# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. GENERAL OVERVIEW</td>
<td>03</td>
</tr>
<tr>
<td>II. HIRING PRACTICES</td>
<td>05</td>
</tr>
<tr>
<td>III. EMPLOYMENT CONTRACTS</td>
<td>07</td>
</tr>
<tr>
<td>IV. WORKING CONDITIONS</td>
<td>09</td>
</tr>
<tr>
<td>V. ANTI-DISCRIMINATION LAWS</td>
<td>11</td>
</tr>
<tr>
<td>VI. PAY EQUITY LAWS</td>
<td>13</td>
</tr>
<tr>
<td>VII. SOCIAL MEDIA AND DATA PRIVACY</td>
<td>14</td>
</tr>
<tr>
<td>VIII. TERMINATION OF EMPLOYMENT CONTRACTS</td>
<td>15</td>
</tr>
<tr>
<td>IX. RESTRICTIVE COVENANTS</td>
<td>19</td>
</tr>
<tr>
<td>X. TRANSFER OF UNDERTAKINGS</td>
<td>21</td>
</tr>
<tr>
<td>XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS</td>
<td>22</td>
</tr>
<tr>
<td>XII. EMPLOYEE BENEFITS</td>
<td>24</td>
</tr>
</tbody>
</table>
1. INTRODUCTION

In Brazil, Labour Law is protective of employees. Some basic principles implicitly or expressly provided by Law will govern any employment relationship in Brazil. The most relevant principles are: (a) prevalence of facts: in the determination of labour consequences, the relevant facts surrounding an employment relationship will prevail over formal documents; (b) prohibition of detrimental changes: employers are prevented from making changes to employment terms and conditions that are detrimental to employees, whether or not the employee has previously consented with the change; and (c) joint liability (group of companies): companies belonging to a group of legal entities under the same control, direction or management are jointly liable for the obligations of any company belonging to such group with respect to employment relationships.

2. KEY POINTS

• The most common practice is hiring workers as employees.
• Employment agreements in Brazil are usually for indefinite term; fixed term employment agreements are only allowed in specific situations.
• All companies and employees are mandatorily represented by Unions.
• Employments are at will, meaning that any party may terminate the employment agreement without cause upon mandatory prior notice and payment of the severance.
• Work permits must be requested whenever a foreigner wants to work in Brazil.

3. LEGAL FRAMEWORK

In Brazil, labour relations are a matter of Federal law, so the States and Municipalities have no power to legislate over labour matters. Therefore, labour rights are nationally standardised and the same labour costs and consequences will apply regardless of an employer’s place of business or place of incorporation.

The basic principles concerning labour relations in Brazil are contained in the Labour Code, the so-called “Consolidação das Leis do Trabalho - CLT”, enacted on 1 May 1943. On 11 November 2017, the Labour Reform became effective. It changed more than 100 articles of the Brazilian Labour Code. The changes intended to: (i) update the Brazilian Labour Code, (ii) improve labour relations, (iii) value collective negotiations between workers and employers, (iv) reduce the number of labour claims filed every year, (v) reduce the workforce informality, and (v) simplify labour procedures.

4. NEW DEVELOPMENTS

The Labour Reform changed significantly the labour relations in Brazil and gave more flexibility for employers and employees to negotiate labour conditions. Such Reform also reinforced the validity of collective negotiations with the Unions, establishing that the collective bargaining agreements should prevail over law.

The main aspects changed by the Labour Reform are:

• negotiation with the Union prevailing over the Law, except when regarding health and safety matters and the rights established by the Federal Constitution and taxes;
• negotiation with employees with university degrees and monthly salary higher than two times the cap amount of the benefits granted by the social security agency (currently a monthly remuneration that corresponds to approx. BRL
12,200) will prevail over the collective bargaining agreement (“hypersufficient employee”);  
• outsourcing of core business is allowed;  
• remote work, including the obligation to provide employees with guidelines related to health and safety matters when working from home;  
• alternatives for resolution of conflicts, including arbitration, validation of private release agreements by courts, negotiation and annual release of labour obligations;  
• Intermittent worker;  
• premiums, even if paid on a habitual basis, will not be part of the employee’s salary, thus not subject to labour and social security charges, if granted on a discretionary basis and for employees with outstanding performances;  
• classification of moral damage indemnification in light, medium, severe and extremely severe, in which indemnification may vary from 1 to 50 times the last monthly salary of the employee;  
• union contributions are no longer mandatory;  
• termination by mutual agreement, which has a lower severance package in comparison to the termination without cause.
II. HIRING PRACTICES

1. REQUIREMENT FOR FOREIGN EMPLOYEES TO WORK

Whenever a foreigner is transferred to Brazil and/or retained by a Brazilian company to render services in Brazil, an appropriate work visa/permit must be requested in advance. If the foreigner will bring his/her dependents, it is necessary to apply for a residency permit based on family reunion. The proper visa depends on the activities that will be performed in Brazil. After the applicable visa is selected, the Brazilian entity will have to comply with the applicable rules concerning the relationship to be maintained with the foreigners.

2. DOES A FOREIGN EMPLOYER NEED TO ESTABLISH OR WORK THROUGH A LOCAL ENTITY TO HIRE AN EMPLOYEE?

A foreign employer needs to establish or work through a local entity to hire an employee in Brazil, because only local companies are able to comply with all labour rights and obligations, which include payment of labour and social security charges, as well as deduction of the applicable income tax.

