

What You Need to Know About Brazil's New Labor Laws

While companies continue to wait for answers on how the courts will rule on grey areas surrounding Brazil's new labor laws, it is important to understand their implications on local human resources departments. Most of all, the new labor laws provide companies with more flexibility for hiring and remunerating their employees.

In July 2017, the Brazilian Federal Chamber of Deputies and President Michel Temer approved changes on the Brazilian Labor Code. Following these approvals, Brazil had 120 days to act on this new Labor Reform, impacting the relationship between companies and employees in Brazil.

Prior to the new legislation, Brazil was a country of high regulatory and labor cost, with no flexibility on how companies hire or compensate employees. While there was a general labor law, each sector had unions that could approve specific clauses for their affiliated employees.

With Labor Reform comes a renewed perspective for companies, allowing greater flexibility on terms of employment and remuneration. Although the new law has been valid since November 11th, some courts are still refusing to accept it, claiming that it breaks the country's main legislation. As a result, many companies remain in a *wait and see* mode, hoping to soon gain clarity on how court decisions will play out.

The following highlights the most important aspects of the new labor laws for companies to be aware of, and how human resources activities will be impacted:

1. **Time in Transit hours (*In itinere*):** The former law stated that if companies provided transportation for employees to get to work, their commute was considered labor time. The new law refutes this and states that when *in itinere*, an employee is not at an employer's disposal.
2. **Bank of Hours:** In order to compensate working extra hours, firms previously negotiated with labor unions for approval. This was time consuming and often ineffective. The new law allows companies and employees to negotiate directly and have a written agreement for compensating extra hours.
3. **Remote Work:** While the former law did not address remote work and its conditions, the new law legally allows employees to work remotely under the following conditions:
 - Conditions can be changed from working in-person to working remotely if both parties agree.
 - Costs of equipment, maintenance, and necessary tools to conduct work remotely should be negotiated between employer and employee with a formal and written agreement.

- Reimbursements and cost coverages are not considered to be part of an employee's compensation package.
 - Labor health and safety conditions of a remote workplace should be validated and are the employers' responsibility.
4. **Dividing Vacation Days:** The former law permitted employees to split vacation time into two periods, requiring one to be at least ten days long. Under the updated law, employees can now split vacation time into three periods, with one lasting at least 14 consecutive days and the others at least five consecutive days.
 5. **Labor Agreements:** Previously, no agreement could differ from the employee's labor law clauses, even if written tacitly, or explicitly agreed upon by both parties. The new labor law permits employees and employers to negotiate any clause that might be of interest to both parties. However, this article is explicitly for employees that hold a higher education degree and have or will have a salary more than two times the Social Security Benefit cap. The Social Security benefit is BRL 5,531.31 and typically updated every year. Therefore, salaries must be higher than BRL 11,062.62.
 6. **Additional Payments and Rewards:** This topic is a grey area with multiple interpretations. Previously, any additional payment or reward, including bonus, sales commission, and profit sharing, was considered part of the salary and received the same type of taxation and additional payments, such as social security, public pension, and funding for unemployment. Those payments were used for calculation of the 13th salary, where employees are typically paid one full monthly salary as a bonus in December, and vacation bonus, which enables employees to receive payment for up to ten unused vacation days. The new law states that any additional payment to reward that was not previously agreed upon is not considered part of salary. As a result, there is no taxation or extra cost for the company to grant it to employees. The issue here is that opinions differ on how bonus and reward payments are chosen, since they are typically part of hiring offers and agreements. At this point, companies are waiting to see what the courts will decide.
 7. **Salary Equity:** The former law stated that two professionals in the same function should be paid equally unless they do not work in the same city or have a two year gap between hiring dates. The new law states that if the two professionals work in different branches or offices, they can be paid differently. Another clause affirms that if one of the employees has more than four years of employment at the company, he or she cannot be used as target for salary equity claim.
 8. **Job Termination:** Terminations are no longer needed to be homologated by the Labor Union or Ministry of Labor. Companies should only communicate to the employee and pay his or her severance package within ten days after dismissal.
 9. **Resignation with Both Parties' Agreement:** This agreement was not covered under the former law. However, with the new law, it is possible that an employer and employee can mutually agree to terminate employment. The old law mandates that if an employee is dismissed without a cause, the company should pay an additional 40% fine over the amount the employee has on his Fund for Guarantee of Unemployment. The new law says that in case of both parties' termination of contract agreement, dismissal fines will be cut in half, with companies paying a 20% fine over the Fund for Guarantee of

Unemployment, rather than 40%. In these cases, employees are not entitled to unemployment insurance paid by the government.

10. Union Contribution: Historically, employees were obliged to contribute to the Union, paying the amount of one labor day per year. The new law mandates that employees must expressly authorize this payment to be made.

Based on our conversations, companies are still reluctant to make operational changes in regard to the new labor laws, since some of the clauses still have grey areas that might be interpreted differently depending on the judge or court. In the meantime, firms are waiting to see what their peers will do and how the law will be treated by the courts, before taking any action. In any case, Brazil's new labor laws offer a set of fresh possibilities with the potential to greatly benefit both employees and companies.

To learn more about Brazil's new labor laws and how they may impact your firm, please [contact our team](#).

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