



AN INSIDER VIEW OF THE BRAZILIAN LABOUR REFORM

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On 13th July 2017, following a long discussion at the Senate and House of Representatives, President Michel Temer approved Law No. 13,467 (2017) to amend the Brazilian labour law as well as the law regulating Temporary Work (Law No. 6,019).

The Brazil Labour Code (CLT) was first enacted in 1943. Although there have been several amendments to the labour law over the years, this reform has been the biggest change to happen in 70 years of labour law. Before the announcement was made in 2017, the labour code was considered inflexible and incompatible with present-day employment relations.

The purpose of the labour reform is to modernise the outdated labour law, reduce lawsuits and incentivise employers to create jobs. The labour reform legislation came into effect on 11th November 2017.

MOST IMPORTANT CHANGES OF THE LABOUR REFORM

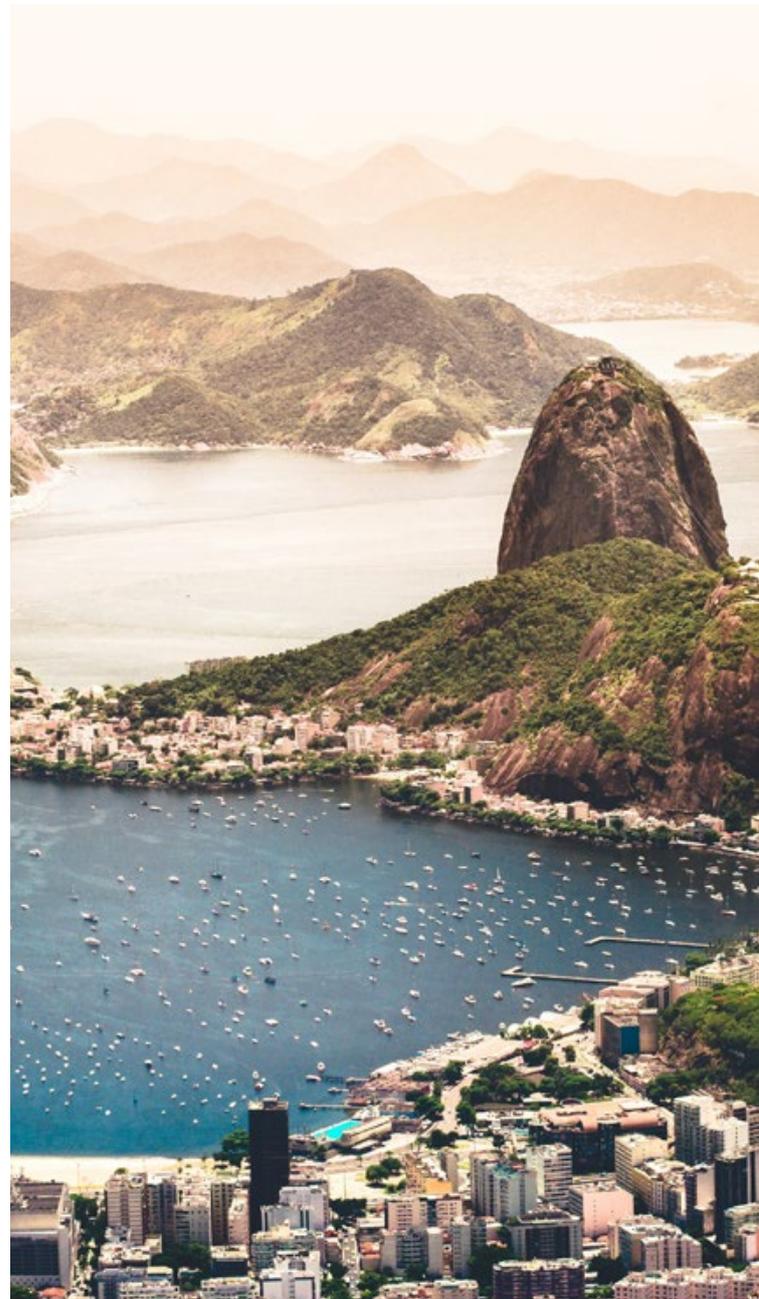
Holiday Leave (per year)

- **Old rule**

The 30-days' holiday leave entitlement allowed employees to split their holiday leave time into two periods. One period to be at least 10 days. One-third of the holiday leave entitlement was allowed to be "sold" back to the employer. Instead of taking the days, the employee received pay for the holiday leave days on top of his/her normal salary.

