Brazil

Ricardo Barretto Ferreira da Silva and Juliana Petrella Hansen
Azevedo Sette Advogados [1]
Sao Paulo, Brazil

Introduction

Labor relations are rigidly regulated in Brazil. The most important regulation is the Consolidation of Labor Laws (*Consolidação das Leis do Trabalho* or Consolidation of Labor Laws of 1943).[2] Brazilian labor law has its roots in the European tradition, and the Consolidation of Labor Laws was inspired by Italian law (*Carta del Lavoro*).

Enjoying the same rank within the hierarchy of laws under the terms of the Constitution, collective norms resulting from negotiation with labor unions also are sources of law and, accordingly, are mandatory in labor relations. Brazil also is a signatory to international norms laid down by the International Labor Organization (ILO), such as those relating to discrimination, child labor, women's labor, work environment, and slave labor.

Legal Relationship of Employer and Employee

Employment Relationship

Under Brazilian law, the characteristics of an employment relationship are continuity (performance of the activity on a permanent, not occasional, basis); subordination (performance of the activity under responsibility and coordination of someone who provides guidance for the activity); salary (the individual must conduct the activity as if he were a regular, salaried employee); personally conducted work (the activity must be performed by a specific person); exclusivity (the employee may render services to no other company or employer); and "alterity" (the employee does not assume risks for the activity, with the employer being liable for all risks).

Accordingly, under Brazilian law, every individual is considered an employee upon rendering services under the conditions specified above, and every individual or company (legal entity) is considered an employer that, upon

1 Ricardo Barretto Ferreira da Silva, partner at Azevedo Sette Advogados – barretto@azevedosette.com.br. Juliana Petrella Hansen, senior associate at Azevedo Sette Advogados - jhansen@azevedosette.com.br.

2 Law Number 5,452/43.

assuming the risk inherent in the economic activity carried on, hires a natural person under the above conditions. The Consolidation of Labor Laws also deals with members of the learned professions, recreational associations, and other non-profit institutions that employ workers as employers.

In Brazil, one comes of age at 18, after which he has the capacity to perform legal acts, among which are those pertaining to the labor area. However, as from 14 years of age, one is permitted to enter into a labor contract in the capacity of a minor apprentice (a special labor contract combining vocational training with work and schooling),[3] as provided by article 428 of the Consolidation of Labor Law.

Between 16 and 18 years of age, it is possible to enter into a contract upon authorization of a parent or guardian. A minor under 18 is prohibited from undertaking housework. All minors less than 18 years of age, regardless of the manner in which hired, are barred from working at night and under unhealthy and/or hazardous conditions. Labor relations are governed by the contract-reality principle, according to which facts supersede written provisions. Therefore, if the legal requirements characterizing an employment relationship are present, the relationship may be recognized as an employment, even if the parties have formally agreed on a different legal relationship or have modified it during the course of the employment contract.

Types of Employees

Specific statutes fix minimum rights for certain types of employees, such as rural workers,[4] lawyers,[5] minor apprentices,[6] physicians,[7] domestic servants,[8] and temporary workers.[9]

Statutory Exceptions to Concept of Employee

Certain categories of workers do not fit into the concept of employee, such as:

- Sporadic worker — This category encompasses a professional hired to carry out sporadic tasks not related to the production chain of the person hiring him. There is autonomy in the provision of services. This employee is not subject to the Consolidation of Labor Laws or other labor laws, the relationship being governed by civil law.
- Trainee — A student will be deemed to be a trainee upon providing services aiming at his vocational training under the coordination and orientation of an

3 Consolidation of Labor Law, article 428.
4 Law Number 5,889/73.
5 Law Number 8,906/94.
6 Consolidation of Labor Law, article 428.
7 Law Number 3,999/61.
8 Complementary Law Number 150 of 2015.
9 Law Number 6,019/74.

educational institution. The trainee contract executed as prescribed by law does not entail an employment relationship.[10]

