



Labour Law of the Democratic Republic of Congo [DRC]

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This brief paper is designed to provide an up to date answer to the increasing demand from many sources for information in English concerning the Labour Law of the Democratic Republic of Congo. Its discusses various issues including hiring Expatriates workers, work permit, visa, Employment contracts, dismissal, leave, etc... in the labour Law of the Democratic Republic of Congo [DRC]

This brief paper is designed to provide an up to date answer to the increasing demand from many sources for information in English concerning the Labour Law of the Democratic Republic of Congo. Its discusses various issues including hiring Expatriates workers, work permit, visa, Employment contracts, dismissal, leave, etc... in the labour Law of the Democratic Republic of Congo [DRC]. A Labour Code was introduced on 16th October 2002 applicable to all employees as well as to all employers operating in the DRC.[\[1\]](#)

1. Localisation

There are no discriminatory or excessively onerous visas, residence or work permit requirements designed to prevent or discourage foreigners from investing in the DRC. Application for a work permit must be made on arrival in the DRC. However, the Ministry of Labour and Immigration Administration Officers controls expatriate residence and work permits.

However, similar to the laws of other African States, the DRC labour law promotes the hiring of the nationals. Therefore, protective regulations towards national workforce have been laid down and expatriates are treated on a different basis than nationals with respect to hiring conditions, work cards, resident permits and payment of income tax. Furthermore, the percentage [of the total workforce] of foreign remunerated workers allowed in a company operating in the DRC is fixed by law and may not exceed 15%[\[2\]](#).

A Ministerial Decree dated 26th October 2005 has fixed the maximum authorised percentage of foreign workers, within the limits set out by the Labour Code, per sector and per category of workers.[\[3\]](#)

Sector		Professional categories	Supervisors	Managerial personnel
Agriculture	2%	2,5%	2%	
Extractive industry	2%	2,5%	2%	
Industrial enterprises	2%	2,5%	2%	
Construction and Public work	2%	2,5%	2%	
Electricity, water and sanitary	2%	2,5%	2%	
Commerce	0%	2%	2%	
Banking, insurance and real estate	0%	2%	2%	
Transport	0%	2%	2%	
Services	0%	2%	2%	
New technologies [ICT]	0%	2%	2%	

In addition, an exemption regarding the rates may be granted by the Ministry of Employment and Social Foresight by means of a decree, on the basis of a corresponding and motivated advice issued by the National Commission of the Employment of the Foreigners, not exceeding 50% of the legally authorised maximum, and the number of foreign workers may not exceed 15%.

These maximum rates concern remunerated foreign workers having an employment contract with a Congolese company.

2. Hiring expatriate workers

2.1. Work permit

Any employer willing to hire an expatriate is to file with the regional Employment office a dossier^[4] consisting of:

- the application for an expatriate “carte du travail” i.e. work card;

- a draft employment contract;
- the CV of the contemplated expatriate employee;
- evidence of the professional skills and expertise of the applicant;
- the job description;
- a list of the company's expatriate employees;
- the training, advance training and professional adjustment programmes;
- and copy of the letter of application for the expatriate work card.

After submitting this dossier, the expatriate worker must apply for an expatriate work card, upon which the National Commission of Hiring Expatriate Workers, *Commission Nationale de l'Emploi des Etrangers* in French will decide. Once the work card is granted, the expatriate worker can obtain a visa for settlement with employment purpose as laid down by current employment regulations. If granted, the visa is issued for the same duration as the work card. In case of termination of the employment contract, the expatriate worker must be repatriated or find another job that would provide proof of holding the work card.

2.2. Visa

The following visas for expatriate workers are issued in the DRC by the Immigration authorities^[5]:

- The visa *d'établissement de travail* has a validity of 1 to 2 years depending on the validity of the work permit [carte de travail];
- A *visa d'établissement de travail spécifique* can be delivered for a period not exceeding one year and is not renewable.

Furthermore, the *Commission Nationale de l'Emploi des Etrangers* [the National Commission of Hiring Expatriate Workers] is not allowed to accept or examine any dossier of a prospective expatriate worker who would only have a tourist visa, a temporary-stay visa or a family reunion visa.

3. Employment contracts

Article 37 of the Labour Code sets out the minimum requirements to be met by employers towards

employees and stipulates that any clause according a less favourable treatment is null and void. Any employment contract should be evidenced in writing, mention certain details, and in absence of a written contract the employee may prove by all legal means including witnesses the existence and scope of the contract.

