

## Brazil: Employment Law Basics for a Country with a Robust Labor Market

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On June 9, 2011, The Ferretti Group, the Italian luxury yacht manufacturer, announced the inauguration of the new Ferrettigroup Brasil production facility. It was reported in the Financial Times that The Ferretti Group has plans, with the production ability of this new site, to increase its labor force from 600 to 1,000 employees and to enhance its sales in Brazil by 15% over the next few years. The Ferretti Group's investment in Brazil is an example of the presence of a robust labor market in that country, which has been exceptionally strong in the past few years. Throughout 2010, Brazil's unemployment rate experienced record lows, and in April 2011 Brazil's 6.4 percent unemployment rate was the lowest for that month in nearly ten years. Employees in Brazil enjoy relatively high salaries due to the demand for skilled workers. Multi-national companies are strong investors in Brazil, South America's largest nation, which is the world's fifth-largest country in both geographical size and population. This article will provide some basic information regarding Brazil's employment laws, with an emphasis on legal requirements of special interest to multi-national employers.

**General information on Brazil's employment laws.** Employer's obligations and employee's rights in Brazil are found in that country's Federal Constitution, its Consolidated Labour Laws and provisions of individual and collective agreements. Although written employment contracts are not required in Brazil except for probationary work periods and for certain types of temporary employment, it is general practice for employment contracts to be in writing.

**Hiring restrictions and requirements.** Employers in Brazil must follow legal requirements regarding hiring foreign employees, as well as individuals with disabilities:

- **Foreign employees.**
  - Employers in Brazil by law are not allowed to have more than one-third of their total workforce consist of foreign workers, and no more than one-third of their total payroll earned by employees who are considered foreigners.
  - Local employers may only hire foreign professionals, with the appropriate work visa, for an initial term of no more than two years, and for one further term of no more than two years.
  - Local companies, prior to hiring a foreign employee, must show the employee has unique skills that do not commonly exist among Brazil's local citizens.
  - Local companies must pay for the foreign worker's repatriation costs when his or her work visa has expired.
  - Foreign resident citizens designated as Brazilian entity administrators by foreign shareholders may only work under a visa granted for a five-year period, and only when there is:
    - at least a \$200,000 stock investment from outside of Brazil from a local company stockholder registered in the country's Central Bank; or
    - a specified increase in the number of new jobs in the local company prior to the year the foreign resident starts work.
- **Individuals with disabilities.** Employers in Brazil with greater than 100 workers are required to have a minimum percentage of employees in their workforce who are considered disabled. The

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minimum percentage for this legal requirement depends upon the size of the employer. For example, individuals with disabilities must comprise at least two percent of an employer's workforce if the company employs between 101 and 200 workers.

**Termination of employment.** Employers may discharge employees with or without just cause. Employees whose employment is terminated for just cause (e.g., misconduct, insubordination or habitual gambling at work) are not entitled to advance notice or severance from either the government fund or the employer. However, employees discharged without just cause are entitled to a 30-day prior notice and severance pay as established by Brazilian law.

**Causes of action.** Employees in Brazil have numerous avenues of legal action following a dismissal, including those found under the law protecting pregnant women and new mothers from discharge (except for just cause), as well as laws protecting union directors and employee union representatives from discharge. Also, Brazil recognizes many causes of action for discrimination and harassment, including the prohibition of recruiting, hiring, promotion and compensation practices based upon sex, age, color, family situation, pregnancy or status as a union member. Further, employees may sue for sexual harassment and what is called "moral harassment," which can consist of actions considered to be humiliating or bullying behavior. Examples of moral harassment include an employer threatening a worker with termination, or the regular questioning of a worker by a manager about the ability of the employee to perform his or her work.