Modernization of labor relations in Brazil – a positive change in Brazil labor scenario that can influence investment decisions, reduce excessive labor conflicts and foster job generation.

On July 14 of 2017, was published the Law 13.467/2017 and will be in force 120 days after its official publication. Its objective is to modernize the labor relations in Brazil, what is an important change in Brazil labor scenario that can influence investment decisions, reduce excessive labor conflicts and foster job generation.

The need to modernize labor law in Brazil reflects the fact that the country's main legal framework for labor relations dates back from 1943 and is not in line with changes in labor and production that have taken place since then. For this reason, the law does not contemplate new and more flexible employment contract modalities that are seen as necessary to address a scenario of almost 14 million unemployed workers and economic crisis. In addition, the current law is rigid and leaves very little space for adjustments to the demands of workers and employers within companies or in Brazil's sectors and regions. In this scenario, little room is left for collective bargaining and dialogue between companies and employees.

Why is Brazilian labor law modernization important to the country?

- the current law is outdated and is not in line with the social and productive dynamics of the modern world any longer;
- the law is rigid and leaves very little room for adjustments to the demands of workers and employers within companies or in Brazil's sectors and regions;
- the law induces conflicts and does not value mechanisms for dialogue, negotiation, and consensus between employees and employers;
- The adoption of new contract modalities and more flexible contracts has the potential to make it possible/to overcome the economic crisis, which has left almost 14 million workers unemployed.

KEY MODERNIZATION ISSUES UNDER DISCUSSION IN BRAZIL

The modernization of labor relations in Brazil revolves around fundamental axes. These axes are the following ones:

I) STRENGTHENING AND VALUING FREE AND SPONTANEOUS COLLECTIVE BARGAINING

Considering the scenario of legal uncertainty prevailing in Brazil in relation to the validity of collective bargaining, and in line with ILO Conventions 98 and 154, the discussion in question is intended to encourage and promote the full development and utilization of machinery for voluntary negotiation between
employers or employers’ organizations and workers’ organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements, adapted to national conditions.

II) PRESERVATION OF LABOR RIGHTS
All workers’ rights are preserved, especially those provided for in the Brazilian Constitution, which sets out an extensive list of rights – more than 30 of them. These rights include:

| - Maximum daily and weekly working hours | - Additional pay for extraordinary working hours |
| - 13th salary (compulsory Christmas bonus) | - Protection against discrimination |
| - Right to free unionization | - Maternity and paternity leave |
| - Right to strike | - 30-day vacation a year |
| - Right to free and spontaneous collective bargaining | - Protection for female workers |

III) NEGOTIABLE WORKING TERMS AND CONDITIONS
The law is designed to make it possible for employees and their unions and companies to negotiate working terms and conditions. These terms and conditions include:

| - Representation of workers in the workplace | - Additional pay for work under unhealthy conditions |
| - Flexible working hours and an annual working hours bank | - Possibility of extending working hours in unhealthy environments |
| - Rest and meal break of at least 30 minutes | - Home office and intermittent work |
| - Modality of recording working hours | - Possibility of switching holidays falling in the middle of the week |
| - Career and wages plan and corporate regulation | - Compensation for productivity and individual performance |
| - Incentive bonuses in goods and services | - Participation in profits and results |

IV) SIMPLIFICATION OF LABOR RELATIONS
The previous labor laws in Brazil give rise to many doubts among enterprises and workers and provide for a lot of bureaucratic procedures that are harmful to the workplace environment. Therefore, one of the labor modernization objectives is to simplify them with the aim of reducing red tape and legal uncertainty regarding their application in the social and productive scenario of our days, which poses a burden on labor relations and contributes to unemployment.

V) VALUING DIALOGUE BETWEEN EMPLOYEES AND ENTERPRISES
The previous law was based on the premise that labor relations should be regulated in every detail, reducing the space for collective bargaining and dialogue between companies and workers on their working terms and conditions with a focus on ensuring benefits to workers, productivity gains and increased competitiveness.

Labor modernization is intended to afford more possibilities and conditions for employers and workers to better define the details of their relationship through dialogue and collective bargaining, in addition to stimulating companies to provide benefits to their employees and to strive to increase their productivity and competitiveness jointly with them.
Besides valuing and strengthening collective bargaining, the law is designed to modernize specific aspects of the labor law by simplifying labor relations and reducing red tape. These aspects include:

**Vacations** – under the previous legislation, workers in Brazil were entitled to an annual vacation of at least 30 days, with payment of their regular wages plus a one-third vacation bonus. These 30 days can only be divided into two periods in exceptional cases (not listed in the law), with at least 10 days each. However, workers under 18 (including apprentices) and over 50 years old cannot divide their vacation.

With the Law 13.467/2017, employers and employees will be able to freely agree to divide the vacation into up to 3 periods, one of which of at least 14 days and the others of at least 5 days. The current legal provision that prohibits holidays from being divided for workers under 18 or over the age of fifty will also be eliminated. At the same time, the minimum 30-day paid annual vacation will be preserved with the one-third vacation bonus.

**In itinere hours** – under the previous labor law, employers must consider the time spent by workers traveling to and from work as working hours and pay for them accordingly if the company provides them with transportation and is located in a hard-to-access location or in a location not served by public transportation.

With the Law 13.467/2017, this time is no longer considered as working hours, which will stimulate collective bargaining on this matter and also the granting of transportation benefits to workers. In addition, it will ensure fair and proper payment to workers for hours actually worked.

**Regulation of new forms of working (home office and intermittent work)** – the previous labor law had no regulation for home office (work done remotely through electronic means) and for intermittent work (the one workers are invited to perform and, if they accept, they are paid for the corresponding hours of work).

With the Law 13.467/2017, these forms of working became regulated. For the home office modality, whose regulation is based on rules created by some public agencies for their civil servants, the terms and conditions under which the work is to be performed have to be agreed upon in a specific contract. For the intermittent work modality, i.e. for work that is only necessary sporadically, a deadline has to be set for workers to respond to the respective invitation and show up for work, while any refusal to do so will not be seen as insubordination. As benefits for the labor market, several activities that are being carried out informally today will be formalized and workers will have their fundamental rights and social security contributions ensured.

**Termination of employment** – under the previous legislation, terminating an over one-year employment contract involves a bureaucratic procedure before the Ministry of Labor or before a labor union without any effect on the discharge of the contract. In addition, no agreement between a company and an employee to terminate such a contract is allowed.

With the Law 13.467/2017, termination procedures are simplified and the procedures before the Ministry of Labor or a labor union are no longer mandatory. Employees and employers are also allowed to enter into an agreement to terminate the contract.