



GUIDE TO GOING GLOBAL EMPLOYMENT

Brazil



Downloaded: 29 Apr 2024

INTRODUCTION

Welcome to the 2023 edition of DLA Piper's *Guide to Going Global – Employment*.

GUIDE TO GOING GLOBAL SERIES

Many companies today aim to scale their businesses globally and into multiple countries simultaneously. In order to help clients meet this challenge, we have created a handy set of global guides that cover the basics that companies need to know. The *Guide to Going Global* series reviews business-relevant corporate, employment, equity compensation, intellectual property and technology, and tax laws in key jurisdictions around the world.

EMPLOYMENT

As business grows more global, the challenge for in-house counsel and HR professionals responsible for workforce issues and employment law compliance is intensifying. This guide is designed to meet that challenge head on and has been produced in response to feedback from clients in both established and emerging international businesses. We hope it will become an invaluable resource for you.

This 2021 edition of our popular guide covers all of the employment and labor law basics in 63 key jurisdictions across the Americas, Asia Pacific, Europe, the Middle East and Africa. From corporate presence and payroll set-up requirements, language rules, minimum employment rights, business transfer rules, through to termination and post-termination restraints, we cover the whole employment life span.

We have used our global experience and local knowledge to bring you this newest edition of our guide. With over 300 lawyers, DLA Piper's global Employment group is one of the largest in the world, with one of the widest geographical footprints of any global law firm. We partner with our clients, wherever they do business, to find solutions and manage risk in relation to their legal challenges and objectives.

While this guide provides high-level guidance, it is not a substitute for legal advice, and we encourage you to take advice in relation to specific matters. If you wish to speak to any of our contributors, their contact details are set out towards the back.

We hope that you find this guide valuable and we welcome your feedback.

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This is a general reference document and should not be relied upon as legal advice. The application and effect of any law or regulation upon a particular situation can vary depending upon the specific facts and circumstances, and so you should consult with a lawyer regarding the impact of any of these regimes in any particular instance.

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BRAZIL



Last modified 10 May 2023

LEGAL SYSTEM, CURRENCY, LANGUAGE

Civil law. The official currency is the Brazilian Real (BRL). The official language is Portuguese.

CORPORATE PRESENCE REQUIREMENTS & PAYROLL SET-UP

A foreign entity cannot hire employees in Brazil without a local corporate presence. Employers must pay social security contributions and labor charges on top of compensation, which represent an additional cost of approximately 65 percent in addition to salaries. Employees incur an income tax (up to 27.5 percent) and social security contributions (up to 11 percent of the compensation, subject to a legal cap) withheld at source from compensation.

PRE-HIRE CHECKS

Required

Immigration compliance, a valid ID and a pre-hire medical examination are required.

Permissible

Background checks for education, prior employment and basic personal information, such as proof of identity and residential address, are accepted in certain circumstances. Criminal checks are limited to certain circumstances.

IMMIGRATION

Nationals of the Mercosul (ie, Argentina, Paraguay, Uruguay, Bolivia, Chile, Colombia, Ecuador and Peru) have the right to work in Brazil. For other non-Mercosul nationals, immigration permission is likely required.

HIRING OPTIONS

Employee

Indefinite, fixed-term, full-time or part-time (intermittent).

Independent contractor

Independent contractors may be engaged directly by the company or through an entity. Engagement may be subject to misclassification exposure.

Agency worker

Agency workers are hired by temporary work agencies to render services to the temporary agencies' clients. Agency workers are entitled to various employment rights.

EMPLOYMENT CONTRACTS & POLICIES

Employment contracts

A written agreement is not legally required, but is common. Basic terms and conditions of employment are recorded in the employee's booklet (*Carteira de Trabalho e Previdência Social* or CTPS) and in other mandatory documents upon hiring.

The eSocial system allows the company to electronically perform all procedures related to hiring. The Digital Employee's Booklet now replaces the physical employee's booklet (CTPS) so that, at the time of hiring, the employee only needs to inform the employer of their Individual Taxpayers' Registry number.

Starting on January 16, 2023, companies are required to provide information related to final court decisions and settlements rendered by or made before the Labor Courts, in addition to settlements made within Previous Settlement Commissions (CCPs) and Inter-Union Centers (NINTERs), via the eSocial system.. The following information must be entered on the system: registry, contract, employment relationship, the basis for FGTS (Guarantee Fund for Length of Service), and social security contributions.

Probationary periods

Permissible. Statutory limit of 90 days.

