

LABOR AND EMPLOYMENT REFORM: MAIN CHANGES AND IMPLICATIONS*

* In accordance with Law No. 13,467/2017, as amended by Provisional Measure No. 808/2017. (The text in **bold/underlined** reflects the main changes implemented by the Provisional Measure No. 808/2017)

- Change in the Concept of Economic Group:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| Brazilian labor courts have a broad interpretation of the concept of economic group provided by Brazilian labor and employment laws. Usually, the mere existence of common partners and/or shareholders is sufficient to characterize the economic group for labor purposes. | The mere existence of common partners does not characterize economic group for labor purposes, being necessary the demonstration of integrated interest, effective communion of interests and joint operation of the respective companies. |

- Labor Responsibility in case of Succession of Employers:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| There is no specific rule regarding the labor responsibility in case of succession of employers. The matter is regulated solely by case law. | Once the business or employer succession is characterized, labor and employment obligations, including those related to the period employees worked for the succeeding company, will be the successor's responsibility. The succeeding company will be jointly and severally liable with the successor only when the business deal is proven to be fraudulent before courts. |

- Intermittent Work:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| There is no specific rule. | Definition: employment agreement in which the employee is subordinated to the employer, but works on a non-continuous basis, in alternate periods, determined in hours, days or months, regardless of the type of activity of the company. |



The employment agreement must be executed in writing and must set forth the hourly salary, which cannot be lower than the minimum hourly wage or than the hourly salary of other employees of the company who work in the same position pursuant to an intermittent or regular agreement, **the place and deadline for the payment of the remuneration, the parties' name, address and signature.**

At the end of each service period, the employee must immediately receive the following payments: (i) salary; (ii) proportional vacation, plus vacation bonus; (iii) proportional 13th salary; (iv) paid weekly rest; and (v) other mandatory legal allowances (if any). Every 12 months, employees acquire the right to enjoy, during the 12 subsequent months, one month's vacation, during which period he/she cannot work for the same employer.

If the intermittent worker is not called to work by the employer within 1 year, the intermittent employment agreement will be considered automatically terminated.

Regular employees engaged for an undetermined period, cannot be terminated and re-hired as intermittent employees by the same employer within 18 months after the termination of their employment contract. This rule will be valid up to December 31, 2020.



- Independent Contractors:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| There is no specific rule. | The hiring of independent contractors, provided that all legal formalities are fulfilled (and that the contractor works with autonomy and no subordination), continuously or not, does not implicate in the existence of an employment relationship. <u>However, if the independent contractor is not allowed to render services for other companies due to an exclusivity clause, the independent contractor shall be considered as an employee of the contracting company.</u> |

- Outsourcing:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| Law No. 6,019/1974, as amended by Law No. 13,419/2017, and Precedent No. 331 of the Brazilian Superior Labor Court. | <p>Express possibility of outsourcing the contracting company's main activity.</p> <p>When and as long as the services are rendered within the contracting company's premises, outsourced employees of the services provider company are entitled to (i) the same conditions related to meals, transportation, medical care existing in the contracting company's premises or the place designated by it, and training, when required for the services, and (ii) adequate hygienic, health and safety working conditions in the workplace.</p> <p>Employees terminated cannot render services to the same contracting company as an employee (or partner) of a services provider company within 18 months following his/her termination.</p> |



- Relativization of Employees' Hyposufficiency:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| Brazilian labor courts (i) consider null and void Arbitration clauses signed by employees and (ii) restrict the autonomy of employees to negotiate certain labor and employment rights and obligations. | Employees who hold a higher education degree and receive a monthly salary equal to or greater than R\$11,062.62* will have autonomy to (i) freely negotiate the rights established in article 611-A of the Brazilian Labor Law**; and (ii) sign Arbitration clauses to settle disputes. * This amount will be annually adjusted. ** Among those rights, we highlight: (i) working hours; (ii) positions that are considered as position of trust for purposes of control of working hours; (iii) home office, on call duty and intermittent work; (iv) systems to control of working hours; (v) profit sharing payments. |

