Mozambique, sick leave is not strictly calculated by a pre-determined number of days absent. A worker may be absent from work ill indefinitely, subject to the discussion below.

After the worker is absent for illness for 15 consecutive days, or more than 5 days in a quarter, the employer may have the worker examined by the Health Board (*Junta de Saúde*) or other duly licensed body to determine if he is fit to return to work.¹⁴⁵ The reference to “other duly licensed bodies” allows that at some future point private clinics and individual doctors may be licensed to determine workers’ aptitude for work.

During a period of sick leave the worker is not remunerated by the employer – instead, in theory, he is supposed to receive an amount for temporary disability from the National Institute for Social Security (INSS).¹⁴⁶

Leave taken by parents taking children under their care to hospital may be discounted proportionately from their vacation up to a limit of 10 days in each year of effective service or from their remuneration, as the employee prefers.¹⁴⁷

In order to prove sick leave the worker must present a hospital receipt for the first day and a medical certificate (*atestado médico*) for all subsequent days.

Frequently Asked Questions

1. What can an employer do if a worker does not return to work after the Health Board (*Junta de Saúde*) has found him fit to work?

If the employee is absent for any reason not listed in Article 103, paragraph 3 (the exhaustive list of justified absences), the employer can consider the absence unjustified. The employee loses her pay for the days of unjustified absence; those days are also discounted from her vacation and deducted from the period of service of the employee. In addition to the foregoing consequences, if the unjustified absence lasts for three consecutive days or six days over a quarter, the employer may start disciplinary proceedings and impose sanctions. Unjustified absence for more than 15 days creates the presumption that the employee has abandoned her post, and can also lead to disciplinary proceedings (and the sanction imposed may include dismissal). See Article 105.

2. What if the employee was found fit to work by the Health Board but actually is too sick to work?

The employer may resubmit the employee to the Health Board (or, in the future, some other duly licensed body), to obtain a ruling on the employee’s lack of capacity to work. If the employee is absent from work, the employer may proceed as described in the preceding question.

12. Disciplinary Measures and Disciplinary Procedures

¹⁴⁵ Ibid.: Article 104, paragraphs 1 and 2.

¹⁴⁶ Ibid.: Article 105, paragraph 3.

¹⁴⁷ Ibid.: Article 105, paragraph 2.

Disciplinary power is attributed to the employer and permits the use of sanctions including dismissal. This power is designed to enable employers to deal with issues of disciplinary responsibility, in other words, behavior by the worker that violates the employment contract or other obligations under the law.

Disciplinary procedures are governed mainly by Chapter III, Section VII, subsection III of the Labor Law. Employers may discipline workers for a broad variety of offenses, including, absenteeism, culpable failure to perform appointed tasks, drunkenness, theft and sexual harassment (whether committed on or off the work premises).¹⁴⁸ There are six disciplinary measures employers may take, in ascending order of severity:

- verbal warning;
- written reprimand;
- suspension from post with loss of pay (up to 10 days for each offense and 30 days in any calendar year);
- a fine of up to 20 days of salary;
- demotion to the immediately lower professional category, for a period not greater than 12 months; and
- dismissal.¹⁴⁹

The application of other disciplinary sanctions or the increase in severity of those described above through internal regulations or collective bargaining agreements is forbidden.

Disciplinary measures must be proportional to the offense. Employers are required to take into account such factors as the gravity of the offense, the degree of guilt of the worker, the professional conduct of the worker and, in particular, the facts of the case.¹⁵⁰ The Labor Law differs from the Law 8/98 in that it does not require the employer to take into account the economic situation of the worker.¹⁵¹

In addition to curbing bad conduct by workers, disciplinary sanctions are imposed to discourage further violations in the workplace, and to educate the offending and the remaining workers to voluntarily comply with their obligations.

All disciplinary measures more severe than the verbal warning and the written reprimand are subject to the commencement of an internal disciplinary proceeding as detailed in Article 67 of the Labor Law.

The disciplinary proceeding has three phases: accusation, defense and decision. They are described below.

Accusation phase – The employer must, within 30 days of learning of the violation, prepare a disciplinary notice (*nota de culpa*) which is given to the employee and to the union committee.¹⁵²

¹⁴⁸ A full list of violations that may give rise to disciplinary action is provided in the Labor Law, Article 66, paragraph 1.

¹⁴⁹ Labor Law, Article 63, paragraphs 1 and 2.

¹⁵⁰ Ibid.: Article 64, paragraph 2.

¹⁵¹ Cf. Law 8/98, Article 23, paragraph 1.

¹⁵² Labor Law, Article 67, paragraph 2, clause a).

Defense phase – Within 15 days of receiving the disciplinary notice the worker may respond in writing or may request a discovery proceeding (*diligência de prova*). At the end of this period, the file is given to the union committee which must give its opinion within five days.^{153,154}

Decision phase – Thereafter, within 30 days from the time limit for the union committee to present its opinion, and taking into account the discovery proceeding, and based on the general proof gathered to support the alleged facts, both as stated in the accusation and in the defense, the employer provides its decision.¹⁵⁵

For legal purposes, the disciplinary proceeding is deemed to have started and the time periods are counted from the date on which disciplinary notice was presented to the worker. However, the disciplinary proceeding may be preceded by an inquiry period of not more than 90 days.¹⁵⁶

If the worker refuses to receive the disciplinary notice, this must be confirmed in writing on the disciplinary notice itself, by the signature of two other workers, of whom one should preferably be a member of the union committee.¹⁵⁷

Having given the disciplinary notice the employer may suspend the worker – on full pay – whenever the worker's presence in the workplace may hinder the normal conduct of the disciplinary proceeding.¹⁵⁸

If a disciplinary proceeding is started against a worker whose whereabouts are unknown and who is presumed to have abandoned the workplace, or should the worker refuse to receive the disciplinary notice, the employer must prepare a notice (*edital*) which must be displayed in a prominent place in the workplace. This notice should invite the worker to receive the disciplinary notice and advise that the time period for presentation of the defense runs from the date of publication and display of said notice. The current practice used by some employers of summoning workers to receive disciplinary notices through newspaper advertisements is specifically prohibited under the Labor Law.¹⁵⁹

The Labor Law lists the following as reasons for a disciplinary proceeding being declared invalid:

- non-observance of the legal formalities, namely not fulfilling the requirements for, or not giving, a disciplinary notice; not giving the worker a hearing if requested to do so; not publishing a notice if required; failing to send to the file to the union committee; and a final decision taken without basis;
- not undertaking the discovery proceeding requested by the worker;
- violation of any of the time periods provided for the disciplinary procedure.¹⁶⁰

¹⁵³ Ibid.: Article 67, paragraph 2, clause a). The Labor Law does not provide procedures for discovery proceedings. In general, the parties have the right to request any documentary or other proof pertaining to the alleged act.

¹⁵⁴ Law 8/98 allowed the worker and union committee a common period of 10 days to present a defense. Under the Labor Law, these time periods are separated and made autonomous, with the worker and union committee each having their own obligation, the total time for defense being 20 days.

¹⁵⁵ Labor Law, Article 67, paragraph 2, clause c)

¹⁵⁶ Ibid.: Article 67, paragraph 3.

¹⁵⁷ Ibid.: Article 67, paragraph 6.

¹⁵⁸ Ibid.: , Article 67, paragraph 5.

¹⁵⁹ Ibid.: Article 67, paragraphs 7 and 8.

¹⁶⁰ Ibid.: Article 68, paragraph 1.

The causes of invalidity of the disciplinary proceeding (except the statute of limitation on the violation and the deadline for communicating a decision) may be corrected before the end of the disciplinary proceeding or within 10 days of the problem coming to light. However, the disciplinary proceeding is considered null if the worker has not been informed of it either by service of the disciplinary notice or by publication of a notice in the workplace, as appropriate.¹⁶¹

Frequently Asked Questions

1. In addition to a disciplinary proceeding, can an employee be obliged to pay for damage caused?

Yes, if the loss was caused by the willful or culpable conduct of the employee. According to Article 64, paragraph 4, disciplinary sanctions are distinct from the obligation to make good such losses.

13. Rescission of Contract

The rescission of contracts (*rescisão de contrato*) and the procedures to be followed are set forth in Chapter IV, Section II of the Labor Law. The Labor Law provides the following means of rescission at the initiative of the employer:

- unilateral rescission of the labor contract by the employer for just cause (Article 127 of Labor Law); and
- unilateral rescission of the labor contract by the employer with prior notice (Article 130 of Labor Law).

Unilateral rescission of the labor contract by the employer for just cause can be based on any one of four grounds:

- manifest inaptitude of the employee for the job, discovered after the probationary period has ended;
- culpable conduct on the part of the employee, sufficiently serious to justify dismissal;
- the arrest or imprisonment of the employee if, by the nature of the employee's tasks, that arrest or imprisonment operates to hinder the functioning of the employer;
- economic reasons which may be technological, structural or market-related.¹⁶²

Subject to certain conditions, unilateral rescission by the employer for one of the reasons listed above does not require the payment of severance to the worker.¹⁶³

¹⁶¹ Ibid.: Article 67, paragraphs 2 and 4.

¹⁶² Article 127, paragraph 4 of the Labor Law defines structural reasons as those which require the restructuring or reorganization of production, change of activity or a lack of economic or financial resources that could lead to an excess of the number of work posts. Technological reasons are those related to the introduction of new technology, new procedures or work methods or computerization that could result in a reduction in personnel numbers. Market-related reasons are those which have to do with the difficulty of placing goods or services on the market or with reduced activity in the company (see also Article 130, paragraph 2).

¹⁶³ See Labor Law, Article 127, paragraphs 7 and 8. A worker dismissed for manifest inaptitude for the job discovered after the probationary period has ended must have first received training for the purpose. Similarly, a worker dismissed for arrest or imprisonment must be reinstated if she is eventually acquitted of the crime of which she is accused.

