

## **THINGS TO CONSIDER BEFORE HIRING EMPLOYEES IN BRAZIL**

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As the United States battles high unemployment rates amidst announcements of massive layoffs by the country's largest employers, Brazil is experiencing the lowest unemployment rate in its history. The second largest country in the Americas ranks number one in expected job creation for the last quarter of 2011. Brazil has very strict labor laws, embedded in its Constitution as non-negotiable fundamental rights. As a result, Brazilian workers enjoy many legal protections that would be considered perks in other countries. Such laws give rise to voluminous litigation in Brazilian Labor Courts, with around 2 million complaints filed every year. This article highlights some of the issues that employers may face when dealing with their workforce in Brazil.

### **Employment Agreements**

Since labor laws are statutory in nature, labor contracts must fit squarely within their narrow parameters. Employment contracts cannot deviate from the law in any way that waives, releases, or circumvents a worker's rights. Some employers get creative and choose to frame the relationship as that of an independent contractor, rather than an employee. However, structuring the relationship in that manner has little effect if a Labor court finds that the independent contractor was in fact performing activities of an employee as legally defined. Courts will consider variables such as work hours, place of work, subjectivity to the employer's administrative rules, reporting requirements, and compensation, among others, in determining whether the individual is indeed an independent contractor or in fact an employee. Unfortunately for companies, courts tend to favor protecting the employee and usually grant whatever statutory benefit for which the individual has petitioned.

### **Employee Wages and Hours**

After your company has established the type of relationship that it will have with the individual, it must comply with strict labor requirements. In Brazil, the minimum wage ("salário mínimo") is currently set by the federal government at R\$545.00 per month, although some regions may require a minimum that exceeds this baseline. Accompanying the minimum wage is the concept of the workday, or jornada, defined as the time the employee is available to the employer,

whether performing his function or not. A workday cannot exceed eight (8) hours per day and 44 hours a week.

Employees whose working hours exceed the maximum hours of work prescribed by law earn overtime, one of the major sources of labor litigation. Generally, the employee will earn time and a half for overtime hours worked. However, if overtime is earned on weekends and holidays, then the employee will earn two times the regularly earned wage. Employees working on commission are treated no differently, and are entitled to either double or time and a half commissions for all overtime hours worked.

The legal workday varies depending on the industry involved. For example, bank workers, telephone operators, and doctors enjoy shorter workdays. Shift workers are also subject to different standards. If an employee works any one shift (morning, afternoon, or night) on any given week, his or her shift must be limited to six (6) hours.

### **Employee Benefits**

Brazilian employees enjoy many benefits. For example, Brazilian law calls for a “thirteenth salary” (“décimo terceiro”), plus 30 days of vacation time that all employees earn at the end of each year. Disbursement of at least half of the “thirteenth salary” must be made by November, or in the month when the employee takes vacation, if he or she has solicited the thirteenth salary in January. The last portion must be paid by December 20.

Employers must also comply with social contributions and the FGTS (Fundo de Garantia por Tempo de Serviço, or “Guarantee Fund for Time of Service”). Both regular earnings and the thirteenth salary are subject to the FGTS, which corresponds to an eight (8) percent withholding of the monthly salary plus 0.5 percent of social contribution by the employer. This fund provides financial support in certain employment termination situations. The federal government administers the fund through mandatory deposits in accounts opened by the employer for the employee’s benefit with the Caixa Econômica Federal (one of the largest government-owned banks).

### **Good News For Employers**

Despite these seemingly onerous worker protection laws, Brazil is also concerned with its competitiveness in the global stage. In August of 2011, the federal government announced the Plano Brasil Maior (Greater Brazil Plan) to stimulate innovation in certain industries. Notably, the plan provides for a reduction in the social contribution rate by employers involved in industries adversely affected by the cheap workforce available in China. The benefiting industries include footwear, clothing, furniture, and software. Even though the plan is limited to certain industries,

the government intends to expand it to other sectors with the aim of attracting more foreign companies to Brazil.

### **Conclusion**

Brazil remains a very attractive option for multinational companies, as it harbors a large workforce and provides for a growing consumer market. As shown by the measure recently announced by the federal government, Brazil wants to remain competitive and provide fertile ground for foreign companies and investment. When choosing to set foot in Brazil, having adequate knowledge of local customs and complying with the country's sometimes onerous labor laws is critical to protecting your investment and your company's bottom line.