

ARBITRATION FOR INDIVIDUAL LABOR DISPUTES – STILL A CONTROVERSIAL ISSUE

Until recently Brazilian law did not expressly provide for alternative methods of dispute resolution - including arbitration - to settle individual employment disputes. This made labor courts historically reject the validity of arbitration clauses in such disputes.

In addition, courts repeatedly held that labor rights were inalienable and not subject to waiver, which they did based on notions such as the hypo-sufficiency of employees, the imbalance of power between them and employers to negotiate working conditions, and on the fact that the Federal Constitution only provides for the possibility of arbitration to settle collective labor disputes.

In 2017 a new Law instituting the so-called “Labor Reform” came into effect. The initial taking of stock of this legislation seems to warrant the opinion that the traditional stance of labor courts in relation to arbitration and labor disputes has now come to an end.

The Labor Reform allowed for the inclusion of arbitration clauses in employment contracts of individuals whose remuneration exceeds twice the ceiling of the Enviair benefits of the General Social Security Regime (BRL11,678.00), as long as the relevant clause was included per the employee’s initiative or upon his or her express agreement.

Also, the Law did not establish any restrictions in relation to the second mechanism under which arbitration may be agreed upon – namely, arbitration agreements, negotiated when the conflict has already arisen.

We are of the opinion that after termination of the relevant relationship employment rights are subject to transaction and can be freely negotiated; and that in this context disputes between parties can be submitted to arbitration, by means of arbitration agreements, regardless of the salary of the employee. Granted, there is a great chance that Labor Courts do not hold this understanding and the matter is bound to remain controversial until solid case law is reached.

The new legal framework has led to the creation in the past two years of numerous specialized chambers in labor courts to deal with employment issues, with their own rules and specificities, which may settle conflicts confidentially and more quickly, through the intervention of individuals trusted by the parties.

In all, it is fair to expect that a new culture on dispute resolutions may arise so as to reduce Court litigation in one of the countries that features most labor lawsuits in the world.

Author:

[Silvia Fidalgo Lira](mailto:slira@levysalomao.com.br)
slira@levysalomao.com.br