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THE MODERNIZATION OF LABOR RELATIONS IN BRAZIL

LAW No. 13,467 OF JULY 13, 2017
- Scenarios before and after the passage of the law -

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Labor relations are known to make a difference for the economic growth, productivity and development of any country. The challenge of making sure that labor relations are actually focused on promoting dialogue and legal certainty to all those involved is also the challenge of ensuring sustainability for companies and competitiveness in the domestic and international market, as well as of stimulating the generation of more and better jobs.

Brazil should have faced this challenge a long time ago, since the main legal instrument regulating labor relations in Brazil, the Consolidated Labor Laws (CLT, in the Brazilian acronym), was passed in the 1940s, which despite its motivation and importance to consolidate rights and protect workers back then was no longer appropriate to regulate new ways of working and producing that have emerged over the more than 70 years that have elapsed since then.

Law no. 13,467/2017 is therefore extremely relevant and represents a breakthrough for the modernization of labor relations in Brazil. Of the 922 articles of the Consolidated Labor Laws (CLT), 54 were amended, 43 new ones were added, and 9 were revoked – totaling 106 provisions. In addition, two articles on outsourcing were amended and three new ones were included in Law No. 6,019/1974. Some specific adjustments were also made to the sparse legal framework available. All of this resulted in 114 articles that were either included in it or amended.

The main innovations brought by the law include the prevalence of negotiation over legislation, the end of the applicability of collective bargaining instruments after abrogation, exclusion of commuting hours from working hours, regulation of telework and intermittent work, and optional, as opposed to compulsory, union contribution. All of these innovations preserved the fundamental rights of workers, such as the right to vacations, to a 13th salary, to maternity and paternity leave, to unemployment insurance, to severance pay (FGTS, in the Brazilian acronym), and to a retirement pension, among others.

The new law paved the way for greater legal certainty and cooperation and for an improved business environment that will contribute to economic growth, benefiting companies, employees and, ultimately, Brazil at large.

The changes brought by the law will be described in detail below, as well as the scenario before it was passed and what it provides for.

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Economic group

Situation before the new law: According to the Consolidated Labor Laws (CLT), whenever one or more companies with their own legal personality were under the management, control or administration of another one, **constituting an industrial or commercial group or a group engaged in any other economic activity**, they were to be considered, **for the purposes of labor relations**, jointly and severally liable to **the parent company and each of their subordinated companies** (Art. 2, paragraph 2).

What the new law provides for: It provides that whenever one or more companies with their own legal personality are under the management, control or administration of another one, or **even when each of them preserves its autonomy while belonging to an economic group**, they are to be considered as jointly and severally liable for the obligations arising out of the employment relationship. It adds, however, that **the mere identity of associates does not characterize an economic group, for which purpose the integrated interest, actual communion of interests, and joint operation of its members must be confirmed** (Art. 2, paragraphs 2 and 3 of the CLT).

Permanence of an employee in a company for a personal interest

Situation before the new law: According to the CLT, "**actual working hours consist of the period during which an employee remains at the disposal of an employer**, awaiting or carrying out orders, unless expressly provided for otherwise" (Art. 4). It also provides that **time variations in the punch card record not exceeding 5 minutes shall not be deducted or computed as overtime**, **provided that a maximum limit of 10 minutes a day is observed** (Art. 58, paragraph 1).

The Superior Labor Court (TST, in the Brazilian acronym) consolidated an understanding in Precedent No. 366 that "time variations in the punch card record not exceeding 5 minutes shall not be deducted or computed as overtime, provided that a maximum limit of 10 minutes a day is observed. **If this limit is exceeded, the total time exceeding the regular working hours shall be considered as overtime, as this characterizes time at the disposal of the employer,** regardless of the activities carried out by the employee during the overtime period (changing uniform, having a snack, taking care of his or her personal hygiene, etc.)." And in Precedent No. 429, it stated that "**time at the disposal of the employer is,** according to Art. 4 of the CLT, the **time spent by a worker to travel from the company's gate to his or her workplace**, provided that it exceeds the limit of 10 minutes a day."