- **New Rule**

The 30-days' holiday leave entitlement can now be split into three periods provided it is negotiated with the employer first. One period must be at least 14 calendar days with the remaining two periods no less than 5 calendar days each.



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Working Hours

- **Old rule**

The working hours were limited to 8 hours per day, with a total of 44 hours per week and 220 hours per month. Two overtime hours were allowed per day. The Superior Labour Courts also allowed 12 x 36 shifts (12 daily hours with a 36-hour rest period) provided this condition was established by law or upon union agreement.

- **New Rule**

The daily working hours are now 12 hours with a 36-hour rest period. The weekly limit is 44 hours per week (or 48 hours with overtime) and 220 hours per month provided there is an individual written agreement or union agreement.

Intermittent Work

- **Old rule**

There was no rule regarding intermittent work in the old legislation.

- **New Rule**

The worker now receives pay for the worked period (per hour or days worked). He/she is entitled to holiday leave, FGTS (federal severance fund savings), social security and 13th salary, all proportional. The employment contract must state the rate per hour worked, and it cannot be less than the minimum wage nor the remuneration of the other workers performing the same function.

Home Office/Remote Work

- **Old rule**

There was no rule regarding home office/remote working in the old legislation.

- **New Rule**

The employment contract must include compensation for the tools needed to perform the job from home such as equipment, internet and energy expenses as well as health and safety prevention measures. There is no control of hours for home office workers.

Part Time

- **Old rule**

The weekly working hours limit was a maximum of 25 hours per week, without the option of overtime. The worker was entitled to a maximum of 18 days holiday leave and was not allowed to sell their holiday leave entitlement.

- **New Rule**

The weekly working hours limit is now a maximum of 30 hours per week, without the option of overtime; or 26 hours per week, with a maximum of 6 extra hours per week payable with an addition of 50%. Holiday Leave is now increased to 30 days, and one-third of holiday leave entitlement can be sold.

Collective Agreement

- **Old rule**

Collective agreements could establish work conditions different from the ones provided in the legislation, only if they granted a superior level of protection compared to the labour legislation.

- **New Rule**

Collective Agreements may prevail, in certain circumstances, over the labour legislation. Labour unions and companies can negotiate different working conditions than those provided in the labour legislation.

If companies or labour unions wish to reduce the salary or working hours, the agreement must state that the employee cannot be dismissed during the union agreement.

Highly educated employees who receive a salary more than twice the maximum amount paid by Social Security Agency (currently BRL 11.290,00) can now negotiate employment agreements with employers without union involvement.

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Union Contribution

- **Old rule**

Contribution was mandatory. Payment was made once a year by deducting the amount from the employee's salary.

- **New Rule**

Union contribution is now optional.

Termination

- **Old rule**

When the worker resigned or was dismissed with just cause, he/she did not have the right to the FGTS fine of 40% nor was able to withdraw the funds.

Regarding notice period, the employer could notify the worker about the dismissal 30 days in advance or pay it in lieu of notice not worked.

- **New Rule**

Mutual Agreement - Termination by mutual agreement is a new type of termination and the mandatory severance is reduced in comparison to a termination without cause. The labour law now allows the employment contract to be terminated in a common agreement upon payment of half of the notice period and half of the 50% FGTS fine.

The employee is also able to withdraw up to 80% of the FGTS fund that the specific employer deposited, but he/she is not entitled to unemployment insurance.

Outsourcing

- **Old rule**

Outsourcing of core business was not included in the old legislation.

- **New Rule**

The labour reform expressly allows outsourcing of core

business. It also states that there is no labour relationship or subordination between the service taker and the outsourced workers.