Policies

Written employment health and safety policies such as an Occupational Health Medical Control Program (PCMSO) and an Environmental Risk Prevention Program (PPRA) are legally required.

Third-party approval

The employment relationship with foreign employees must be submitted for the Secretary of Labor's approval.

LANGUAGE REQUIREMENTS

Although not required by statute, all employment documents should be in Portuguese.

WORKING TIME, TIME OFF WORK & MINIMUM WAGE

Employees entitled to minimum employment rights

All.

Working hours

As a general rule, full-time employees' working hours cannot exceed 8 hours per day or 44 hours per week. Collective bargaining agreements may provide that the employees subject to them will work fewer than 44 hours per week. Certain types of employees are not subject to control of work hours.

Overtime

Maximum 2 hours per day. Compensation for overtime hours must exceed compensation for normal hours by at least 50 percent. Collective bargaining agreements may provide for higher amounts of overtime compensation. It is not possible to make a fixed payment in lieu of overtime.

Wages

Currently, the national minimum wage for 2022 is BRL1,302 per month. Regional minimum salaries and minimum salaries set out in collective bargaining agreements often apply and may be higher.

Vacation

Employees are entitled to remunerated vacations (30 days) for every 12-month period of work, beginning 12 months after their hiring date. The vacation payment is equivalent to 1 month's wage, plus at least 1/3 of the monthly wage. Granting of vacation is subject to specific terms and conditions set forth by law.

Sick leave & pay

The company must pay wages corresponding to the first 15 days of sick leave absence. After the 15th day of absence, the employee will be entitled to social security benefits. Collective bargaining agreements may require payments in addition to the social security benefit for a limited period.

Maternity/parental leave & pay

Women are entitled to paid maternity leave of 120 days starting on the date of their child's birth or 28 days before such event. Adopting mothers have the same right. After the birth of a child, fathers are entitled to a paid 5-day leave.

Collective bargaining agreements may set out additional requirements.

Other leave/time off work

Employees may also be entitled to leave for other purposes, such as bereavement, marriage, voting, study/exam, military service, participation as representative of a trade union in official meeting of international organization, blood donation, accompanying spouse or partner for up to 6 (six) medical appointments, or in complementary exams, during pregnancy, cancer preventive medical examinations and attending a hearing/judicial notification.

DISCRIMINATION & HARASSMENT

Characteristics protected by statute from unlawful discrimination are gender, origin, race, color, marital status, family situation, age, pregnancy, religion and disability. Case law has also protected individuals of various sexual orientations and gender identities as well as individuals with severe illnesses from discriminatory termination.

WHISTLEBLOWING

Currently the legal protection of whistleblowers is limited to corruption cases. There is no legislation regarding whistleblower protections in the private sector. However, it is common for companies to adopt whistleblowing channels. The whistleblowing channel should assure the preservation of the whistleblower's anonymity throughout the process, and, although not a legal requirement, it should provide protection against retaliation.

BENEFITS & PENSIONS

All Brazilian employees must be enrolled with the Brazilian Social Security System, which provides for pension and disability benefits as well as public health coverage.

Employees must be granted transportation vouchers and benefits set out in collective bargaining agreements. The granting of meal vouchers and a private health plan is common.

DATA PRIVACY

The new General Data Protection Law (*Lei Geral de Proteção de Dados* or LGPD) came into force on September 18, 2021. The LGPD is Brazil's first comprehensive data protection regulation and applies to any processing operation carried out by a natural person or a legal entity, of public or private law, irrespective of the means used for the processing, the country in which its headquarters are located or the country where the data is located, provided that:

- The processing operation is carried out in Brazil
- The purpose of the processing activity is aimed at the offering or provision of goods or services, or at the processing of data of individuals located in Brazil, or
- The personal data was collected in Brazil.

The LGPD does not contain specific employment provisions, but its provisions cover employment data.

The monitoring of corporate email and internet use is allowed, but employees should be notified that they cannot expect privacy in the use of these work tools.

RULES IN TRANSACTIONS/BUSINESS TRANSFERS

There is no obligation to notify the government before asset or share deals. There are significant restrictions on changing terms and conditions of employment.

EMPLOYEE REPRESENTATION

Union representation is mandatory, and all employees are subject to industrywide collective agreements. Works councils are uncommon. However, Law 13,467, which became effective on November 13, 2017, provides for a commission of employees for companies whose workforce exceeds 200 individuals. The number of commission employees will depend on the size of the workforce, ranging from 3 to 7 members.

