

# LABOR LAW IN BRAZIL (PART - I)

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These two-part series of articles will introduce and outline the Brazilian Labor Law. This first article is outlining the general labor aspects in Brazil, the employment contract, the basic rights, and the union rights.

## I. GENERAL LABOR ASPECTS

The rules of the Brazilian Labor Law are governed by the Federal Constitution of 1988 (FC), the Consolidation of Labor Laws of 1943 (CLT) and several other laws. Therefore, the Labor Law in Brazil is endowed with several rules that are cogent, with public character, to ensure minimum labor rights and standards. Such rules exist due to the public intervention in labor relations, protecting the employee (considered the weakest part – disadvantaged part – in the relationship) against the employer, ruling that will be null any actions taken in order to prevent or circumvent the application of labor rights.

The Brazilian Labor Law has some basic principles that drive the development, interpretation and

application of all rules and labor standards. Among these principles, we can highlight the Principle of Protection, considered the backbone of the entire Brazilian labor normativity. This principle can be subdivided into three other:

- (i) *in dubio pro operario* (in case of doubts on the interpretation of law, must prevail understanding more favorable to the employee);
- (ii) application of the more favorable rule (when there are several rules, the most favorable to the worker is applied); and
- (iii) most favorable condition (when there are any changes in the contract that make it less favorable to the employee, this change will not take effect, given that the employee has acquired right to more favorable rule).

Also important are the principles of:

- (i) Non-waiver of Rights (the rights guaranteed by the CLT are inalienable, irrevocable and unavailable and such rule is to prevent the employer to press or coerce the employee to waive his rights);

- (ii) Continuity of Employment Relationship (as a rule, the employment contract is agreed to last indefinitely);
- (iii) Prohibition of Harmful Alteration (the rule that any change in the legal structure of the company does not affect the acquired rights of their employees);
- (iv) Primacy of Reality (the hard facts of everyday life take precedence over the content of documents to establish the legal effects of the employment relationship); and
- (v) Phasing Salary (wages cannot undergo corporate discounts unless legally permitted).

## II. THE EMPLOYMENT CONTRACT

The regular procedure to hire an individual to render services in Brazil is through the establishment of an employment relationship under the CLT's rules and regulations (however, a written employment agreement is not required to evidence such relationship, as it can result from verbal arrangements or even from implied circumstances). According to the CLT, the employer is a company or a person that assumes the risks of an economic activity, employs, pays wages and directs the rendering of personal services. On the other hand, the employee is the person that renders non-occasional services, under the employer's direction, while receiving a

The main points that differentiate the employment relationship of other types of legal relationships are:

- (i) provision of services by an individual;
- (ii) personality (the employee, on his own, cannot be

- substituted);
- (iii) non-eventuality (the service is provided continuously, repeated);
- (iv) compensation; and
- (v) subordination (legal subordination to the employer).

The labor laws are applicable to all workers with employment contract, except for those who work in public employment, in domestic labor or in rural work, who have separate regulations. Some types of activities, due to their specificities, beyond the rights guaranteed in the CLT, have their own rules. The CLT makes no distinction regarding the type of employment and the condition of the worker, nor between the intellectual, technical, and manual work (i.e., regardless of the employment contract be indefinitely or for a stated period; oral or written; or employee run manual or intellectual services, CLT is applied in the same way).

## III. BASIC RIGHTS

In Brazil, the main labor rights (34 inalienable social rights) are prescribed in CF. Among these rights, can be highlight:

- a. A nationally unified minimum monthly wage, established by law: this value, considering the normal working hours (8 hours daily and 44 weekly), is the minimum that the employee can receive and its readjustment occurs in the beginning of the year. Any amounts paid to the employee on a regular basis are considered salary for all purposes and will be taken into account in the