Companies are prohibited from dismissing a full-time employee and rehiring them as an outsourced worker for 18 months after their termination. The labour law also foresees that the outsourced workers should have the same work conditions as the full-time employees, such as outpatient care, food, security, transportation and quality equipment.

Bank of hours

- **Old rule**

Overtime hours could be compensated on another day, if it did not exceed, on a total one-year period, the sum of the weekly working hours predicted. There was also a daily 10 working hours limit.

- **New Rule**

The bank of hours can now be negotiated directly upon a written individual agreement provided the compensation happens within 6 months.

Contract Termination

- **Old rule**

Contract termination, for employees with over one year of employment, had to be ratified by the respective union to be considered valid.

- **New Rule**

Contract termination can now be signed and can take place at the Company's offices. The employer's lawyer, as well as union assistance, may attend but this is not mandatory.

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Lawsuits

- **Old rule**

The employee could be absent for up to three court hearings. The legal fees related to the investigation were paid by the Federal Government. There was no cost incurred by the party who filed a lawsuit.

- **New Rule**

The worker is now obligated to attend the court hearing. In the event he/she loses the lawsuit he/she must bear the costs of the judicial process. (The worker will also be required to pay the costs even when absent in hearings, unless there is a legal reason that justifies such absence.) Defeat fees ranging between 5% and 15% of the sentence value are paid by the defeated party to the lawyer of the winning party.

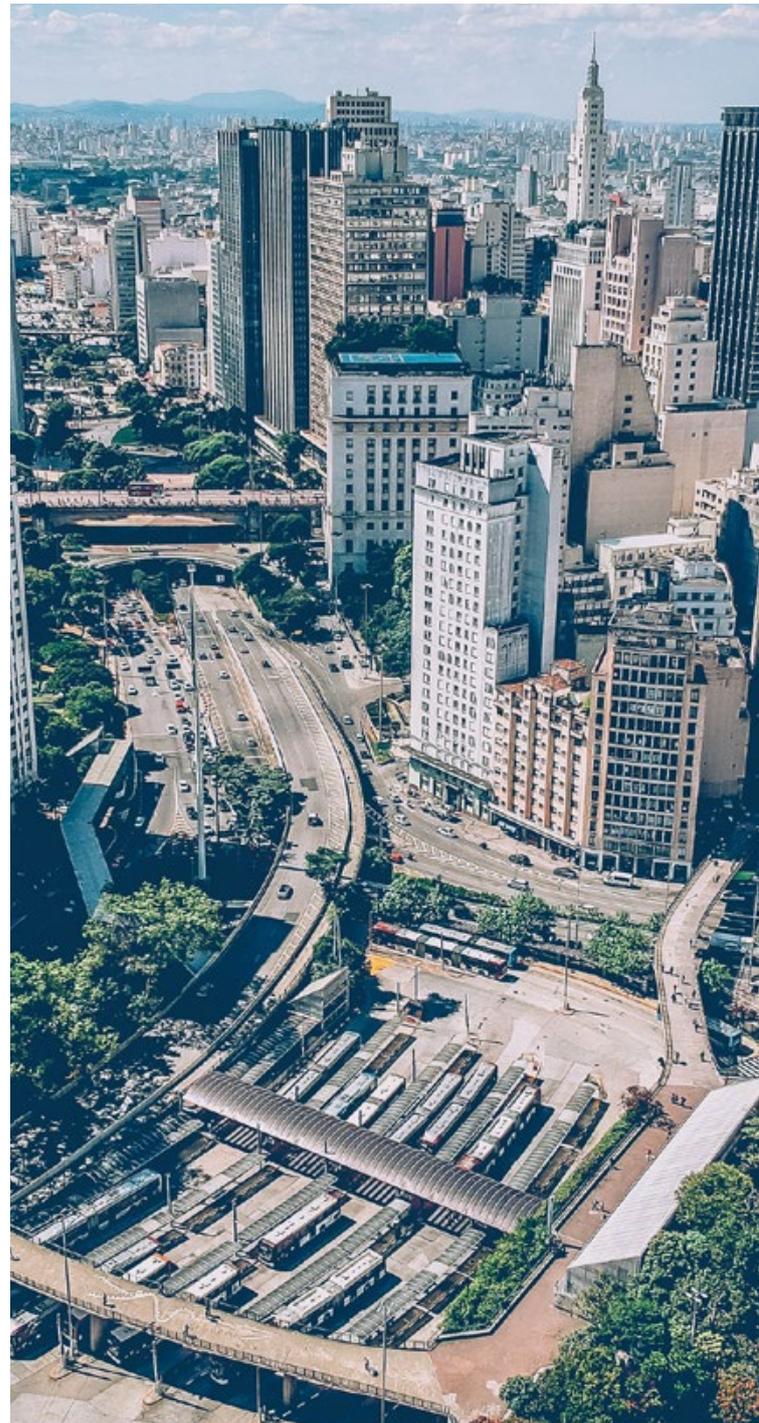
The worker who has access to free judicial assistance is now required to pay the legal fees related to the investigation if he/she obtained enough labour credits from other judicial processes to support the costs. If the worker cannot pay these fees, the Federal Government will bear the costs.