As noted above, unilateral rescission by the employer with prior notice is based on technological, structural or market-related motives.¹⁶⁴

At least 30 days before the contract is to end, the employer must communicate its intentions and reasons to the worker, the union committee and the Ministry of Labor.¹⁶⁵ In such cases, the employer is obliged to clarify the matters and supply the information regarding its economic restructuring requested by the Labor Inspectorate.¹⁶⁶

The severance to be paid in such circumstances is determined as a function of the following variables:

- type of contract (indeterminate or fixed period);
- the worker’s salary (including any seniority bonus), expressed as a multiple of national minimum salaries (*salários mínimos*, or “SMs”);
- length of service; and
- how long after the entry into effect of the Labor Law the rescission occurs.

This last criterion is particularly relevant since the levels of severance applicable under Law 8/98 will remain in force for a number of years to come.¹⁶⁷

The severance payable to a worker on a fixed period contract corresponds to the amount that would have been earned between the date of rescission of the contract and the date on which the contract was due to terminate.¹⁶⁸

Severance payable to a worker with an indeterminate period contract is calculated under the Labor Law based on the following table. Note, however that these are valid only after the date indicated in the third column of the table.¹⁶⁹

	Base wage	Severance payable	Date at which this comes into force
1	Between 1-7 SMs	30 days for each year of service	31 October 2022
2	Between 8-10 SMs	15 days for each year of service	31 October 2017
3	Between 11-16 SMs	10 days for each year of service	31 October 2012
4	More than 16 SMs	3 days for each year of service	30 April 2010

If an indeterminate period contract is rescinded before a relevant date on the table above comes into force, the severance owed is calculated as follows:¹⁷⁰

	Period of service	Severance payable
1	Between 3 and 6 months	45 days’ salary
2	More than 6 months but less than 3 years	3 months’ salary

¹⁶⁴ Labor Law, Article 130, paragraph 2.

¹⁶⁵ Ibid, Article 131, paragraphs 1 and 2.

¹⁶⁶ Ibid., paragraph 3.

¹⁶⁷ Labor Law, Article 270, paragraph 4 .

¹⁶⁸ Ibid.: Article 131, paragraph 4. This principle remains unaltered from Law 8/98, Article 68, paragraph 5.

¹⁶⁹ Labor Law, Article 130, paragraph 3 and Article 270.

¹⁷⁰ LaborLaw 8/98, Article 68 paragraph 6

3	More than 3 years	3 months' salary for each 2 years worked or fraction thereof
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Employers must take special care to comply with all the legal formalities required in respect rescission of contracts. The rescission must be communicated in writing and must include the facts which constitute the basis for rescission. This communication must be given to the worker and sent to the union committee and Ministry of Labor with at least 30 days' notice.¹⁷¹ During this period the employer must provide any clarification requested by the Labor Inspectorate.¹⁷² Severance must be available for the worker on the date on which the contract ceases.¹⁷³

Note that receiving severance only creates a presumption of acceptance of the rescission of the contract by the employee. This presumption may be rebutted if the just cause on which the rescission is based is held to be invalid.¹⁷⁴ As a practical matter, therefore, the employer cannot be sure that the rescission has "taken" until six months have passed.¹⁷⁵

Distinct procedures apply to the rescission of 10 or more contracts, which is classified as collective rescission.¹⁷⁶

If the rescission is found to be legally invalid the worker must be reintegrated to his work post and paid what he would have earned between the date of rescission and the date of reintegration, up to a maximum of six months' salary. The value of severance paid is deducted from this amount.¹⁷⁷

If however reintegration is not possible or the worker does not want to be reintegrated, the employer must pay severance of 45 days for each year of service for indeterminate period contracts or the remuneration outstanding until the date on which the contract would have terminated in the case of fixed period contracts.¹⁷⁸

The Labor Law in its Article 68, paragraph 8 provided that receipt of severance entails acceptance by the worker of the rescission of the contract. Under the Labor Law, even in the context of rescission by mutual agreement, the worker may retract his rescission by communicating in writing to the employer within 7 days thereof (though he must also return the indemnity payment received in its entirety).¹⁷⁹

Whenever an employment relationship ceases, for whatever reason, the employer must provide the worker with a certificate of employment (*certificado de trabalho*) which must include the time worked, level of professional capacity attained and post or posts in which the worker was employed. The certificate must not contain any other reference unless specifically

¹⁷¹ Labor Law, Article 131, paragraphs 1 and 2. Note that the notice period under the Law 8/98 is 90 days – see Article 6, paragraph 3 of the LaborLaw 8/98.

¹⁷² Labor Law, Article 131, paragraph 3.

¹⁷³ Ibid.: Article 131, paragraph 4.

¹⁷⁴ Ibid.: Article 131, paragraphs 6 and 7.

¹⁷⁵ Ibid.: Article 135, paragraph 4. Note however that Article 127, paragraph 2 provides the period for contesting as three months. This appears to be a contradiction. Probably, the courts will apply the longer period invoking the principle under which workers' rights are to be favored.

¹⁷⁶ Labor Law, Articles 132 and 133

¹⁷⁷ Ibid.: Article 135, paragraph 2

¹⁷⁸ Ibid.: Article 135, paragraph 3. Note again that receipt of severance only creates a presumption of acceptance, which may be rebutted if the just cause for rescission is found to be invalid – Article 131, paragraphs 6 and 7.

¹⁷⁹ Labor Law, Article 126, paragraph 3.

requested in writing by the employee. If the worker is not satisfied with the contents of the certificate, he has 30 days to take the matter to the proper authority (most like the local labor administration office) to require the appropriate changes to be made.¹⁸⁰

Frequently Asked Questions

1. Does the rule of double severance for termination without cause still apply?

The question of whether double severance applies under the new Labor Law in the event of termination without cause has not yet been clarified either by jurisprudence or doctrine. Nevertheless, there is a strong probability that courts will find that that principle (carried over from Article 70, paragraph 4 of Law 8/98) does apply in respect of employment contracts entered into under Law 8/98 and that remain in effect, as set forth in the table above.

By contrast, double severance for termination without cause does not apply in respect of employees with contracts signed under the Labor Law. There are still, however, substantial penalties to employers for termination without cause.

2. In the case of collective dismissal must each worker be informed individually?

Yes. Under Article 131, paragraph 1, when an employer intends to rescind an employment contract, it must inform “each employee covered.” This principle applies as much to collective dismissals (rescissions of labor contracts of more than 10 employees at the same time) as it does to the rescission of the labor contract of a single employee.

14. Collective Rights and Instruments of Collective Regulation

Under the Constitution, workers and employers have the right to organize themselves in professional associations and unions, as regulated by law.¹⁸¹ Workers are guaranteed the right to strike, and lock-outs may not be used against them.¹⁸²

These principles are also found in the Labor Law. Unions and employers’ groups may organize into higher level organizations or may affiliate in federations and confederations.¹⁸³

Employers’ organizations and unions have the legal authorization to carry out collective bargaining and to work with the State to develop labor legislation and define and apply policies in respect of many workplace issues.¹⁸⁴

Unions and professional organizations must be democratically organized, with internal elections for periods of limited duration, for which the whole membership is eligible to vote.¹⁸⁵

¹⁸⁰ Ibid.: Article 136.

¹⁸¹ Constitution, Article 86.

¹⁸² Ibid.: Article 87.

¹⁸³ Labor Law, Article 137.

¹⁸⁴ Ibid.: Article 139, paragraph 1, clauses b) and d).

¹⁸⁵ Ibid.: Article 141, paragraph 2.

The Labor Law does not place any limit on the number of unions permitted in respect of any particular industry.

Workers' rights to organize and carry out some union activities on the premises of the employer are guaranteed.¹⁸⁶ At the shop floor level, the unit of union representation is called the union committee (*comité sindical*).¹⁸⁷

The union committee represents workers at the level of the production unit in the negotiation of collective bargaining agreements with the firm, and in the discussion of particular workplace problems.¹⁸⁸ It also represents the union at the production unit level to both management and the workers.¹⁸⁹

The members of the union committee are elected by the workers at the production unit level.¹⁹⁰

Unions and their subordinate bodies are permitted to hold meetings on the premises after work hours or during work hours if the employer agrees.¹⁹¹ Both employers and workers are to be given at least 24 hours' notice of any meeting.¹⁹²

Unions have the right to post notices related to union matters in a prominent place on the premises of the production unit.¹⁹³ Other facilities, such as time and the physical space to carry out union activities, are the subject of bargaining between unions and employers.¹⁹⁴

No worker may be compelled to be a member of a union or be in any way penalized for being a union member.¹⁹⁵ Workers may not be compelled to pay dues to a union to which they do not belong.¹⁹⁶

Union dues may only be deducted from a worker's salary if that worker has signed a written authorization for such a discount.¹⁹⁷ If such a declaration has been signed then the employer is responsible for deducting the dues and paying them to the union.

The law does not specify the percentage of a firm's workforce that must be unionized before an employer may be obliged to negotiate with the union. Collective bargaining applies to firms of any size.¹⁹⁸

Once a collective bargaining agreement is reached, it applies to all the workers in the firm, whether or not they are members of the union.¹⁹⁹

¹⁸⁶ Ibid.: Article 159, paragraph 1.

¹⁸⁷ Ibid.: Article 153, paragraph 2, clause b).

¹⁸⁸ Ibid.: Article 155, paragraph 1, clause a).

¹⁸⁹ Ibid.: Article 155, paragraph 2, clause b).

¹⁹⁰ Ibid.: Article 155, paragraph 2.

¹⁹¹ Ibid.: Article 159, paragraphs 1 and 4.

¹⁹² Ibid.: Article 159, paragraph 5.

¹⁹³ Ibid.: Article 160.

¹⁹⁴ Ibid.: Article 159, paragraph 2.

¹⁹⁵ Ibid.: Article 143.

¹⁹⁶ Ibid.: Article 144, paragraph 1.

¹⁹⁷ Ibid.: Article 144, paragraphs 2 and 3.

¹⁹⁸ Ibid.: Article 166.

¹⁹⁹ Ibid.: Article 176.

Members of the union leadership, whether of the union committee or of other bodies, may not be transferred from the production unit without prior consultation of the union, and may not be treated less favorably as a result of their roles in the union.²⁰⁰ Their work contracts may not be rescinded without cause and never based on their union role.²⁰¹

Employers and their professional associations may not promote, maintain or subsidize union organizations or in any way interfere in the conduct of their affairs.²⁰²

Mozambique subscribed to two relevant ILO conventions, namely, Convention n° 87 on freedom to organize unions and union rights, and Convention n° 98, on rights to organize and to collective bargaining.