- Vacation (PTO) Rules:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| As a general rule, vacations must be enjoyed in a single period of 30 days. Splitting vacation leaves has been accepted by Brazilian labor courts only in specific situations, in up to 2 periods, none of which can be less than 10 days. Splitting vacation leaves is not allowed for employees under 18 and over 50 years old. | Possibility of splitting vacations in up to 3 periods, including for employees under 18 and over 50 years old, with the employee's authorization or upon the employee's request, one of which cannot be less than 14 calendar days and the others less than 5 days. Vacations cannot start: (i) on the paid weekly rest day; or (ii) 2 days before holidays. |

- Change in the Concept of Salary:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| As a general rule, any amounts voluntarily paid on a regular basis to employees or contractually agreed in consideration for | The base salary, legal bonuses, <u>position gratifications</u> and commissions paid by the |



the rendering of services shall be considered as salary. Thus, the concept of salary currently comprehends not only the fixed amount contractually agreed (base salary), but also commissions, rewards, premiums, bonus or fringe benefits.

employer to employees are considered as part of the employee's remuneration.

The amounts, even if paid on a regular basis, paid as allowances, **subject to the limit of 50% of the monthly remuneration**, meal allowances (except when paid in currency), travel allowances and premiums (**if not paid more than twice a year**) are not part of the employee's remuneration and, therefore, shall not be considered as calculation basis for labor and social security purposes.

The payments described above will be subject to income tax and other taxes, except if expressly regulated otherwise.

- Equal Pay for Equal Work Rules:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| <p>An employer must pay equal salaries to its employees who: (a) work in the same position (i.e. have identical duties and responsibilities, regardless of their title); (b) work in the same location (city or metropolitan region); (c) have equivalent seniority (less than 2 years in the position); and (d) provide services of equal quality.</p> | <p>An employer must pay equal salaries to its employees who: (a) work in the same position (i.e. have identical duties and responsibilities, regardless of their title); (b) work in the same business establishment; (c) have equivalent seniority (less than 2 years in the position) and length of services (less than 4 years); and (d) provide services of equal quality.</p> |



- Pregnant Women Working under Unhealthy Conditions:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| Women cannot work during the pregnancy and breastfeeding periods under unhealthy conditions. The services must be rendered in a place where there are no unhealthy working conditions. | <p><u>Women cannot work during the pregnancy period under unhealthy conditions. The services must be rendered in a place where there are no unhealthy conditions.</u></p> <p><u>However, in situations of medium or minimum degree of unhealthiness, women</u></p> <p><u>can work only during the pregnancy period if they voluntarily present a medical certificate by their physician that authorizes them to work.</u></p> <p>During the breastfeeding period, women may be absence from work under unhealthy conditions, regardless of the level of unhealthiness, if they present a medical certificate by their physician recommending their removal from work.</p> |

- Employees' Working Uniform:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| There is no specific rule. | The employer has the right to determine the employees' uniforms, being legally allowed the inclusion of logos of the company or partners and other identification items in the uniform. |

- Commuting and Overtime:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| The time spent by the employee on transportation provided by the employer to/from the workplace that is difficult to access or that is not served by regular public transportation is considered as working hours. | The time spent by the employee commuting, in any case, shall not be considered as working hours. |



- Time Available to Work and Overtime:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| <p>The period in which the employee is at the employer's disposal, awaiting or executing orders, is considered as working hours.</p> | <p>The period in which the employee, by his/her own choice, seeks personal protection in case of insecurity on public roads or bad weather conditions, as well the period he/she remains in the company's premises to perform particular activities (e.g. religious practices, rest, leisure, study, feeding, social activities, personal hygiene and change of clothing or uniform, when there is no obligation to make the change in the company) shall not be considered as working hours.</p> |

- Part-time Work:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| <p>Part-time employees cannot work more than 25 hours per week and work overtime.</p> <p>The number of vacation days currently varies according to the number of hours worked in the week, with no possibility of "selling" part of the vacation period.</p> | <p>Part-time employee may work up to (i) 30 hours per week, without the possibility of working overtime; or (ii) 26 hours per week, with the possibility of working up to additional 6 overtime hours, which may be offset until the immediately following week or paid in the subsequent month, with the respective overtime premium.</p> <p>Part-time employees will be entitled to the same vacations as full-time employees and will be legally allowed to "sell" up to 10 days of vacation.</p> |



- Home Office:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| <p>There is no specific rule. The matter is regulated solely by case law.</p> | <p>Home office must be expressly provided in the employment agreement.</p> <p>Employees who work in home offices are considered exempt employees and are not entitled to overtime payments.</p> <p>Equipment and infrastructure costs must be defined in the employment agreement.</p> <p>Employers shall instruct employees on the precautions to be taken in order to avoid work-related accidents and diseases, and employees must sign a term undertaking to follow the instructions provided.</p> |