3. LIMITATIONS ON BACKGROUND CHECKS

There is no specific provision in Brazilian Labour Laws either prohibiting or authorising the employer to perform background checks on its prospective employees. However, protection of personal information pertaining to any Brazilian citizen is granted in a broad scope by the Federal Constitution, which grants protection and inviolability of any citizen’s intimacy and personal life. The Federal Constitution also prohibits any kind of discrimination. In addition, Law 9.029/95 prohibits any discriminatory or restrictive measure for the admission of an employee or maintenance of employment based on sex, origin, race, color, marital status, family situation or age. There are only a few exceptions to the general rule that justify some types of background checks (i.e. criminal check for bank employees). In view of the above, currently, as a general rule, Brazilian Labour Courts understand that certain kinds of search queries that a company performs regarding its prospective employees’ information personifies discrimination, thus being illegal, and entitling the individuals to an indemnification for moral damages. Therefore, in order to evaluate the candidate’s background, and in order to make a hiring decision, the company should only use public information about the individual.

4. RESTRICTIONS ON APPLICATION/INTERVIEW QUESTIONS

With regards to the employment application and interview questions, as mentioned above, Law 9.029/1995 prohibits any kind of discriminatory practice which may limit the access or the maintenance of employment due to sex, origin, race, color, marital status, family situation, disability, professional rehabilitation, age, among others. Therefore, the employer must avoid questions like “Are you married?”, “Do you have any children?”, “What is your nationality/religion/marital status?”, among others that may be discriminatory on an employment application or during an interview. Under Law 9.029/1995, with respect to women, the requirement of statements, examinations or similar measures related to sterilisation or state of pregnancy are considered discriminatory. This law also prohibits inducing or instigating birth control.
In addition, the Brazilian General Data Protection Law, so-called “LGPD”, was enacted in August 2018 (Law 13.709/2018) and has been in force since September 2020. Per the LGPD, personal and sensitive data can only be processed on an underlying lawful basis. Thus, companies will have to be careful not only with the personal and sensitive data of employees that is processed, but also the data of candidates (e.g. résumé, background checks, among others).
III. EMPLOYMENT CONTRACTS

1. MINIMUM REQUIREMENTS

In Brazil, workers may be hired in several ways, but the most common practice is to hire workers as employees. An employment relation is characterised by the simultaneous presence of four requisites: (a) services rendered on a personal basis; (b) on a permanent/habitual basis; (c) with subordination, i.e., the services are rendered under the employer’s direction; and (d) on an onerous basis, i.e., the individual must receive remuneration in consideration for the services rendered.

Whenever the requisites of employment relation are not present in a labour relation, the parties are free to structure it in a different way other than employment, such as: independent contractors/consultants, service providers/outsourced workers, temporary workers, intern, non-employed officers, among others, provided that the specific rules and regulations regarding such other forms are complied with. The Labour Code is applicable solely for employees, while the other work structures are governed by different statutes.

2. FIXED-TERM /OPEN-ENDED CONTRACTS

Employment agreements in Brazil are usually for an indefinite term. As per the Labour Code, fixed-term employment agreements are only allowed: (a) for up to two years when: (1) the temporary nature of the service justifies a pre-established term, or (2) the business activities have a temporary nature; (b) during an initial 90-day probation employment period, after which the employment agreement will become for an indefinite term. If the parties intend to execute a fixed term employment agreement it is necessary to have a written employment agreement expressly stating the term and the reason. Additionally, Law 9.601/98 establishes that collective bargaining agreements may also authorise some additional situations in which fixed-term employment agreements will be allowed.

The fixed-term agreement will become an indefinite term employment agreement, if the agreement: (a) is for a fixed term, but the reason to justify it is not one of the reasons allowed by law; (b) does not have a clause mentioning the term and the legal justification for such term; (c) is extended more than once; (d) the maximum term is not observed; (e) the renewal is not agreed by the parties in writing; or (f) if successive fixed-term employment agreements are used without observing the 6-month break.

In addition, the Labour Reform introduced a new type of hiring – “intermittent work” – wherein the employee renders services with subordination, alternating between periods of provision of services and inactivity, but not on a habitual basis. The employee can work for any other employer during the inactivity periods.

3. TRIAL PERIODS

The trial period, also called “probation period”, may be established for a period up to 90 days and may be renewed once if the limit of 90 days is observed, e.g., 45 days renewable for 45 days, or 30 days renewable for 60 days.

4. NOTICE PERIOD

The notice period, also called “prior notice”, is only applicable in the event of termination of employment agreements for an indefinite term. In the event of termination of the employment agreement for an indefinite term, without cause
and upon the employer’s initiative, the employer must provide the employee with a prior notice proportional to the length of service; minimum of 30 days if the employee has worked up to 1 year and 3 additional days for each year of service limited to 60 additional days (maximum of 90 days prior notice). In the case of a termination of employment agreements for an indefinite term, without cause and upon the employee’s initiative (resignation), the employee must provide a prior notice to the employer of 30 days or request to be released from working during the prior notice period. In the event of termination by mutual consent, the prior notice period will be reduced by half.
IV. WORKING CONDITIONS

1. MINIMUM WORKING CONDITIONS

Employees are entitled to the rights established by Federal Constitution, Brazilian labour legislation, including all regulations and supplementary rights set forth by the respective collective bargaining agreement. Individual employment agreements and internal policies may also establish additional rights, which must always be greater than the rights established by law.

