

REPUBLIC OF MOZAMBIQUE
COUNCIL OF MINISTERS

Decree 40/2008 of 26 November

It being necessary to regulate domestic labour, the Council of Ministers, under the authority of the provisions of Article 204, clauses f) and h), of the Constitution of the Republic, together with Article 269 of the Labour Law, decrees:

Article 1

The Domestic Labour Regulations, which are an integral part of this Decree, are hereby approved.

Article 2

All legislation contrary to the provisions of this Decree is hereby repealed.

Article 3

This Decree enters into force sixty days after its publication.

Approved by the Council of Ministers, on the 9th of September 2008

Let it be published.

The Prime Minister, Luísa Dias Diogo

DOMESTIC LABOUR REGULATIONS

CHAPTER I

General Provisions

Article 1 (Object)

These Regulations govern the labour relations resulting from domestic employment contracts.

Article 2 (Scope of application)

1. These Regulations apply to domestic employees providing domestic work to a household or similar.
2. For the purpose of these Regulations a household or similar means a group of people living in a regular or temporary way under the same roof.
3. The regime laid down in these Regulations also applies to domestic employees working for households or similar, when contracted by non-profit legal persons, without prejudice of the parties agreeing the application of the regime established in the following paragraph.
4. These Regulations do not apply to employees on account of others who, in spite of performing domestic work, are employed by a for-profit natural or legal person, or by a household, at the expense of that person.

Article 3 (Domestic labour)

1. Domestic labour means the subordinate service, rendered on a regular basis to a household or similar, in its residence, and comprising specifically:
 - a) The preparation of meals;
 - b) Washing and ironing clothes;
 - c) Cleaning and tidying up the house;
 - d) Supervision and aid to children, the elderly and the sick;
 - e) Treatment and care of domestic animals;
 - f) Execution of gardening activities;
 - g) Execution of external tasks related to the above;
 - h) Other activities agreed upon.

2. The performance of the activities referred to in the previous paragraph, when carried out in an accidental, intermittent way, with autonomy or voluntarily, is not considered domestic labour.

Article 4 (Domestic Employee)

1. A domestic employee is a person performing domestic labour on the account of another person, in his or her home or residence, in exchange for payment.
2. Employers are not allowed to employ as domestic employees minors under the age of fifteen, except in cases where this is authorized by the minor's respective legal representative; contracting minors of less than 12 years of age is, however, forbidden.

CHAPTER II

Domestic employment contracts

SECTION I

Contract clauses

Article 5 (Domestic employment contracts)

A domestic employment contract is the agreement through which a person binds him or herself to carry out remunerated activities for another person, on a regular basis, under the orders and authority of that person, for the benefit of a household or similar and its respective members.

Article 6 (Form)

1. A domestic employment contract is not bound to be in writing.
2. A domestic employment contract may be reduced to writing when its object is the provision of domestic work for a specified term.
3. A written agreement may be made in the form of a contract or a simple declaration, Form I in annex, which must contain the following information:
 - a) Identification of the employer and his or her home address;
 - b) Identification of the employee;

- c) Place of work;
 - d) Duration of the contract;
 - e) Wage and form of payment;
 - f) Social security beneficiary number;
 - g) Date of signature and signature of the parties.
4. A domestic employment contract is presumed to be permanent, whenever the existence of a term has not been agreed upon.

Article 7 (Fixed term or unspecified term contracts)

1. A domestic employment contract may be entered into for a fixed term or an unspecified term.
2. The duration of a domestic employment contract entered into for a fixed term, including the respective renewals, cannot exceed a period of two years.
3. A domestic employment contract can only be renewed twice and is considered automatically renewed, if the domestic employee remains in service beyond the set term.
4. A fixed term domestic employment contract is converted into a permanent contract, if the domestic employee remains in service after the date of its term or of the term of its last renewal.
5. A domestic employment contract is entered into for an unspecified term, when the parties have its termination depend on the occurrence of a future and uncertain fact or event.

Article 8 (Modes)

1. A domestic employment contract may be entered into with or without lodging and with or without board.
2. For the purpose of this regulation, a domestic employee is considered housed when in addition to the payment in money, he or she receives a non-monetary compensation, comprising lodging or board and lodging.
3. A domestic employment contract may be entered into full-time or part-time.
4. A domestic employment contract may be entered into for the performance of “work for one or a few days a week”.

Article 9 (Probationary period)

1. A domestic employee may be submitted to a probationary period not exceeding 90 days, after which, if not dispensed with, he or she is considered admitted, with effect from the date of the beginning of the job.
2. The probationary period may be omitted or reduced by the parties, but never extended, provided that the omission or reduction clause is established in writing.
3. During the probationary period, either of the parties may discontinue the contract, immediately, without having to declare just cause and without any right to compensation.
4. The probationary period is valid for the purpose of length of service.