- Cooperative member — Cooperative societies are regulated by the Civil Code and other applicable laws. Cooperatives are non-profit in nature and are exempted from having capital stock. A person joining a cooperative of his free will is not considered an employee and, accordingly, there is no employment relationship between a member and the cooperative.[11]
- Business agent — This category encompasses individuals or legal entities, without the elements of an employment relationship, who act on a non-sporadic basis, on the account of one or more persons, serving as an intermediary in the conduct of business transactions, intermediating proposals or orders to transmit them to the principal, whether or not performing acts related to the conduct of business transactions.[12] Under these conditions and provided the requirements of the law will have been complied with, the relationship between the agent and the company contracting with him is not an employment relationship.
- Non-employee officer — Brazilian law allows the election of an officer in a company's charter without him being required to be an employee. In this case, the officer will carry on his activities with absolute autonomy and assume the risks inherent in his office, thus remaining distant from the elements leading to an employment relationship. Although legally possible, the election of a non-employee officer must be done cautiously so as not to constitute an employment relationship.

Foreign Workers

The Federal Constitution ensures all workers, both aliens and Brazilians, protection in their work. Article 5[13] of the Federal Constitution provides for non-discrimination between Brazilians and foreigners and establishes the principle of equal treatment. Brazil is a signatory to Convention Number 111[14] of the International Labor Organization, according to which all member states must observe fundamental principles in the labor relationship and equal treatment, including the prohibition of any form of discrimination.

The Consolidation of the Labor Laws contains a chapter that deals with nationalization of labor by addressing the foreign employee issue and establishing specific hiring conditions. The Consolidation of Labor Laws provides in article 354 that two-thirds of the employees of Brazilian companies must be Brazilian workers. The requirement is applicable only to employees and

10 Statute-Law Number 11,788 of 2008.
11 Consolidation of Labor Laws, article 442.
12 Statute-Law Number 4,886 of 1965; Statute-Law Number 8,420 of 1992.
13 Federal Constitution, article 5.
14 See http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111.

not to professionals having labor relationship with the company. Other service providers not having a labor relationship are excluded.

Save for the above-mentioned hiring proportion, there may be no distinction between foreign and Brazilian employees in respect of the other rights ensured by law, under a collective agreement, or in the internal regulation of the company. As regards wages, the Consolidation of Labor Laws provides that foreign and Brazilian employees must earn the same salary if they perform the same activities and tasks.

An employment contract ensures foreign workers labor conditions equal to those afforded to Brazilians. It also guarantees protection of Brazilians in that it restricts the number of aliens and provides that, in the event of reduction or termination of the employer's activities, an alien performing work analogous to that of a Brazilian must be dismissed first. A foreign worker also is protected under the Foreign Citizen Statute15, which governs the status of immigrants in Brazil, as well as their working conditions.

Types of Labor Contracts

Under Brazilian law, labor contracts may be entered into in writing or tacitly; in either case, it is mandatory to record the date of admission and dismissal with other important data, such as salary, position, promotions, and vacation) in the Employment and Social Security Booklet, i.e., the Work Card (CTPS) to prove length of time of service for Social Security.

Article 443 of the Consolidation of Labor Laws provides that an individual contract of employment may be entered into tacitly or explicitly, orally or in writing, and for a specified period or for unspecified periods. A contract of employment for a specified period means a contract whose period of operation is fixed in advance or depends upon the performance of specified services or on the occurrence of a particular event, the approximate date of which can be foreseen. A contract for a specified period will be valid only for services whose nature or limited duration justifies the fixing of a period beforehand, activities carried on by an undertaking on a temporary basis, and trial contracts. Under article 443 of the Consolidation of Labor Laws, there are two possibilities when contracting for a definite period, namely:

- Probation contract — An initial trial-period contract may be adopted for a fixed period, which may not exceed 90 days, after which, and provided the employee remains in his job, the contract will automatically convert into a regular employment agreement, effective for an open-ended duration.
- Fixed-term employment contract — A fixed-term contract is one whose validity depends on a pre-fixed term or performance of specified services, or also the performance of an event susceptible to a rough estimate. Therefore, for validity of the fixed-term employment contract, it is necessary to fulfill the