As per the Labour Reform, collective bargaining agreements should prevail over law, even when the conditions agreed are worse than the ones established by law, except as they relate to: (i) health and safety rights, (ii) third party rights (i.e. social security contributions) and (iii) labour rights set forth in the Federal Constitution, among other conditions established by law.

2. SALARY

The Labour Code establishes that the employee’s salary must be paid in Brazilian currency. Compensation comprises not only the employee’s fixed salary, but also any commissions, bonuses (Christmas or otherwise), fringe benefits, such as personal or family benefits and living expenses. The Federal Constitution prohibits reduction of compensation, except by means of a collective bargaining agreement.

Compensation, with some exceptions, must be paid at least monthly. Employees are entitled to receive a Christmas bonus corresponding to one monthly salary per year. Half of the Christmas bonus must be paid by the 30th of November, and the other half on or before the 20th of December.

The national minimum wage (established by law) is currently BRL 1,100.00. Collective bargaining agreements may establish a so-called “professional salary”, which is the minimum wage for a specific category and must be higher than the national minimum wage.

3. MAXIMUM WORKING WEEK

The regular working period cannot exceed 8 hours per day and 44 hours per week. One-hour break for rest and meal is mandatory for employees that work more than 6 hours per day. Employees are also entitled to a paid weekly rest period preferably on Sundays. Some specific categories have a different work shift. For instance, regular bank employees and telemarketing operators can only work 6 hours per day, journalists and musicians 5 hours per day, among others.

4. OVERTIME

Compensation for overtime work must be at least 50% greater than the compensation for regular work. The following employees are not entitled to overtime payments and are not subject to the limits on working hours under the Labour Code: (a) employees who perform activities outside of the company’s facilities and wherein those activities as such, are not compatible with defined working hours; (b) employees (such as managers) who occupy trust positions (“cargos de confiança”); and (c) employees who work in a remote work system.
5. HEALTH AND SAFETY IN THE WORKPLACE

A. EMPLOYER’S OBLIGATION TO PROVIDE A HEALTHY AND SAFE WORKPLACE

Employers are obliged to provide a healthy and safe workplace to employees and to comply with all mandatory regulations regarding healthy and safety matters. There are several regulations providing for strict rules concerning mandatory periodical medical examinations, medical examinations upon admission and termination, medical records, environmental risks prevention, creation and maintenance of an Internal Commission for Accident Prevention (CIPA), health-hazard and dangerous activities and the corresponding allowances and ergonomics, among others.

B. COMPLAINT PROCEDURES

In Brazil there is no legal provision regarding complaint procedures. Generally, all employees are entitled to file labour claims to request rights related to the employment relationship. Employees may file labour claims while working, or within two years as from the termination date, to claim rights related to the past five years, counted as of the filing date of the claim. Companies may establish their own internal policy related to complaint procedures, but it will not prevent the employees from filing claims directly without observing the internal policy.

C. PROTECTION FROM RETALIATION

There is no specific legislation regarding retaliation in Brazil. Nevertheless, the Federal Constitution prohibits any kind of discrimination, and retaliation may be understood as a type of discrimination. Employees who suffered retaliation and are able to evidence it in court are entitled to indemnification due to moral damages or even reinstatement to work, depending on the reason for the retaliation.
V. ANTI-DISCRIMINATION LAWS

1. BRIEF DESCRIPTION OF ANTI-DISCRIMINATION LAWS

The Federal Constitution prohibits any kind of discrimination, including distinction of salaries, duties and admission criteria due to gender, age, skin color or marital status. The Constitution also prohibits any discriminatory acts with regards to distinction of salary and admission criteria of disabled employees.

Furthermore, as mentioned above, Law 9.029/1995 prohibits any kind of discriminatory practice which may limit the access or the maintenance of employment due to sex, origin, race, skin color, marital status, family situation, disability, professional rehabilitation and age, among others.

2. EXTENT OF PROTECTION

Employers are prohibited from discriminating against any candidate/employee during the hiring process and the employment relationship for any reason, including, but not limited to sex, origin, race, color, marital status, family situation, disability, professional rehabilitation and age.

An employer can adopt a non-discriminatory policy applicable to all employees with guidelines about conduct that should not be performed by employees. In addition, the employer may provide training to its managers and hierarchical superiors to avoid any discriminatory act or otherwise transmit an anti-discriminatory culture at the company.

3. PROTECTIONS AGAINST HARASSMENT

Protection of personal intimacy of any Brazilian citizen is granted, in a broad scope, by the Federal Constitution, which (a) prohibits any kind of discrimination; (b) grants the protection and inviolability of any citizen’s image, honor, intimacy and personal life; and (c) sets forth that the noncompliance with such legal guarantees or the violation of their limits may be challenged, with the payment of indemnification due to moral harassment.

Notwithstanding, as far as Brazilian law is concerned, there are no express and specific provisions of law defining what is or what is not considered harassment in the workplace, but rather has been defined by the applicable case law. Moral harassment can be defined as the repeated exposure of employees to humiliating and embarrassing situations during the working hours and while employees perform their duties. On the other hand, sexual harassment can be defined as the repeated exposure of employees to conduct from their superiors with libidinous and malicious connotations. Companies may establish their own policies related to moral and sexual harassment.
4. EMPLOYER’S OBLIGATION TO PROVIDE REASONABLE ACCOMMODATIONS

With regards to disabled persons, please note that Law 8.213/91 sets forth that every company with 100 or more employees is obligated to hire 2% to 5% of employees who are disabled or in the process of being rehabilitated according to the following proportionality: (a) up to 200 employees - 2%; (b) from 201 to 500 employees - 3%; (c) from 501 to 1000 employees - 4% and (d) over 1001 employees - 5%.

