

Alert – Labor Reform



Labor Reform – Law no. 13467/2017

On 7/13/2017 the Brazilian President sanctioned the so-called “labor reform”, introducing several changes in the Brazilian Labor Law [*Consolidação das Leis do Trabalho* - “CLT”], including in regard to outsourcing, which was recently regulated by Law no.13429/2017.

The new rules will take effect on November 10, 2017.

However, given the high likelihood of court disputes over the constitutionality of the rules, as well as of probable provisional presidential decrees, which, as

negotiated with the Brazilian Congress, will be published by the Brazilian Presidency to amend some specific points of the Law, possibly the legal uncertainty as to the application of the new legislation will persist for some time.

In this scenario, the new legal provisions should be applied with caution.

Anyway, we make brief comments on the main changes brought about by the Reform.

This report is intended to provide information only and does not contain any opinion, recommendation or legal assistance by Santos Bevilaqua Advogados on the matters addressed.



Companies may be represented in court by a third party (representative)

Now the employer may be represented in lawsuits filed with the Labor Courts by a representative that is not a member or an employee of the employer company.

Collective Bargaining

The negotiated issues prevail over the legislated matter in regard to (i) hours of work, including reduction in the meal and rest break (provided that within the legal limits), (ii) internal policies on positions and salaries (iii) bonus, (iv) work from home office, (iv) granting of benefits (ex.: health care plan), (v) Profit and Results Sharing [*Participação nos Lucros e Resultados* - PLR], among others.

However, the fundamental rights of workers cannot be negotiated (ex.: list in article 7 of the Federal Constitution), such as minimum legal additional number of overtime hours, deposits into the Unemployment Savings Fund (FGTS), Social

Security Contributions (INSS), 13th salary, vacation pay, among others.

Union dues

Now they are optional and may be deducted only upon prior express authorization of the employee.

Term for payment of severance amounts and procedures for ratification of employment termination

The term for the payment of severance amounts was unified to 10 days, and the ratification of the employment termination by the applicable Trade Union/ Labor and Employment Regional Office is now optional.

Business Group

The mere identity of the members, in itself, does not characterize a labor Business Group for the purposes of liability towards employees and ex-employees.

This report is intended to provide information only and does not contain any opinion, recommendation or legal assistance by Santos Bevilaqua Advogados on the matters addressed.

Outsourcing

The permission to outsource any activities, including within the ambit of the core business, was reaffirmed.

Vacation

The employee may divide his/her vacation into up to 3 periods, however one must be at least a period of 14 consecutive days and the others, 5 consecutive days.

Remote work

Remote work, including work from home office, was regulated and excluded from the control of hours of work, consequently, it is not subject to payment of overtime and other additional amounts related to the hours of work, provided that the employer adopts means to control the employee's hours of work.

Customary advantages not integrated to the salary

Acknowledgment of the indemnity nature of the food-voucher (except where the payment is in cash), health care and dental plans (even if granted to different

categories of employees), rewards, reimbursement for expenses, among others. Although such change is in conflict with the tax and social security legislation, its major impact is the intended payroll tax cut as it excludes the salary nature of such amounts, which, therefore, will not be the base for the assessment of the social security contribution, the deposits into the Unemployment Savings Fund, the vacation pay, the 13th salary, among others.

Non integration to the hours of works -> private activities

In the cases the employees who, at their own choice, enter or stay on the premises of the company to develop private activities, such as (i) religious practices, (ii) rest, (iii) leisure, (iv) study, (v) meals, (vi) activities related to relationships, (vii) personal hygiene, (viii) change of clothes or uniform, among others.

Commuting time

The employee's commuting time will not be part of the hours of work, including in the event of transportation

This report is intended to provide information only and does not contain any opinion, recommendation or legal assistance by Santos Bevilaqua Advogados on the matters addressed.

offered by the employer and/or in the event the place is not served by regular public transportation.

Compensatory time off

The employee may enter into with the employee an agreement on individual compensatory time off and compensation for hours of work, subject to a six-month period for the compensation.

Parameters and limits for nonpecuniary damages to be fixed

A ceiling of up to one hundred (100) times the last salary amount (very serious offense repeatedly committed) for award of nonpecuniary damages against the employer.

Annual settlement

Possibility of annual settlement during the employment relationship, releasing expressly allocated amounts, provided that the employee is assisted by the applicable Union.

Agreed termination

A new type of employment termination whereby the employee and the employer, upon mutual agreement, may terminate the employment, and in such event the employee may withdraw the deposits made in the FGTS account.

Individual agreement -> “qualified” employees -> college degree and salary above R\$ 11,062.62

The employer may enter into directly with the employee an agreement providing for, for example, compensatory time off/compensation for hours of work, work from home office, bonus system (including PLR), as well as validity of arbitration clause to settle conflicts arising from the employment agreement.

Costs of loss of suit

The litigants (including ex-employees) will be subject to pay the fees of the attorney for the winning party (costs of loss of suit) corresponding to 5% to 15% of the amount resulting from the liquidation of award.

This report is intended to provide information only and does not contain any opinion, recommendation or legal assistance by Santos Bevilaqua Advogados on the matters addressed.

This measure is intended to reduce the number of labor lawsuits filed by employees and ex-employees against companies, as, before the Reform, even those cases that were dismissed and declared insufficient did not result in any burden of such nature to the claimants.

Ratification of termination agreement

The Labor Courts, which previously had jurisdiction to decide on litigations (“lawsuits”) now have jurisdiction to ratify extrajudicial settlements executed by the parties, duly assisted by their attorneys.

Employees’ internal commission

Upon the Reform, the election of an internal commission composed of workers to negotiate directly with the employer is an option in companies with more than 200 employees.

Final comments

In general, the labor Reform, although maintaining the fundamental rights of the employees, is intended to make the labor relationship more dynamic, especially because it gives more liberty and legal certainty to the collective bargaining and the agreements made directly with the employees.

However, given the legal oppositions that will be possibly filed and the provisional decrees that will be probably published by the Federal Government, combined with the possibility of the Labor Courts not applying in full the precepts approved (supposed conflict with the principles of the Labor Law), in all likelihood the legal uncertainty as to the application of the new legislation will persist for some time.

This report is intended to provide information only and does not contain any opinion, recommendation or legal assistance by Santos Bevilaqua Advogados on the matters addressed.

We remain at your service should you need any clarifications.

Regards,

Santos Bevilaqua Advogados

Juliano Castro



This report is intended to provide information only and does not contain any opinion, recommendation or legal assistance by Santos Bevilaqua Advogados on the matters addressed.