15 Law Number 6,815/80.

legal requirements, indicating in the contract itself the justification for the transitory nature of the hiring. This fixed-term mode of contract cannot stipulate a period exceeding two years, with the possibility of only one extension, provided that the period of two years is not exceeded. Once the contract term is exceeded or if the purpose is misrepresented, the employment contract will be converted into an employment contract for an indefinite period. A contract for a specified term immediately following an agreement for a fixed term of no less than six months is deemed indefinite, unless the employer proves a justification. Any irregularity in a contract for a fixed period will make it into an indefinite-term contract.

There also is a modality of contract for temporary employment. It is a special labor contract,[16] consisting of a triangular relationship (temporary worker, agency, service taker). Under this contract, a temporary worker is hired as an employee by a temporary labor supplier (incorporated and registered for that purpose), which will furnish labor to another company (service taker), aiming at meeting the transitory need for replacement of its regular and permanent personnel or for extraordinary addition of services. The replacement of regular and permanent personnel is limited to the events of leave on account of vacation, sickness, and maternity. The extraordinary addition is an event that occurs on an uncommon basis and is not deemed as a company's routine. A temporary worker is not an employee of the company taker of the service, even though he may render services to it in a direct and personal manner. This is the only modality of contract in which labor assignment is allowed under Brazilian labor law. The duration of this contract is initially three months, extendable for up to nine months, should there be a justification and authorization by the Ministry of Labor and Employment.

The law also allows for the possibility of hiring a part-time employee for a working week of up to 25 hours.[17] In this case, the employee may not work overtime, under penalty of invalidating the part-time employment. The economic advantages including vacations are reduced in that they are proportional to the work length of time,[18] and the salary paid is proportional to the period worked as compared with the other employees performing the same task. The law further allows migration of labor contracts in progress to part-time work, provided it has been negotiated with the union.

Under article 58-A of the Consolidation of Labor Laws, a job the duration of which does not exceed 25 weekly hours is deemed to be part-time work. The salary to be paid to employees under a part-time regime will be proportional to their daily working hours in relation to employees who in the same positions work full time. As regards current employees, the adoption of a part-time regime must be made through an option expressed to the company in the manner set out in the instrument resulting from collective negotiation. Under article 130-A, a

16 Statute-Law Number 6019 of 1974.
17 Consolidation of Labor Law, article 58-A.
18 Consolidation of Labor Law, article 58-A, paragraph 2.

part-time employee, after each period of 12 months of labor contract effect, will be entitled to vacation as follows:

- Eighteen days for work with a weekly duration of more than 22 hours, up to 25 hours;
- Sixteen days for work with a weekly duration of more than 20 hours, up to 22 hours;
- Fourteen days for work with a weekly duration of more than 15 hours, up to 20 hours;
- Twelve days for work with a weekly duration of more than 10 hours, up to 15 hours;
- Ten days for work with a weekly duration of more than five hours, up to 10 hours; and
- Eight days for work with a weekly duration equal to or less than five hours.

An employee hired under a part-time regime who has more than seven unjustified absences throughout the vesting period will have his vacation period reduced by half. The apprenticeship contract (minor apprentice contract) also is a special labor contract with mandatory rules. This type of contract must be executed in writing and for a fixed period (maximum limit of two years). In this contract, the employer undertakes to ensure a person over 14 and under 24 years of age, enrolled in an apprenticeship program, such methodical technical-professional training as is compatible with his physical, moral, and psychological development, and the apprentice undertakes to perform with care and diligence the tasks required for that training.

Labor Succession

There is labor succession where there is a transfer of ownership of the company on a provisional or definitive basis, either publicly or privately, gratuitously or onerously, and provided the successor will continue to carry on the same economic activity conducted by the succeeded predecessor.