The law also establishes that the termination of an employee who is disabled or in the process of being rehabilitated is contingent on the hiring of another employee bearing similar conditions, in order to comply with the quota mentioned above.

Law 10.098/2000 established general rules and basic criteria to promote accessibility of disabled persons in public and private buildings. Therefore, companies are required to adapt their workplace structure to enable disabled employees to work and have a place for them at the company.

With regards to an employee’s religious practices, the Federal Constitution protects the freedom of religious belief. However, there is no specific provision under the law obligating the employer to accommodate the employee’s religious practices.

5. REMEDIES

Brazilian Labour Courts are ruling that discriminatory termination of employees may result in reinstatement and indemnification due to moral damages. For instance, Precedent 443 of the Superior Labour Court holds that the termination of an employee with HIV or any other serious disease is presumed to be discriminatory and invalid, and the employee is entitled to reinstatement.

6. OTHER REQUIREMENTS

In Brazil, companies must observe two quotas: (i) employees with disabilities and (ii) apprentices. There is no other specific legislation regarding diversity in the workplace. However, several companies are adopting internal policies and affirmative actions that aim at increasing diversity in the workplace.
VI. PAY EQUITY LAWS

1. EXTENT OF PROTECTION

The Federal Constitution prohibits salary differences based on sex, age, color or marital status. As mentioned above, such prohibition also applies to disabled employees. In addition, the Labour Code ensures that employees performing the same activity, with equal value, to the same employer, at the same facility, are entitled to the same remuneration, except if the difference in their length of service: (a) with the same employer is longer than 4 years and (b) at such position is longer than 2 years. In accordance with law, “equal value work” is the work performed with the same productivity and same technical perfection.

2. REMEDIES

If a company does not comply with the equal pay rules mentioned above, the company may be subject to (a) inspection from the Ministry of Economy, which may subject the company to the payment of administrative penalties, (b) investigation by the Ministry of Labour Prosecution and/or (c) individual labour claims filed by employees or former employees, claiming moral damages due to the discriminatory treatment and payment of salary differences.

3. ENFORCEMENT/ LITIGATION

Equal pay for equal work is a common labour claim in Brazil.
1. RESTRICTIONS IN THE WORKPLACE

Brazilian Labour Courts recognise that the employer can restrict the personal use of the Internet and social media by the employees during the working hours, due to the employer’s power of command.

A. CAN THE EMPLOYER MONITOR, ACCESS, REVIEW THE EMPLOYEE’S ELECTRONIC COMMUNICATIONS?

There is no specific provision in Brazil regarding this matter. However, it is advisable to include such a provision in an internal policy of the employer. If the employer restricts the use of the Internet and social media to professional use only, the employer is allowed to inspect such use, and if the employee is using the Internet/social media improperly, it could lead to disciplinary measures (in accordance with rulings by Brazilian Labour Courts).

2. EMPLOYEE’S USE OF SOCIAL MEDIA TO DISPARAGE THE EMPLOYER OR DIVULGE CONFIDENTIAL INFORMATION

There is also no specific provision in Brazil regarding this matter. However, Brazilian Labour Courts understand that the use of social media to disparage the employer or to divulge confidential information, may lead to disciplinary measures. Prior decisions by these courts on this issue held that this type of conduct could lead to termination with cause by the employer, and payment of an indemnification due to moral damages, by the employee to the employer.
1. GROUNDS FOR TERMINATION

In Brazil, employments are at will, meaning that any party may terminate the employment agreement without cause upon the mandatory prior notice and payment of the severance. It is not necessary to mention any reason for termination, except if it is a termination with cause. Termination with cause is the most severe sanction for an employee and results in the reduction of the employee’s severance entitlements. Also, the termination with cause is always an exemplary action before other employees.

The employer should only terminate an employment with cause when the misconduct is foreseen by law and serious enough to justify such a severe sanction. The Brazilian Labour Code lists the following as misconduct:

- improbity (e.g. fraud);
- impropriety;
- business dealings by the employee for his/her own or someone else’s benefit without permission of the employer;
- competition with the employer;
- criminal conviction (final decision);
- negligence in the performance of his/her duties;
- drunkenness, either habitual or at work;
- breach of confidentiality by the employee;
- act of disobedience or insubordination by the employee;
- abandonment of employment by the employee;
- libel, slander and any other defamation acts, exercised at worksite by the employee, against any person, or physical acts of offence under the same conditions, except in the case of self-defense or defense of third parties;
- libel, slander, any other defamation acts or physical acts of offence exercised by the employee against the employer and hierarchical superiors, except in the case of self-defense or defense third parties;
- gambling or similar conduct by the employee; and
- loss of qualification or of the requirements established in law for the exercise of the profession, as a result of willful misconduct of the employee.

Fixed-term employment relationships may terminate exactly on the last day of such term or may end before it. If it terminates on the last day of such a term, the employee will be entitled to the severance payments set forth by law. However, if the termination occurs before the fixed-term, there are two alternatives regarding the severance that vary in accordance with the wording of the employment agreement: (a) the terminating party must pay the equivalent of 50% of the amount that would be due until the end of the agreement or (b) if there is a specific clause in the employment agreement mentioning that, upon early termination of the fixed-term employment agreement, the termination will be treated as a termination of an indefinite term employment agreement and the regular severance for termination of indefinite term employment agreements will be due.

