

Main points of the Brazilian Labor Reform

Negotiation with the Union prevailing over the Law

Companies can negotiate with the Union of employees several matters, such as reduction of salary with job stability, working hours, remuneration based on productivity, among others. Health and safety matters and the rights established by Federal Constitution cannot be freely negotiated. This provision aims at creating a safer environment for collective negotiations, which will prevail over any possible law on the same matter.

Working hours

- ✓ Commute hours are extinguished, i.e, the time from home to work by transportation granted by the employer due to the lack of public transportation will not be considered part of working hours as it is currently.
- ✓ Bank of hours limited to 6 months can be implemented through individual agreement rather than through collective bargaining agreements. If the offsetting of hours occurs within the month, it is possible to be a non-written agreement.

Telecommuting – Home Office

The terms and conditions of Telecommuting must be established in the labor agreement, including the regulation about equipment, expenses, health and safety prevention measures. Labor Reform classifies a Telecommuting employee as not entitled to control of working hours and overtime payment.

Intermittent work

Employers may hire employees to work for specific hours, days or months.

Vacation

Currently, as a general rule, vacation must be taken by employees in only one period. According to the Labor Reform, employees will remain entitled to annual 30 day paid vacation, however, the

vacation period can be taken in up to 3 periods. One of the period must not be shorter than 14 days and the others cannot be shorter than 5 days.

Premium

Premiums, even if paid on habitual basis, will not be part of the employees' salary, thus not subject to labor and social security charges. Premiums are any discretionary payment made to an employee or group of employees due to outstanding performance.

Equal pay for equal work

Labor Reform establishes several changes in the rules related to equal pay for equal work. As an example, to be entitled to the same pay, the compared employees should work in the same branch. Currently, employees working in the same city, even in different branches, are entitled to request equal pay for equal work.

Pregnant employees

Pregnant employees must not work in hazardous conditions if her doctor states so. If there is no way for the employee to perform the activities in a non-hazardous workplace, she should be on maternity leave.

Employees' representative

Companies with more than 200 employees must have a committee composed of representatives elected by employees, as follows:

- ✓ more than 200 and up to 3000 employees: 3 representatives.
- ✓ more than 3000 and up to 5000 employees: 5 representatives.
- ✓ more than 5000 employees: 7 representatives.

The mandate will be for 1 year and the representative will have job stability as of the candidacy until 1 year after the end of the mandate.

Termination of employment relationship

- ✓ Termination by mutual agreement: this is a new type of termination and the mandatory severance is reduced in comparison to a termination without cause. The prior notice and indemnification based on the severance fund known as FGTS are reduced by half and the employee will be entitled to withdraw 80% of the FGTS balance.
- ✓ Mandatory severance must be paid in 10 days and there will no longer be the need to validate the termination by the Union.
- ✓ Mass dismissal will not require prior negotiation with the Union as has been demanded by courts.
- ✓ PDV – Voluntary dismissal plan implemented under Union negotiation can establish a full release of the relationship.

Alternatives for resolution of conflicts – arbitration, validation of private release agreements by courts, negotiation and annual release

Arbitration and validation of out of court settlements were not accepted by labor courts, as employees were not allowed to waive labor rights.

As of the effectiveness of the Labor Reform, employees receiving a monthly salary higher than approximately USD 3,300 and holding a university degree can agree to arbitration and may freely negotiate with the employer their labor conditions, without the assistance of the Union. In addition, courts can validate private settlements, which will definitely close any further judicial discussions.

It will be possible to obtain a release of labor obligations on an annual basis from the employee with the assistance of the Union.

Union Contribution

Employees and employers in Brazil are mandatorily represented by a Union and they must pay a mandatory annual Union contribution. Labor Reform establishes that the annual Union contribution is optional. Therefore, the Union contribution of employees which is equivalent to 1 day of salary in March every year will depend on a prior and expressed authorization from the employee.

Outsourcing

Despite a law enacted in March, 2017 established the possibility to outsource the core business, there have been different interpretations per our Courts and scholars.

Labor Reform closes the discussion since it expressly allows outsourcing of core business.

In addition, it establishes a quarantine of 18 months for engaging outsourcing companies created by former employees or hiring of ex-employees through outsourcing companies.

Moral damage indemnification

Labor Reform establishes that moral damage indemnification should be classified based on the seriousness of the damage: light, medium, serious and extremely serious. The amount of the indemnification will be limited to 3, 5, 20 or 50 times the last monthly salary, respectively.

Attorney fees

Currently, the parties in a labor claim are not required to pay attorney fees to the other party. Labor Reform establishes that the losing party should pay attorney fees to the other party in an amount from 5% to 15% of the condemnation or economic benefit.

Certain aspects of the new law, such as intermittent work, work of pregnant employees in hazardous conditions and the parameters for moral damage indemnification may still be changed in the future by specific regulation.