

## DDSA provides overview of the Brazilian Labour Reform

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The Brazilian Labour Reform will come into force on 11 November 2017, modifying over 100 articles of the Brazilian Labour Code (the so-called "CLT"). Below are the highlights on the most relevant changes on the perspective of the employer.

### Employment Contracts

- Intermittent work or "Zero-hours agreements"\*: This is a new type of agreement allowing employers to pay on demand and employees to refuse work.
- Independent work: Admission through an independent arrangement of autonomous work would exclude the statutory employment system even if the relationship is exclusive and work is on a regular basis.
- High-level employees' autonomy to negotiate: Employees with a university diploma and a monthly salary equal to, or greater than double the social security benefits limit (currently 11,062.62 BRL) will be at more liberty to negotiate certain employment conditions with their employers. In addition, they will be able to include an arbitration clause in their employment contracts.
- Vacations: Authorisation to split vacation days into three periods; provided that one period is of at least 14 consecutive days and none is less than 5 days.
- Compensation: Expense allowances ("ajudas de custo"), travel expenses, meals (except those paid cash), rewards (rewards to outstanding performances) and other allowances ("abonos") even when frequently paid, are not to be considered 'salary'.
- Salary equalisation: Creation of further criteria and exceptions. Only employees that work at the same premise may be compared. The difference in terms of duration of employment should be of 4 years at the most (2 years in the same position is already required today). Employers will have the authority to create exceptions to the equalisation rule by creating their own salary plans. Registration with the Inspection Body of the Ministry of Employment (DRT) will no longer be required.
- Additional pay for position of trust: Suppression will be authorised in case an employee returns to his/her previous position, regardless of the time lapsed.

### Working hours

- **Overtime:** The extra time spent by the employee at a company's premises will not be considered overtime if resulting from employee's choice for personal protection, studying, hygiene, change of clothing/ uniform and other personal reasons not involving actual work.

- **Part-time work:** Increased to up to 30 hours a week. Overtime will be permitted (up to 6 hours per week) if a contract is for up to 26 hours a week.
- **Home office:** Express inclusion of home work as work exempted from overtime control. Written contract will now be required.
- **Commuting time:** Will no longer be considered part of the work shift in any circumstance.
- **Offsetting of working hours** (flexible hours): offsetting working hours in excess can be agreed through individual contracts for offsetting within a month.
- **“Hour Bank”:** Creates the possibility to have time offset against overtime based on individual written contracts. Offsetting in this case is must be within 6 months, and 12 months depending on a collective bargaining. Habitual overtime will not invalidated hour banks, as is the current opinion of the Courts.
- **Rotating Shift** (12X36)\*: Will no longer require union participation.
- **Lunch-break:** Can be reduced to 30 minutes by collective bargaining. The time reduced will entitle only to payment of such time, as indemnity\*.

### Terminations

- **Ratification (*homologação*)\*:** Ratification by union or inspection body will no longer be a requirement.
- **Payment:** 10-day deadline for termination payments regardless of cause or notice.
- **Termination by mutual agreement:** New way of terminating the employment contract by agreement between company and employee.
- **Mass dismissal/Collective termination:** Union involvement is not required, as opposed to current understanding of the Courts.
- **Private settlements:** Possibility to submit joint petition of separation agreements to Court to obtain valid waiver of employment rights and general acquittal.
- **Annual settlement of employment rights:** possibility to have an “annual” release of labour obligations. Validity will depend on union ratification.

### Union relations

- **Collective arrangements vs. Statutes:** Collective arrangements will prevail over the legislation specially when dealing with working hours, overtime offsetting, positions and salaries structure, home office, time on-call, working hours recording modality, unhealthy work condition level and profit sharing.
- **Contributions to unions\*:** Eliminates mandatory contributions to unions.

Inter-company operations:

- **Economic group:** Broad Interpretation of the concept of economic group is more restricted. Creates the need to demonstrate “integrated interest” between companies.
- **Succession of employers:** Successor company liability understanding of the Courts is confirmed. Joint liability of the successor and succeeded companies will require evidence of fraud.
- **Disregard of legal entity:** Personal partner liability now has a regulated procedure allowing adversary proceedings and production of evidence.
- **Withdrawing partner liability:** The withdrawing partner is secondarily liable for labour debts created during the period he was a partner and for lawsuits filed up to two years after his withdrawal. In case of fraud, he will have joint liability, not secondary.

We are certain that all the modifications above will have to pass the scrutiny of Labour Courts, which have openly demonstrated great reluctance to the reform. It is therefore essential that the points mentioned above are carefully studied before any changes are implemented by the employers.

There are other innovations not mentioned above that might still be of interest to some companies depending on their particularities, to wit: creation of employees’ committees in companies with over 200 employees, new procedural rules to discourage exaggerated labour claims (elimination of certain requirements for companies to be represented in court, new limitations to benefit with court costs exemption, attorney’s fees payable to the prevailing party, proportional to claims granted or rejected, objective criteria to fix indemnities for pain and suffering, simpler requirements to access third instance courts, redistribution of the burden of proof, conditions to drop a case or claim, consequences in case employee does not attend a hearing, limitations to the courts’ authority, including ability to change precedents, and other rules), negotiable aspects of unhealthy work, elimination of break before overtime, extension of the effects of a volunteer dismissal programs (PDVs), increase on administrative penalties both in terms of number and amounts.

\*The marked topics are expected to be modified soon by means of a Provisional Executive Decree that is already being drafted.

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