What the new law provides for: **It does not consider the time available to the employer and provides that the time exceeding the regular working hours shall not be computed as overtime**, even if it exceeds the limit of 5 minutes provided for in paragraph 1 of Art. 58 of the CLT, **when the employee, by his or her own choice, seeks personal protection** in the case of insecurity on public roads or bad weather conditions **and enters or remains on the premises of the company to carry out private activities,** including, among others: I - religious practices; II - rest; III - recreation; IV- study; V- meals; VI - socializing; VII - personal hygiene; VIII - changing clothes or a uniform, when there is no obligation to do it in the company (Art. 4, paragraph 2, of the CLT).

Common law as a subsidiary source of labor law

Situation before the new law: The CLT provided that common law would be a subsidiary source of labor law, **insofar as it was not incompatible with the fundamental principles of the labor law** (Art. 8, sole paragraph).

What the new law provides for: It preserved the provision that common law is a subsidiary source of labor law, but **removed the requirement of its compatibility with the fundamental principles of the labor law** as a condition for being so (Art. 8, sole paragraph, of the CLT).

Restriction or creation of rights by case law precedents

Situation before the new law: **There was no legal provision on the subject**. However, **there are cases of restriction or creation of rights by case-law precedents**, such as that of Precedent No. 331, which restricted outsourcing to ancillary activities.

What the new law provides for: It expressly provides that **precedents and other case law-based decisions issued by a labor court cannot restrict rights provided for in the law nor create obligations** not contemplated in the law (Art. 8, paragraph 2, of the CLT).

Liability of dissenting members

Situation before the new law: **There was no legal provision on the topic**, which was therefore subject to the interpretation of labor courts.

What the new law provides for: It provides that **dissenting members of the employing company shall be jointly and severally liable for the company's labor obligations relating to the period in which they were members, only in connection with lawsuits filed within up to two years after the amended contract is registered**, in the following order of preference: I- the debtor company; II- current members; and III- dissenting members.

However, **if fraud is confirmed in amendments to articles of incorporation** the member shall be **jointly and severally liable** with the others (Art. 10-A of the CLT).

Statute of limitations for successive payment obligations

Situation before the new law: Art. 7, item XXIX, of the Brazilian Federal Constitution (CF) provides that lawsuits related to credits resulting from labor relations have a 5-year statutory period for urban and rural workers, up to a limit of 2 years after the termination of an employment contract. The Superior Labor Court consolidated an understanding about this provision in Precedent No. 294, according to which "in the case of a lawsuit involving a claim for successive payment obligations arising from a change in what had been agreed upon, full statute of limitations is applied, except where the right to a payment is also ensured by law." **Full statute of limitations was not applied to cases of noncompliance with what had been agreed upon.**

What the new law provides for: It provides that **a claim involving successive payment obligations arising from amendments to articles of incorporation or noncompliance with what had been agreed upon, full statute of limitations is applied**, except where the right to a payment is also ensured by law. The new law incorporated the consolidated understanding of the Superior Labor Court, but it added that full statute of limitations is also applied when the claim involves payments resulting from noncompliance with what had been agreed upon (Art. 11, paragraph 2, of the CLT).

Intervening limitation

Situation before the new law: This type limitation was not applied to labor claims due to the understanding of the Superior Labor Court, as consolidated in Precedent No. 114, according to which "**intervening limitation cannot be applied by labor courts.**"

What the new law provides for: It provides for **intervening limitation** upon request or on the court's own initiative **when the judgment creditor fails to comply with a court order** during the course of execution proceedings **after a period of two years** (Art. 11-A of the CLT).

Administrative fines

Situation before the new law: The CLT provided that companies that hired unregistered workers would incur a **fine of 1 regional minimum wage per unregistered worker** plus an equal amount for each repeat infraction (Art. 47, *caput*). For other infractions related to the registration of employees (admission to employment, duration and effectiveness at work, holidays, accidents, and other workers' protection circumstances - Art. 41, sole paragraph),

companies may incur a fine of half the regional minimum wage, or of twice this amount in the case of repeat infraction (Art. 47, sole paragraph.).

What the new law provides for: **It preserved the provision that companies shall incur a fine for hiring unregistered workers, but it changes its amount to R$3,000.00 per unregistered employee**, plus an equal amount for every repeat infraction and makes it clear that this infraction constitutes an exception to double visits of inspection (Art. 627 of the CLT). It innovates by providing that **in the case of a microenterprise or small business, the final amount of the fine shall be of R$800.00 per unregistered employee**. It also adds that in the event of non-disclosure of other employee data (admission to employment, duration and effectiveness at work, holidays, accidents, and other workers' protection circumstances - Art. 41, sole paragraph, of the CLT), the employer shall be subject to a fine of R$600.00 per employee affected by such non-disclosure (Art. 47 and 47-A of the CLT).