2. COLLECTIVE DISMISSALS

Labour legislation in Brazil is silent on the concept of mass termination (collective dismissal). It is possible to infer that the employer may legally terminate all employments without cause, provided it pays all mandatory severance. In accordance with the Labour Reform, collective dismissal does not require prior negotiation with the union. However, mass termination is still a very controversial matter in Brazilian Labour Courts and depending on the industry and number of employees involved, a prior negotiation with the union may still be recommendable.
3. INDIVIDUAL DISMISSALS

Since employment agreements are at will, an employer can terminate an employment agreement at any time, provided that the notice period is granted. Some employees cannot be terminated without cause due to temporary job stability. That is the case of Union representatives, members of the Internal Committee for Accidents Prevention (CIPA), pregnant employees, employees that have work-related accidents, among other situations that may be set forth in the applicable collective bargaining agreement. Termination with cause and resignation are allowed even if an employee has temporary job stability. A termination with or without cause or resignation should be communicated to the other party in writing. No prior communication or requests of authorisation to the employees’ union or Ministry of Labour are required to perform any type of termination.

The Labour Reform introduced a new type of termination called “termination by mutual agreement” in which both parties decide to end the employment agreement.

The employer must take the following procedures upon termination:
- Schedule a mandatory medical examination with an employment doctor, to check any possible work-related disease that could prevent a termination without cause (job stability, as mentioned above);
- Pay the severance amount within 10 days as of the last worked day. Non-compliance with such term results in a penalty to be paid by the employer to the employee in the amount equivalent to one monthly salary; and
- Validate the termination before the union or the Ministry of Labour is no longer necessary, except if it is established in the applicable collective bargaining agreement.

A. IS SEVERANCE PAY REQUIRED?

In Brazil, severance pay is mandatory, but the amount differs based on the type of termination, i.e. in case of resignation, termination by mutual agreement, without cause, and with cause in an indefinite term agreement and fixed-term agreement, as follows:

<table>
<thead>
<tr>
<th>TYPE OF TERMINATION</th>
<th>MANDATORY SEVERANCE</th>
<th>COMMENTS</th>
<th>RESIGNATION</th>
<th>MUTUAL AGREEMENT</th>
<th>WITHOUT CAUSE</th>
<th>WITH CAUSE</th>
<th>FIXED-TERM</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Prior Notice</td>
<td>Proportional to the length of service. Maximum of 30 days and maximum 90 days. Employees shall provide 30 days’ prior notice.</td>
<td>30 days by the employee</td>
<td>Half of the regular notice period: 15 to 45 days</td>
<td>30 to 90 days to the employee</td>
<td>Not due</td>
<td>Not due</td>
</tr>
<tr>
<td></td>
<td>Christmas Bonus</td>
<td>1/12 of compensation per month of work during the calendar year, including the prior notice period.</td>
<td>Due</td>
<td>Due</td>
<td>Due</td>
<td>Not due</td>
<td>Due</td>
</tr>
<tr>
<td></td>
<td>Vested and Proportional Vacation Not Taken</td>
<td>After each period of 12 months of work, the employee is entitled to 30 days paid vacation, plus 1/3 bonus.</td>
<td>Due</td>
<td>Due</td>
<td>Due</td>
<td>Only vested vacation</td>
<td>Due</td>
</tr>
<tr>
<td></td>
<td>FGTS Penalty</td>
<td>It corresponds to 40% of the FGTS account’s balance payable to the employee.</td>
<td>Not due</td>
<td>Half of the regular FGTS penalty (20%) that is due to the employee.</td>
<td>Due</td>
<td>Not due</td>
<td>Not due</td>
</tr>
</tbody>
</table>
If the termination without cause occurs 30 days before the annual salary increase date established in the collective bargaining agreement, the employee is also entitled to an indemnification equivalent to 1 monthly salary. Collective bargaining agreements, internal policies and individual contracts/offer letters must also be checked since they may establish additional rights. In the event fixed-term agreements are terminated without cause, the terminating party must pay damages in the amount of 50% of the compensation established for the remaining term of the agreement.

4. SEPARATION AGREEMENTS

A. IS A SEPARATION AGREEMENT REQUIRED OR CONSIDERED BEST PRACTICE?

Brazilian Labour Law does not require a separation agreement. However, it may be considered good practice in the event of termination of a high-level employee/worker, who would be entitled to a special severance package beyond the severance payments determined by Brazilian Labour Law, or by the contract executed between the parties.

However, the separation agreement is not binding, i.e. even though the employee/worker signs the agreement, he/she may claim additional rights before the Brazilian Labour Courts. Despite its unenforceability, any amounts paid in connection with the separation agreement, if properly identified, may be offset against future amounts sentenced in a judicial claim, if necessary. Additionally, the separation agreement has a moral effect upon the employee/worker and is very useful to avoid claims. If the employee/worker feels satisfied with the negotiation he/she will likely not file a claim after signing the separation agreement.

B. WHAT ARE THE STANDARD PROVISIONS OF A SEPARATION AGREEMENT?

The standard provisions are: (a) provision by which the employee/worker grants general release from any and all possible rights and/or payments related to or which might have arisen from the relationship with the company; and (b) provision stating that the employee/worker grants to the company the right of offsetting with the values paid in the separation agreement, any and all values that the company may be compelled to pay to the employee/worker, for any reason, as a result of any judicial or administrative determination.