There are various forms of collective bargaining agreements, from those between a union and a single employer, to those between multiple unions and multiple employers.²⁰³

The Labor Law provides a formal process for collective bargaining.²⁰⁴ Either unions or management may take the initiative by sending a written proposal to the other, specifically referring to the subjects proposed to be the object of negotiation.²⁰⁵ The party receiving the proposal then has 30 days to respond. This period may be extended if the parties agree.²⁰⁶

The response is supposed to indicate which elements of the proposal are accepted and, for those that are not, a counterproposal.²⁰⁷ If no response is given, the proposing party may immediately request mediation by public or private mediation, conciliation and arbitration entity.²⁰⁸

In principle, direct negotiations are to begin within 10 days after receipt of the counterproposal.²⁰⁹ The first order of business is the establishment of a negotiating schedule and whatever other rules the parties want to govern the negotiations.²¹⁰ Negotiations are considered confidential though union representatives are free to transmit information to their hierarchically superior organization,²¹¹ and both sides may seek the assistance of experts.²¹²

Collective bargaining agreements must obey certain minimum requirements; specifically, they must:

- make the rights and privileges of the respective parties explicit;
- state the period they are to remain in effect;

²⁰⁰ Ibid.: Article 161, paragraph 1.

²⁰¹ Ibid.: Article 161, paragraph 2.

²⁰² Labor Law, Article 138, paragraph 1.

²⁰³ Ibid.: Article 15, paragraph 3.

²⁰⁴ For simplicity of exposition, the discussion below uses the terms “union” and “management” without reference to whether negotiations are taking place between a company and a union or an employers’ association and a union federation. This is possible because the mechanics are basically the same at each level, though the complexity of the negotiations will increase as the number of parties covered thereby increases.

²⁰⁵ Labor Law, Article 168, paragraph 1.

²⁰⁶ Ibid.: Article 169, paragraph 1.

²⁰⁷ Ibid.: Article 169, paragraph 2.

²⁰⁸ Ibid.: Article 169, paragraph 6.

²⁰⁹ Ibid.: Article 170, paragraph 1.

²¹⁰ Ibid.: Article 170, paragraph 2.

²¹¹ Ibid.: Article 165, paragraphs 2 and 3.

²¹² Ibid.: Article 168, paragraph 4.

- state how and when one party may inform the other of its intention to end the agreement; and
- be signed and dated by authorized representatives of the parties.²¹³

The original copy of the agreement must be deposited with the Ministry of Labor within 20 days of signature,²¹⁴ and then posted prominently at the company premises.

While a collective bargaining instrument is in effect, management and unions may not adopt any conduct which could breach it, nor may unions resort to a strike as a means of forcing the amendment of the agreement.²¹⁵

In addition, the rules established by the collective bargaining agreement may not be modified by individual employment agreements, unless the modification is more favorable to the workers.²¹⁶

Frequently Asked Questions

1. What size must a company be before it is obliged to have a union?

Association in unions or other organizations of their choice is a right recognized to all employees for the defense of their rights and interests. The law is silent in respect of the size (by number of employees) at which a company must have a union. Indeed, note that under Article 138, an employer can neither promote nor hinder the organization or operation of a union.

2. What should a company do in regard to the various procedures that require union consultation if it doesn't have a union?

Article 153, paragraph 3 states that in companies or units where there is no trade union body, union rights shall be exercised by the trade union body "immediately above" or by a workers' commission elected at a general meeting convened specifically for that purpose by at least twenty per cent of the employees.

²¹³ Ibid.: Article 171, paragraphs 1 and 2.

²¹⁴ Ibid.: Article 173, paragraph 1.

²¹⁵ Ibid.: Article 177, paragraphs 3 and 4.

²¹⁶ Ibid.: Article 165, paragraph 4.

15. Strike Procedures

Strike procedures in Mozambique are governed by Articles 194 through 215 of the Labor Law.

As noted above, the right to strike is constitutionally protected, and this principle is reaffirmed in the Labor Law.²¹⁷

If a collective bargaining agreement is in effect, workers are not supposed to resort to a strike except in a case of “serious violations” of that agreement by the employer and after other means to settle the conflict have been exhausted.²¹⁸

In a production unit with union representation, a strike is called by the union, after consultation with the workers.²¹⁹ In those without unions, it is called on the vote of a general meeting of workers provided that the meeting is called by at least 20% of the workers, attended by at least two-thirds of the workers, and the decision to strike is agreed by an absolute majority of those present.²²⁰

After a vote to strike has been taken, the union²²¹ must notify the employer and the Ministry of Labor, in writing, of the strike, at least five days before it is scheduled to begin.²²²

The written notice must specify the place at which the strike will take place, the period of time for which work will be suspended, how long the strike is planned to go on for and the basis for the decision to strike.²²³

At that point, the Ministry of Labor or the mediation, arbitration and conciliation body may seek to conciliate the parties, either based on their own decision to intervene or at the request of the employer or the union.²²⁴ If the conciliation does not succeed, the strike proceeds as indicated in the notification given and in accordance with the law.²²⁵

Workers on strike are not permitted to block access to the plant by non-striking workers, or otherwise intimidate or coerce them to suspend work.²²⁶

The strike has certain effects on the rights of workers and employers. In respect of workers on strike, while the strike is in effect, rights and duties under the employment agreement are suspended. Striking workers are neither paid nor obliged to follow the instructions of management. The exception to this are any rights which do not depend on the provision of

²¹⁷ Ibid.: Article 194.

²¹⁸ Ibid.: Article 197, paragraph 4.

²¹⁹ Ibid.: Article 197, paragraph 1.

²²⁰ Ibid.: Article 197, paragraph 2.

²²¹ Again, to simplify things, we refer only to “unions” in the description below. The same requirements apply to striking workers in plants without unions, with the necessary changes.

²²² Labor Law Article 207, paragraph 1. For strikes in companies providing essential services the notice period is seven days.

²²³ Ibid.: Article 207, paragraph 3.

²²⁴ Ibid.: Article 208.

²²⁵ Ibid.: Article 209.

²²⁶ Ibid.: Article 199.

work such as payment of INSS, payments owing due to accident or work-related illness and the duty of loyalty.²²⁷

However, if the underlying reason for the strike was the “manifest violation” of the collective bargaining agreement by the employer, then striking workers do not lose (even temporarily) their right to pay or other rights.²²⁸ And while rights generally are suspended during a strike, workers do not lose seniority.²²⁹

A strike ends when the union and management reach agreement, by an arbitration panel's decision given during the notice period, by decision of the union, after consulting with the workers, or as stated in the original notice to strike.²³⁰

Even during a strike, workers are obliged to supply the minimum services necessary to ensure the security of plant and equipment.²³¹

Lock-outs are prohibited, but an employer may close down a firm in order to secure plant and equipment as well as the safety of workers or third parties.²³²

In principle if the strike is legal the employer may not replace striking workers with third parties that do not work for the company at the time of the notification of intention to strike. However, if the legal formalities associated with calling a strike have not been complied with, the employer may substitute workers as long as the opinion of the Ministry of Labor as to the legality of the strike has first been sought.²³³

16. Occupational Health and Safety

Occupational health and safety in Mozambique is governed in the first instance by Article 85 of the Constitution, in the second instance by the Labor Law and finally by an ample body of subordinate legislation, much of it of colonial origin.

Mozambique is subscribed to ILO Convention n° 17, regarding compensation for workplace accidents, and ILO Convention n° 18, regarding compensation for occupational illnesses.

Article 85 of the Constitution provides that all workers have a right to a fair wage, rest and vacation and to a safe and hygienic work environment.

Articles 216 through 236 of the Labor Law govern worker health and safety. All workers have the right to work under hygienic and safe conditions.²³⁴ Employers have the obligation to create such conditions and to inform the workers regarding the risks associated with the particular jobs they perform.²³⁵

²²⁷ Ibid.: Article 210, paragraphs 1 and 2.

²²⁸ Ibid.: Article 210, paragraph 3.

²²⁹ Ibid.: Article 210, paragraph 5.

²³⁰ Ibid.: Article 212.

²³¹ Ibid.: Article 202.

²³² Ibid.: Article 203 together with Article 204, paragraph 1.

²³³ Ibid.: Article 202, paragraph 8, together with Article 204, paragraphs 3 and 4.

²³⁴ Labor Law, Article 216, paragraph 1.

²³⁵ Ibid.: Article 216, paragraph 2.

Whenever necessary, they are required to provide appropriate safety equipment and work clothing in order to prevent accidents and negative effects on workers' health.²³⁶

Regulations and instructions regarding health must be rigorously followed both by employers and by workers.²³⁷

Any company that has a high risk of accidents or occupational illnesses is obliged to create a workplace safety committee.

The purpose of workplace safety committees is to ensure compliance with health and safety norms, investigate the causes of accidents and organize preventive measures. The Labor Law does not define rules for the creation of such committees, stating only that they must include representatives of both the employer and the workers.²³⁸

Industry-specific regulations on health and worker safety may be established by ministerial diploma, by the Minister of Labor, the Minister of Health or the Minister in charge of the specific sector.²³⁹

Large companies and companies that engage in work that is strenuous, unhealthy or highly dangerous must have a health post on site.²⁴⁰ Medical professionals are supposed regularly to examine workers to determine, among other things, if they are well enough to do the work called for in their contracts.²⁴¹

In accordance with sector-specific legislation, health checks can be arranged through CHAEM and are compulsory for workers dealing with food and beverages, such as in restaurants and hotels. Companies are obliged to adopt effective measures for the prevention of accidents and occupational illnesses.²⁴²

Articles 222 through 225 define the concepts of work accidents and occupational illnesses. The latter include, among others, lead poisoning and poisoning attributable to exposure to industrial gases or vapors.²⁴³

Industries likely to cause occupational illnesses are supposed to be specifically regulated.²⁴⁴ Workers who suffer from occupational illnesses have a right to compensation. This right includes a right to be given work compatible with their residual capacity as a result of such occupational illness.²⁴⁵

Companies (without explicit regard to size) are required to insure against workplace accidents and occupational illnesses.²⁴⁶ Such insurance must cover the particular risks to which workers may be exposed.²⁴⁷

²³⁶ Ibid.: Article 216, paragraph 5.

