



Resignation and Full and Final Settlement in the Democratic Republic of Congo Labour Code

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This brief covers all you need to know about the full and final settlement process and the calculations involved in the Democratic Republic of Congo

Full and final settlement is the process of calculating all the dues payable to an employee who resigns. The settlement process is not just limited to the salary drawn by the employee but also deductions.

1. Defining resignation

The resignation is a unilateral legal act emanating from the employee, which supposes a clear and unequivocal demonstration on the part of its author to terminate the contract. Resignation is a unilateral act by which the employee under a permanent contract clearly and unequivocally expresses his desire to terminate the employment contract. Thus, for it to be regular, it complies with certain legal and conventional requirements.

However, the employer takes note of the breach of the contract or considers it to be breached by the employee due to the non-performance of the contract by the latter. For the employer, the employee would have de facto resigned; however, the purely passive behaviour of the latter is not, as such, indicative of a clear and unequivocal desire to resign.

Moreover, compared to dismissal, resignation has some legal advantages for the employee, but above all many disadvantages. In terms of benefits, the employee under a permanent contract has no reason to invoke, no long or complex procedure to follow, other than the sending of a letter, as provided for in the collective agreement, which will set the date of breaking.

The employer cannot oppose a resignation even if it occurs at a crucial period for him.

2. Resignation and the employee rights to full and final settlement in the DRC

The end of the employment relationship – even by resignation - generally gives rise to the establishment of a final salary statement. Under certain conditions, this includes, in addition to the last salary due:

- the net remuneration (salary), for the period worked during the month (in proportion to the days),
- overtime pay not yet compensated by leave,
- annual leave not taken within the legal limits which are transformed into compensation,
- and other benefits provided for in the company regulations (the law sets the minimum and the regulations can set the surplus which becomes mandatory: e.g. 13th month, bonus, attendance bonus, an exit allowance, etc.)

The final statement means remuneration remaining due at the end of the contract, which is calculated by taking into account the base salary, seniority and the period of notice; this if and only if both parties have agreed on the termination of the contract, the period of notice. ***The employee who has not taken the notice, in the calculation of his final statement, he will not be entitled to the notice indemnities.***

The term “final count” of “final statement” simply means "details of the last calculations of what is due". Technically we speak of "Balance of any account".

The establishment of the final statement is a legal obligation incumbent on the employer and this, within 2 working days following the cessation of services, for any reason whatsoever, in accordance with article 100 of the Labour Code.

These sums must be paid no later than two working days for fear of giving right to the postulation of default damages in the event that the worker provides proof of the prejudice suffered because of the delay at the expense of his employer.

In return for sums due to the employee and received by him, a receipt for the settlement of all accounts must be signed. It is this document which certifies that the employer no longer owes the worker anything and serves as an accounting entry that can be used for all useful purposes, in particular as proof in the event of claims for said sums subsequently.

The basic calculation elements consist of:

- On the one hand, the remuneration for the provision of services, made up of the basic salary or salary, salary for incapacity for work, leave allowance or compensatory leave allowance, bonuses, commissions, overtime and rewards.

- On the other hand, other earnings and allowances, made up of: Healthcare, family allowances, notice and dismissal indemnities, accommodation allowances or accommodation in kind, transport allowances and other benefits.