- calculation of every other rights, such as vacation, thirteen salary (i.e., bonus equivalent to one month salary at the end of the year), unemployment guarantee fund (FGTS) and overtime. Since January 1st, 2014, the minimum wage is 724.00 reais (seven hundred and twenty four BRL).
- b. Irreducibility of the wages, except when established in union agreement.
  - c. Normal working hours not exceeding 8 hours per day and 44 hours per week, with the option of compensating working hours (an agreement is made between employee and employer for the hours exceeding the eighth of a day are offset by the reduction of those hours in another working day) and reducing the length of the workday (for example, employee and employer may agree upon a working day of 5 hours daily) through an union agreement. Some professional groups have different working hours, as workers in telemarketing and banking sector, which have 6 hours' workday.
  - d. Paid weekly leave, preferably on Sundays: there must be a minimum of 24 hours of weekly rest which shall be treated as paid leave. Moreover, as per the Brazilian legislation and regulation, it is necessary to obtain an authorization (emitted by a union and by the Ministry of Labor) to work on Sundays and holidays.
  - e. Payment for overtime should be at least 50% higher than that of normal working hours. Usually, the union agreement stipulates a higher percentage.
  - f. Work breaks: in Brazil, there are two important breaks;
    - (1) for lunch ((i) 15 minutes when the workday is up to 6 hours and exceeds 4 hours and (ii) 1 hour when the workday exceeds 6 hours, and its reduction to 30 minutes is only allowed with permission of the Ministry of Labor);
    - (2) between work days (minimum of 11 hours).
  - g. Remuneration of night time (when work is performed between 10 PM and 5 AM) with a 20% increase over the wage amount for normal working hours, regardless of the workday.
  - h. Annual vacation (paid-leave), with remuneration at least one third (1/3) higher than the normal salary. After one year of services, the employee acquires the right of a vacation period of 30 days. The right to a vacation must be exercised in the year that follows the acquisition period, otherwise the company will pay double the value of the vacation (i.e., "normal salary + 1/3 of normal salary"\*2).
  - i. Thirteenth salary: at the end of each year (in November and December), employees are

entitled to receive a bonus equivalent to one month salary. The first part of the 13th salary, also called an advance, corresponds to half the salary of the month prior to the payment (October) without any kind of discount. The second installment, paid in December (up to the 20th day), takes as the basic salary of the month of December itself, discounting the value of the advance of the 13th already paid.

- j. Brazilian law stipulates that employers must deposit 8% of the wages paid or due to employees (The Unemployment Guarantee Fund, also known by the acronym FGTS) to a bank account in the name of the employee on the 7th day of each month. In the event of the employment contract being terminated by the employer's initiative regardless of the causes attributable to the employee, the company must deposit (i) a fine of 40% of the total amounts deposited in the employee's FGTS account, during the employment contract, as a statutory minimum requirement (its percentage cannot be changed by the company, and if the deposit is not made, the company may suffer legal and administrative actions) plus (ii) the 8% on the value of severance payment. If such termination/dismissal is without cause (i.e., the company's convenience), the employee may request the company to raise the amount of FGTS, while if the employee resigns at his convenience, he has no right to uplift the amounts deposited in the account of the FGTS.

- k. Previous notice of dismissal, the required period of which shall be varied corresponding to the length of service during which the employee has been employed. Such previous notice must be given with at least 30 days of antecedence to the dismissal (plus three days per year of employment).

- l. Recognition of union agreements: in Brazil, union agreements have the status of valid and enforceable law. It is possible for such agreements to stipulate labor rights that go beyond those of the ordinary legislation.

#### IV. UNION RIGHTS

Besides the labor law, employment relations are also governed by union agreements signed by unions (these agreements are equivalent to the law and apply to all companies and all workers, regardless of union affiliation, represented by the signatory unions (representative union) in their territorial and valid for up to two years from execution of such union agreements.).

Standards and working conditions established in the laws are added to those arranged in union agreements. The rights provided for in the union agreements derogate the rights provided for in the law only when expressly permitted by CLT or other laws (for example, the Federal Constitution provides the possibility of wage reduction by union agreement) because of the Principle of Protection.

In Brazil, each professional category is represented by a trade union within the municipality of its performance. Companies may enter into agreements directly with the union to regulate the relationship and the rights of its employees, always observing the minimum requirement under the law.

END -LABOR LAW IN BRAZIL (PART -II) FOLLOWS-

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