²³⁷ Ibid.: Article 216, paragraph 6.

²³⁸ Ibid.: Article 217.

²³⁹ Ibid.: Article 218, paragraph 1.

²⁴⁰ Ibid.: Article 219.

²⁴¹ Ibid.: Article 221, paragraph 1. As made clear in Section 18, below, these tests does not extend to HIV status.

²⁴² Labor Law, Article 226, paragraph 1.

²⁴³ Ibid.: Article 224, paragraph 2.

²⁴⁴ Ibid.: Article 224, paragraph 4.

²⁴⁵ Ibid.: Article 229, paragraphs 1 and 2.

²⁴⁶ Ibid.: Article 231.

²⁴⁷ Ibid.: Article 232.

The INSS does not cover workers in the event of workplace accidents and occupational illnesses. This cover is provided by the employers, who are free to contract with private insurance companies.

Workers who are incapacitated as a result of an occupational illness are entitled to a pension, if the incapacitation is permanent and indemnification if it is temporary.²⁴⁸ If a workplace accident or an occupational illness results in death, the worker's survivors are entitled to a pension.²⁴⁹

The main source of detailed and generally applicable health and occupational safety regulations is contained in Annex III to Diploma Legislativo n° 3057 of 12 December 1970. Although the greater part of this instrument was repealed by means of the contemporary regulation for the licensing of industrial activities,²⁵⁰ its Annex III remains in force. Annex III sets forth, in broad terms, the conditions that should obtain at industrial sites.

Its general conditions govern such matters as the state and location of the buildings in which people work, lighting and ventilation, and general rules of the hygiene and cleanliness (e.g., one shower per ten workers who end shift simultaneously).²⁵¹ Special conditions apply in certain industrial establishments in respect of sanitary facilities, cafeterias and first aid and medical treatment.²⁵²

Annex III's Chapter II on safety in the workplace governs such matters as, among others, storage of combustible or explosive materials, fire prevention, emissions of dangerous or toxic fumes and individual worker protection.²⁵³

More detailed rules of hygiene and safety in the workplace are supplied by Legislative Diploma n° 48/73 of 5 June 1973 (the "Hygiene and Safety Regulations"). These regulations are more specific than the general regulations set forth in Annex III to Legislative Diploma n° 3057. Their main purpose is the mitigation of occupational risk and the promotion of hygiene in the workplace.²⁵⁴

Legislative Diploma n° 1706 of 19 October 1957, Chapter 1 allocates legal responsibility for workplace accidents and occupational illnesses between workers and employers. The annex of the diploma lists those industries considered to be directly related to a list of occupational illnesses.²⁵⁵

In respect of such industries, if a worker can prove that he has a listed occupational illness, and that he habitually worked in one of the listed industries, the law presumes a causal link between his work and his illness.²⁵⁶

²⁴⁸ Ibid.: Article 233, paragraph 1.

²⁴⁹ Ibid.: Article 233, paragraph 3.

²⁵⁰ Decree n° 39/2003 of 26 November.

²⁵¹ Legislative Diploma n° 3057 of 12 December 1970, Annex III, Section B - I, paragraph 28.3.

²⁵² Ibid.: paragraphs 28 through 39.

²⁵³ Ibid.: Sections IV, V and VI.

²⁵⁴ Legislative Diploma n° 48/73 of 5 June 1973, Article 1.

²⁵⁵ Legislative Diploma n° 1706 of 19 October 1957, sole annex.

²⁵⁶ Ibid.: Article 9.

Chapter II of Legislative Diploma n° 1706 of 19 October 1957 gives administrative procedures in the event of an accident. Chapter III contains the rules of emergency assistance and treatment.

Chapter IV sets forth the pensions and indemnities to which the survivors of a worker killed in an accident are entitled. Chapter VII establishes that it is obligatory (in most cases) for employers to obtain insurance against workplace accidents and occupational illnesses. Chapter VIII provides fines for non-compliance.

As a complement to Legislative Diploma n° 1706 of 19 October 1957, Edict n° 21 769 of 3 January 1966 sets forth the method of calculating the indemnification due to an injured worker, including numerous tables to assist in making the calculation.

17. Employment Promotion

Professional training is a fundamental right of citizens and workers, and the State and employers must permit the exercise of this right through actions they take.²⁵⁷

In order to promote employment the law permits the use of fixed term contracts for recently-trained young people. Fixed-term employment contracts can be entered into with such candidates for employment, and such contracts can be freely renewed for up to eight years with the same employer, except in the case of small and medium companies within their first 10 years of activity.²⁵⁸

Employers who take in final year students from any level of education as pre-professional trainees for pay are supposed to receive tax benefits to be established under separate legislation. Employers may also sign agreements with educational institutions to enable students to undertake unpaid pre-professional training and work experience as well as signing apprenticeship contracts.²⁵⁹

The Labor Law specifies that whenever a worker enrolled in INSS fulfills the eligibility requirements for a retirement pension, the worker must retire. The rationale behind this is that compulsory retirement will free up jobs for young job-seekers.²⁶⁰

18. Tests, medical examinations and HIV/AIDS

The Labor Law allows for medical examinations in two cases.

Medical tests are permitted when the employee is admitted into the company or when the contract comes into force, and employers may request that candidates for employment present the outcome of medical tests to demonstrate their physical and psychological aptitude,²⁶¹ except where such tests may not legally be requested, as is the case with HIV/AIDS testing.

²⁵⁷ Labor Law, Article 238, paragraph 1

²⁵⁸ Ibid.: Articles 241 and 42.

²⁵⁹ Ibid.: Articles 243 and 249.

²⁶⁰ Ibid.: Article 125, paragraph 2, together with Article 242.

²⁶¹ Labor Law. Article 7.

Throughout the duration of the contract the medical staff responsible, in those companies which have private health posts, must regularly examine workers to verify that:

- workers are sufficiently physically robust to undertake the jobs defined in their contract;
- any worker with an infectious disease does not put at risk the health of other workers (see below for a discussion of HIV/AIDS in the workplace); and
- any worker with a mental illness is not employed in an unsuitable position.²⁶²

The medical professional responsible for undertaking the examinations, either at the start of the contract or on an ongoing basis, may not communicate any information other than that which directly relates to the capacity or lack thereof of the worker for a given position.²⁶³

The HIV/AIDS pandemic in Mozambique is regulated by Law n° 5/2002 of 5 February (the “Law for the Protection of Workers with HIV/AIDS”) and Law n° 12/2009 of 12 March (the Law for Rights and Responsibilities of those Living with HIV/AIDS). The main purpose of Law 5/2002 is to ensure that workers and candidates for employment do not suffer discrimination because of their HIV-positive status.²⁶⁴ (The term “worker” below also covers a candidate for employment, where appropriate. The rights of the two are very similar).

Under the Law for the Protection of Workers with HIV/AIDS, it is prohibited to test workers for HIV without their consent, or to make such testing a condition for access to training or promotion.²⁶⁵

A worker cannot be obliged to reveal her HIV status.²⁶⁶ Nor may a worker be discriminated against, in terms of workplace rights, training or promotion, on the basis of HIV status.

A worker who is exposed to the HIV virus in the workplace and thereby contracts the disease has a right to compensation and to full medical treatment to deal with the effects of the disease, including such drugs as have been approved for treatment by the National Health Service, at the cost of the employer.²⁶⁷

There is at least one course of anti-retroviral drugs that is now an approved treatment for HIV/AIDS in Mozambique. Under one interpretation of the law, employers are obliged to provide them to all infected employees.²⁶⁸

A worker sick with AIDS cannot simply be replaced. Employee absences due to AIDS are justifiable absences under the terms of the Labor Law.²⁶⁹

A worker with HIV/AIDS who can no longer work at a particular job must be given another, less exacting job in keeping with his residual capacity.²⁷⁰

²⁶² Ibid.: Article 221.

²⁶³ Ibid.: Article 7, paragraph 2.

²⁶⁴ Law for the Protection of Workers with HIV/AIDS, Article 2.

²⁶⁵ Ibid.: Article 4, paragraphs 1 and 2.

²⁶⁶ Ibid.: Article 6.

²⁶⁷ Ibid.: Article 8, paragraphs 1 and 2.

²⁶⁸ Ibid.: Article 10, paragraphs 1 and 2.

²⁶⁹ Law for the Protection of Workers with HIV/AIDS, Article 11.

²⁷⁰ Ibid.: Article 9.

Once the worker can no longer work, it appears that the right to continuing medical treatment at the expense of the employer²⁷¹ continues. This is as distinct from a worker disabled for other reasons, who becomes the charge of the INSS.

Sanctions are applied to employers who dismiss a worker with HIV/AIDS. Dismissal for that reason is considered to be without just cause and the worker is entitled to double damages and to reinstatement.²⁷²

A candidate for employment who is not given a job as a result of having HIV/AIDS is entitled to damages equal to six months' salary at the rate applicable for the job applied for.²⁷³

A range of fines for violations, ranging from 50 to 150 minimum wages, applies.²⁷⁴

Mozambique's Law for the Protection of Workers with HIV/AIDS closely follows International Labor Organization (ILO) guidelines and Southern Africa Development Community (SADC) guidelines on the subject.²⁷⁵

Law 12/2009 reinforces a number of requirements established in respect of workers in Law 5/2002, and also establishes additional requirements, such as that requiring all companies implement programs designed to combat HIV/AIDS, in the workplace.²⁷⁶ This requirement is due to be regulated and further information on Law 12/2009, its eventual regulation, and on HIV/AIDS workplace programs is available from ACIS.

19. Dispute Resolution

Dispute resolution in the labor field in Mozambique is mainly governed by a combination of laws. In addition to the relevant provisions of the Labor Law (Articles 180 through 193), dispute resolution is governed also by the Labor Courts Law, and Law n° 11/99 of 8 July (the "Arbitration Law"). The Labor Procedure Code (*Código do Processo de Trabalho*), Civil Procedure Code (*Código do Processo Civil*) and Civil Code (*Código Civil*) also apply.