SECTION II

Rights and obligations of the parties

Article 10 (Rights of the domestic employee)

The domestic employee has the following rights:

- a) To receive payment in the agreed way;
- b) To be guaranteed weekly rest periods and paid annual holidays;
- c) To benefit from medical and medicinal aid in the case of accidents at work or occupational illness;
- d) To be treated with propriety and respect;
- e) To register him or herself, with the Compulsory Social Security system under the self-employed workers' regime.

Article 11 (Obligations of the domestic employee)

1. The domestic employee is subject to the following obligations:
 - a) To go to work regularly and punctually;
 - b) To perform the agreed upon work with diligence and honesty;
 - c) To show obedience and respect to the employer, to the members of his/her family and to the people who live or are temporarily in his/her house;

- d) To comply with the measures of hygiene and safety at work laid down by the employer and by the competent authorities;
 - e) To be loyal to the employer and maintain good relations with the other domestic employees and other people, if these exist, so as to avoid hindering the service of each one and disturbing the tranquillity of domestic life;
 - f) To look after the interests of the employer.
2. In the event of imminent danger to people and property, and without prejudice of their physical integrity, the domestic employee should render the services he/she is asked to provide.

Article 12 (Rights of the employer)

The employer has the following rights:

- a) To demand from the domestic employee the execution of the work that has been agreed upon;
- b) To instruct and control how the service is being provided;
- c) To determine the measures of hygiene and safety at work and of the prevention of work accidents and occupational diseases;
- d) To maintain discipline.

Article 13 (Obligations of the employer)

The employer has the following obligations:

- a) To pay punctually the agreed wage;
- b) To treat the domestic employee with propriety and provide the necessary means for the execution of his/her work;
- c) To provide medical aid to the domestic employee for work accidents or occupational diseases and fulfil the respective compensation requirements.

SECTION III

Work discipline

Article 14 (Disciplinary power)

1. The employer has disciplinary power over the domestic employee at his or her service.

2. For the application of any disciplinary penalty the preparation of disciplinary proceedings is not necessary.
3. The application of the disciplinary penalty of dismissal must be done in writing, except in cases in which this is not possible, with an indication of the justifying facts, including:
 - a) The facts practised by the employee that are considered proven;
 - b) The means of the proof used;
 - c) The basis of the decision.
4. Under no circumstances shall corporal punishment or other punishments affecting his/her physical or moral integrity be applied to the domestic employee, for non-compliance with his or her obligations.

Article 15 (Disciplinary offences)

1. Disciplinary offences comprise all culpable behaviour of the domestic employee, which breach his or her work obligations, namely:
 - a) Refusal, omission or neglect in executing the agreed work;
 - b) Absence from the job without authorisation or justified reason;
 - c) Failure to come to work, without valid justification;
 - d) Disobedience to orders given by the employer or other members of the household or similar, regarding work;
 - e) The practice of physical injury, offences, ill treatment, or of other offences against the employer, members of the household and people related to the household;
 - f) Drunkenness, being under the influence of drugs or any habit or behaviour that is not compatible with the normal environment of the household;
 - g) The abusive introduction of outsiders into the residence of the household or similar;
 - h) The waste, larceny or theft of foodstuff, objects or other items belonging to the employer, his or her household or similar, guests or others;
 - i) Abandoning the job.
2. The disobedience to illegal orders or to orders affecting the moral integrity of the domestic employee does not comprise a disciplinary offence.

Article 16 (Abandoning the job)

1. Abandoning the job is the absence of the domestic employee from the job, whenever supported by facts showing the likely intention of not returning.
2. The supposition laid down in the previous paragraph may be disproved by the domestic employee through the presentation of proof of the occurrence of *force majeure* impeding communication of the absence.
3. Abandoning the job corresponds to the rescission of the contract, resulting in the domestic employee's obligation to indemnify the employer, at a value corresponding to 10 days for each year of actual service.

Article 17 (Disciplinary penalties)

1. The employer has disciplinary power over his/her domestic employee, to whom may apply any one of the following disciplinary penalties, according to the gravity of the offence:
 - a) Verbal or written reprimand;
 - b) Dismissal.
2. The application of a disciplinary penalty does not exclude the civil liability of the employee for confirmed harmful acts committed.

SECTION IV

Duration of work

Article 18 (Normal working hours)

1. The effective normal working hours cannot exceed 54 hours per week and 9 hours per day.
2. For the purpose of the previous paragraph, relative to a worker living on the premises, only the hours he or she is as a matter of fact working are considered.

19 (Schedule of working hours)

1. The domestic labour working hours schedule will be agreed upon between the contracting parties, complying with the limits referred to in paragraph 1 of the previous article, and should include meal and rest periods.

