

INSS REGULATION 53/2007

INTRODUCTION

Please note that this document does not constitute a translation of the regulation. It is a general summary of certain points. In case of any doubt the original legislation should be referred to. ACIS cannot be held liable for any loss or omission resulting from this document.

SUMMARY

This decree (53/2007 of 03 December) regulates certain aspects of the Social Security Law (4/2007 of 07 February).

The decree comes into force 60 days after publication (i.e 2nd February 2008).

The decree regulates compulsory social security regimes for those in an employment relationship and for the self-employed. (Art 1)

The response to any requests submitted to INSS must be provided within 30 days. Where requests are denied, the response to the request must include the legal basis for this decision.

Where a reply is not given within 30 days, tacit approval of the request is presumed.

If the request was in respect of a payment owed, and where such payment is not made within 10 days of the date on which tacit approval is assumed to have taken place, the applicant has the right of appeal to higher authority within INSS. (Art 2)

This regulation applies to all employees, national or foreign, resident in Mozambique, independent of the sector in which they work. It also applies to those in part time work, those on probation periods and those on paid work placements or apprenticeships.

Employees are also considered to be:

- Administrators and managers; members of the Board of an organization where these have an employment contract; owners, managers or members of the board of one-person companies;
- One person company owners either where these have employees or a fixed place of work;
- Stevedores contracted by a stevedoring company or by an employment agency;
- Professionals working for transporters;
- Workers for state institutions and state-owned enterprises except where covered by the General State Employees Statute;
- Seasonal workers;
- Employees of political parties, unions, associations, social organizations and NGOs.

Coverage of domestic workers, sportspeople, artists and agricultural sector workers will be introduced gradually based on Ministerial Diplomas of the Labour Ministry, as the capacity of INSS to absorb these categories grows. (art 4)

The requirement to enroll in the Mozambican INSS system does not apply to foreigners who can demonstrate that they are enrolled in a social security system in another country, without prejudice to future alterations of legislation in this respect. (art 5)

Compulsory social security for employees provides the following benefits:

- A sickness or hospitalization subsidy;
- A maternity subsidy;
- An invalidity pension;
- An old-age pension;
- A death subsidy, funeral subsidy and survivor's pension. (art 6)

Employers must register with INSS within 15 days of their start of activity or acquisition. Registration is to be done using the form provided. The following documents must be annexed to the form:

- Copy of alvará or proof of licensing;
- Copy of Modelo 6 – proof of registration with the fiscal authorities;
- Copy of the ID documents of the person/s with powers to operate the organization

After registration INSS will provide a contributor registration number. This number must be used on all payments and in all correspondence with INSS. (art 7)

Employees are registered with INSS using the form provided. The form must be accompanied by proof of identity which can be in the form of a BI, cédula or birth certificate. The employee registration form must be validated by the stamp and signature of the employer. The employee must complete the form and the employer is responsible for sending it to INSS within 30 days of the date of start of contract. If the employee does not complete the form the employer must do so using the data available. The updating of information contained in the employee's registration document is the responsibility of the employee. INSS will provide an employee registration number within 30 days of receipt of the form. The enrolment of the employee dates from the first day of the first month in which a contribution was paid on his behalf. (art 8)

The admission of an employee already enrolled in the system does not require the submission of a new form as long as the employee's registration number is included on the payment form submitted monthly. It is the duty of the employee to advise INSS of change of employer. (art 9)

Contributions are payable based on basic salary and any additional bonuses, commissions or payments of this nature which are made regularly, as well as management bonuses. (art 10)

Employers must, by the 10th of the subsequent month, submit a list of employees and their earnings used as a basis for calculation of social security payments. This information is to be submitted on a form approved by INSS. When the 10th falls on a Saturday, Sunday or public holiday, the date for submission falls on the next working day. (art 11)

If a salary list is not submitted INSS may demand payment based on the totals of previously-submitted lists. If such lists are not available payment is calculated based

on the accounts of the employer in question. If the accounts do not provide sufficient information the payment demand is based on the average paid by other employers in the same sector. (art 12)

Payments of INSS are made based on the legally established percentages. Payments are due from the date of start of contract to the date of termination of the same. Payments must be made by 10th of the subsequent month using the approved proof of deposit. The obligation in respect of payment terminates 10 years after the date on which the last payment was due. (art 13)

Articles 14 and 15 deal with internal INSS accounting procedures.

Employers ceasing their activities must inform INSS in writing within 10 days of having ceased. Non-communication will lead to a debt being accrued in the name of the employer until such time as the communication is made. (art 16)

Sickness pay is available for all aspects of sickness which lead to temporary incapacity of the employee, except those attributable to work-related sickness or sickness resulting from intentional acts by the employee. Temporary incapacity includes time away from work to accompany a minor for medical treatment when such treatment requires hospital admission or during periods of convalescence from such treatment where the doctor responsible acknowledges the need for special care to be provided. (art 17 & 19)

In case of sickness the employee has the right to a sickness subsidy and a hospitalization subsidy where relevant. (art 18)

In order to qualify for sickness subsidy the employee must fulfill the following criteria: six months worth of payments made within the last twelve months, at least one of which must have been made within two months of the start of the sickness; Application for other types of subsidy which overlap with sickness subsidy, and also re-incidence of sickness within a short period are also dealt with in this article. (art 20)