The worker's lawyer will have to define exactly what he is asking for in the lawsuit. The labour claim must be certain, determined and indicate the exact amount of the claim.

Whoever acts in bad faith will be subject to a fine ranging between 1% and 10% of the value of the claim, as well as providing compensation to the other party for losses stemming from such bad faith.

If a worker signs the term of annual discharge (a document delivered by the union releasing companies from any labour debts with workers) before the union, he/she is prevented from questioning it later at the Labour Justice.

The maximum duration of a labour lawsuit is now limited to 8 years. If the lawsuit has not been judged or concluded after 8 years, it will be dismissed.



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WHEN SHOULD THE LABOUR REFORM BE APPLIED?

Old Contracts, New Contracts

One of the biggest questions for all employers in Brazil was whether to apply the changes imposed by the labour reform on ongoing contracts or only on new contracts. In May 2018, it was announced that all contracts, even those signed prior to the approval of the new law, should be included in the changes imposed by the reform. All valid employment contracts in Brazil as of 11th November 2017 will be governed by the Reform Law No. 13;467.

LABOUR REFORM AND LABOUR LAWSUITS

President Michel Temer has repeatedly said that the labour reform's main purpose has been to create jobs and help pull Brazil out of its economic depression with a labour market that is modern, competitive, and more flexible. These ideas were used to convince the House of Representatives and Brazilian society that the labour reform was the solution to all the countries' employment or unemployment problems.

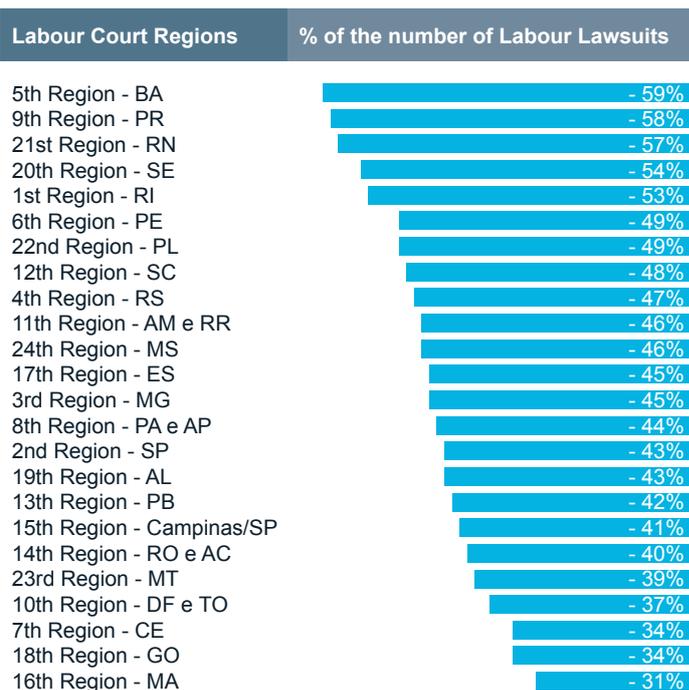
It has been 8 months since the new law has passed, and while the unemployment rates have not dropped, there have been many positive aspects regarding the labour reform.

