

EMPLOYMENT LAW: ADDITIONAL CHANGES AIMED AT REDUCING COSTS AND RED TAPE

A new Provisional Measure (MP 905/2019) sent to Congress in November implemented significant changes in regard to employment legislation and costs. It reduces payroll charges for young workers and simplify payments made under profit sharing plans and premiums as well as introduce changes to minimize taxation and bureaucracy.

A highly protective employment legislation and a complex and expensive tax and social security system contribute to the (often cited in this LS Brazil Outlook) Brazil Cost and discourage investments in the country. Statutory contributions to the social security and to the Severance Indemnity Fund (FGTS) and employment-related financial obligations such as Christmas bonus and vacation pay amount to up to 70% of the amount of compensation paid to employees.

MP 905 creates the so-called Green and Yellow Employment Contract (a reference to the colors of Brazil's national flag), with reduced payroll charges for workers aged between 18 and 29 who had not been employed before. These contracts will have a maximum term of 24 months; employers who resort to them will be exempt from social security contributions and allowances and pay contributions to FGTS at a rate of 2%, instead of the general rate of 8%.

MP 905 also address payments under profit sharing plans and premiums (extraordinary payments), which historically spark off disputes in Brazil, with tax authorities and tax courts treating them as compensation proper (with the associated charges and contributions). Now, the participation of labor unions in the negotiation of profit-sharing plans is no longer mandatory when the plan is instituted by a committee elected by the parties and the rules negotiated by the parties shall prevail. The limit of two payments per year under profit sharing plans and of three months between payments were kept. But the consequences of non-compliance have changed and only the amounts paid above the two limits mentioned above will be considered salary for the computation of tax and employment charges.

Under MP 905 the terms and conditions for the payment of premiums may be set forth on a written document between the employer and the employee or group of employees, or by a collective agreement. Brazilian employment law sets forth that, in order to be exempt from employment and social security charges, premiums must be granted at the employer's discretion and, until now, tax authorities systematically held the view that the existence of a prior agreement would invalidate the nature of the premium, as it would indicate that employer's discretion was absent.

In addition, new rules set forth that premiums must (i) be paid solely to employees (they could previously be paid to executive officers as well), (ii) result from outstanding performance, at the discretion of the employer, provided that ordinary performance is previously defined by the employer, and (iii) not be paid more than three times a year, or more than once per quarter.

MP 905 also authorizes work on Sundays and public holidays, except in case of retail activities, whose rules remain subject to local legislation. Previously, the possibility of working on these days was subject to prior permission from the labor unit of the Ministry of Economy (former Ministry of Employment). Other changes aiming to minimize taxation or bureaucracy refer to the electronic storage of documents, meal vouchers, working hours for employees in banks, labor inspections and imposition of administrative fines related to labor laws and regulations.

Brazilian National Congress has already proposed a significant number of amendments to MP 905 and thus it is still uncertain if (and to what extent) its current drafting will be confirmed. However, MP 905 is the latest important initiative taken by the Brazilian administration aimed at reducing bureaucracy and costs associated with payroll expenses.

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