A transfer of ownership may affect the whole or a part of the company in that there is continuity in the service of the workers, even after transformation of the employer (succeeded company) into another legal entity (successor company). It does not matter whether there is transfer of the entire company or of merely a part of it. Employees who remain in their positions will suffer no loss, even a mere alteration in their labor contracts, even after a change of employer.

In labor contracts, an employer succession reflects, in short, the inalterability of conditions previously established between the former employer and the employee. Articles 10 and 448[19] of the Consolidation of Labor Laws, which treat of labor-related succession, aim to protect the worker and ensure continuity of

19 Consolidation of Labor Laws, articles 10 and 448.

the labor contract in case of any alteration to the business structure, including a change of ownership.

Terms and Conditions of Employment

According to the Federal Constitution, the most important labor rights are:

- FGTS (Worker Length of Service Severance Indemnity Fund)[20] ;
- A wage floor compatible with the difficulty and amount of work, which is normally determined by the relevant unions;
- Thirteenth salary[21];
- Night shift work[22];
- Family pay according to the number of the employee's dependents;
- Regular work hours that may not exceed eight hours per day and 44 hours per week;
- A six-hour day in the case of uninterrupted relay shifts, except in the event of a collective bargaining agreement;
- Weekly remunerated rest;
- Overtime payment amounting to no less than 50 per cent over regular wages;
- Yearly vacations with pay at least one-third higher than regular wages;[23]
- Maternity leave of 120 days, with guaranteed employment and salary;[24]
- Paternity leave as provided by law;
- Advance notice of dismissal, which must be proportional to the time of employment and of at least 30 days as required by law; and
- Additional pay for difficult, unhealthy, or dangerous work as required by law.[25]
- Proper recognition of collective bargaining agreements.

---

20 FGTS is equivalent to eight per cent of the monthly earnings, which the employer must deposit on a monthly basis into a blocked bank account in the name of the employee.

21 The employee will earn an extra salary at the end of the year, to be paid each December.

22 Night shift work must be remunerated at a rate no less than 20 per cent higher than equivalent daytime work.

23 The vacation period can only be taken in two separate periods in exceptional cases and neither period may be less than 10 days. The employee may elect to convert one-third of his vacation into a pecuniary allowance in the amount of pay that would be due for the relevant days of work.

24 From the date in which the pregnancy is confirmed until five months after birth, pregnant employees can only be dismissed for cause.

25 Employees subject to a hazardous work environment may claim a salary increase of 30 per cent. If the work environment is considered unhealthy, depending on the level of potential harm to health and well-being, the salary may be increased by up to 40 per cent.

Recognition of Collective Bargaining Agreements

Deductions and Reductions

Employers are not permitted to make deductions from the employee's compensation other than for salary advances given or those deductions prescribed by law and collective bargaining agreements, such as withholding taxes, social security contributions, and union dues. Employers may not reduce salaries except under extraordinary circumstances.

Equal Opportunity

The law requires that all work of equal value be remunerated at the same rate, regardless of the nationality, age, gender or marital status of the employee who performs identical functions. However, differences in length of service may be taken into account to justify different salary levels if the difference is greater than two years. Companies that have a career-track plan may have differences in salary levels in accordance with seniority and merit.

Profit Sharing

Profit-sharing agreements are not mandatory. However, if implemented in compliance with the law, profit-sharing payments are not subject to payroll taxes but are subject to personal income withholding tax. These payments also are not included in the employment rights calculations basis. For corporate tax purposes, the payments are fully tax deductible.

Meals and Transportation

Normally, companies pay part or all of the employees' cost of meals and transportation.

Bonus

A bonus paid to the employee, in accordance with performance (productivity) may be considered a type of reward. Article 457, paragraph 1, of the Consolidation of Labor Laws determines that agreed bonuses must be incorporated into the employee's wage for all purposes. Brazilian courts hold that bonuses are a part of the worker's wage for all purposes if they result from an express contractual provision or a written or oral agreement, or are paid on a regular basis.