2. Meal and rest periods, of a total duration of at least 30 minutes, are considered part of the normal effective working period.
3. The meal and rest periods, referred to in the previous paragraph, do not exempt the domestic employee from his/her surveillance and support functions, which he or she should provide to the household or similar.

**Article 20
(Meal periods)**

The organization of the meal and rest periods should be established by agreement between the parties or should, in its absence, be defined by the employer.

SECTION V

Interruption in the performance of work

**Article 21
(Weekly rest)**

1. The domestic employee is entitled to one day of weekly rest, which shall normally be on Sunday, unless another day has been agreed upon.
2. Whenever the domestic employee performs activities on the day of his or her weekly rest, he/she will be awarded a day off or will receive payment equivalent to that period.

**Article 22
(Right to annual holidays)**

1. The right of the domestic employee to take paid holidays cannot be renounced nor can it be refused.
2. The domestic employee is entitled to paid annual holidays under the following terms:
 - a) 12 days in the first year of service;
 - b) 24 days in the second year of service;
 - c) 30 days for each year of effective service, from the third year onwards.

3. The employer may deduct the unjustified absences from the holiday period, provided that these have not resulted in the application of a disciplinary penalty.
4. Holidays may exceptionally be paid in money, through a written agreement, dated and signed by the two contracting parties, though the domestic employee must take at least 5 workdays off.
5. Domestic employees employed for a fixed term of more than three months but less than one year shall be entitled to holidays of one day for every month of actual service.

Article 23 (Public holidays)

1. Without prejudice to the respective payment, the domestic employee is entitled to the enjoyment of public holidays, under the terms laid down in the general individual employment contract regime.
2. The parties may agree upon the provision of work on a public holiday, provided that the domestic employee is granted a day off or payment equivalent to that period.

Article 24 (Absences)

1. When the domestic employee is absent from the workplace during the normal obligatory working period, this is considered an absence.
2. Absences may be justified or unjustified, under the general terms of the general individual employment contract regime.
3. The domestic employee who is unable to turn up at his or her workplace shall inform the employer immediately, stating the reason of the absence. When the absence is foreseeable, the employer shall be given at least two days prior notice.
4. Unjustified absences, in addition to implying the loss of the respective pay, may determine the application of disciplinary penalties or the discount of the corresponding time from the domestic employee's annual leave.
5. The domestic employee who is absent from his or her workplace, due to a confirmed non-imputable cause does not lose his/her entitlement to the respective pay, namely in the case of illness or accident.

6. Absences of the domestic employee do not lead to the loss of pay in the following conditions:
 - a) 5 days, for his/her marriage or for the death of his/her spouse, father, mother, child, step-child, sibling, grandparent, stepfather or stepmother;
 - b) 3 days, in the event of an illness, confirmed by a medical certificate;
 - c) 60 days, for maternity.
7. Besides the cases referred to in this article, absences shall only be considered justified if declared as such by the employer or if this condition results from the law.

SECTION VI

Remuneration for work

Article 25 (Concept and forms of payment)

1. Remuneration is that to which the domestic employee is entitled in return for his or her work, under the terms of the agreement laid down between the parties in the contract.
2. The remuneration may be paid in cash or in kind, provided that the part in cash is not less than 75% of the overall pay.
3. Payment in kind may either comprise the domestic employee's board and lodging, or lodging only, or board only.
4. The employer is not allowed, in the case of payment in kind, to force the domestic employee to acquire goods or services supplied by him or herself or by a person indicated by him/her.
5. Unless stipulated to the contrary, the obligation to pay the remuneration in cash is due at the end of each month of work.

Article 26 (Modes of remuneration)

1. Remuneration may be fixed on the basis of time units that may be hours, days, weeks or months.

2. The determination of the value of daily payment results from the division of the amount paid by 30, by 15 or by 7, depending on payment being monthly, fortnightly or weekly, respectively.
3. For the purpose of calculating compensation and indemnities laid down in this regulation, the pay value will only be expressed in money.
4. The payment to be made to the domestic employee, corresponding to the holiday period, cannot be less than the pay he/she would receive if being in actual service.
5. In the act of payment the employer may require the domestic employee's confirmation of the receipt of his or her wage by signing a written document.
6. For tax purposes, the employer does not have any responsibility for retention at source of the domestic employee's tax, or for forwarding it to the competent entity.

SECTION VII

Suspension of the work contract

Article 27 (Temporary impediment)

1. When the domestic employee is temporarily unable to work, for reasons not imputable to him/her, namely illness or accident, and the impediment lasts for more than 30 days, the parties' rights, obligations and guarantees, inherent in the actual performance of work, are suspended, without prejudice of the observance of the applicable social security provisions.
2. The time of the suspension of the contract is valid for the purpose of length of service, with the obligations of loyalty and mutual respect remaining in force.
3. The suspension starts even before 30 days have elapsed, as soon as there is certainty that the impediment will last for longer than that period.
4. When the impediment has come to an end, the domestic employee shall, within five days, show up at the workplace, on penalty of abandonment of their job being considered with the resulting termination of the work contract.

