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Brazil's New Labor Law Grants Employers More Flexibility in Their Hiring and Pay Programs

While local courts are still ruling on certain grey areas surrounding Brazil's new labor laws, employers should understand the overarching implications to their hiring and rewards programs.

In November 2017, sweeping changes to the Brazilian Labor Code, which were approved months earlier, went into effect. The changes are intended to give companies greater flexibility in how they hire and pay employees. However, some courts are still refusing to accept the law on the basis that it contradicts some existing legislation. As a result, some grey areas in the new law are held up, putting businesses and HR professionals in a wait-and-see mode. Nonetheless, we recommend companies take time now to understand how the reform could affect their own hiring and rewards programs as it is expected to have a large impact.

Prior to the new legislation, Brazil's labor laws were highly regulated and labor costs were expensive relative to other countries in the region. Generally speaking, companies lacked flexibility on hiring and compensation policies. And while there was a general labor law covering all of Brazil, each sector had unions that could approve specific clauses for their affiliated employees.

Below we highlight the most important aspects of the new labor reform that companies should be aware of:

- ***In itinere* hours (time spent by employee on transportation granted by the company):** 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.

- **Bank of Hours:** In order to compensate working extra hours, companies 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.

- **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; and

- Health and safety conditions of a remote workplace should be validated and are the employer's responsibility.

- **Dividing Vacation Days:** The former law permitted employees to split vacation time into two periods, requiring one to be at least 10 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.

- **Labor Agreements:** Previously, no agreement could differ from the employee's labor law clauses, even if written, tacit, or explicitly agreed upon by both parties (e.g., if the employer and employee wanted to cut vacations in half, this could not be done outside the framework set in law). The new labor law permits employees and employers to negotiate any clause that might be of interest to both parties. Notably, this section applies only to 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.

- **Additional Payments and Rewards:** Previously, any additional payment or reward— including bonus, sales commission, and profit sharing— was considered part of the salary and received the same tax treatment. Those payments were also used for the calculation of **13th month salary** and vacation bonuses. The new law states that any additional payment 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. However, many companies are interpreting this section differently. 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 on this provision.

- **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 an employee has more than four years of employment at the company, his or her salary should not be used as a benchmark for salary equity.

- **Job Termination:** Terminations no longer need to be homologated on the Labor Union or Ministry of Labor. Companies should only communicate to the employee and pay his or her severance package within 10 days after dismissal.

- **Resignation with Both Parties' Agreement:** 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 the case both parties terminate their 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.

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

Next Steps

Based on our conversations with clients, companies are still reluctant to make operational changes in response to the new labor law since some of its key clauses are still up to interpretation by the courts. We agree with this line of thinking, but planning for future changes and examining how different legal scenarios might impact policy and pay practices is important. 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 law offers 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 write to consulting@radford.com.

Author Contact Information

Dino Pieczynski
Director, Radford
Aon | Talent, Rewards & Performance
+55 11 3058 4489
dino.pieczynski@radford.com

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