Commuting hours

Situation before the new law: According to the CLT, **the time spent by an employee commuting to work and back using any means of transportation was not to be computed as working hours except when, in the case of difficult-to-access locations not served by public transportation, the employer provided the transportation** (Art. 58, paragraph 2). In the case of micro and small enterprises, the average commuting time of employees, as well as the form and nature of the remuneration, could be defined beforehand in a collective agreement or convention (Art. 58, paragraph 3).

The Superior Labor Court consolidated its understanding on the subject through the following guidelines contained in **Precedent No. 90: I - The commuting time of employees in a means of transportation provided by their employer to and back from a difficult-to-access workplace or one that is not served by regular public transportation can be computed as working hours;** II - Incompatibility between the start and end of an employee's working hours and those during which regular public transportation is available is a circumstance that also generates the right to be paid for commuting time; III - The mere inadequacy of public transportation does not entitle an employee to be paid for commuting time; IV - If regular public transportation is available in part of the route to the company, commuting hours for which an employee is entitled to get paid are limited to the stretch not covered by public transportation; V- **Considering that commuting hours can be computed as working hours, the time that exceeds the legal working hours is considered as overtime** and entitles employees to the respective additional pay. And in Precedent No. 429 it stated that "time at the disposal of the employer is, according to Art. 4 of the CLT, **the time spent by a worker to travel from the company's gate to his or her workplace**, provided that it exceeds the limit of 10 minutes a day."

What the new law says: It provides that **the commuting time of an employee from his or her home to the actual workplace within the employer's premises and back**, by walking or by any means of transportation, **including by a means of transportation provided by the employer, shall not be computed as working hours because it does not constitute time available to the employer** (Art. 58, paragraph 2, of the CLT).

Part-time work

Situation before the new law: The CLT characterized **part-time work as one whose duration could not exceed 25 hours** (Art. 58-A), with holidays proportional to the number of hours worked per week (Art. 130-A), no possibility of conversion of 1/3 of the vacation period into a cash bonus (Art. 143, paragraph 3) and overtime allowed (Art. 59, paragraph 4).

What the new law provides for: It considers **part-time work as one whose duration does not exceed 30 hours, without any overtime allowed, or work whose weekly duration does not exceed 26 hours with the possibility of up to 6 hours of overtime per week**, which can be directly compensated until the week immediately following the extra hours actually worked or processed on the following month's payroll, if not compensated before that. Holidays are now governed by the provisions of Art. 130 of the CLT (after each 12-month period of the employment contract, the employee has the right to a 30-day paid vacation) and the employee can convert 1/3 of the vacation period to which he or she is entitled into a cash bonus (Art. 58-A, CLT).

Overtime

Situation before the new law: According to the CLT, overtime was allowed up to a number of hours not exceeding the number of regular working hours of 2 working days, **upon agreement in writing** between the employee and the employer or through collective bargaining (Art. 59). In addition, in cases of overtime exceeding the number of working hours corresponding to 2 working days as provided for in the previous law, due to force majeure or to ensure the provision or completion of services that could not be postponed or whose non-performance could lead to clear losses (imperative necessity), such overtime had to be **reported to the competent labor authority within 10 days** (Art. 61).

What the new law provides for: It provides that daily working hours may be increased by 2 extra hours at most **upon individual agreement** or collective agreement or convention. In the case of imperative necessity, working hours may exceed the legal or contractual limit due to force majeure or to ensure the provision or completion of services that could not be postponed or whose non-performance could lead to clear losses r**egardless of collective**

bargaining or the requirement to report extra hours to the competent authority (Art. 59 and 61, paragraph 1, of the CLT).

