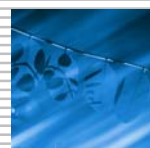


BRAZIL: LABOR RELATIONS





Brazil: Labor Relations

Last update: July, 2007

The basic principles concerning labor relations in Brazil are contained in the Labor Code enacted on May 1, 1943. Since then, however, scattered statutes have been passed covering wage increases, social security and pension funds, strikes, health and safety standards, and protection of certain specific classes of workers. The Federal Constitution of 1988 has also established certain rights for urban and rural workers which overruled some of those set forth by the Labor Code.

1. Definition of Employee

An employee is defined in the Labor Code as an individual who renders services to an employer on a permanent basis, under its direction and for a salary.

Subordination is essential in an employment relationship. According to such principle, directors and officers of a corporation generally are not employees.

Companies belonging to a group of legal entities under the same control, direction or management are jointly liable for the obligations of any company belonging to such group with respect to the employment relationship.

2. Labor Agreements

Individual labor agreements may be set forth in writing or may be implied from the relationship between an individual and the company to which he or she renders services. Foreign employees transferred to Brazil must execute a labor agreement and submit it to the Ministries of Labor and Social Security.

Employers and employees may freely negotiate labor agreements, provided, however, that the provisions of the law, the decisions of the competent authorities and the terms and conditions of the relevant collective bargaining labor agreement, if any, must always be observed.

Collective bargaining labor agreements are those executed between the employers' association and employees union, or between the employees' union and a specific company, for purposes of establishing general and normative rules which govern the relationship of a given category of employers and employees. Collective bargaining labor agreements are not compulsory but, once they are entered into, their terms and conditions prevail over individual contracts.

3. Compensation and the Minimum Wage

Compensation comprises not only the employee's fixed salary, but also amounts for any commissions, bonuses (Christmas or otherwise), fringe benefits, such as personal or



family benefits and living expenses. Compensation may not be reduced, except by means of a collective bargaining labor agreement.

Compensation, with the exception of commissions, must be paid at least monthly. Employees are entitled to receive a Christmas bonus corresponding to one monthly salary per year. Half of the Christmas bonus must be paid by November 30th, and the other half on or before December 20th.

Compensation is to be paid in Brazilian currency. Part, however, may be paid in kind, e.g. when the employer is responsible for providing employees with housing, food and clothing.

Under the Federal Constitution of 1988, workers are guaranteed a share in the profits or results of the employer's activities, irrespective of compensation. Although profit/result sharing rules are extremely flexible and do not establish any kind of limit, payments under the program may not be made more than twice a year. Profit/result sharing payments shall not be computed as part of the workers' compensation for calculation of the Christmas bonus, vacations, deposits into the Severance Pay Fund, etc.

Workers nationwide are guaranteed a minimum wage established by law equivalent to approximately US\$ 190.00.

Collective bargaining labor agreements may establish a so-called "professional salary", which is the minimum wage for a specific class of workers. Any professional salary shall always be higher than the minimum wage.

4. Child Labor

According to the Federal Constitution, children under sixteen (16) years of age are prohibited from working other than as apprentices.

Employees under eighteen (18) years of age are prohibited from working overtime, at night and under hazardous or risky conditions. Student employees under eighteen (18) years are granted the right to coordinate their vacations with school vacations.

5. Salary Increases

Except for increases based on negotiations between employers and employees (whether on an individual basis or through annual negotiations of collective bargaining agreements), no other adjustment in the monthly base salary is required.

6. Working Hours

The regular working period may not exceed eight (8) hours per day and forty-four (44) hours per week except where, as per a collective bargaining agreement, additional hours worked on one day are offset by a reduction in those worked on another day,



provided that the total work hours do not exceed ten hours per day. If no breaks are permitted, the working period may not exceed six (6) hours, unless otherwise established by a collective bargaining labor agreement. Employees are also entitled to a weekly rest period of twenty-four (24) hours which is generally taken on Sundays. Compensation for overtime work must be at least fifty percent (50%) greater than the compensation for normal work.