The net effect of these three main laws is as follows:

- the collective conflict resolution regime is applicable, with the necessary adaptation, to disputes arising from individual employment relationships; provided, that extrajudicial resolution of disputes arising from individual employment contracts is always voluntary;²⁷⁷
- except in cases of interlocutory injunctions, all disputes must be mediated before being submitted to arbitration or to the Labor Courts; arbitration bodies or courts

²⁷¹ Ibid.: Article 10.

²⁷² Ibid.: Articles 12 and 13.

²⁷³ Ibid.: Article 13, paragraph 2.

²⁷⁴ Ibid.: Article 16. Calculated at the exchange rate of MT 24,000: US\$1.

²⁷⁵ See International Labor Office. HIV/AIDS and the World of Work. (Geneva: International Labor Organisation), 2002, and SADC Employment and Labor Sector Coordinating Unit. Code of Conduct on HIV/AIDS and Employment in the Southern African Development Community. (Lusaka: SADC).

²⁷⁶ Law 12/2009, Article 43.

²⁷⁷ Labor Law, Article 182.

- which receive cases which have not been subject to mediation must notify the parties to comply with this requirement,²⁷⁸ and
- in relation to dispute resolution through arbitration, where the Labor Law procedures are incomplete, subsidiary procedures established in the Arbitration Law are applicable.

The creation of labor arbitration, conciliation and mediation services is to be regulated by specific legislation, which is currently under discussion. Some provinces have already established mediation commissions, which must be used in the first instance, in most disputes. However the functioning of these bodies is not yet regulated and their capacity to deal with disputes has yet to be fully tested.

Labor disputes arising from collective labor relations in Industrial Free Zones (IFZs) must be adjudicated by arbitration.²⁷⁹

20. Labor Inspection

The Ministry of Labor includes among its subordinate departments the Labor Inspectorate. The main purpose of the Labor Inspectorate is to ensure compliance with the terms of the Labor Law.²⁸⁰

The main instruments governing labor inspection are Decree n° 32/89 of 8 November (“Decree 32/89”) and Ministerial Diploma n° 17/90 of 14 February (“MD 17/90”). Mozambique also subscribed to ILO Convention n° 81, governing labor inspection in industry and trade.

The Labor Inspectorate is a powerful department. In order to be able to carry out its functions, it is permitted free access to any premises of an employer and may demand to see any records it considers necessary.²⁸¹ An updated regulation governing labor inspections is currently being prepared.

Failure to grant access or information on the spot is a criminal offense.²⁸² Labor inspectors are considered deputed to perform their functions at all times on any day of the week.²⁸³

If a Labor Inspector finds a violation that is not minimal (and therefore the subject of a warning notice), he must draw up a notification indicating the violation and the fine imposed.²⁸⁴ Once the notification is confirmed with his superior, it may not be cancelled; the matter must be adjudicated to its conclusion.²⁸⁵

²⁷⁸ Ibid.: Article 184.

²⁷⁹ Decree 75/99 of 12 October, Article 9, paragraph 2

²⁸⁰ See Ministerial Diploma n° 88/95 of 28 July, supplying the structure of the ministry and the functions of its subordinate departments and, in particular, Article 6, clause b) thereof.

²⁸¹ Decree 32/89, Article 4, paragraph 1.

²⁸² Ibid.: paragraph 2.

²⁸³ Ibid.: paragraph 1.

²⁸⁴ Ibid.: Article 9, paragraphs 1 and 2.

²⁸⁵ Ibid.: paragraph 5.

Once a notification has been served, the employer has 10 days to either pay or appeal the fine. Appeals are made in writing.²⁸⁶ An appeal suspends the fine which need not be paid until the appeal is finally adjudicated.²⁸⁷

Appeals are supposed to be decided within 30 days; in the absence of any notification within that period, it is presumed that the appeal has been rejected.²⁸⁸ Within 10 days of the end of that previously mentioned 30-day period,²⁸⁹ the employer may then appeal the matter to the Labor Court of competent jurisdiction.

Labor Inspectors are also empowered to issue immediate corrective orders to an employer if they find an imminent threat to the life, health or security of the workers.²⁹⁰

Under the Labor Law, Labor Inspectors may only set fines at the minimum level, and the employer may then conclude the process by paying the fine in full or by appealing to the Inspector's superior. On appeal, the Inspector's superior may increase the fine up to its maximum level.²⁹¹

Frequently Asked Questions

1. What if a Labor Inspector enters company premises without any form of identity document?

According to Article 2 of Decree 32/89 Labor Inspectors have an identification card to identify themselves while on a mission. If a person declares himself to be a Labor Inspector but does not have a card identifying himself as such, the employer may remove him from the premises as she would any trespasser.

Note, however, that, according to Article 4, paragraph 2 of Decree 32/89, once the Inspector has identified himself, the refusal of access or denial of any element required is a criminal offense.

Checklist

Below is a list of items commonly checked by labor inspectors.

- Work schedule
- Leave plan
- Legally required list of workers by name (*relação nominal*)
- Employment contracts
- Individual employee files, including health certificates, employment certificates and disciplinary processes
- Proof of social security payment
- Proof of payment of collective workers' insurance
- Declaration of start of activity made to the Provincial Labor Department

²⁸⁶ Ministerial Diploma 17/90, Article 23, paragraph 1 and Article 26, paragraph 1.

²⁸⁷ Ibid.: Article 26, paragraph 2.

²⁸⁸ Ibid.: Article 26, paragraph 2.

²⁸⁹ Ibid.: Article 26, paragraph 5.

²⁹⁰ Decree 32/89, Article 11, paragraph 1.

²⁹¹ Labor Law, Article 267, paragraph 2.

- Work permits for foreign employees

21. Social Security

Articles 256 through 258 of the Labor Law govern social security, providing that all detail be supplied in specific legislation. This legislation is Law 4/2007 of 07 February (the “Social Protection Law”) which provides the basis for social security and reorganizes the social security system. The Social Protection Law is regulated by Decree 53/2007 of 03 December.

The social security system is intended, taking into consideration the economic situation of the country, to mitigate the absolute poverty in which much of the population lives, to ensure minimum subsistence and security to its member workers in the event of illness or incapacitation, an old age pension, and family benefits in the event of a member worker’s death.²⁹²

Social protection is divided into basic social security, compulsory social security and complementary social security.²⁹³ There are various levels of responsibility for management of the system.

Basic social security is managed by the ministry responsible for social action. Compulsory social security is managed by INSS. Complementary social security is managed either publicly or privately based on regulations to be approved by the Council of Ministers.²⁹⁴

All employers must be registered for social security. Employers are legally required to register all workers, national and foreign, for social security.²⁹⁵

However, employers need not register foreign workers registered in the social security systems of their home countries if they can prove that they are so registered.²⁹⁶ While the law does not specify how this should be proven, in practice the presentation of a certificate or declaration from the social security entity in the country of origin is the norm. A specific exemption certificate must be requested from INSS by each foreigner, and a copy of this must be held on the employee’s file for inspection by the Labor Inspectorate.

Employers and employees are both obliged to contribute towards a member worker’s social security.²⁹⁷ The legally required contribution to social security is 7% of a worker member’s monthly salary, 4% from the employer and 3% percent from the worker.²⁹⁸

Employers are obliged to withhold both their own and their workers’ contributions at the source and pay over the corresponding amount monthly to the INSS.²⁹⁹ Payment must be made by the 10th of the following month.

²⁹² Social Protection Law, Article 2.

²⁹³ Ibid.: Article 5.

²⁹⁴ Ibid.: Article 39, paragraphs 1, 2 and 5.

²⁹⁵ Ibid.: Article 14, paragraphs 1 and 2.

²⁹⁶ Ibid.: Article 14, paragraph 5.

²⁹⁷ Ibid.: Article 20, paragraph 1

²⁹⁸ Decree 4/90, of 13 Abril, Article 2 which established the social security contribution at 7%

²⁹⁹ Social Protection Law Article 20, paragraph 2.

Note that INSS does not take responsibility for workers with work-related temporary disabilities. This is the responsibility of the employer, which is required to have workers insurance to cover this risk.

INSS is responsible for the material subsistence of temporarily or permanently incapacitated workers when such incapacity is not the result of work-related illness or injury.

It is necessary to differentiate the permanent nature of an illness and the permanent or temporary nature of the pensions and subsidies available from INSS. For example, a disability pension is always given on a temporary basis and later replaced by a retirement pension, which is permanent.

It is also important to note that retirees do not have the right to receive their pension as a lump sum. Therefore, if a pensioner returns to live in his place of origin he must return monthly to the nearest INSS office, usually in a provincial capital, to collect his pension.

A number of changes have been made to the benefits structure for workers who are contributory members of INSS by Decree 53/2007. The following is a summary of the key aspects of this regulation:

The decree regulates compulsory social security regimes for those in an employment relationship and for the self-employed.³⁰⁰

The response to any requests submitted to INSS must be provided within 30 days. Where requests are denied, the response to the request must include the legal basis for this decision. Where a reply is not given within 30 days, tacit approval of the request is presumed. If the request was in respect of a payment owed, and where such payment is not made within 10 days of the date on which tacit approval is assumed to have taken place, the applicant has the right of appeal to higher authority within INSS.³⁰¹

This regulation applies to all employees, national or foreign, resident in Mozambique, independent of the sector in which they work. It also applies to those in part time work, those on probation periods and those on paid work placements or apprenticeships.³⁰²

Employees are also considered to be³⁰³:

- Administrators and managers; members of the Board of an organization where these have an employment contract; owners, managers or members of the board of one-person companies;
- One person company owners either where these have employees or a fixed place of work;
- Stevedores contracted by a stevedoring company or by an employment agency;
- Professionals working for transporters;
- Workers for state institutions and state-owned enterprises except where covered by the General State Employees Statute;
- Seasonal workers;
- Employees of political parties, unions, associations, social organizations and NGOs.

³⁰⁰ Decree 53/2007, Article 1.

³⁰¹ Decree 53/2007, Article 2.

³⁰² Decree 53/2007, Article 4.

³⁰³ Decree 53/2007, Article 4.

Coverage of domestic workers, sportspeople, artists and agricultural sector workers will be introduced gradually based on Ministerial Diplomas of the Labour Ministry, as the capacity of INSS to absorb these categories grows.