Working Hours

The labor law establishes working hours at eight a day and 44 a week, and the hours in excess of such limits are to be paid accrued by at least 50 per cent. Nonetheless, labor collective bargaining may impose other limits more beneficial than those set forth by law. Other professional categories may be entitled to other hour limits that are set forth in special laws, such as for lawyers and aircraft pilots.

There are two legal exceptions to the working-hours limitation: **(i) Position of trust**: Managers who occupy a position of trust are not subject to the control of working hours and will not be entitled to overtime, provided their remuneration is at least 40 per cent higher than the wage of the effective position (or in other words, 40 per cent higher than the salary of the manager before the promotion), or than the wage of other employees of his department, if hired directly for the management position.

However, if the employee who holds a position of trust is subject to the control of working hours, he will be entitled to overtime, as provided under article 62 of the Consolidation of Labor Laws. **(ii) External Basis:** Employees can be included in this exception only if their work is absolutely external and if this necessarily makes it impossible for the employer to control their working hours, even indirectly. When such factors exist, the employer is excused from the need to record the employee's hours of work or to pay for any overtime. A situation where external work is incompatible with control of working hours must be noted, specifically and in writing, in the employment agreement, in the CTPS, and in the employee's records, according to article 62 of the Consolidation of Labor Laws.

Legal Guarantees of Employment

Brazilian law has until now allowed termination of the labor contract without cause (see text, below). However, some categories of employees, on account of their personal condition or position, do enjoy provisional guarantees of employment under the law.

Article 10 of the Federal Constitution Transitional Provisions Act provides that an employee elected to a management position in internal accident prevention committees, from the registration of his candidacy until one year after the end of his term, may not be dismissed arbitrarily or without cause. Article 10 of the Federal Constitution Transitional Provisions Act provides that a pregnant employee enjoys temporary tenure from confirmation of pregnancy until five months after delivery.

Article 543, paragraph 3, of the Consolidation of Labor Laws and Article 8 of the Federal Constitution provide that discharge of a unionized or associated employee is prohibited as from the moment of registration of his candidacy to a management or representation position in a union or professional association until one year after the end of his term, should he be elected, even as an alternate, save if he has committed grave misconduct verified under the terms of the law.

Article 55 of Statute-Law Number 5,764 of 1971 provides that employees elected directors of cooperatives created by themselves will enjoy the guarantees applicable to union leaders under Article 543 of the Consolidation of Labor Laws, namely, as from registration of the candidacy until one year after the end of his term.

Finally, Article 118 of Statute-Law Number 8,213 of 1991 provides that an employee covered by the Social Security System who suffers an on-the-job

accident is entitled to tenured employment for 12 months as from the Social Security medical release.

Discrimination

Brazil has provisions in its Federal Constitution and federal laws that prohibit discrimination at the workplace, including for purposes of admitting and dismissing employees. The legal texts address discrimination based on sex, race, color, religion, age, marital status, and nationality.[26]

In addition, special protection is provided to persons with disabilities (whether physical or mental), as well as to those with severe diseases, such as HIV-infected persons. A recently enacted law[27] defines a crime as discrimination at the workplace against persons who have AIDS or are infected with HIV. To that effect, a judicial precedent (Precedent Summary Report Number 44328 of the Labor Superior Court) provides that termination of a labor contract with an employee with HIV or suffering from such other serious disease as might evoke stigma or prejudice is presumed to be discriminatory.

Brazil has signed International Labor Organization Convention Number 111[29], which deals with discrimination at workplace. It also is prohibited to require that that job applicants go through a trial period longer than six months. The most common incidents of workplace discrimination in Brazil occur in regard to termination for severe diseases, occupational diseases, and or pregnancy.

Collective Bargaining and Worker Participation in Management

Trade association or labor union classification is mandatory in Brazil, and every company must be represented by a trade association. Which trade association a company should belong to is determined by its economic category. The economic categories correspond to groups of companies that have similar economic interests or corporate purposes.

