

LABOR LAW IN BRAZIL (PART - II)

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Subsequent to the first article introducing and outlining the Brazilian Labor Law (including the general labor aspects in Brazil, the employment contract, the basic rights, and the union rights) issued as of April 1, 2014, this second article is outlining the topics on termination of employment contract and foreign work under the Brazilian Labor Law.

V. V.TERMINATION OF EMPLOYMENT CONTRACT

Employment in Brazil is normally for an indefinite term, and under Brazilian labor law any employee may be dismissed without cause at any time, provided that the employee receives prior notice of at least thirty days (plus three days per year of employment) and the company pays a severance payment to the employee. Despite this company's discretion on dismissal, there are certain circumstances that provide protection against dismissal to some employees, such as:

- a. Union leaders and members of the Internal Accident Prevention Commission (CIPA) cannot be dismissed without cause up to one

year after they are no longer officers in the particular union or member of CIPA.

- b. Pregnant employees cannot be dismissed without cause up to 5(five) months after childbirth.
- c. Employees on leave receiving accident aid cannot be dismissed without cause up to one year after returning.

There are certain circumstances (exhaustively described in CLT) in which the employer has the right to dismiss the employee with cause, including:

- misconduct;
- improper act or lack of self-restraint
- regular trading on own account or others without permission of the employer which constitutes or causes act of competition or violation of trade secrets.

In the following table, a short list with the amounts due to each type of termination, emphasizing that this list does not contemplate other labor rights and benefits:

| cause of termination | salary owed | notice period | 13th salary | proportional vacation + 1/3 additional | unused earned vacation days + 1/3 additional | Unemployment Guarantee Fund | 40% fine on unemployment guarantee fund |
|---|-------------|---------------|-------------|--|--|-----------------------------|---|
| Resignation (under or equal to 1 year contract) | yes | no | yes | no | yes | yes | no |
| Resignation (over 1 year contract) | yes | no | yes | yes | yes | yes | no |
| dismissal without cause (under or equal to 1 year contract) | yes | yes | yes | no | yes | yes | yes |
| dismissal without cause (over 1 year contract) | yes | yes | yes | yes | yes | yes | yes |
| dismissal with cause (under or equal to 1 year contract) | yes | no | no | no | no | yes | no |
| dismissal with cause (over 1 year contract) | yes | no | no | yes | no | yes | no |

VI. FOREIGN WORK



Universidade de São Paulo

A company interested in hiring foreign nationals must apply for a work visa for him/her at the Ministry of Labor in Brazil. The work visa or visa based on the employment contract is applicable to situations where a Brazilian company intends to hire a foreigner to engage in remunerated activity with employment. In this regard, it should be noted that companies with three or more employees must observe a scaling of 2/3 of Brazilian employees.

The initial term of the work visa can be up to two years, with possible (i) extension for two more years, or (ii) change from the temporary working visa to permanent

resident visa, in both cases the employment contract will have an indefinite term.

The employment contract with the foreigner for services to be performed in Brazil will be governed by Brazilian law. The employment contract may only contain clauses relating to foreign law at the points where it is most beneficial for the employee in relation to Brazilian legislation (for example, stipulate in the employment contract a larger period of vacation or a fourteenth salary).

In the case of visa to an officer, director, manager or administrator (title of employee, normally is the legal representative of the company appointed in the articles of association), the Legislation provides that for obtaining a visa, companies established in Brazil should receive the investment/contribution at least:

- R\$ 600,000 per foreigner, or
- R\$ 150,000 plus the generation of 10 new jobs for Brazilian employees within two years after the grant of the visa, for each foreigner.

The foreign resident in Brazil enjoys all the rights in respect of employment relationship granted to Brazilians, under the Federal Constitution and laws.

It is noted that the foreigner who is in the shelter of Brazil tourist visa, transit or temporary visa, and the dependents of any temporary visa holders are prohibited from engaging in gainful activity.

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Ms. Priscila Moreira is a lawyer graduated from Universidade Católica de Salvador (Catholic University of Salvador), holds a specialist degree in Labor Law from Pontifícia Universidade Católica de São Paulo (Pontifical Catholic University of São Paulo - PUC/SP) and a Master degree in Labor Law from Universidade de São Paulo (University of São Paulo -USP). She has experience in the labor law area, where she has worked with judicial and administrative disputes and has extensive experience in labor consulting.

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