

Cliffe Dekker Hofmeyr hosts employment seminar

Cliffe Dekker Hofmeyr's employment seminar which was recently held in Johannesburg was attended by DLA Piper's Africa partner firms from Mozambique, Botswana, Kenya and Uganda.



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Talking about the current issues in employment law issues in Mozambique, Gimina Mahumana Langa, manager at SAL & Caldeira Advogados Lad said that the termination of employment contracts was a big issue for Mozambican businesses at present.

"According to Mozambican law, a contract of employment can only be terminated by expiry, agreement to terminate, the cancellation of contract by either of the parties, and termination (rescission) of contract by either of the parties based on just cause. Mozambican labour law does not allow summary dismissal," she said.

She noted that after the probationary period, an employer could only terminate the employment contract based on just cause. Just cause on the part of the employer includes: the manifest inaptitude of the employee for the contracted work, discovered after the probationary period; and culpable and material breach of the employment duties of the employee.

Manifest aptitude

In Mozambique, termination by manifest inaptitude occurs when, after the probationary period, the employer discovers the inability of the employee to perform his/her duties. Before terminating the employment contract based on manifest inaptitude, the employer has to: provide a vocational training to the employee; give a reasonable period of adaptation to the employee; and endeavor to place the employee in another position.

According to Thabiso Tafila, partner at Minchin & Kelly in Botswana, the right to strike in Botswana was also a right protected by the Constitution. The Constitution of Botswana affords all individuals the protection of freedom of assembly and association including the right to join and belong to a trade union or other association of their choice.

Tafila said that the Trade & Dispute Act gave rights to every party to a dispute of interest to have a right to strike or lockout provided certain procedures have been adhered to. A dispute of interest has been defined as a dispute concerning the creation of new terms and conditions of employment or the variation of existing terms and conditions of employment. Thus employees only had a right to strike or lockout if the dispute was a dispute of interest and no other.

Interesting history

Moses Segawa, partner at Sebalu & Lule Advocates in Uganda explained that the Ugandan labour law story was an interesting one.

In the years before the passing of new labour laws in 2006, there were some serious ideological battles between the ILO and World Bank/IMF; and the Ugandan Ministry of Finance and Ministry of Labour. Both of which pursued reforms to the labour laws, but with conflicting ideological inclinations. This ideological battle affected the passing of the Labour law bills for decades.

He noted that in 2004, the Uganda Textile, Garment, Leather and Allied Workers Union, a trade union representing over 2,000 female workers at Tri-Star Apparel Textile Company, sought recognition. Tri-Star refused to give recognition and opted to dismiss all the striking employees. The matter got the attention of the United States Congress, and the US government threatened to take Uganda off the African Growth and Opportunity Act (AGOA) list. Government officials rushed to Washington to save AGOA and following a US government ultimatum, the Labour Law Bills were passed by Ugandan parliament in the record time of one week in April 2006, after the presidential elections.

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