Therefore, a company is classified as belonging to a given trade association based on its economic interests or, in other words, on its corporate purpose. It happens that a given company frequently has various activities listed in its corporate purpose or, in other words, more than one economic interest. In these cases, the company is classified for trade association membership based on its primary activity. The company's primary activity is the one that characterizes the product/business unit pursued.

26 Law Number 9029 of 1995, article 1; Federal Constitution, section XXXIII, article 7.
27 Law Number 12.984 of 2014.
28 *Discriminatory Dismissal. Presumption. Employee with Serious Disease. Stigma or Prejudice. Right to Reintegration* – Res. 185/2012, *Dejt*, 25, 26, and 27 September 2012.
29 See http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111.

One can say in summary that a company is classified as belonging to a given trade association based on the company's preponderant activity, in accordance with its corporate purpose and its geographic location. However, there are certain activities and professions that are classified as differentiated categories. For this reason, they do not follow the rule of classification by primary category.

In this regard, applicable law defines a differentiated category as one "that is made up of employees who practice professions or perform duties that are differentiated under a special professional statute or as a consequence of distinctive living conditions." A professional category will, therefore, be considered differentiated when it is governed by a specific law or exists for those who have distinctive living conditions. Examples of professions considered differentiated are those of drivers,[30] nutritionists,[31] engineers,[32] and accountants,[33] which are activities that are governed by law and, therefore, are classified as differentiated categories.

The classification of an employee as belonging to a differentiated category does not, in and of itself, obligate the employer to be bound by the collective bargaining agreement of the labor union representing this category. The employer will only be mandatorily bound if the employer negotiates directly with the union for the differentiated category, there is a collective bargaining agreement between the labor union for the differentiated category and the trade association that represents the employer, and/or there is an express mention with regard to the differentiated category in the collective bargaining agreement of the main category union.

Labor law in Brazil is basically governed by two principles. The first is the **principle of union freedom**, under which every citizen is free to associate with any union. However, this freedom of association does not bind the determination of union classification due to an employment relationship. Nevertheless, if there is a collective bargaining agreement negotiated between the differentiated category of union and the main category of union, the company is legally required to observe the rules of the collective bargaining agreement regardless of whether the employee is a member of the union for his professional category. Second, under the **principle of union unity**, there may be only one trade association that represents the economic category and a single labor union that represents the professional category (employees) in a given territory.

The collective rule stems from negotiation between the unions representing the occupational category (workers) and the economic category (companies), in which case it is called collective bargaining convention, or the occupational category's union and the company, in which case it is called collective bargaining agreement.

Under the Federal Constitution, normative clauses are mandatory and have the hierarchical force of law. The contents of a collective rule may not reduce or

30 Law Number 12,619 of 2012.
31 Law Number 8,234 of 1991.
32 Law Number 4,950 of 1966.
33 Law Number 4,695 of 1965.

suppress minimum rights provided by law. There are, however, permissive instances in the Federal Constitution that authorize the reduction of wages and a change in working hours through a collective rule under specific circumstances.

In Brazil, collective bargaining agreements in general stipulate annual salary adjustment rules, wage floor, and benefits such as health care, meal tickets, day nursery aid, life insurance, funeral expenses, increases in statutory additional amounts of overtime and night shift premium, and stipulation for tenures other than those provided by law, such as pre-retirement tenure, post-vacation tenure, and medical leave. In compliance with the position of the Labor Superior Court, the content of collective rules must adhere to the labor contract as a vested right and may not be suppressed, save under a new collective negotiation expressly revoking it.[34]

Workplace Health and Safety

In General

Rules applicable to labor health and safety are deemed as imperative and are not subject to flexibility in that they are intended to care for the physical and mental integrity of the worker and his working environment. The law ensures an employee working under exposure to risks resulting from physical, chemical, or biological agents (defined by a rule laid down by the Ministry of Labor and Employment) a health-hazard allowance depending on the degree of exposure, which may vary from 20 per cent to 40 per cent on the basis of the minimum wage.

