

Brazil: New labor law reform may provide opportunities to reduce mobility costs

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In brief

New Law 13,467/2017 amends the Consolidation of Labor Laws (CLT) and adjusts various legal rules applicable to labor relationships. The newly introduced rules entered into force on November 11, 2017. Given their importance, companies should give these rules special attention due to their potential impacts on international assignment processes and costs.

In detail

Brazilian labor law reform (hereinafter Reform) is expected to change several rules governing labor relations in Brazil. The following is a brief summary of how the new rules may impact international transfers:

Amounts constituting salary

Amounts paid as (i) cost living allowance; (ii) meal allowance (if not paid in cash); (iii) daily travel allowance (even when higher than the repealed limit of 50%); (iv) awards; and (v) bonuses are not considered as part of the employee's salary, even if habitually paid. Consequently, they will not be incorporated into the work contract and none are considered for labor and social security tax bases. According to the Reform, awards can be granted by the employer in their discretion in the form of goods,

services, or cash corresponding to the employee's outstanding performance of regular working activities.

In addition to the above, the legislation provides that amounts relating to health or dental assistance, even reimbursement of expenses with medicines, glasses, prostheses and similar items, are not considered salary and not part of the labor and social security calculation basis.

Salary equalization

The rule for matching an employee's salary will not apply, whether or not the employer provides a career plan or applies, through internal standards or collective bargaining, for the job position and salary scale, apart from any approval or public registry.

Severance of employment relationship by mutual agreement

The work contract can be terminated by mutual agreement between an employer and an employee. In this scenario, the following payments will be due by the employer in the amount of half of the original value: (i) the dismissal notice, if indemnified; and (ii) the indemnity calculated on the Employee Severance Fund (FGTS)'s balance (40% fine). Any other labor related payments will be regularly paid by the employer.

Also, in this type of termination, the former employee is allowed to withdraw the FGTS account, capped to 80% of the available balance. On the other hand, the employee is prevented from applying for the Government Unemployment Insurance Program.

Collective bargaining agreements and union agreements

For certain matters, collective bargaining agreements and union agreements will predominate over the law. These include for example: (i) working hours (observing the constitutional limitation); (ii) annual bank hours; (iii) company regulation impacting payroll charges; (iv) incentive rewards in goods or services, eventually given in incentive programs; (v) profit sharing plans, etc.

Outsourcing

Outsourcing is considered a third-party service agreement in which there is a transfer of activities from the service taker, including its main activity (core business), to the services provider that has the required economic capacity. The services provider cannot be a legal entity whose partners or owners have worked for the service taker in the last

18 months, with or without an employment relationship, unless such partners or owners are retired. Similarly, an employee who is dismissed cannot be a services provider for the company for which he used to work before the period of 18 months from the termination date.

Other relevant changes

The new rules also provide changes to the following areas:

- Succession of employers
- Economic group characterization
- Former partner responsibilities
- Effective working hours
- Vacation period
- Intermittent work
- Union contributions due by employers and employees.

The takeaway

How will these new rules affect mobility processes in Brazil?

The Reform will modify significantly the relationship between employer and employee in Brazil, as well as between inbound and/or outbound mobile individuals with Brazilian entities. The new rules are expected to generate opportunities, such as the potential to restructure international assignments involving Brazilian companies to reduce excess payments and extra payroll tax burden.

How can PwC help?

PwC can assist in identifying the impacts and opportunities generated by the Reform on mobility processes, with the aim to reach proper legal compliance while also potential cost savings for employers.

Let's talk

For a more detailed discussion of these issues, please contact your Global Mobility Services engagement team or one of the following professionals from PwC Brazil:

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