

## Brazil Labor Practices: Essential Things To Know

Workers' protection in Brazil formally began in 1945 with the *Código Trabalhista* ("Labor Code"). The code guaranteed the right to strike and aimed to ameliorate the country's then-oppressive labor practices. Since 1945, the situation for Brazilian workers has changed dramatically. Most notably, the country's immediate past two-term president, Luís Inácio "Lula" da Silva, was a union leader who fought for workers' rights and established the *Partido dos Trabalhadores* ("Worker's Party"). Dilma Rousseff, Lula's successor, is also part of the Worker's Party.

Brazilians enjoy many benefits that some unfamiliar with its culture and history may consider nothing short of perks. Many of these protections stem from the constitution and therefore are non-negotiable fundamental rights. This article discusses some labor aspects to consider when operating in Brazil.



The legislation sets basic labor guarantees that must be followed by any employer, regardless of industry and function. The *salário mínimo* is the most important one. Although it varies by region, the federal government currently sets the minimum salary at R\$545.00 per month, currently.

A close second is the *jornada* ("workday"), defined as the time the employee is available to the employer, whether performing his function or not. The law provides that it cannot exceed 8 hours per day and 44 hours a week. In any case, employers are free to create a work schedule based on daily, weekly or monthly hours worked. Employees who work in excess of 220 hours in one month (44 hours a week for five weeks) will earn mandatory overtime wages.

Overtime is a major source of labor litigation in Brazil. The law provides that if overtime is earned during the regular workweek, the employee will earn time and a half for those hours. However, if overtime is earned on weekends and holidays, then the employee will earn two times the regularly earned wage. Those who do not earn an hourly wage or a salary, but who work solely on commission are entitled to overtime on top of those commissions earned while working hours in violation of the law.

There are ways to contract around the overtime provisions, but they are usually not given legal effect unless it resulted from a collective bargaining agreement or convention. One such mechanism is a bank of hours through which the employee discounts hours worked in excess of the regular 8 hours on another day. Even in such cases, a maximum of 10 hours a day and 44 hours of work per week cannot be surpassed.

As with any rule, there are exceptions and special provisions. For example, reduced workday hour limits exist for bank workers, telephone operators, doctors and radiologists. Additionally, depending on whether the employer operates based on shifts (morning, afternoon, night), they are capped at six hours if employees are subject to working any one of the shifts.

In addition to the various adjustments to the hourly rates and salaries based on an employee's workday hours, Brazilian legislation provides for a thirteenth salary (the *décimo terceiro*) at the end of each year for every employee and 30 days of vacation (when no more than five unjustified absences occurred).

The thirteenth salary is just an additional compensation to which employees are entitled based on the time worked during any given year. For example, if an employee worked from June 15 through August 31, he will be entitled to two-twelfths of a month's salary for his *décimo terceiro*. Employers must disburse half of it by November, or in the month when the employee takes vacation, if he has solicited the *décimo terceiro* in January. The last portion must be paid by Dec. 20.

Employers must also be aware of social contributions and the FGTS (*Fundo de Garantia por Tempo de Serviço*, or Guarantee Fund for Time of Service). Both regular earnings and the *décimo terceiro* are subject to the FGTS, which corresponds to an 8-percent withholding of the monthly salary plus 0.5 percent of social contribution by the employer. This fund provides financial support in certain employment termination situations. The federal government administers the fund via mandatory deposits in accounts opened by the

employer for the employee's benefit with the Caixa Econômica Federal (one of the largest government-owned banks).

When the FGTS was created in 1966, the legislation also established that employees who worked for at least 10 years for the same employer could only be fired for cause. With the publication of the 1988 Federal Constitution, the 10-year rule was abolished (it had a negative effect on employees as they were being let go just before they came under the rule's protection). However, those employees who had completed 10 years of employment before the enactment of the 1988 Constitution retained its benefit.

It is worth noting that any modification in the employer's company structure cannot affect labor contracts. Courts also tend to rule in favor of employees when disputes arise in this context. Recently, a multinational corporation operating in Brazil lost a case involving a breach of promise to work. The court not only sentenced the multinational to cover the plaintiff's expenses for travel, accommodations and meals relating to his journey to work in compensatory damages, but also awarded the plaintiff R\$4,000 of moral damages for his embarrassment and having his "honor shaken."

Similar to the risks related to consumer litigation matters, labor lawsuits are costly, lengthy and, as mentioned above, tend to go the way of the employee. Whether you are planning on merging or acquiring an already established company in Brazil or establishing a brand new entity, conducting a due diligence into the labor practices department and familiarizing yourself with how your industry and operations may be affected by the intricate labor laws in Brazil will make a big difference to your company's bottom line.

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