The law provides that an employee subject to hazardous agents (defined by a rule laid down by the Ministry of Labor and Employment) is entitled to risk premium verified on the basis of 30 per cent of the contractual salary. There are 36 Regulatory Norms of the Ministry of Labor and Employment, setting out technical rules on health and labor safety.

Companies must have an Internal Commission for Accident Prevention (CIPA) and Specialized Services in Safety Engineering and Labor Medicine (SESMET).

The CIPA must be composed of representatives of employees and the employer. The CIPA's main purpose is to prevent labor-related accidents and illnesses. The implementation of the SESMT is conditional on the size of the company as regards its number of employees and risk level. Such service also is intended to promote worker health by providing a technical staff composed of safety engineers, labor physicians, and labor nurses at the work site. The labor law also provides that companies must maintain environmental reports that are periodically updated.

34 Judicial Precedent Summary Report Number 277 of the Labor Superior Court, *Collective Bargaining Convention or Collective Bargaining Agreement. Enforceability. Outreach.*

Workers' Compensation and Survivors' Benefits

The Federal Constitution sets out minimum parameters concerning disabled persons for both public policies and private initiative. The Constitution prohibits discrimination with respect to wages and criteria for hiring persons with disabilities, under article 7. Of public offices and positions, a percentage is reserved for persons with disabilities, under article 37.

Article 203 provides for habilitation and rehabilitation of persons with disabilities and promotion of their integration into community life through social security. Article 203 also guarantees a monthly benefit of one minimum wage to a person with disability and to the elderly who prove their incapability of providing for their own support or having it provided for by their families.

Article 227 provides for creation of preventive and specialized care programs for the physically or mentally disabled, as well as programs for the social integration of disabled adolescents, by training for a profession and communal life, and by providing access to communal facilities and services through elimination of prejudices and physical obstacles. Construction of public sites and buildings for public use and the manufacturing of public transportation vehicles must ensure appropriate access to persons with disabilities.

Article 93 of Statute-Law Number 8,213 of 1991 provides that every company, within the limits set forth below, is required to hire persons with disabilities. Under article 93, a company with 100 or more employees is required to fill from two per cent to five per cent of its positions with rehabilitated beneficiaries or persons with disabilities in the following proportion:

- Up to 200 employees, two per cent;
- From 201 to 500 employees, three per cent;
- From 501 to 1,000 employees, four per cent; and
- From 1,001 employees, five per cent.

The dismissal of a rehabilitated worker or of a habilitated worker with disability at the termination of a contract for a determinate period of more than 90 days, and without cause in a contract for an indeterminate period, may only occur subsequent to the hiring of a substitute under similar conditions. A company will be required to obtain from the employee such documents as justify his condition of disability. The law also allows an employee holding a rehabilitation certificate issued by Social Security to be deemed fit for the purpose of filling the statutory quota.

Therefore, companies with more than 100 employees are required to hire persons with disabilities or rehabilitated beneficiaries, regardless of the type of disability or rehabilitation. A breach of the statutory quota for persons with disabilities will subject the company to the payment of an administrative fine, in addition to a possible lawsuit brought by the Labor Prosecuting Attorney.

Dispute Resolution

The labor law does not allow resolution of individual disputes by private agreement between the parties without intervention of the judiciary or the unions. The main alternative for dispute resolution is through the courts, and Brazil relies on a specific judicial structure for that purpose: the Labor Courts. A suit may be brought without the need of an attorney.

However, there is a possibility of dispute resolution through the union, by means of a prior conciliation committee. The committee exists in only some unions, and the procedure involves the filing of a complaint by the worker against the employer, who may or may not come before the committee in an attempt at conciliation. If an agreement is reached, the settlement will have the force of judgment, and the rights challenged therein may not be the subject of a lawsuit.

