



## Newsletter Machado Associados

### Labor Reform in Force! Main Aspects

Law 13,467/2017 (Labor Reform) came into effect last Saturday, November 11, 2017, changing several labor and social security rules for both companies and employees.

The main changes brought by the labor reform are:

Type of Change	Previous Scenario	Current Scenario
<b>Unions</b>	<ul style="list-style-type: none"> <li>· Union dues are mandatory.</li> <li>· Unions ratify the termination of employees whose seniority exceeds one year.</li> <li>· The presence of unions is required to negotiate the bank of hours agreements (agreements stating that the employee can offset worked hours in a period that exceeds one week).</li> <li>· The presence of unions is required to negotiate working shifts of 12 hours of work per 36 hours of rest.</li> </ul>	<ul style="list-style-type: none"> <li>· Union dues are no longer mandatory.</li> <li>· Unions will not ratify the termination of employees.</li> <li>· Unions are no longer necessary for the negotiation of the bank of hours agreements, provided that the overall covered period does not exceed 6 months.</li> <li>· Unions are no longer required for the negotiation of working shifts of 12 hours of work per 36 hours of rest.</li> </ul>
<b>Zero Hour Contract</b>	Not provided for by law.	Employees (except for aeronauts) can be called to work per project and the employer will be required to pay only the worked hours. In this case, the employer notifies the employee about the project within at least 3 days in advance and the employee must answer in 24 hours, otherwise the proposal is deemed refused. The payment of the labor rights, including severance and pro rata payments, is made per project as well.

<p><b>Work from Home</b></p>	<p>The law provides solely that employees who work from home are entitled to the same rights extended to other employees.</p>	<ul style="list-style-type: none"> <li>· Work from home is defined as the work rendered mainly outside employer premises.</li> <li>· Employees who work from home are neither entitled to overtime payments nor subject to working hours' control.</li> <li>· The employment agreement must state expressly that the employee was hired to work from home.</li> </ul>
<p><b>Employees with higher compensation</b></p>	<p>Employees with higher compensation had, in principle, the same rights extended to other employees.</p>	<ul style="list-style-type: none"> <li>· Employees (i) whose monthly compensation exceeds approximately R\$ 11.062.62 (USD 3,200), and (ii) have higher education degree can negotiate their employment conditions with employers provided that the negotiation does not offend the law, the decisions of the authorities, and the Collective Bargaining Agreements (CBAs).</li> <li>· Employment agreements of employees whose monthly compensation exceeds approximately R\$ 11.062,62 (USD 3,200) can include arbitration clauses.</li> </ul>
<p><b>Termination</b></p>	<ul style="list-style-type: none"> <li>· Employment relationships may be terminated with or without a cause, by the employer or by the employee. Causes for termination are established in the law.</li> <li>· Based on case law, massive lay-offs require previous negotiation with the union.</li> </ul>	<ul style="list-style-type: none"> <li>· Termination by mutual agreement is possible.</li> <li>· Massive lay-offs do not require prior negotiation with the union.</li> <li>· In case the employee voluntarily joins a plan for the termination of the employment relationship, a general and full release of labor obligations apply (this is not a new provision of law, but it reinforces courts' understanding in this regard).</li> </ul>

<p><b>Collective Bargaining Agreements (CBAs) prevail over the law</b></p>	<p>The Brazilian Federal Constitution provides that CBAs prevail over the law in case of (i) reduction of salary; (ii) working hours' shifts; and (iii) rotating shifts.</p>	<p>In addition to the items established in the Federal Constitution, CBAs may also establish terms and conditions on (i) hours on call; (ii) working hours register/control; (iii) exchange of holidays and definition of position of trust; (iv) bank of hours covering one year; (v) overtime in case of hazardous conditions of work.</p>
<p><b>Benefits not included in the salary</b></p>	<p>Fixed amounts paid to employees to reimburse business trips expenses exceeding 50% of the monthly salary, bonuses paid on a recurrent basis, and advance payments ("abonos") were part of the salary for the purpose of payment of impacts on labor rights, such as 13th salary, FGTS, and vacations with additional payment of 1/3.</p>	<p>Mentioned fixed amounts paid aside are no longer deemed as part of the salary.</p>
<p><b>Meal and rest breaks</b></p>	<ul style="list-style-type: none"> <li>·Employees are in principle entitled to meal breaks ranging from one to two hours.</li> <li>·Companies may obtain approval from the Ministry of Labor to reduce meal breaks to no less than 30 minutes, provided they comply with certain requirements.</li> <li>·In case employer grants less than one hour without having approval from the Ministry of Labor to do so, employee is entitled to the whole meal break period payment as overtime (i.e., one hour).</li> </ul>	<ul style="list-style-type: none"> <li>·It is possible to reduce the meal break to 30 minutes by means of CBA; approval from Ministry of Labor no longer required.</li> <li>·The reduction of the meal and rest breaks can be offset, to allow the employee to arrive later or leave early from work.</li> </ul>