C. DOES THE AGE OF THE EMPLOYEE MAKE A DIFFERENCE?

No.

D. ARE THERE ADDITIONAL PROVISIONS TO CONSIDER?

It is advisable to properly list, when possible, the nature of the amounts paid to the employee/worker in the separation agreement in order to be able to offset such amounts in the future, against amounts sentenced in a judicial claim.

5. REMEDIES FOR EMPLOYEE SEEKING TO CHALLENGE WRONGFUL TERMINATION

There is no specific provision about wrongful termination in Brazil. However, since the Brazilian Federal Constitution prohibits any type of discrimination, if an employee evidences that his/her termination has resulted from a discriminatory act, he/she may file a lawsuit against the company claiming reinstatement and moral damage indemnification.

6. WHISTLEBLOWER LAWS

While there is no specific law regulating whistleblowing systems, the Brazilian Clean Company Act provides credits for companies that have implemented a compliance program. In this context, a whistleblowing channel is an important element of a compliance program. Internal policy should regulate it, establishing provisions about confidentiality, privacy and non-retaliation, among others. The Federal Constitution’s principles such
as the right of privacy and intimacy, the protection of image and reputation and non-discrimination rights, should be complied with when implementing a whistleblowing program.
IX. RESTRICTIVE COVENANTS

1. DEFINITION OF RESTRICTIVE COVENANTS

There is no specific regulation in Brazil on restrictive covenants or the enforceability thereof following termination of employment agreements. However, the Brazilian Federal Constitution establishes freedom of work, which means that the employer cannot force or oblige an employee to remain employed and/or impose other obligations not to hire its own employees.

Also, Brazilian Industrial Property Law (Law 9.279/1996) prevents an employee from disclosing or using the employer’s confidential information, without its authorisation, at any time (during the employment or after its termination, for an indefinite period), under the penalty of characterisation of the crime of unfair competition.

2. TYPES OF RESTRICTIVE COVENANTS

A. NON-COMPETE CLAUSES

The Brazilian Labour Code establishes that an employee cannot compete with his/her employer during the term of the employment agreement. In case of breach of such obligation, the employer may terminate the employee with cause, in addition to the possibility of filing a claim to receive an indemnification linked to the damages caused by the employee regarding such conduct.

Based on case law, Brazilian Labour Courts tend to consider a non-compete agreement valid and enforceable after termination provided the following elements are present in the agreement:

- Limitation in time - the period of restriction must be reasonable and expressly limited to 24 months maximum;
- Geographic limitation - a reasonable geographic limitation for the restriction must be established. This means that the former employee will not be allowed to work in a certain geographic area where the employer develops its business; it is possible to include that the restriction applies in a worldwide basis or in a specific region;
- Limitation of object - the obligation must be established in relation to a determined object. It must not exceed the limits of what is considered reasonable to protect the former employer’s interests;
- Fair compensation - the parties may negotiate what is reasonable on a case-by-case basis based on the extension of the non-compete obligation, non-compete period, object and geographic restriction. If it will be a broad restriction (i.e. the former employee cannot work for any company that is a competitor of the former employer) the recommendation is to pay, during the period of the non-compete obligation after termination, the amount the former employee would earn as his/her ordinary compensation if he/she remained employed for such period. Law experts agree that a fair compensation must correspond to the last compensation multiplied by the number of months for the non-compete obligation.

B. NON-SOLICITATION OF CUSTOMERS / EMPLOYEES

There is no rule in Brazilian Labour Law about non-solicitation provisions. However, it is very common that Brazilian employers address this restriction in employment agreements of management employees. This type of restriction is not usually executed before Labour Courts, which means there
are few decisions about its enforceability. Scholars’ opinion, on the other hand, have already discussed this matter and currently it is understood that non-solicitation clauses are valid as long as the parties agree on: (a) limitation in time; (b) geographic limitation and (c) limitation of object. If these principles are followed, it is possible to enforce such a restriction through the labour courts, as well as a claim for payment of penalty from the employee who practiced the solicitation.

3. ENFORCEMENT OF RESTRICTIVE COVENANTS – PROCESS AND REMEDIES

The parties may negotiate the restrictive covenants to be enforced after termination (i) at the beginning of the relationship - in the employment agreement or in a separate document; (ii) during the relationship; and (iii) at the end of the relationship. In the event of violation of the restrictive covenants, it is possible to file a judicial claim.

4. USE AND LIMITATIONS OF GARDEN LEAVE

Garden leave in Brazil is not legally regulated, nor is it a common practice. The enforceability of a garden leave provision is quite easy to challenge in court.
X. TRANSFER OF UNDERTAKINGS

1. EMPLOYEES’ RIGHTS IN CASE OF A TRANSFER OF UNDERTAKING

Employee labour conditions must not be reduced or negatively impacted from a transfer of undertaking. Employers are prevented from making changes to employment terms and conditions that are detrimental to employees, whether or not the employee has previously consented to the change. Due to the concept of labour succession, the new owner of a company or business will be considered liable for all labour rights and liabilities. Brazilian Labour Courts have consolidated the concept that an acquisition of a company’s control or a transfer of relevant parts of its assets to another company – when assets represent a business unit – characterise labour succession. Once the succession is characterised, the new owner is liable before the employees for any and all labour liabilities relating to the acquired business units or companies, even those connected with the period preceding the transfer of ownership.