3.1. Duration

Every employment contract shall either be a fixed term contract or an open-ended contract. In absence of a written contract, the contract shall be presumed open-ended until evidence of the contrary in writing.

In view of protecting employees, affixed term contract cannot exceed a period of two years, reduced to one year if the employee is married and separated from his family, or when he is widower/widow or divorced and separated from any children under his custody. Furthermore, a fixed term contract can only be renewed once - except in case of seasonal work and other situations to be determined by Ministerial decree- and any violation of the requirements set out in this section leads to the immediate conversion into an open-ended contract.

3.2. Probation period

The Labour Code stipulates that every employment contract can be accompanied with a probation period as long as this period is evidenced in writing and does not exceed a period of 1-6 months depending on the specialisation of the employee.

The probation period may not exceed 1 month for an unskilled labourer without specialisation, and 6 months for the other employees. Any stipulated longer duration will be automatically reduced to the allowed maximum.

3.3. Annual leave

After having obtained 1 year of service, the DRC Labour code grants employees a right to remunerated annual leave. Article 141 of the Labour code emphasizes that the length of annual leave in the DRC is being calculated in relation with the age of the employee:

- Minimum 1 day of leave per full month of services for employees older than 18 years
- Minimum 1,5 day of leave per full month of services for employees younger than 18 years

This will increase with 1 day per month for every period of 5 years of service for the same employer or substitute employer.

3.4. Termination of contract

Both the employer and the employee can terminate every employment contract but termination cannot be done freely and is subject to a strict regime.^[6] This regime differs in relation with the duration of the contract and in relation to the party who is terminating the contract. Finally, there exist two exceptions to the general regime in case there was a probation period, or if the contract is ended by reasons of gross misconduct.

3.4.1 Termination of open-ended contracts

- Termination by the employer.

In the first place, open-ended contracts can only be terminated by an employer on grounds of a valid motive concerning the aptitude or the behaviour of the employee in relation to his/her work, or because of business necessities.

In case a termination was found invalid by the courts, the employee has the right to be reinstated, in absence of which he/she will be entitled to reparation which may not exceed an amount equal to 36 times his latest monthly wage. Secondly, when discharging an employee, the employer has to take into account a notice which may not be less than 14 working days, increased by 7 working days for every full year of employment.

- Termination by the employee.

Termination of employment contract by the employee is not subject to the requirement of a valid motive since this rule is aimed at protecting employees against arbitral dismissal. On the other hand, also employers deserve a degree of certainty that their employees will not leave their job from one day to the next. Therefore employees also have to take into account a notice period which is half as long as the one an employer should have observed in case he/she would have ended the contract.

3.4.2 Termination of fixed term contracts

fixed term contracts always end by expiration of the term for which they were initially concluded, and any clause stipulating the possibility of giving notice is null and void. Therefore, every premature termination of fixed-term contracts gives rise to compensation.^[7]

3.4.3 Probation periods and gross misconducts

Sometimes there exist reasons calling for immediate termination of contract. Therefore, the

foregoing has to yield in case termination of contract is the result of a probation period or gross misconduct.

- In case ***an employment contract contains a probation period***, both parties are allowed to terminate their contractual relationship for any valid reason concerning the aptitude or the behaviour of the other party. However, also in these situations, termination is subject to a 3 days' notice[8].

- ***Any employment contract may be immediately terminated when gross misconduct*** is at hand. Gross misconduct refers to a situation in which no party, exercising all reasonable and usual care, can demand the adverse party not to break the contract. The Labour code gives a non-exhaustive list of examples of gross misconduct and further states that any compulsory redundancy because of gross misconduct must be notified within 15th days after discovery of the facts constituting the gross misconduct.

[1] *Loi 015-2002 du 16 octobre 2002 portant Code du travail*; further referred to as Labour Code

[2] Article 185 Labour Code

[3] Arrêté Ministériel No12 CAB-MIN/TPS/112/2005 du 26 octobre 2005

[4] Article 5 of the Arrêté départemental du 21 janvier 1987 déterminant les conditions d'engagement des expatriés.

[5] See: <http://www.dgm.cd/delivrance.php>

[6] Articles 61 to 78 Labour Code

[7] Article 70 Labour Code

[8] Article 71 of Labour Code