

Brazilian Labor Reform - Key Points

On July 13, 2017, President Michel Temer approved Law No. 13,467, which amends the Brazilian Labor Code (*Consolidação das Leis do Trabalho* - CLT), as well as the laws regulating temporary work (Law No. 6,019, of 1.3.74), the Severance Guarantee Fund (Law No. 8,036, of 5.11.90), and the organization of the Brazilian social security system (Law No. 8,212, of 7.24.91). The principal purpose of the so called "labor reform" is to update existing legislation to bring it in line with current labor relationships.

Rights ensured to workers by the Brazilian Constitution, such as the minimum wage, Christmas bonus, remunerated weekly day off and annual vacation have been preserved.

Among the amendments, it is worth highlighting the regulation of remote work, the creation of the so-called intermittent labor, the possibility of fractioning the statutory annual 30-day paid vacations into three separate periods, the change in definition of "economic group", the end of the compulsory union dues and the prevalence of negotiated terms over the law.

There are also relevant changes in labor litigation aspects, including the possibility of arbitration as a means of conflict resolution between the employer and employees with higher salaries, limitations on the applicability of the exemption of procedural costs and attorneys' fees to certain parties in labor litigation, attorneys' fees awards and fines to bad faith litigators.

The amendments will become effective in November 2017. It is expected that by then the President will propose additional modifications by means of provisional measures. Below is a summary of the most relevant points of the reform.

Collective negotiations

Law No. 13.467/17 grants more autonomy to employees in negotiations with employers and more importance to the union-negotiated collective conventions and bargaining agreements, which will prevail over the law when regulating working hours, work breaks, careers and salaries plans, incentive awards and profit sharing, among other matters.

Collective bargaining agreements will prevail over collective conventions¹ and both will be effective for the periods set forth therein, up to the limit of two years. The inclusion of rights set forth in collective bargaining agreements and conventions into employment contracts will be forbidden.

In the examination of collective conventions and collective bargaining agreements, Brazilian Labor Courts will be subject to the principle of minimum intervention, i.e. will solely be entitled to verify the compliance with the essential labor rights.

Non-compulsory union dues

The payment of labor union dues by the employees, currently compulsory and deducted from salaries, shall become optional.

Economic group

Currently, the fact that a same given individual or entity holds relevant equity interests in different companies suffices for such companies to be deemed parts of an economic group, which entails joint and several liability for labor purposes. Under the reform, in order

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1. Collective bargaining agreements are instruments executed between the employers and the unions representing their employees' interests. Collective conventions are executed between the unions that represent the employers' interests and those that represent the employees' interests.

to characterize an economic group, there must be proof that different companies are united by common interests and operate jointly.

Liability of the departing shareholder

Departing shareholders shall be secondarily liable for the company's labor obligations regarding the period of their shareholding, and only if the applicable labor lawsuit is filed within two years after disposing of the shares. The exiting partner will be jointly liable with other partners of the company only when there is proven fraud in the corporate documents regarding such partner's departure.

Remote work

Law No. 13,467/17 institutes remote work, or home office, defined as work, other than typical outdoor work, performed predominantly out of the premises of the employer, with the use of technologies and communication. Employees hired under this modality, which must be specifically provided for in the employment contract, will not be subject to the control of working hours.

Intermittent work

The labor reform also institutes the intermittent employment contract, whereby the provision of services, although subordinated, is not continuous, such that the employee will be able to alternate between periods of activity and inactivity in hours, days or months.

Working hours

Periods spent by the employee in the workplace, but in personal activities, such as religious practices, breaks, study, leisure, changing of clothes or uniform (as long as not mandatory) will not be considered working hours. The same will apply as a rule to time spent by the employee to get to the workplace, even if the employer supplies transportation.

The minimum break of one hour for meals and rest can be altered by collective negotiation, provided that a minimum break of 30 minutes is observed. The payment for failure to comply with this minimum break, in whole or in part, will be treated as an indemnification to the employee and will not be considered in the calculation basis for other labor rights.

The working hours' offsetting system named "bank of hours" (*banco de horas*), which currently depends on collective negotiations, will be negotiated in individual employment agreements, provided that the offsetting of working hours occurs within the maximum period of six months.

Labor Proceedings

Law No. 13,467/17 establishes the possibility of both plaintiff and defendant being subject to portions of the burden of defeat in labor litigation, when claims are partially granted, including attorneys' fees awards between 5% and 15% of liquidated claims (the economic benefit obtained as a result of the claim; if it is not possible to measure it, over the value initially attributed by the plaintiff to the controversy).

If the defeated party, by reason of their economic needs, benefits exemptions of procedural costs and attorneys' fees awards, and does not obtain in the claim payments sufficient to bear the applicable expenses, the burden of defeat shall be suspended and may be charged in up to two years if the party's economic situation changes.

The new Brazilian Labor Code shall also provide that the bad faith litigator in a labor proceeding will be subject to a fine between 1% and 10% over the value of the matter in controversy and will entail the duty to indemnify the other party for losses stemming from such bad faith.

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Arbitration

With the labor reform, arbitration clauses in individual employment contracts are permitted for employees whose salary exceeds a certain threshold that currently corresponds to R\$11,063.00.

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