The requirement to enroll in the Mozambican INSS system does not apply to foreigners who can demonstrate that they are enrolled in a social security system in another country, without prejudice to future alterations of legislation in this respect.³⁰⁴

Compulsory social security for employees provides the following benefits³⁰⁵:

- A sickness or hospitalization subsidy;
- A maternity subsidy;
- An invalidity pension;
- An old-age pension;
- A death subsidy, funeral subsidy and survivor's pension.

Employers must register with INSS within 15 days of their start of activity or acquisition of a company. Registration is to be done using the form provided. The following documents must be annexed to the form³⁰⁶:

- Copy of *alvará* or proof of licensing;
- Copy of *Modelo 6* – proof of registration with the fiscal authorities;
- Copy of the ID documents of the person/s with powers to operate the organization.

After registration INSS will provide a contributor registration number. This number must be used on all payments and in all correspondence with INSS.

Employees are registered with INSS using the form provided. The form must be accompanied by proof of identity which can be in the form of a BI, *cédula* or birth certificate. The employee registration form must be validated by the stamp and signature of the employer. The employee must complete the form and the employer is responsible for sending it to INSS within 30 days of the date of start of contract. If the employee does not complete the form the employer must do so using the data available. The updating of information contained in the employee's registration document is the responsibility of the employee. INSS will provide an employee registration number within 30 days of receipt of the form. The enrolment of the employee dates from the first day of the first month in which a contribution was paid on his behalf.³⁰⁷

The admission of an employee already enrolled in the system does not require the submission of a new form as long as the employee's registration number is included on the payment form submitted monthly. It is the duty of the employee to advise INSS of change of employer.³⁰⁸

Contributions are payable based on basic salary and any additional bonuses, commissions or payments of this nature which are made regularly, as well as management bonuses.³⁰⁹

Employers must, by the 10th of the subsequent month, submit a list of employees and their earnings used as a basis for calculation of social security payments. This information is to be

³⁰⁴ Decree 53/2007, Article 5.

³⁰⁵ Decree 53/2007, Article 6.

³⁰⁶ Decree 53/2007, Article 7.

³⁰⁷ Decree 53/2007, Article 8.

³⁰⁸ Decree 53/2007, Article 9.

³⁰⁹ Decree 53/2007, Article 10.

submitted on a form approved by INSS. When the 10th falls on a Saturday, Sunday or public holiday, the date for submission falls on the next working day.³¹⁰

If a salary list is not submitted INSS may demand payment based on the totals of previously-submitted lists. If such lists are not available payment is calculated based on the accounts of the employer in question. If the accounts do not provide sufficient information the payment demand is based on the average paid by other employers in the same sector.³¹¹

Payments of INSS are made based on the legally established percentages. Payments are due from the date of start of contract to the date of termination of the same. Payments must be made by 10th of the subsequent month using the approved proof of deposit. The obligation in respect of payment terminates 10 years after the date on which the last payment was due.³¹²

Employers ceasing their activities must inform INSS in writing at least 10 days prior to the planned cessation date. Non-communication will lead to a debt being accrued in the name of the employer until such time as the communication is made.³¹³

Sickness pay is available for all aspects of sickness which lead to temporary incapacity of the employee, except those attributable to work-related sickness or sickness resulting from intentional acts by the employee. Temporary incapacity includes time away from work to accompany a minor for medical treatment when such treatment requires hospital admission or during periods of convalescence from such treatment where the doctor responsible acknowledges the need for special care to be provided.³¹⁴ In case of sickness the employee has the right to a sickness subsidy and a hospitalization subsidy where relevant.³¹⁵

In order to qualify for sickness subsidy the employee must fulfill the following criteria: six months worth of payments made within the last twelve months, at least one of which must have been made within two months of the start of the sickness.³¹⁶

Subsidy is not payable for the first 3 days of absence in the case of sickness. The first day of absence is not counted if the employee received salary for that day. The waiting period does not apply in cases of hospitalization, contagious illness attested to by a doctor and medically certified absence in pregnancy. The first day of absence in the case of sickness is the first day confirmed as such by a doctor.³¹⁷

The daily sickness subsidy corresponds to 65% of the average salary of the affected worker.³¹⁸ Sickness subsidy is payable up to a maximum of 365 continuous days. If illness continues after this time the worker passes onto invalidity pension, if they have completed the contributions required to qualify. The opinion of a medical board is required in such cases.³¹⁹

Impediment from working due to sickness is proven by presentation of the Health Service's approved form duly signed by a doctor or medical technician, and authorized by the health

³¹⁰ Decree 53/2007, Article 11.

³¹¹ Decree 53/2007, Article 12.

³¹² Decree 53/2007, Article 13.

³¹³ Decree 53/2007, Article 16.

³¹⁴ Decree 53/2007, Articles 17 & 19.

³¹⁵ Decree 53/2007, Article 18.

³¹⁶ Decree 53/2007, Article 20.

³¹⁷ Decree 53/2007, Article 21.

³¹⁸ Decree 53/2007, Article 22. This article also includes the basis for calculation of average salary

³¹⁹ Decree 53/2007, Article 23.

post responsible for the area in which the sick employee resides. The form includes details of the number of days of absence to date and the likely number of days for which the worker will be unable to work. The form is completed in duplicate with one copy being sent to INSS and one copy for the employee. The employer must pass its copy to INSS within 5 working days. In case of hospitalization a different form with similar information is used and processed in the same manner.³²⁰

Hospitalization subsidy is payable for non-work related accidents or when the worker accompanies a hospitalized minor. The payment is made directly to the hospital based on the daily rates in force within the health service. Payment is made after presentation to INSS of the relevant invoice from the hospital. Minors are considered to be those under the age of 15 except in special cases authorized by a doctor.³²¹

Maternity subsidy is payable for 60 days and may be claimed up to 20 days before the due date. The subsidy is payable monthly.³²² This article provides further details of calculation of this subsidy.

Old age pension is payable at age 55 for women and 60 for men as long as the following have been complied with: have been enrolled in the system for at least 20 years prior to the date of eligibility for pension; have completed 10 years (120 months) of contributions. In addition irrespective of age the employee that has been enrolled for 30 years and has 25 years (300 months) of contributions is eligible for an old-age pension. Old-age pensions are calculated based on the formula provided.³²³

Eligibility for old-age pension signifies the end of the work contract. INSS is responsible for communicating to the employee the date from which the pension will start.³²⁴

Eligibility for invalidity pension is based on medical certification that the employee has suffered mental or physical injury, illness or accident which renders his unable to work. Employees certified as invalids before reaching 55 for women and 60 for men are eligible for invalidity pension having fulfilled the following criteria: been enrolled for at least 5 years before the date of invalidity; paid 2.5 years (30 months) of contributions within the preceding five years; reached the end of the applicable period for sickness benefit. Invalidity pension is automatically commuted to old-age pension when the relevant age is reached. Those benefiting from invalidity pension must be evaluated by a medical board every six months. The beneficiary can appeal the decision of the medical board within 8 days of that decision being given. Invalidity pension is calculated based on the criteria provided and must be applied for using the relevant form.³²⁵

If the employee or pension beneficiary dies their heirs are eligible for various benefits. These are payable as a once-off payment as long as the employee has been contributing to INSS for 3 years and has made six months worth of payments in the 12 months preceding his death. Payments are calculated and made to heirs based on the criteria provided. Funeral subsidy is payable if the employee has been enrolled for at least 3 months and has 3 months worth of

³²⁰ Decree 53/2007, Article 24.

³²¹ Decree 53/2007, Articles 25 & 26.

³²² Decree 53/2007, Article 27. This article provides detail on how the subsidy is calculated.

³²³ Decree 53/2007, Articles 28, 29 & 30.

³²⁴ Decree 53/2007, Article 31.

³²⁵ Decree 53/2007, Articles 32 – 36.

contributions paid. Eligibility for funeral subsidy is based on the criteria provided as is eligibility for a survivor's pension.³²⁶

INSS has the power to submit non-payments to the relevant court to recover the amounts outstanding. An appeal in such cases on the grounds of wrongly-calculated debt suspends the process but in cases where the debt is found to be correct the debtor pays 0.5% of the value owed per month during which the suspension was in place.³²⁷

The following are considered non-compliance with the regulation³²⁸:

- Non-submission of proof of identity of the employing entity for registration purposes;
- Late submission of proof of identity of the employing entity for registration purposes;
- Non-submission by the employer of documents for the registration of each employee;
- Late submission by the employer of documents for the registration of each employee;
- Non-submission or late submission of documents requiring changes in the original registration of the employer or employee;
- Non-submission or late submission of monthly lists of employees and payments made to them;
- Omission of the name of an employee or incorrect statement in respect of the declaration of the amount paid to employees;
- Non-payment or late payment of contributions;
- False declarations by either the employer or employee.

Non compliance is subject to fines of between 1-5 minimum wages depending on the infraction.

Non-payment is subject to interest payments of 1% of the total value owed for each month or part thereof. Interest must be paid within 5 years. In cases where an appeal has gone to court interest payments continue to accrue. In cases of demonstrable force majeure employers may appeal to INSS to reduce interest payments.

Non-payment to INSS of amounts deducted from employees, and the refusal to provide documents demanded by INSS are punishable as a crime.

Defrauding the system is punishable as a crime.

Compliance with social security obligations is inspected by the Labour Inspectorate.³²⁹

Frequently Asked Questions

1. Are seasonal workers covered by INSS?

Under Law 4/2007, the definition of employees subject to social security obligations is broadly stated as "workers who work for others" (*por conta de outrem*). This definition clearly captures seasonal workers in its scope. Decree 53/2007, Article 4 provides that seasonal workers are considered to be employees, however in practice some INSS

³²⁶ Decree 53/2007, Articles 37-47.

³²⁷ Decree 53/2007, Articles 90-93.

³²⁸ Decree 53/2007, Articles 94-100

³²⁹ Decree 53/2007, Article 101.

delegations are not yet accepting payments on behalf of seasonal workers, and Decree 53/2007 also provides that contributions by agricultural workers (some of which may be expected to be seasonal) will be phased in. No further clarification on this matter has yet been forthcoming from the Ministry of Labor, and the reader is recommended to seek written confirmation of how to proceed from their local Provincial Labour Department.