7. Vacations and Leaves of Absence

After each 12-month working period, an employee is entitled to a thirty (30) day vacation, which must be taken within the subsequent period of twelve (12) months. In addition, the employee is entitled to receive a vacation bonus equivalent to one-third of his or her compensation.

Maternity leave is granted for a period of one-hundred and twenty (120) days. During maternity leave, the salary is paid by the employer which, in turn, is reimbursed by the Social Security Agency.

A paternity leave of five (5) days is provided for by the Federal Constitution.

8. Term of Individual Labor Agreements

The term of an employment contract may be for an indefinite or fixed term, the latter permitted only in specific circumstances. The term of an employment contract will be considered indefinite in any of the following cases: (i) the contract expressly states that the term is indefinite; (ii) the contract does not stipulate a term; (iii) a contract for a fixed term is implicitly or expressly renewed more than once; and (iv) an existing contract for a fixed term is terminated and within six months as of such termination, another contract for a fixed term is entered into, with the same employee, except where the termination of the fixed term was connected to the execution of specialized services or occurrence of certain events.

In comparison to employment contracts for an indefinite term, enhanced flexibility and reduced benefit contributions and severance payments are the primary advantages of fixed term contracts. An employment contract for a fixed term is permitted: (i) during an initial 90 day trial employment period, the continuation of which will trigger its transformation into a contract for an indefinite term; and (ii) for a maximum two year term where: (a) the nature of the object services, including their transitional nature, justifies a pre-set term; or (b) the object services are related to business activities of a transitional nature.

9. Termination of Individual Labor Agreements

Individual agreements may be terminated upon expiration of their fixed term, if any, or otherwise by notice from either the employer or the employee.



In the event of termination, the employee is entitled to receive (a) the balance of his or her pay, (b) the corresponding payment for vacations not yet taken, and (c) a proportional amount of the Christmas bonus equivalent to the number of months he or she has worked during the calendar year.

In the event fixed-term agreements are terminated without cause, the terminating party must pay damages in the amount of fifty percent (50%) of the compensation established for the remaining term of the agreement. In the case of contracts with an indefinite term, the terminating party must give prior notice of at least thirty (30) days.

The employee who registers as a candidate for a position of union leader or representative may not be dismissed as of the date of said registration until one year after termination of the term of office, even if elected as alternate, unless the employee commits a serious fault as defined by law. Other employees who have attained a temporary employment stability set forth either by law or by collective bargaining agreements, such as expectant mothers and employees that have been away from work due to work accident, may not be dismissed as well.

10. Employees with Physical Disabilities

Brazilian companies with one hundred or more employees are required to hire handicapped workers. These workers, which may or may not have been trained in special programs conducted by the Social Security Agency (INSS), must account for two percent (2%) to five percent (5%) of the total number of job positions in the company.

11. Transportation Vouchers

Workers are entitled to transportation vouchers for commuting between home and the workplace using the public transportation system. Vouchers are not considered compensation, and the amount disbursed by the employer is deductible for income tax purposes.

12. Unions and Strikes

The law does not require State authorization for a trade union to be founded, except for registration with the competent agency. The Government is prevented from interfering or intervening in trade union organization.

No more than one trade union representing a particular professional or economic category in the same territorial base may be created. This territorial base is to be defined by the interested employees or employers and must cover, at least, a municipality.

The right to strike is constitutionally guaranteed, and it is incumbent upon the workers to decide on the advisability of exercising such right as well as the interests to be defended thereby.



Strikes are not permitted in essential activities (water treatment and supply, electric power production and distribution, fuel and gas production and distribution and public transportation, among others).

Strikes are deemed abusive if (a) the period established by law for notices are not observed; (b) they jeopardize by violence or intimidation the free exercise of the right to work of those who have not joined the strike; (c) they result in violence or intimidation or cause damages to the property of the employer or others; (d) they result in disobedience to a legitimate order of an authority; (e) they attract persons foreign to the professional category; and (f) they result in undue occupation of work premises, jeopardize their operation or the access of the employer or of the workers who have not joined the strike.

