

Brazilian Labor Reform: Reshaping the Employer–Employee Relationship

IN SHORT

The Situation: High unemployment rates, combined with an outdated Brazilian protectionist labor regime that imposed high costs on employers, created the opportunity for a new approach to labor regulation.

The Result: Brazil recently passed a new labor law modernizing Brazil's outdated existing labor regime.

Looking Ahead: Employers need to implement Brazil's new labor law, and these reforms will need to be tested in Brazilian courts.

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.



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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

employment agreement and can consent to an arbitration clause to resolve disputes.

- **Home office.** Employment agreements can include provisions allowing employees to work remotely. The agreement should set forth the party responsible for providing the necessary equipment and infrastructure for remote employment and payment of underlying expenses.
- **Union tax.** Payment of the union tax—a Brazilian federal tax—is no longer mandatory.
- **Termination by mutual consent.** In the event of termination by mutual consent, an employee is entitled to half of the statutory severance payment and 80 percent of the employee's federal severance fund savings (*FGTS*). Termination of employment no longer needs to be ratified (homologated) by the applicable union or the Ministry of Labor.
- **Defense against labor claims.** A written release of claims from an employee must be recognized by Brazilian labor courts, and employers can use the written release as a valid defense against frivolous labor claims. Former employees who file frivolous labor lawsuits are liable for a penalty of up to 10 percent of the claimed value.
- **Court ratification of settlement agreements.** An employer can enter into an out-of-court settlement agreement with an employee and file a motion requesting a Brazilian court to ratify its terms. An employer may seek a full and general release against any employment-related claims without facing actual labor litigation.
- **Large-scale termination.** Mass layoffs or large-scale terminations (*demissão coletiva*) no longer require bargaining with the applicable union prior to implementing such terminations.
- **Severance pay.** Statutory severance is reduced by half in cases of termination by mutual consent.
- **Collective bargaining.** Collective bargaining agreements prevail, in certain circumstances, over labor laws, including in areas such as working hours, time banking, breaks, and vacation. An employer-specific collective bargaining agreement (*acordo coletivo de trabalho*) prevails over a general industry-wide collective bargaining agreement (*convenção coletiva de trabalho*).
- **Part-time employment (*jornada intermitente*).** The new Brazilian labor law also enables an employer to retain employees alternating between periods of activity and inactivity and paid on an hourly basis.
- **Employees' committee.** The new Brazilian labor law makes employees' committees mandatory for companies with more than 200 employees.

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.

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