2. Are foreigners obliged to pay social security contribution?

Under Article 18 paragraph 2, of Law 4/2007, foreigners are only obliged to pay INSS if they are not enrolled in the social security system of another country.

22. Consultative Labor Council (CCT)

The Consultative Labor Council (*Comissão Consultiva de Trabalho*, or "CCT") is governed by Decree n° 7/94 of 9 March ("Decree 7/94"). Mozambique is also a subscriber to ILO Convention n° 144, governing tripartite consultation intended to promote fulfillment of international rules on labor.

The main purpose of the CCT is dialogue and social agreement in matters related to the economic, social and labor policies of the Government.³³⁰

It is a tripartite body, composed of the Government (represented by the Minister of Labor and other ministers with responsibility for economic areas); six members from organizations representing management; and six from organizations representing labor.³³¹

Normally, the Minister of Labor presides over meetings of the CCT though the Prime Minister may preside whenever she considers it necessary.³³²

The CCT is both an advisory group and a forum for negotiation. It issues opinions in respect of the Government's economic policies when asked, and may make proposals to the Government.³³³

Its role as a negotiating forum covers, in theory, a broad range of issues, including wages and prices, employment and training, occupational health and safety and social security.³³⁴ In practice, the main matter negotiated at the CCT, annually, are the national sectoral minimum wages.

The CCT meets in plenary session ordinarily twice a year and extraordinarily at the request of any of its members.³³⁵ Its deliberations are submitted to the Prime Minister for consideration by the Government.³³⁶

³³⁰ Decree 7/94, Article 1, paragraph 1.

³³¹ Ibid.: Article 3, paragraph 1.

³³² Ibid.: paragraph 2.

³³³ Decree 7/94, Article 2, paragraph 1, clause a).

³³⁴ Ibid.: clause b).

³³⁵ Ibid.: Article 12, paragraph 1.

³³⁶ Ibid.: Article 13, paragraph 1.

The Government recently issued a tender for a consultancy to revise the structure and mode of operation of the CCT.

23. Labor-Management Consultation

The forms of labor-management consultation are not, generally, driven by the terms of the labor legislation. The CCT operates on a macro level, and does not have a role in respect of negotiations between a union and a single firm or groups of firms. It is not common in Mozambique for significant negotiations to take place at the level of industry associations and unions. With the exception of the annual minimum wage negotiations, the level on which consequential consultation takes place is the firm and the union.

At this level, the key player on the side of labor is the union committee (*comité sindical*). Depending on the size of the firm, the union committee may in turn be composed of sectoral subcommittees that supply information to and collect feedback from the members in different departments of the operation.

The union committee and management meet periodically with a regular agenda. Unless a collective bargaining agreement dictates specifically, the meetings can be monthly, quarterly or less frequent still.

These meetings, however, need not be and often are not the only organized consultation between labor and management. It is also practice in Mozambique to have periodic meetings of all the workers with management.

In some companies these are conducted by representatives of both management and the union committee. Consultation is also often taking place through the medium of contact between the workers and the department of human resources, in those firms big enough to have such a department.

Finally, it is common in Mozambican enterprises to have a suggestion box in which anyone may leave a record of a concern or a recommendation. Suggestion boxes are a means of direct but non-hierarchical consultation between labor and management.

24. Personal Income Tax

The Personal Income Tax Code (*Código do Imposto sobre o Rendimento das Pessoas Singulares - "IRPS"*) requires that employers withhold income tax at the source. Having done this the employer pays the tax over to the relevant tax department.

All individuals residing in Mozambique and those who do not reside in Mozambique but receive income there are subject to IRPS.

The levels of tax payable range from 10% to 32% depending on the income level of the individual. IRPS rates are steeply progressive, and deductions for marital status and dependents are modest. IRPS is payable not only on wages but also on other forms for remuneration including, without limitation, bonuses, accommodation and personal use of company vehicles. Computer programs which automatically calculate tax and payroll values are available.

IRPS is payable monthly. All those on the company payroll are required to pay tax. At the end of the Mozambican tax year (31 December), companies must also provide a statement of earnings including IRPS deductions for each employee, in order to enable employees to complete personal income tax declarations (*Modelo 10*).

Each new employee must complete an IRPS registration form (*Modelo 11*), and also request an individual tax number (*Modelo 5*) unless already he already has one.

Further details of how the IRPS system works can be found in the booklet in this series entitled "The Legal Framework for Tax – Component 3 – IRPS" available in Portuguese and English to download from www.acisofala.com

25. Management of Essential Documents

When beginning operations, or on an annual basis there are a number of documentary requirements to be complied with in terms of the Ministry of Labor. These are detailed below.

25.1 Individual employee files (*Processo individual*)

Companies must use this system for maintaining their workers personnel records. The *Processo Individual* is a folder which may be purchased at any stationer and contains details about the worker including name, age, marital status, qualifications etc. as well as a photograph. The file should also contain copies of the worker's contract, INSS membership card, personal tax registration form and any disciplinary processes as well as details of promotions and salary increases.

25.2 List of employees by name (*Relação nominal*)

This is a list of those employed. It must be completed annually in four copies on forms issued by government stationers (an electronic version of this form, approved by the Ministry of Labour is available from ACIS). The form must be submitted by the end of March. In the case of companies which begin operation later in the year, the form for the first year may be submitted at any time.

When the form is submitted, two of the four copies are returned to the company. The following year one of these copies must be submitted with the new list as proof of compliance.

The list must be displayed prominently at company offices. Fines for non-compliance are heavy.

This list is used to calculate the quote of foreign employees for which a company is eligible.

25.3 Vacation plan (*Plano de férias*)

A vacation plan for all workers must be prepared by the end of January, and displayed at the company office. See above for details of vacation allocations.

25.4 Work schedule (*Horário de trabalho*)

Before beginning operations a company must have a work schedule approved by the Provincial Labor Department. The schedule is prepared in duplicate on a form purchased from the government stationers. Working hours are filled in as per the information given above. The company director signs before submitting the forms to the Provincial Labor Department. Here they are approved and a copy is returned to the company, where it must be displayed in a prominent position.

25.5 Internal regulation (*Regulamento interno*)

Medium and large companies must have an internal regulation,³³⁷ sometimes negotiated between unions and management. The internal regulation provides the organizational and disciplinary norms which apply in the company, the social support regime for workers and norms regarding the use of company premises and equipment. The adoption of an internal regulation must be based on agreement between the employer and workers and must be communicated to the Provincial Labor Department. Its entry into force is taken as a proposed contract of adhesion in respect of employees hired before its publication.³³⁸ The regulation must be prominently displayed and available to consult. Employees whose contracts specify that they adhere to the internal regulation are presumed to do so unless they express themselves in writing against the regulation within 30 days of its publication.³³⁹

Frequently Asked Questions

1. Do internal regulations require approval by the Ministry of Labor?

No. Internal regulations are only subject to communication to the relevant labor administration office, according to Article 61, paragraph 2.

25.6 Payroll (*Folha de salários*)

Every worker must receive a full breakdown of her salary. This must include any deductions made, taxes and social security payments made as well as fines and bonuses.

Checklist

The following should be included in an employee's individual file:

- copy of ID document
- employment contract
- copy of INSS registration card
- IRPS registration form
- Results of medical examinations undertaken when admitted (and monthly ones for employees in the food and beverage sector)
- Letter or card issued by the Provincial Labor Department indicating that the employee was unemployed before being hired by the company

³³⁷ Labor Law, Article 61, paragraph 1.

³³⁸ Ibid.: Article 61, paragraphs 2 and 3.

³³⁹ Ibid.: nº 2 e 3 do art. 37.

- photos
- records of any disciplinary proceedings, or other documents (certificates, training plans etc.)

26. Annex 1 - Main Legislation Consulted

Constitution of the Republic of Mozambique, 2004
<i>Laws</i>
Law n° 12/2009, of 12 March (the Law of Rights and Responsibilities of those living with HIV/AIDS)
Law n° 23/2007, of 01 August (the Labor Law)
Law n° 33/2007 of 31 December , IRPS, Income Tax law
Law n° 4/2007 (the Social Protection Law)
Law n° 5/2002, of 13 February (Law for the Protection of Workers with HIV/AIDS)
Law n° 11/99 of 8 July , (Arbitration Law)
Law n° 8/98, of 8 July
Law n° 18/92 of 14 October (the Labor Courts Law)
Law n° 5/89, of 18 September (Social Security Law)
<i>Decrees</i>
Decree n° 38/2006 of 27 September regulating the entry into, stay in and departure from the country of foreign citizens
Decree n° 53/2007 of 03 December (the Social Security Regulation)
Decree n° 55/2008 of 30 December (the Regulation of the Employment of Foreigners)
Decree n° 40/2008 of 26 November (the Domestic Employment Regulation)
Decree n° 75/99 of 12 October (IFZ Labor Regulation)
Decree n° 61/99 of 21 September (IFZ Law)
Decree n° 26/99 of 24 May (Work Visas)
Decree n° 57/2003 of 24 December (Contracting Foreign Workers)
Decree n° 7/94, of 9 March (Consultative Labor Council)
Decree n° 4/90, of 13 April (Establishing 7% contribution to Social Security)
Decree n° 46/89, of 28 December (Social Security Regulation)
Decree n° 32/89, of 8 November (Labor Inspection)
Provincial Decree n° 61/73 of 20 November (Extending occupational health and safety regulations to Mozambique)
<i>Ministerial Diplomas</i>
Ministerial Diploma n° 75/2008 which creates committees for the extra-judicial resolution of labour conflicts in each province
Ministerial Diploma n° 88/95 of 28 June (Organic structure of the Ministry of Labor)
Ministerial Diploma n° 45/90 of 9 May (Social Security Procedures)
Ministerial Diploma n° 17/90 of 14 February (Labor Inspection Regulation)
<i>Legislative Diplomas</i>
Diploma Legislativo n° 57/73 of 29 November 1973 (Complement to the Hygiene and Safety Regulations)
Diploma Legislativo n° 48/73 of 5 June 1973 (Hygiene and Safety Regulations)
Diploma Legislativo n° 3057 of 12 December 1970, Annex III (Occupational Health and Safety Rules)
Diploma Legislativo n° 1706 of 19 October 1957 (Treatment of Workplace Accidents and Occupational Illnesses)

<i>Edicts</i>
Portaria n° 87/70 (Applies the Labor Procedure Code to Mozambique)
Portaria n°21 769 of 3 January 1966 (Method of Calculating Indemnification due to an Injured Worker)

27. Annex 2 Model Employment Contract (revised)

Note: All forms in this Annex 2 should be used in practice only in the original Portuguese-language form. The purpose of this Annex 2 is to provide the English-language reader with a translation of those forms.