<b>In itinere hours</b>	Employees are entitled to the payment of the time spent in the transportation provided by the employer to/from the working place not served by public transportation.	Employees are no longer entitled to the payment of the time spent in the transportation provided by the employer to/from the working place not served by public transportation.
<b>Time available to the employer</b>	The time spent by employee waiting for instructions from the employer is deemed as time available to the employer and thus is part of the regular working hours.	The time spent by the employee with personal hygiene, change of uniform (provided that employer does not require employee to change it at the work place), meals, entertainment, study, rest, option of the employee to remain inside employer premises, among others, is not deemed time available to the employer.
<b>Part time</b>	Employees who work up to 25 hours per week are deemed part time employees and could not be asked to work overtime hours.	Part time employees work up to 30 hours per week. Employees whose weekly working hours do not exceed 26 can work up to 6 weekly overtime hours, which should be offset in the following week.
<b>Commission of employees</b>	Not provided for by law.	<ul style="list-style-type: none"> <li>·Companies whose workforce exceeds 200 individuals will have a commission of employees.</li> <li>·The number of commission employees will depend on the workforce, ranging from 3 to 7 members.</li> </ul>
<b>Vacations</b>	Employees are entitled to 30-day vacations that can be split in no more than 2 periods of not less than 10 days each.	Employees are entitled to 30-day vacations that can be split in up to 3 periods, being one of not less than 14 days and the two remaining periods of not less than 5 days each one.
<b>Labor litigation</b>	<ul style="list-style-type: none"> <li>· There is no moral damages indemnification cap, as this subject is addressed on a case-by-case basis by the courts.</li> </ul>	<ul style="list-style-type: none"> <li>·Moral damages indemnifications are limited to 50 times the last contractual salary of the employee.</li> <li>·The shareholder who leaves the company is liable for the period of 2 years following leaving date and only in case the company and the current</li> </ul>

	<ul style="list-style-type: none"> <li>· Disregard of the legal entity usually results from the lack of assets of the debtor.</li>   <li>· To obtain an exemption from court fees, employees should usually declare that they are not able to bear the procedural expenses.</li> </ul>	<p>shareholders do not have enough assets to pay the labor debts.</p> <ul style="list-style-type: none"> <li>·Disregard of the legal entity must follow the rules of the Civil Procedure Code.</li>   <li>·Courts cannot determine that the court-appointed expert fees be paid in advance.</li>   <li>·A new procedure to ratify out-of-courts agreements was implemented.</li> </ul>
<p><b>Outsourcing</b></p>	<p>Law 6,019/74 establishes that outsourcing is allowed, but expressly forbids outsourcing the company's core activities.</p>	<ul style="list-style-type: none"> <li>·Law 6,019/74 was amended to state that outsourcing of core business activities is lawful.</li>   <li>·Employees of the service providers are entitled to the same benefits granted to the hiring company employees: (i) meals granted in the company's cafeteria; (ii) transportation services; (iii) medical assistance, if any, in the hiring company's premises or at a place indicated by hiring company; (iv) adequate training granted by the service provider in case the activity thus requires.</li>   <li>·It is unlawful to retain a service provider whose shareholders had worked as employees or self-employees to the hiring company during the past 18 months, except if the mentioned shareholders are retired.</li> </ul>

This newsletter contains information and general comments on legal matters that may interest our clients and friends. It does not represent the legal opinion of Machado Associados on the subjects addressed herein. In specific cases, readers should rely on proper legal assistance before adopting any concrete action relating to the matters addressed herein.

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