

Remote Working Legal Framework

Presidential Decree 52/22 of 17 February was published recently to establish the Remote Working Legal Framework. The Decree regulates the performance of work done with legal subordination, usually outside the company and with the use of information and communication technologies.

The establishment and legal regulation of remote working arises from the accelerated evolution of the forms and conditions of working and of commercial activity. It is a result, in particular, of the pandemic and the consequent physical distance and social isolation. To date, there had been no legislation on this matter in Angola.

Under the new law, remote working can take one of the following forms:

- **Remote working from home** – the employee works from his or her own home;
- **Remote working at a satellite office** – the employee works in a place outside his or her home, or the main premises of the employer, where several other employees of the same employer may also work;
- **Remote working in community work centre** – the employee works in a place shared by several organisations or professionals, including employees contracted by several employers, and even self-employed workers;

- **Nomadic remote working** – the employee works in any location outside the main premises of the employer, which is not designated in advance and is not fixed.

The rule for the adoption of any of these forms of remote working is the agreement between company and employee. The proposal for remote working can be made at the initiative of either party, and it is possible to agree on remote working with either an existing employee or someone who is being recruited. Therefore, remote working should be the result of an agreement between the parties or of a remote working contract when there is no previous employment relationship.

The agreement or remote working contract must be made in writing and contain a set of mandatory information: (i) the identification of the parties, (ii) an indication of the employee's duties, (iii) a statement of the employee's remuneration and working hours, (iv) a reference to the ownership of the work instruments, and (v) the identification of an establishment or physical department of the company for the employee to contact.

THE PROPOSAL FOR REMOTE WORKING CAN BE MADE AT THE INITIATIVE OF EITHER PARTY.

The law also establishes a set of situations in which employees are entitled to work remotely:

- A pregnant employee with an eligible health condition;
- An employee who, individually or jointly, cares for a child under 5 years of age or a dependant with a certified disability or incapacity of 60% or more;
- An employee whose health status is incompatible with on-site work, provided this is proven by a document issued by a doctor;
- The context of a Constitutional State of Necessity.

The employer may not oppose the request of the employee in the situations indicated above if the way of working is compatible with the duties and the employer has the means to do so.

To make it possible to perform the contract, the employer must provide the employee working remotely with the instruments necessary to do their work. In turn, the employee is under a duty to make prudent use of these instruments and not to use them for any purpose other than doing their work, unless otherwise agreed. After termination of the remote working contract, the employee is obliged to return these instruments.

If it is not possible for the employer to provide the instruments necessary to do the work, if the employee so agrees, the remote working may be carried out using the employee's own means. In this case, the employer is responsible for reimbursing all the additional costs that the employee has incurred as a direct result of acquiring or using the instruments necessary to do their work.

One of the changes introduced by this law relates to the guarantee of respect for the privacy of employees who work remotely. Besides privacy, the employer must respect the rest periods and personal and family time of the employee. The employer must also guarantee the right to disconnect.

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If there is the need to use video surveillance systems, these should be used solely to protect people and property within the limits of what is strictly necessary to safeguard the privacy and informational self-determination of the employee. In these cases, it is the responsibility of the employer to inform the employee of the existence and purpose of the video surveillance, the use of which requires the authorisation of the data protection agency. This authorisation can only be granted if the use of this form of surveillance is necessary, appropriate and proportional to the objectives to be achieved. It will be necessary to reconcile this matter with the provisions of Law 2/20 of 22 January, the Video Surveillance Law, and Presidential Decree 308/21 of 21 December, the Video Surveillance Law Regulations.

The current law also enshrines the safeguarding of equal treatment. Any employee working remotely has the same rights and duties as other employees, including protection against accidents at work and occupational diseases, and guaranteed benefits.

This new piece of legislation will come into force 30 days after the date of its publication and will be applicable to private companies and, on a subsidiary basis and until specific legislation is approved, to remote working by civil servants and administrative agents.

Besides reconciling the interests of business owners and employees by increasing productivity and quality of life, respectively, the establishment of remote working will generate positive impacts for society. These include guaranteeing a reduction in the costs of maintaining public and private infrastructures, reducing logistical expenses, better management of working time, and guaranteeing the modernisation of public and private services. ■