The law does not allow arbitration for resolution of individual labor disputes. The labor law deems strike as a constitutionally guaranteed right.[35] Once a workers' strike is started, all alternatives are possible as forms of dispute resolution (mediation, arbitration, or collective bargaining). A specific statute governs the right to strike.[36]

Termination of Employment

A company may dismiss an employee without cause, but the employee has the following rights:

- Balance of wages due up to the last day in the job;
- Advance notice of dismissal, which must be proportional to the time of employment, but cannot be fewer than 30 days as required by law;
- *Pro rata* share of the thirteenth wage;
- Paid vacation, if due, plus one-third over the vacation paid amount;
- *Pro rata* vacation pay, if due, plus one-half over the vacation paid amount
- Forty per cent penalty deposited into the employee's bank account;
- Compensation as provided in article 9 of Law Number 7238 of 1984, if due, which is equivalent to approximately one month's wage, and
- Family pay.

When an employee is dismissed for cause, the employee has only the right to the balance wages up to the last day at work; paid vacations, if due, plus one-third over the vacation paid amount; and family pay.

Additionally, conditions established by the applicable collective bargaining agreement must be observed. Other conditions may be included in the

35 Federal Constitution, article 9.
36 Statute-Law Number 7,783 of 1989.

employment agreement and other facts may influence its development and termination of an employment relationship.

An employment relationship also may be terminated on the employee's initiative. In this case, the employee requests his dismissal and, by doing so, may lose certain rights to which he or she would otherwise be entitled if the employment agreement had been terminated on the initiative of the employer. Consequently, the rights arising from the termination of the employment agreement by the employee will be limited to the balance of wages up to the last day at work; the thirteenth salary; paid vacations, if due, plus one-third over the vacation paid amount; and *pro rata* vacation pay, if due, plus one-third over the vacation paid amount.

The Consolidation of Labor Laws also provides for the termination of an employment agreement by the employee for cause ("indirect discharge"). In this case, the employee terminates the agreement and seeks indemnification, when the employer does not abide by the employment agreement or performs injurious acts against the honor or moral of the employee or his family. The payment of the employment amounts must be made to the employee at a Regional Labor Office (*Superintendência Regional do Trabalho e Emprego*) of the Ministry of Labor or the union for the category to which the employee belongs, at which time the termination of the employee's employment agreement will be ratified.

Retirement, Social Security and Health Care, and Old-Age Pensions

In General

Among the most relevant Social Security benefits are those relating to retirement, which may be based on the employee's length of contribution or his age. Accordingly, the insured may retire at 65 years of age if male or 60 if female. A rural worker may retire at 60 years of age if male or 55 if female. An insured individual also may retire upon completing 35 years of contribution to Social Security if male or 30 years of contribution if female.

An insured who will have worked under special labor conditions harmful to his health or his physical integrity may retire on the basis of reduced length of services, according to the harmfulness of the work. An employee suffering a labor accident or work-related illness will, upon returning to his activities in the company, be tenured in the job for 12 months, having the right not to be dismissed save for cause.

Summary of Social Costs

An employee's contribution to Social Security corresponds to approximately 11 per cent of his gross salary. The 11 per cent ceiling is adjusted annually. An employer must contribute an amount equivalent to approximately 28 per cent of the gross salary paid to the employee.

Conclusion

It has been long since a reform of the labor law has been the subject of discussion, and some attempts have already failed, such as the attempt to include arbitration as a form of individual conflict resolution for high-management employees. This was rejected in the Arbitration Law (Statute-Law Number 13,129 of 2015), thus maintaining the understanding that the employee will always be the weaker party in the employment relationship and that certain rights cannot be waived.

Issues of significance in labor law include the status of outsourcing, variable remuneration, home office work, use of technology, and non-compete clauses after a labor contract has terminated. These are some of the themes the Brazilian labor law is silent about, bringing about great juridical insecurity to labor relations.

Consequently, the Labor Tribunals have sought to fill such legislative gaps based on the general principles of law, without however, delivering uniform decisions that might result into a binding judicial precedent, in that the situation in each case requires that different decisions be made. These are brought by way of examples to demonstrate that there is still much to advance so as to obtain labor laws that may stand for the real needs of employees and employers with a view to guaranteeing full employment and fostering private initiative.