5. The provision of this article does not prevent the annulment of the fixed term domestic employment contract, which reaches its term during the suspension period.

SECTION VIII

Termination do employment contract

Article 28

(Ways of terminating the employment contract)

The domestic employment contract may be terminated by:

- a) Agreement of the parties;
- b) Expiry;
- c) Denunciation by the domestic employee, with previous notice;
- d) Rescission by either of the parties, based on just cause;
- e) Dismissal.

Article 29

(Termination of the contract by expiry)

The domestic employment contract expires, with the necessary adaptations, in the cases referred to in Article 125 of the Labour Law.

Article 30

(Rescission of the contract with just cause)

1. Just cause for the rescission of an employment contract shall be considered to be any material fact or circumstance that, considering the special nature of the relation established by the domestic employment contract, renders its existence morally or materially impossible.
2. Where just cause exists, either of the parties may rescind the contract immediately, with the rescinding party providing explicit and unequivocal indication of the underlying facts or circumstances.
3. Just cause for dismissal on the part of the employer shall constitute, among others, the facts and behaviours referred to in Article 15 of these Regulations.
4. The domestic employee may rescind the contract with just cause in the following situations:

- a) The need to perform any legal obligations that are incompatible with the continuation of the work;
 - b) Conduct by the employer, which culpably violates the domestic employee's rights and guarantees laid down in these Regulations or in the domestic employment contract;
 - c) The application of an abusive sanction;
 - d) The change of the employer's residence.
5. The rescission of the contract under the terms of clauses b) and c) of the previous paragraph gives the domestic employee the right to compensation in an amount equal to ten days for each year of actual service.

Article 31

(Denunciation of the contract, with prior notice)

1. The domestic employee may denounce the contract by giving a prior notice of 3 days for each year of service, with a maximum however of thirty days.
2. If the domestic employee does not comply, fully or partially, with the period of prior notice, he or she shall compensate the employer in an amount equal to the remuneration for the period of prior notice not complied with.

Article 32

(Employment certificate)

1. Whenever a domestic labour relation is terminated, irrespective of the reasons, the employer shall give the domestic employee, if so requested, an employment certificate, which shall indicate the identity of the parties and the length of time during which the domestic employee was working for the employer.
2. The certificate shall not contain any other references, unless specifically requested in writing by the domestic employee.
3. If the domestic employee disagrees with the content of the information, he or she may, within thirty days, appeal to the labour mediation and arbitration centres, to the local administrative authorities or to the judicial courts, so that appropriate changes may be made, as applicable.

CHAPTER III

Supervision

SECTION I

Inspection

Article 33 (Monitoring of legality)

1. The supervision of compliance with the provisions of this regulation is undertaken by the General Labour Inspectorate and, where this is not represented, by the local State bodies, namely the local administrative authorities.
2. The intervention of the General Labour Inspectorate and of the local administrative authorities, referred to in the previous paragraph, is subject to the presentation of a verbal or written complaint by the domestic employee.
3. The right to demand in court any payment, pension or compensation, expires after a period of six months, from the date of the rescission of the domestic employment contract.

ANNEX I

Domestic Employment Contract

Name of the employer¹ _____

Holder of BI/DIRE/Passport No. _____ **issued in** _____ **by** _____ **on** ___/___/___ **and valid until** ___/___/___

Residence² _____ **District** _____ **Province** _____

Name of the domestic employee³ _____

Holder of BI/Passport No. _____ **issued in** _____ **on** ___/___/___ **by** _____ **and valid until** ___/___/___

Residence⁴ _____ **District** _____ **Province** _____

INSS number _____

Place of work⁵ _____

Work to be done⁶ _____

Duration⁷ _____ **from⁸** ___/___/___ **until⁹** ___/___/___

Remuneration¹⁰ _____ (.....)

Form of payment¹¹ _____

_____ ¹² **on** _____ **(day)** _____ **(month)** _____ **(year)**

The employer

The employee

¹ Complete name of the employer

² Indication of the place of residence: street, house no., quarter, etc.

³ Complete name of the employee

⁴ Indication of the place of residence: street, house no., quarter, etc.

⁵ Identification of the workplace

⁶ Indication of the kind of work or tasks agreed upon

⁷ Indication if the contract is permanent or a fixed term one

⁸ Only to be filled in for fixed term contracts

⁹ Only to be filled in for fixed term contracts

¹⁰ Indication of the amount of pay in figures and in full

¹¹ Weekly, fortnightly or monthly pay

¹² Indication of place and date of signing the domestic employment contract