TERMINATION

Grounds

As a rule, termination does not require a cause, but severance payments for terminations without cause are higher than those owed in cases of termination for cause. Certain circumstances protect employees against unmotivated dismissal. Termination by mutual agreement is allowed in certain circumstances when it is convenient for the company as well as for the employee.

Employees subject to termination laws

All employees are subject to termination laws.

Restricted or prohibited terminations

Certain circumstances prevent the termination of the employment relationship without cause or cause an increase in the severance payments, such as:

- Pregnancy
- Application by the employee for, or election of the employee to, a position at the Internal Commission for Accident Prevention (*Comissão Interna de Prevenção de Acidentes* or CIPA)
- Application by the employee or election of the employee for a management position at the employees' union
- Work accident (an employee who suffers a work-related accident cannot be dismissed until 1 year after the illness allowance has ceased) and
- Acceptance by the employee of a position in the conciliation commission in charge of settling labor disputes.

Other events provided under collective conventions or collective agreements may lead to temporary job tenure protection.

Third-party approval for termination

The union may be required to participate in the termination process of employees in circumstances preventing termination per collective bargaining rules.

Since November 13, 2017, the union – or the labor authority – is no longer required to ratify terminations of employees; however, collective bargaining agreements may provide that ratification is mandatory for certain sectors.

Mass layoff rules

Mass layoffs do not require prior negotiation with the union.

Notice

Termination without cause by employer's initiative: 30 days during the first year plus 3 days per additional year of service for the same company, limited to 90 days. Additional collective bargaining agreement provisions may apply.

Termination for cause: Not applicable, effective immediately.

Statutory right to pay in lieu of notice or garden leave

The company has the statutory right to pay in lieu of notice. Garden leave is not allowed.

Severance

In case of termination without cause, the employee is entitled to severance, amounting to the equivalent of 40 percent of the balance in the employee's Unemployment Guarantee Fund (*Fundo de Garantia por Tempo de Serviço* or FGTS), accrued during the employment relationship. Additional payments will be due, such as 1 month's salary if the termination takes place in the 30 days before the expected date of the collective bargaining agreement for the following period; payout of accrued vacation plus 1/3 vacation bonus; pro-rated 13 months' pay; and other payments required by the applicable collective bargaining agreement or contract.

In case of termination with cause, accrued unused vacation plus vacation bonus and other payments required by the applicable collective bargaining agreement or contract are still required, but there will be no FGTS payout or additional 1 month's salary.

In case of termination by mutual agreement, the company must pay half of the notice and 20 percent of the FGTS balance, as opposed to 40 percent when the termination is on the company's initiative. The employee will be allowed to withdraw 80 percent of the balance of the FGTS fund, as opposed to 100 percent when the termination is on the company's initiative, but they are not entitled to unemployment benefits in this type of termination.

POST-TERMINATION RESTRAINTS

Brazilian law does not address post-termination restraints. Therefore, enforcement of post-termination restraints may be challenging.

Non-competes

Periods of up to 24 months have been accepted, but enforceability is more likely for shorter periods (ie, 6-12 months). Case law has upheld non-competes that were limited with regards to scope, territory, timeframe and fair and reasonable payment.

Customer non-solicits

Generally permissible.

Employee non-solicits

Generally permissible, but case law is scarce in this regard.

WAIVERS

Not enforceable unless in a settlement ratified at court.

REMEDIES

Discrimination

Indemnification based on the claimant's damages in case of a labor lawsuit, plus a recommendation that the employer takes action.

The law establishes parameters that must be observed by the judges when rendering a decision. The maximum indemnity amount cannot exceed 50 times the amount paid by the social security system benefits to the worker – the cap is BRL276,565. However, recent case law has fixed amounts above this limit as certain labor judges consider the limit for moral indemnifications unconstitutional.

Unfair dismissal

Severance in case of termination without cause in which the employee is not protected by job tenure is set out in law. In case of termination without cause, employees protected by job tenure can trigger damages and reinstatement.

Failure to inform & consult

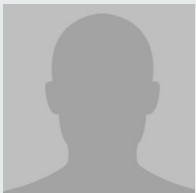
As a rule, there is no obligation to inform and consult the union about terminations, unless so required by a collective bargaining agreement. In such cases, failure to inform triggers the consequences set out in the collective bargaining agreement.

Failure to inform and consult in mass terminations may trigger reinstatement orders and financial consequences.

CRIMINAL SANCTIONS

Violation of employment laws and discrimination can trigger criminal sanctions.

KEY CONTACTS



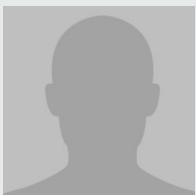
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