2. REQUIREMENTS FOR PREDECESSOR AND SUCCESSOR PARTIES

From a labour standpoint, there is no need to request any authorisation, from a union or other authority, in order to proceed with a takeover.
XI. TRADE UNIONS AND EMPLOYERS ASSOCIATIONS

1. BRIEF DESCRIPTION OF EMPLOYEES’ AND EMPLOYERS’ ASSOCIATIONS

All employers and employees are mandatorily represented by their respective union. The unions that will represent the employer and its employees are linked to the activities performed by the company in each city or state.

2. RIGHTS AND IMPORTANCE OF TRADE UNIONS

Unions can negotiate on behalf of the employers and employees and execute collective bargaining agreements. Collective bargaining agreements are instruments executed between the unions representing employers and employees for purposes of establishing general and normative rules that govern the relationship of a given category of employers and employees. The terms and conditions negotiated by the unions are mandatory and cover the employers and employees of the category.

An employer may also negotiate a specific collective bargaining agreement, applicable to its employees, directly with the employees’ union.

There are some matters that can only be implemented by means of a collective bargaining agreement such as an offsetting of a working hours system and profit/result sharing program.

3. TYPES OF REPRESENTATION

A. NUMBER OF REPRESENTATIVES

As per the Labour Code, companies with more than 200 employees may elect an employees’ representative committee in order to improve communications between employer and employees.

In accordance with the Labour Reform, the employees’ committee should be composed as follows:

- 3 committee members for companies with more than 200 and up to 3,000 employees;
- 5 committee members for companies with more than 3,000 and up to 5,000 employees;
- 7 committee members for companies with more than 5,000 employees.

B. APPOINTMENT OF REPRESENTATIVES

The election date of the committee must be communicated at least thirty days in advance, counted from the end of the previous mandate, by means of a public notice that must be fixed in the company and enable the employees to enroll themselves as candidates.

The election committee shall be composed of 5 employees who are not candidates, in order to organise and monitor the election procedure.

Employees hired on a fixed-term, with the employment agreement suspended or who are in a notice period, even indemnified, cannot be candidates.
The members of the employees’ committee have job stability, as of the register of their candidacy, up to 1 year after the end of the mandate. Such members cannot suffer arbitrary termination. In other words, they cannot be terminated if their termination is not based on a disciplinary, technical, economic or financial reason.

4. TASKS AND OBLIGATIONS OF REPRESENTATIVES

The members of the employees’ committee have the following tasks/duties:

• represent the employees before the Board of Directors of the company;
• improve the relationship between the company and its employees based on the principles of good faith and mutual respect;
• promote dialogue and understanding in the workplace in order to prevent conflicts;
• seek solutions to the conflicts arising from the employment relationship, in a fast and efficient way, aimed at the effective application of legal and contractual norms;
• ensure fair and impartial treatment of employees, preventing any form of discrimination based on sex, age, religion, political opinion or union activity;
• forward specific claims of the employees of their scope of representation; and
• monitor the compliance with labour and social security norms and the collective bargaining agreements.

5. EMPLOYEES’ REPRESENTATION IN MANAGEMENT

As mentioned, the members of the employees’ committee have the duty of representing the employees before the Board of Directors.

In addition, Law 12.353/10 defines that public entities with more than 200 employees must elect an employees’ representative to occupy a position and represent them on the Board of Directors. Such representative must be elected among the other employees, in an election with the participation of a member of the representative Union.

6. OTHER TYPES OF EMPLOYEE REPRESENTATIVE BODIES

Depending on the number of employees and the risk degree of the employer’s facility activity, the employer must have an Internal Commission for Accident Avoidance (“CIPA”), composed of both employee– and employer– representatives. Individuals elected as employee representative members of CIPA (either as full or alternate members) may not be terminated from the date of their registration as candidates for such position up to 1 (one) year after the expiration of their one-year term-in-office.

Also, depending on the number of employees and the risk degree of the employer’s facility activity, the employer must implement a Specialised Safety Engineering and Occupational Medicine (“SESMT”), which is a team of health and safety professionals hired by the employer.
XII. EMPLOYEE BENEFITS

1. SOCIAL SECURITY

Employers and workers must make compulsory contributions to the Brazilian Social Security Agency, which is in charge of managing a system designed to protect the employee in case of illness and retirement. With regards to healthcare, despite the fact that employers are not obliged to grant private healthcare to their employees, it is a very common practice. Collective bargaining agreements may establish additional benefits to employees and, therefore, employers must comply with the conditions set forth and grant such benefits to its employees.

A. REQUIRED CONTRIBUTIONS

The employer’s contributions average twenty-seven percent (27%) of the employee’s overall salary. Contributions may be higher than this average if the employees are subject to health hazardous working conditions. Companies in some specific industries are subject to a 1% or 2% social security contribution on top of their revenue instead of the employees’ salary. The employer withholds the employee’s individual contributions. The individual contribution is proportional to the salary amount and is capped by the Federal Government, currently at approximately BRL 855.00 per month and adjusted on an annual basis. For different labour structures which are not employment, other mandatory social security schemes may apply.

2. HEALTHCARE AND INSURANCES

The social security authority provides the following insurances to workers who have contributed to the system, which will depend on the number of contributions made and on the amounts involved in each contribution. The main insurances provided by the social security authority are: 1) death allowance; 2) accident allowance; 3) disease allowance; and 4) imprisonment allowance.