Individual Employment Contract

Between

_____, a Mozambican commercial company, with headquarters at _____, represented in this act by _____, hereinafter designated the **Contracting Party**,

and

the **Contracted Party**, better identified in the Annex, this individual employment contract is executed and mutually agreed, to be governed by the following clauses:

- 1. Objective** – The Contracted Party hereby agrees to undertake, under the authority of the Contracting Party, the job described in the Annex, for the remuneration and duration therein indicated. The Annex referred to is an integral part of this contract.
- 2. Adhesion** – The Contracted Party adheres to the internal regulation currently in force and as may be in force from time to time in the Contracting Party as well as the general obligations established in the Labor Law and other applicable legislation.
- 3. Duration** – This contract is entered into for the term indicated in the Annex.
- 4. Place of Work** – The services object of this contract are to be performed at the premises of the Contracting Party or in another location indicated thereby.
- 5. Remuneration** – The Contracted Party shall receive the remuneration indicated in the Annex, payable on the last working day of each month worked. The Contracting Party shall deduct from that amount the legal contributions and any others which may be established by law.
- 6. Work Schedule** – The normal working period shall be indicated by the Contracting Party and shall obey the legal limits on working hours.
- 7. Conflict Resolution** – Any conflict arising from this contract shall in the first instance be resolved by mediation.
- 8. Entire Agreement** – This contract constitutes the entire agreement between the contracting parties in respect of its content and replaces any previous understandings or agreements between them.
- 9. Entry into force** – This contract enters into force from the date indicated in the Annex as the start date.

_____ [place] on _____ [date] _____ [year]

The Contracting Party

The Contracted Party

Name:
Position:

Name:

Annex to the Individual Employment Contract

Specifications	Description
Contracted party	
ID number	
Job description	
Contract duration (choose one)	<input type="checkbox"/> Indeterminate period <input type="checkbox"/> Fixed period, uncertain time <input type="checkbox"/> Fixed period until _____ <input type="checkbox"/> Renewable for _____ <input type="checkbox"/> Non-renewable
Justification (for fixed period contracts, whether for periods certain or uncertain)	
Probation period (choose one)	Indeterminate period contract: <input type="checkbox"/> 180 days (senior and mid-level technicians and posts of management or direction) <input type="checkbox"/> 90 days Fixed period, period uncertain (for 90 days or longer) <input type="checkbox"/> 15 days Fixed period, period certain <input type="checkbox"/> 90 days (contracts of more than 1 year) <input type="checkbox"/> 30 days (contracts of between 6 months and 1 year) <input type="checkbox"/> 15 days (contracts of up to 6 months)
Remuneration	MT _____ <input type="checkbox"/> Cash <input type="checkbox"/> Kind (up to 25% at regional price)
Contract start date	
Other conditions	During the period of this contract the Contracted Party is forbidden to enter into employment or service provision contracts which may directly prejudice capacity to meet the requirements of this contract.
Responsibilities	The Contracting Party shall not be responsible for any malicious or culpable action by the Contracted Party when in violation of this contract or of the law, nor shall said party be held responsible for any damage the Contracted Party suffers as a result. The Contracted Party must comply with the health and safety measures determined by the Contracting Party and is responsible to use of protective equipment provided.

The Contracting Party

The Contracted Party

 Name:
 Position:

 Name:

28. Annex 3 Models of Disciplinary Proceedings Forms (Revised)

Verbal Warning Form

Instructions: Under the terms of Article 63, paragraph 1 and Article 65 paragraph 1, of the Labor Law, a verbal warning does not require a disciplinary proceeding. All that is required is recording that measure on this form for the purpose of a complete record).

Name of Worker: _____

Date of verbal warning: _____

On the above-mentioned date I verbally warned the above-named worker as a result of the worker having done the following:

_____ [place] on _____ [date] _____ [year]

The person responsible

Name:

Written Reprimand Form

Instructions: Under the terms of Article 63, paragraph 1 and Article 65 paragraph 1, of the Labor Law, a written reprimand does not require a disciplinary proceeding. All that is required is recording that measure on this form.

Name of Worker: _____

Date of written reprimand: _____

On the above-mentioned I register the following written reprimand against the above-named worker as a result of the worker having done the following:

In addition, I advised the worker above-named worker that if the same violation is committed again or any other disciplinary breach is committed, a disciplinary proceeding will be opened.

_____ [place] on _____ [date] _____ [year]

The person responsible

Name:

Disciplinary Notice

In accordance with Article 65, paragraph 1 and Article 67, paragraph 2, clause a) of the Labor Law a disciplinary proceeding is hereby started against worker _____, who is accused of having done the following:

The worker indicated above has 15 (fifteen) days from receipt of this disciplinary notice to respond.

On receipt of this disciplinary notice and in accordance with Article 67, paragraph 5 of the Labor Law, the worker (*indicate one*):

- is preventively suspended without loss of pay; or
- is not suspended and must come to work as usual.

_____ [place] on _____ [date] _____ [year]

The person responsible

Name:

I hereby confirm receipt of the disciplinary notice.

Name:

We confirm that the abovementioned worker refused to accept this disciplinary notice.

Name:

Name:

Notice

In accordance with Article 67, paragraph 7 of the Labor Law, this serves to notify the worker _____ to receive a disciplinary notice as part of a disciplinary proceeding taking place within this company.

The time period for presentation of a defense in respect of this disciplinary proceeding is 15 days counted from the date of publication of this notice.

_____ [place] on _____ [date] _____ [year]

The person responsible

Name:

Submission of Disciplinary Proceeding

In accordance with Article 67, paragraph 2, clause b) of the Labor Law, this serves to submit for the consideration and opinion of the union body the disciplinary proceeding against

_____.

_____ [place] on _____ [date] _____ [year]

The person responsible

Name:

Annexes:

- Disciplinary notice
- Worker's response (if any)
- Other: _____

Submission of Decision

In accordance with Article 67, paragraph 2, clause c) of the Labor Law, this serves to submit the decision taken in the disciplinary proceeding against _____ to such worker as well as to the union body.

_____ [place] on _____ [date] _____ [year]

The person responsible

Name:

I confirm receipt of the decision taken.

Name:

Decision

Having followed the disciplinary proceeding initiated against worker _____, and taken the following measures to produce evidence (*indicate one or more measures taken*):

- employee hearing;
- testimony of witnesses;
- analysis of documents;
- other _____,

this serves to state:

1. The Facts

We consider proven (*check one*):

- all the charges contained in the corresponding disciplinary notice;
- the following charges contained in the corresponding disciplinary notice:

based on: (*indicate justification*)

or

- none of the charges contained in the corresponding disciplinary notice.

2. The Law

Having analyzed the concept and list of disciplinary violations contained in Annex 1, in accordance with Article 66, paragraphs 1 and 2 of the Labor Law, we find that the worker (*check one*):

- committed the disciplinary violations contained in numbers _____ of Annex 1; or
- did not commit any violation listed in Annex 1.

3. The Disciplinary Measures

Taking into consideration the facts and the law described above, as well as the list of possible disciplinary measures foreseen in Article 63, paragraph 1 of the Labor Law and included in Annex 2, and bearing in mind that not more than one disciplinary measure may be applied for each violation, we have decided:

to apply to the worker the following disciplinary measure (*check one*):

- suspension for _____ days with loss of pay;
- fine of _____ days' pay;
- demotion to the immediately lower professional category for _____ months;
- dismissal.

or

not to apply any disciplinary measure included in Annex 2.

The decision is based on the gravity of the offence, the degree of culpability of the worker, the professional conduct of the employee and, in particular, the circumstances in which the events occurred, as well as the evidence produced as described above.

_____ [place] on _____ [date] _____ [year]

The person responsible

Name:

Annex Disciplinary violations possible under Article 66, paragraph 1 of the Labor Law

<ol style="list-style-type: none"> 1. Non-compliance with work schedule and work assignment; 2. Non-appearance at work without justification; 3. Absence from the workplace during work time without permission; 4. Disobeying legal instructions or instructions based on the employment contract and the rules that regulate it; 5. Lack of respect for superiors, colleagues and third parties, or by a superior to their subordinate in the workplace or when carrying out work; 6. Injury, bodily harm, mistreatment or threat in the workplace or when carrying out work; 7. Willful lapse of productivity; 8. Abuse of office or of position for illegitimate gain; 9. Breach of professional confidentiality or industrial espionage; 	<ol style="list-style-type: none"> 10. The use of company equipment, goods, services or other work-related items for personal ends or for inappropriate purposes 11. The damage, destruction or willful deterioration of items in the workplace; 12. Lack of austerity, or the waste of material or financial resources of the workplace; 13. Drunkenness, being in a drugged state, consuming or possessing drugs in the workplace or while working; 14. The theft, abuse of confidence, fraud or other malpractice in the workplace or while working; 15. Abandonment of workpost; 16. Sexual harassment in the workplace or outside it which interferes with the stability of the employment or for the professional progress of the injured party.
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Annex Disciplinary measures possible under Article 63, paragraph 1 of the Labor Law

<ol style="list-style-type: none"> 1. Verbal warning; 2. Written reprimand; 3. Suspension with loss of pay for up to 10 days per violation, up to a maximum of 30 days in each calendar year; 	<ol style="list-style-type: none"> 4. Fine of up to twenty days' pay; 5. Demotion to the professional category immediately below the current one for not more than twelve months; 6. Dismissal.
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29. FLOWCHART ON PROCEDURES FOR HIRING FOREIGNERS IN MOZAMBIQUE

The flowchart on the page that follows summarizes the procedures and documents set forth in Section 7.4 above.

HIRING OF FOREIGNERS