13. Social Security and Pension Funds

Employers and employees must make compulsory contributions to the Federal Social Security Agency, which is in charge of managing a system designed to protect the employee in case of illness and retirement.

Individual employee contributions range from seven point sixty five (7.65) to eleven (11) percent of the salary, considering the maximum base to calculate the contribution of approximately US\$1,450.00.

Employer contributions average twenty-seven percent (27%) of employee's overall salary. Contributions may be higher than this average if the employees are subject to health hazardous working conditions. Also, all companies must withhold social security contributions of twenty percent (20%) over the total compensation paid to corporate directors and independent contractors.

14. Time of Service Guaranteed Fund (FGTS)

Employers must deposit, on a monthly basis, eight percent (8%) of each employee's salary on his or her behalf in a Fund administered by a federal financial institution. The deposited funds may only be withdrawn in events of dismissal, retirement, purchase of real estate and death.

For dismissals without cause, employers are required to pay employees an amount of forty percent (40%) of the balance on deposit in such Fund¹.

The amounts deposited are subject to monthly monetary adjustment equal to that of savings accounts and bear interest at a rate that may vary from three percent (3%) up to six percent (6%) per year, depending on the employment term with the same employer.

¹ Currently, an additional deposit of ten percent (10%) must also be made by the employer, although the corresponding amounts are not paid to the employee who has been dismissed.



15. Program of Social Integration (PIS)

PIS is a system for the participation of employees in the results of the employer's activities. Such participation, rather than being established on the basis of the relationship between a specific company and its employees, is based on compulsory contributions from employers from all over the country and is to be used to fund the unemployment insurance program and a bonus distributed to employees who receive monthly compensation of up to two (2) minimum salaries.

16. Health and Work Safety Matters

16.1 Health and Safety Programs

Companies are required to create the following programs, among others:

(i) Occupational Health and Medical Control Program (PCMSO) / Medical Records

This program includes the obligation to submit employees to a medical examination prior to admission, as well as periodically and upon dismissal. The medical examination carried out prior to admission is to discover if any health problem would prevent the individual from performing his or her duties. The periodical examinations determine if any professional diseases associated with the employee's work have appeared, or if his or her general health condition has deteriorated. The medical examination upon dismissal is intended to determine the existence of any health disease, or even pregnancy, which would restrain the right of the employer to dismiss such employee.

(ii) Environmental Risk Prevention Program (PPRA)

This program is designed to protect the employees' health and integrity by anticipating, recognizing, evaluating and controlling the occurrence of environmental risks in the work environment always taking into consideration the protection of environmental and natural resources.

(iii) Internal Commission for Accident Avoidance (CIPA)

Brazilian companies must have a CIPA, composed of employee and company representatives, and having a term-in-office of one (1) year. The number of CIPA members varies in accordance with the number of employees and the risk levels involved in the activities of each company.

The individuals elected by the employees for a position in the company's CIPA (either as current or alternate members) may not be removed from their positions from the date of their registration as candidates for such position up to one (1) year after the expiration of their one-year term-in-office.

16.2 Health Hazard Allowance



Brazilian labor laws provide for the payment of a monthly amount equivalent to ten percent (10%), twenty percent (20%) or forty percent (40%) of the minimum wage to employees working under hazardous health conditions. Only an expert appraisal can definitively confirm the existence of hazardous health conditions.

The employer may avoid or reduce the obligation to pay such additional amounts by neutralizing the hazardous health conditions, which can be done by providing the employees with adequate Equipment for Individual Protection (EPI).

16.3 Dangerous Work Allowance

Employees under dangerous working conditions, such as those in contact with explosives, flammable materials or electricity, are entitled to an additional thirty percent (30%) of their corresponding base salary. Only an expert appraisal can definitively confirm the existence of risky working conditions.

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