- Offsetting of Working Hours:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| <p>Offset of Working Hours: may be adjusted by individual agreements, as long as the offset occurs within the same week.</p> <p>Bank of Hours: may be adjusted by collective bargaining agreements, as long as the offset occurs within 1 year.</p> <p>The provision of usual overtime annuls the offsetting of working hours agreement, including the Bank of Hours.</p> <p>In case of suppression of the meal break, the payment of the full period, as overtime, with a salary nature, is due.</p> | <p>Offset of Working Hours: may be adjusted by individual agreements, as long as the offset occurs within the same month.</p> <p>Bank of Hours: may be adjusted by individual written agreements, as long as the offset occurs within 6 months.</p> <p>The provision of usual overtime does not annul the offsetting of working hours agreement, including the Bank of Hours.</p> <p>In case of suppression of the meal break, only the payment of the suppressed period is due, as overtime, with an indemnity nature.</p> |



- 12x36 Shifts:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| In accordance with case law, this type of shift may only be adjusted through collective agreements with the union. | <u>This type of shift may only be adjusted through collective agreements with the labor union, except within the health sector, in which this may be individually negotiated.</u> |

- Ratification of Termination:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| Companies must ratify the termination of employees who have been working for more than 1 year to the company before the labor union or the Labor Ministry. | Companies are not obliged to ratify the termination of employees before the labor union or the Labor Ministry, regardless of the length of the employment relationship. |

- Mass Termination:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| There is no specific rule, but Brazilian labor courts have been applying the concept that companies must negotiate the terms and conditions of a mass termination with the relevant labor union prior to effecting the mass termination. | Companies are not obliged to obtain prior authorization from the labor union or to execute a collective bargaining agreement in order to perform a mass termination. |

- Mutual Agreement Termination:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| N/A | The employment agreement may be terminated by mutual agreement between the employee and the company, in which case the following severances shall be due: (i) in half: (i.a) prior notice, if paid in lieu; and (i.b) FGTS termination fine; and (ii) in full: the remaining severance payments. Employee will be able to withdraw 80% of the balance of his/her FGTS account. |



- Termination of Employment for Cause due to Loss of Qualification or of the Requirements Established by Law for the Exercise of the Profession, as a result of Willful Misconduct of the Employee:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| N/A | Companies will be able to terminate employees for cause due to loss of qualification or of the requirements established by law for the exercise of the profession, as a result of willful misconduct of the employee. |

- Voluntary Termination Plans and General Release:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| There is no specific rule. The matter is regulated solely by case law. | Voluntary termination plans involving individual or mass termination provided by collective bargaining agreements implicate in the general release regarding the employment relationship, unless otherwise established by the parties. |

- Annual Release:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| N/A | During or after the employment relationship, employees and companies may execute an annual release agreement regarding labor and employment obligations before the relevant labor union. The annual release agreement must set forth all labor and employment obligations carried out on a monthly basis and expressly provide that the employee releases the company from them. |



- Voluntary Jurisdiction:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| Companies and employees cannot file lawsuits before labor courts in order to ratify out-of-court release agreements. | Companies and employees will be able to file lawsuits before labor courts in order to ratify out-of-court release agreements. |

- Annual Union Dues:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| Companies must withhold union dues due by its employees to the labor union. The withholding is mandatory by law. | Companies may withhold union dues due by its employees to the labor union only if them expressly authorize the withholding. |

- Employees' Representation (Work Council):

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| N/A | <p>Companies employing more than 200 employees must have a commission elected by its employees (work council). The commission will be responsible for, among others, representing employees in order to enter into agreements with the employer regarding work-related matters.</p> <p>The members of said commissions cannot be terminated without cause since their registration as candidates and for 12 months after the end of their mandate.</p> <p><u>The work council cannot replace the labor union in the defense of the rights and interests of employees before judicial or administrative courts and within collective bargaining agreements/negotiations.</u></p> |