According to a Labour Judge we interviewed, during a labour court session, judges are taking the new law very seriously, even those who are not totally convinced by the labour reform's new set of practices. The judge also confirmed that labour claims have been reduced greatly during the first quarter of 2018 compared to the first quarter of 2017.

According to Brazil's Superior Labour Courts Ministry,

from December 2016 to March 2017, a total of 831,625 labour lawsuits were filed in Brazil. During the same period from December 2017 to March 2018, a total of 450,355 lawsuits were filed. This is a reduction of nearly 46%. Obviously, this is a reflection not only of the flexibilisations brought by the labour reform but also of the changes in the legislation itself.

Comparison between December 2016 to March 2017, and December 2017 to March 2018. Before and After the Labor Reform.



Sources: TST (Superior Labor Court), TRT-6 (Regional Labor Court of the 6th Region - PE: State of Pernambuco) and TRT-7 (Regional Labor Court of the 7th Region - PE: State of Ceará)

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LABOUR REFORM AND OCTOBER'S PRESIDENTIAL ELECTION

Brazil's next presidential election is coming up in October, and the new labour reform could be at risk. Although candidates are not yet confirmed, some names have been mentioned. Depending on which candidate wins the October election, we should expect to see some changes to current labour legislation in Brazil.

Below we have outlined each candidate and their position regarding the labour reform:

Candidates for the Reform

Álvaro Dias (PODE) - Centre: He has promised to evaluate the results of the reform, and then produce a reform of the reform.

Geraldo Alckmin (PSDB) - Centre & Centre Left: He has promised to maintain the labour reform without modifications.

Henrique Meirelles (MDB) - Centre: He has promised to maintain the labour reform.

Joao Amoedo (NOVO) - Right: He is in favour of the labour reform.

Another potential candidate Jair Bolsonaro (PSL) - Right: He is in favour of the labour reform, but his position is not confirmed yet.

Candidates against the Reform

Guilherme Boulos (PSOL) - New Left: He has promised to revoke the labour reform as he believes it to not be beneficial to the employee.

Manuela D'Ávila (PCdoB) - Left: He has promised to revoke the labour reform.

Marina Silva (Rede) - Centre Left: She is against the labour reform.

Only one candidate seems undecided. Ciro Gomes (PDT) - Centre Left: He has promised to conduct a vote, so Brazil can decide whether to keep or revoke the labour reform.

One of the most controversial subjects of the labour reform has been its non-unionised characteristic. The transformation of the "once" mandatory, to "optional" union contribution has caused a huge debate across the country.

Most employers and employees agree that all the labour unions have done throughout the years was charge large sums of money to employers and employees and offer both parties very few benefits. Nonetheless, Brazil's labour law and even its constitution mentions that labour unions and similar organisations as a right, must be part of the labour relations which means that any changes of employment relations in Brazil needs union approval. Most of the left and centre left election candidates, if elected, are in favour of revoking the labour reform and making labour unions prominent again.

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CONCLUSION

When the Brazil Labour Code (CLT) was enacted in 1943, it provided a variety of labour rights and protections to workers and at the same time granted the state power over labour relations, leaving no space for negotiation between employees and employers.

As mentioned at the beginning of this article, the main purpose of the labour reform has been to adapt a more service-based economy, modernise the outdated labour law, reduce lawsuits and incentivise employers to create jobs.

The labour reform now allows the possibility of negotiation between employers and employees outside of labour courts with both parties requiring adjustments to this legislation. As a result, companies should see a decrease in labour costs which will help increase the country's competitiveness for years to come and help expand opportunities for companies in the international market.

Any company who operates in Brazil has seen the positive changes brought by the labour reform, although all local employers agree that there is still a long road ahead for Brazil in its aim to become a more flexible and modern labour market.





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