On November 11, 2017, major reforms to Brazil’s labor laws took effect (Law No. 13,467/2017). Against the backdrop of high unemployment rates, Brazilian legislators passed a set of modernized laws that update the Consolidation of Labor Laws (Consolidação das Leis do Trabalho, in Portuguese), the governing framework for labor regulation in Brazil that has been in effect since shortly after World War II, and focused on protecting unskilled rural workers moving to urban areas.

The main purpose (from a legal perspective) was to establish that mutually agreed arrangements between an employer and employee in many circumstances prevail over general labor laws. In addition, Brazilian lawmakers hoped that modern labor laws would bring informal contracts out of the shadows and better protect employers and employees.

From an economic standpoint, Brazil’s new labor reform was designed to incentivize employers to create new jobs and increase productivity by decreasing the burden of a restrictive labor regime. The labor reform reflects the federal government’s public policy of fostering a more business-friendly environment in Brazil. In the first quarter of 2017, modern outsourcing laws in Brazil took effect and allowed employers and employees more freedom to determine the contours of the work relationship. Brazil’s new labor outsourcing rules paved the way for this general labor reform.

Under the old labor regime, Brazilian labor courts were known for favoring employees’ interests, and compliance with complicated labor laws imposed heavy costs on employers. While these new labor laws are intended to modernize the current labor environment, employers will need to take steps to implement these reforms, and most importantly, the new labor law will need to be tested in Brazilian courts.

Brazilian lawmakers hoped that modern labor laws would bring informal contracts out of the shadows and better protect employers and employees.

Summary of Brazil’s Labor Reform
Below is a summary of key aspects of this recent Brazilian labor reform:

- **Corporate liability.** Companies in the same corporate group are jointly liable only if evidence of pooled operations/common interest exists.

- **Liability for labor debts.** As a general rule, there is no joint and several liability for a selling company and a successor company in an M&A transaction. The successor company bears all the labor liabilities of the target company.

- **Secondary liability for former company and former shareholders.** Former shareholders of a company sold in an M&A transaction are secondarily liable (i.e., after the company and its current shareholders) for labor claims filed within two years of the date the target company or related assets are sold.

- **Allowances.** Provided certain requirements are met, bonuses, commissions, allowances, and travel benefits are not part of an employee’s compensation package for labor and payroll tax and social security purposes. These bonuses can be modified (or terminated) at any time and do not become an acquired right of the employee.

- **Negotiation leeway for senior employees.** An employee with a university degree and earning a monthly wage of at least approximately US$3,500 can negotiate most of the terms of his or her
TWO KEY TAKEAWAYS

1. From a legal perspective, the reform’s intent is that mutually agreed arrangements between an employer and employee often will take precedence over general labor laws.

2. From an economic perspective, the reform should incentivize employers to create new jobs and increase productivity by decreasing the burden of a restrictive labor regime.

CONTACTS

S. Wade Angus
New York/São Paulo

Artur L. Badra
São Paulo

Daniel D’Agostini in the São Paulo Office and Isabel Junqueira in the New York Office assisted in the preparation of this Commentary.

Brazilian labor counsel Eduardo Junqueira O. Martins of GT Lawyers coauthored this Commentary.

YOU MIGHT BE INTERESTED IN:  Go To All Recommendations >>

Proposed UK Corporate Governance Reforms
Target Executive Pay Justification, Employee Engagement

Are Employers Obligated to Maintain a Daily Register of Working Hours in Spain?