- Collective Negotiated vs. Statutory Rules:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| <p>There is no specific rule, but collective bargaining agreements must observe statutory rights established by law.</p> | <p>Collective bargaining agreements will prevail over the law when, among others, covering matters foreseen by new article 611-A of the Brazilian Labor Law. Among those matters, we highlight: (i) working hours; (ii) positions that are considered as position of trust for purposes of control of working hours; (iii) home office, on call duty and intermittent work; (iv) systems to control working hours; (v) profit sharing payments.</p> <p>Companies and labor unions cannot execute collective bargaining agreements related to the suppression or reduction of the rights foreseen by new article 611-B of the Brazilian Labor Law. Among those minimum rights, we highlight: (i) FGTS deposits; (ii) 13th salary; (iii) minimum overtime premium of 50%; (iv) maternity and paternity leave; and (v) notice period.</p> |

- Possibility of Reduction of Meal Breaks:

| CURRENT RULES | NEW RULES AFTER THE REFORM |
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| <p>Companies may only reduce the meal break from 1 hour to 30 minutes if authorized by the Labor Ministry.</p> | <p>Companies may reduce the meal break from 1 hour to 30 minutes through (i) collective bargaining agreements or (ii) individual agreements with employees who hold a higher education degree and receive a monthly salary equal to or greater than R\$11,062.62*.</p> <p>* This amount will be annually adjusted.</p> |



- Work-related Moral Damage Compensation:

| CURRENT RULES | NEW RULES AFTER THE REFORM | | | | | | | | | | |
|---|---|----------------------|--------|--------------|---|---------------|---|----------------|--|--------------------------|--|
| <p>There is no specific rule. The matter is mainly regulated by general principles of law and case law.</p> | <p>According to the Labor and Employment Reform, as amended by the Provisional Measure, lawsuits involving work-related moral damage compensation will be regulated by the following rules:</p> <ul style="list-style-type: none"> ▪ Specific rights that, if violated, will entitle employees to claim for damages: <u>ethnicity, age, nationality</u>, honor, image, intimacy, freedom of action, self-esteem, <u>gender, sexual orientation</u>, health, recreation and physical integrity. ▪ Specific rights that, if violated, will entitle companies to claim for damages: image, brand, name, company's trade secrets and the confidentiality of the written communications. ▪ The definition of the compensation must take into consideration: (i) the nature of the right that was violated; (ii) the intensity of the suffering or humiliation; (iii) the possibility of physical or psychological recovering; (iv) the personal and social reflexes of the action or omission; (v) the extension and length of the effects of the offense; (vi) the circumstances related to the offense or moral damage; (vii) the level of intention or of negligent act or omission; (viii) the existence or not of voluntary retraction; (ix) the existence or not of effective efforts to minimize the offense; (x) forgiveness, tacit or express; (xi) the social and economic situation of the affected parties; and (xii) level of publicity of the offense. ▪ <u>Maximum compensation amounts (not applicable in case of death):</u> <table border="1" data-bbox="701 1515 1459 1853"> <thead> <tr> <th data-bbox="701 1515 1008 1576">NATURE OF THE OFENSE</th> <th data-bbox="1008 1515 1459 1576">AMOUNT</th> </tr> </thead> <tbody> <tr> <td data-bbox="701 1576 1008 1647">Minor</td> <td data-bbox="1008 1576 1459 1647">Up to 3 times the value of the higher benefit paid by Social Security General Regimen</td> </tr> <tr> <td data-bbox="701 1647 1008 1717">Medium</td> <td data-bbox="1008 1647 1459 1717">Up to 5 times the value of the higher benefit paid by Social Security General Regimen</td> </tr> <tr> <td data-bbox="701 1717 1008 1787">Serious</td> <td data-bbox="1008 1717 1459 1787">Up to 20 times the value of the higher benefit paid by Social Security General Regimen</td> </tr> <tr> <td data-bbox="701 1787 1008 1853">Extremely Serious</td> <td data-bbox="1008 1787 1459 1853">Up to 50 times the value of the higher benefit paid by Social Security General Regimen</td> </tr> </tbody> </table> <p>In case of relapse <u>by any party</u>, amounts may be doubled.</p> | NATURE OF THE OFENSE | AMOUNT | Minor | Up to 3 times the value of the higher benefit paid by Social Security General Regimen | Medium | Up to 5 times the value of the higher benefit paid by Social Security General Regimen | Serious | Up to 20 times the value of the higher benefit paid by Social Security General Regimen | Extremely Serious | Up to 50 times the value of the higher benefit paid by Social Security General Regimen |
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