Subsidy is not payable for the first 3 days of absence in the case of sickness. The first day of absence is not counted if the employee received salary for that day. The waiting period does not apply in cases of hospitalization, contagious illness attested to by a doctor and medically certified absence in pregnancy. The first day of absence in the case of sickness is the first day confirmed as such by a doctor. (art 21)

The daily sickness subsidy corresponds to 65% of the average salary of the affected worker. This article includes the basis for calculation of average salary. (art 22)

Sickness subsidy is payable up to a maximum of 365 continuous days. If illness continues after this time the worker passes onto invalidity pension, if they have completed the contributions required to qualify. The opinion of a medical board is required in such cases. (art 23)

Impediment from working due to sickness is proven by presentation of the Health Service's approved form duly signed by a doctor or medical technician, and

authorized by the health post responsible for the area in which the sick employee resides. The form includes details of the number of days of absence to date and the likely number of days for which the worker will be unable to work. The form is completed in duplicate with one copy being sent to INSS and one copy for the employee. INSS will pass its copy to the employer within 5 working days. In case of hospitalization a different form with similar information is used and processed in the same manner. (art 24)

Hospitalization subsidy is payable for non-work related accidents or when the worker accompanies a hospitalized minor. The payment is made directly to the hospital based on the daily rates in force within the health service. Payment is made after presentation to INSS of the relevant invoice from the hospital. Minors are considered to be those under the age of 15 except in special cases authorized by a doctor. (art 25 & 26)

Maternity subsidy is payable for 60 days and may be claimed up to 20 days before the due date. The subsidy is payable monthly. This article provides further details of calculation of this subsidy. (art 27)

Old age pension is payable at age 55 for women and 60 for men as long as the following have been complied with: have been enrolled in the system for at least 20 years prior to the date of eligibility for pension; have completed 10 years (120 months) of contributions. In addition irrespective of age the employee that has been enrolled for 30 years and has 25 years (300 months) of contributions is eligible for an old-age pension. Old-age pensions are calculated based on the formula provided. (art 28, 29 & 30)

Eligibility for old-age pension signifies the end of the work contract. INSS is responsible for communicating to the employee the date from which the pension will start. (art 31)

Eligibility for invalidity pension is based on medical certification that the employee has suffered mental or physical injury, illness or accident which renders his unable to work. Employees certified as invalids before reaching 55 for women and 60 for men are eligible for invalidity pension having fulfilled the following criteria: been enrolled for at least 5 years before the date of invalidity; paid 2.5 years (30 months) of contributions within the preceding five years; reached the end of the applicable period for sickness benefit. Invalidity pension is automatically commuted to old-age pension when the relevant age is reached. Those benefiting from invalidity pension must be evaluated by a medical board every six months. The beneficiary can appeal the decision of the medical board within 8 days of that decision being given. Invalidity pension is calculated based on the criteria provided and must be applied for using the relevant form. (arts 32 - 36)

If the employee or pension beneficiary dies their heirs are eligible for various benefits. These are payable as a once-off payment as long as the employee has been contributing to INSS for 3 years and has made six months worth of payments in the 12 months preceding his death. Payments are calculated based on the criteria provided. Payments are made to the heirs on the basis of the criteria provided. Funeral subsidy is payable if the employee has been enrolled for at least 3 months and has 3

months worth of contributions paid. Eligibility for funeral subsidy is based on the criteria provided as is eligibility for a survivor's pension. (art 37 – 47)

Articles 48 – 52 deal with voluntary contributions by those who are no longer employed.

Chapter IV deals with contributions by the self-employed.

Chapter V deals with making claims for invalidity, old age and death. Claims in these cases must be made by the individual or their legal representative according to the norms established in this regulation.

Chapter VI deals with the powers attributed to INSS to recover payments and ensure enforcement of the regulation.

INSS has the power to submit non-payments to the relevant court to recover the amounts outstanding. An appeal in such cases on the grounds of wrongly-calculated debt suspends the process but in cases where the debt is found to be correct the debtor pays 0.5% of the value owed per month during which the suspension was in place. (art 90 - 93)

The following are considered non-compliance with the regulation:

- Non-submission of proof of identity of the employing entity for registration purposes;
- Late submission of proof of identity of the employing entity for registration purposes;
- Non-submission by the employer of documents for the registration of each employee;
- Late submission by the employer of documents for the registration of each employee;
- Non-submission or late submission of documents requiring changes in the original registration of the employer or employee;
- Non-submission or late submission of monthly lists of employees and payments made to them;
- Omission of the name of an employee or incorrect statement in respect of the declaration of the amount paid to employees;
- Non-payment or late payment of contributions;
- False declarations by either the employer or employee.

Non compliance is subject to fines of between 1-5 minimum wages depending on the infraction.

Non-payment is subject to interest payments of 1% of the total value owed for each month or part thereof. Interest must be paid within 5 years. In cases where an appeal has gone to court interest payments continue to accrue. In cases of demonstrable force majeure employers may appeal to INSS to reduce interest payments.

Non-payment to INSS of amounts deducted from employees, and the refusal to provide documents demanded by INSS are punishable as a crime.

Defrauding the system is punishable as a crime. (art 94 - 100)

Compliance with social security obligations is inspected by the Labour Inspectorate. (art 101)

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Chapters VII, VIII, IX and X deal with the management of INSS, and additional supplementary issues.