



Termination of fixed term contract of employee by the employer in Democratic Republic of Congo

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This brief paper answers to the question whether in the Congo labour law; the employer terminates the fixed term contract of an employee few months to the end of the contract. Will the employer pay for the remaining months that didn't take place?

I. Introduction

In the Democratic Republic of Congo [DRC] a new Labour Code was introduced since 16th October 2002 applicable to all employees as well as to all employers operating in that country.^[1]

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.

II. Nature and duration of a fixed term contract

In view of protecting employees, a fixed term contract cannot exceed a period of 2 years, reduced to 1 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 here leads to the immediate conversion into an open-ended contract.

III. Conditions of termination of fixed term contract in DRC

In the DRC, both the employer and the employee can terminate every employment contract but termination cannot be done freely and is subject to a strict regime

. [Articles 61 to 78 Labour Code].

Concerning ***the termination of fixed term contracts, the subject of the matter; we should note that these 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.** [Article 70 Labour Code]

IV. Conclusion

Article 70 of the Congolese Labour Code states that when the fixed term contract is terminated by the employer, compensations equivalent to salaries and advantages that the employee was entitled in normal situation should be pay to him/her during the remaining period up to the end of the fixed contract.

In other words, if the employer terminates the fixed term contract of an employee few months to the end of the contract, the employer will pay for the remaining months that didn't take place.

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