3. REQUIRED LEAVE

A. HOLIDAYS AND ANNUAL LEAVE

In accordance with Brazilian Labour Law, after each period of 12 months worked, employees are entitled to a 30 calendar-day paid vacation, which must be taken within the subsequent period of 12 months, in the period that is most convenient to the employer. The Labour Reform allows the split of the vacation period, provided that the employee agrees. The vacation period can be taken in up to three periods, one of which cannot be less than 14 days and the others cannot be less than 5 days each. Moreover, the vacation period cannot start 2 days before a holiday or a weekend. Additionally, note that the employee may “sell” 1/3 of his/her vacation period. The vacation remuneration corresponds to the monthly salary plus 1/3 of the employee’s monthly salary as vacation bonus.

Employees are entitled to be absent from work on public holidays as established by law to celebrate some special occasion (e.g. Christmas, Independence Day, etc.), being entitled to the regular remuneration for such days. Local (Municipal or State) holidays may also apply, depending on where the company is based. If the employer demands the employee to work on a holiday, the remuneration paid with respect to the worked holiday must be at least double the regular compensation. Applicable collective bargaining agreements may establish a higher rate for the holiday remuneration.

B. MATERNITY AND PATERNITY LEAVE

All female employees are eligible for maternity benefits, including when adopting a child. The maternity benefit will be paid to the employee for a period of 120 days and is paid by INSS, the Brazilian social security agency. In practical terms, the employer pays the benefit to the employee
and deducts the amount from the social security contributions due to the INSS. Male employees are entitled to 5 days of paid paternity leave. If the company is enrolled in a Government Program called “Empresa Cidadã”, the maternity leave may be extended to 180 days and the paternity leave to 20 days, provided some requirements established by the government program are observed.

C. SICKNESS LEAVE

In the event of sickness leave, the employer will be responsible for the employee’s salary during the first fifteen days. After the fifteenth day of absence due to sickness, the INSS will pay a sick leave benefit to the employee. However, the benefit does not correspond to the actual salary, but rather to a specific INSS based calculation made over the last contributions and is capped at approximately BRL 6,100.00.

D. DISABILITY LEAVE

In the event of an injury at work, the employer will be responsible for the employee’s salary during the first fifteen days.

4. PENSIONS: MANDATORY AND TYPICALLY PROVIDED

On 13 November 2019, the Pension Reform changed several rules for retirement pension applicable to Brazilian citizens and defined transition rules applicable to those who were close to retirement.

According to the new rules, to be eligible to receive the retirement pension, male individuals must be at least 65 years old and have paid a minimum of 240 monthly contributions to INSS. Females must be at least 62 years old and have paid a minimum of 180 monthly contributions to INSS. In addition, retirement is no longer based solely on the length of service; nowadays individuals must have met the minimum age mentioned above to be eligible for the retirement pension. There is also a special retirement for employees who have worked under unhealthy conditions; their contribution periods are shorter than the regular period. A company that has employees working under unhealthy conditions that entitle them to the special retirement, must pay additional social security contributions. The additional contribution is 6%, 9% or 12% of the employees’ salary, depending on the level of the risk.

Disability pensions are also available to workers who have become disabled due to work related illness or accident. A Social Security medical expert must document such disability and the beneficiary must be subject to regular exams. The benefit payments end when the employee recovers his/her ability to work.

Apart from the aforementioned public retirement system, some companies provide their employees with a private pension plan, in which the amounts of the contributions from both parties (employers and employees), can be defined by the companies directly, subject to specific rules in Brazil as issued by the government agency Superintendência de Seguros Privados (SUSEP).
TozziniFreire Advogados has extensive experience in all aspects of employment law including profit-sharing plans, stock options, flexible benefits, variable compensation, executive compensation, and employment and service agreements. Our labour team has assisted clients from many different industry sectors in managing their labour and employment needs. The group has worked on numerous matters involving the improvement of union relations to achieve collective bargaining agreements, as well as on strategies to reduce labour liabilities and improve on-the-job safety and health.

Over the years, TozziniFreire has played a major role in many of the most significant transactions in the Brazilian market, becoming one of the largest and most prestigious firms in Latin America. TozziniFreire has been recognised as a first-tier firm by Chambers Latin America and The Legal 500, along with other national and international specialised publications.

This memorandum has been provided by:

TozziniFreire Advogados
Rua Borges Lagoa, 1328
04038-904, São Paulo, SP, Brazil
P +55 11 508 650 00
www.tozzinifreire.com.br

CONTACT US
For more information about L&E Global, or an initial consultation, please contact one of our member firms or our corporate office. We look forward to speaking with you.

L&E Global
Avenue Louise 221
B-1050, Brussels
Belgium
+32 2 64 32 633
www.leglobal.org
This publication may not deal with every topic within its scope nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice with regard to any specific case. Nothing stated in this document should be treated as an authoritative statement of the law on any particular aspect or in any specific case. Action should not be taken on this document alone. For specific advice, please contact a specialist at one of our member firms or the firm that authored this publication.

L&E Global CVBA is a civil company under Belgian law that coordinates an alliance of independent member firms. L&E Global does not provide client services of any kind. Such services are solely provided by the member firms in their respective jurisdictions. In certain circumstances, L&E Global is used as a brand or business name by one or more of the member firms. L&E Global CVBA and its member firms are legally distinct and separate entities. They do not have, and nothing contained therein, shall be construed to place these entities in the relationship of parents, subsidiaries, agents, partners or joint ventures. No member firm, nor the firm which authored this publication, has any authority (actual, apparent, implied or otherwise) to bind L&E Global CVBA or any member firm, in any manner whatsoever.