Compensation for working hours

Situation before the new law: Art. 7, item XIII, of the Brazilian Federal Constitution provides that compensation for working hours is allowed. The Superior Labor Court consolidated its understanding on the subject through the following guidelines contained in **Precedent No. 85:** I. **Compensation for working hours must be agreed upon individually in writing** or through a collective agreement or convention; **II. An individual agreement for compensation for working hours is valid**, unless there is a collective convention to the contrary; III. **Mere failure to comply with the legal requirements for compensation for working hours**, including when agreed upon through a tacit agreement, **does not imply repeated payment for hours exceeding the regular daily working hours if the maximum weekly working hours are not exceeded, in which case only the respective extra hours are paid**; IV. **Habitual overtime overrides the agreement on compensation for working hours. In this case, the hours exceeding the regular weekly working hours shall be paid and, as for those set apart for compensation, only the additional pay for extra work shall be paid;** V. The provisions contained in this precedent shall not apply to the compensatory regime in the "hour bank" modality, which can only be established by collective bargaining; VI - No compensation agreement for working hours in unhealthy environments shall be valid, even if established in a collective standard, without the necessary prior inspection and permission from the competent authority, according to Art. 60 of the CLT. And in Case-Law Orientation OJ SBDI-I No. 323 it consolidated the understanding that "the system for compensation for working hours is valid when the working hours adopted are those of the so-called 'Spanish week,' which alternates between 48 working hours in one week and 40 working hours the following week, and its adjustment upon a collective agreement or convention does not constitute a violation of Arts. 59, paragraph 2, of the CLT and Art. 7, item XIII, of the Brazilian Federal Constitution of 1988."

What the new law provides for: It provides that the **regime for compensation for working hours can be established upon a tacit or written individual agreement for compensation in the same month**. It points out that **failure to comply with legal requirements** to execute the agreement **does not generate the need to repeat overtime pay**, and only the additional pay due for extra work is to be paid. Moreover, it expressly provides that **habitual overtime does not override the agreement** on compensation for working hours (Art. 59, paragraph 6, 59-B, *caput* sole paragraph, of the CLT).

Hour bank

Situation before the new law: The CLT provides that additional pay may be waived if, **by virtue of a collective agreement or convention, overtime in one day is compensated by a corresponding decrease in working hours in another day**, so that it does not exceed, **over a maximum period of one year**, the sum of the regular weekly working hours or the maximum limit of ten hours per day (Art. 59, paragraph 2).

In its interpretation of this provision, the Superior Labor Court consolidated its understanding on the subject in **Precedent No. 5, item V, according to which the compensatory regime in the "hour bank" modality can only be established through collective bargaining**.

What the new law provides for: It maintains the possibility of an agreement being reached on an annual hour bank through collective bargaining and expressly adds the possibility of **an individual agreement being entered into in writing for this purpose, provided that the compensation occurs within a maximum period of 6 months.** Moreover, it expressly provides that **habitual overtime does not override the hour bank regime** (Art. 59, paragraph 5, 59-B, sole paragraph, of the CLT).

12x36 working hours

Situation before the new law: There was no general legal regulation of the subject. The Superior Labor Court consolidated its understanding in Precedent No. 444, according to which "twelve-hour working days followed by thirty-six hours of rest are valid on an exceptional basis, as provided for in the law or adjusted **exclusively through a collective bargaining agreement or convention**, with double pay for worked holidays."

What the new law provides for: Through an individual agreement in writing or a collective convention or agreement, it allows the parties to adopt 12-hour working days followed by 36 hours of uninterrupted rest, duly observing or compensating for breaks for resting and meals. The **monthly pay** due for such working day **covers** payments due **for the weekly rest and holidays** and considers, where appropriate, holidays and any extension of working hours in night shifts compensated for. In addition, **this modality of working hours** is waived from the requirement o**f prior authorization** from the competent authorities in relation to health and safety at work **for any extension of working hours in unhealthy activities** (Art. 59-A, 60, sole paragraph, of the CLT).

Telecommuting

Situation before the new law: There was no specific regulation for this kind of work in the labor law and, as a result, the internal rules of companies that are already hiring telecommuting workers were subject to the interpretation of the courts.

What the new law provides for: **It regulates telecommuting**, defining it as work **outside the premises of the employer using information and communication technologies that, because of their nature, do not constitute external work. The presence of telecommuting workers on the premises of the employer** to carry out specific activities that require their presence there **does not override the regime. Telecommuting is not subject to the general rules applied to working hours** (e.g. workers' attendance control). An express agreement between the employee and the employer is required for shifting from on-site work to telecommuting; but the employer can unilaterally determine a shift from telecommuting to on-site work within a minimum transition period of 15 days in this case. Arrangements regarding the acquisition, maintenance or provision of the necessary equipment and infrastructure for telecommuting must be defined in writing in the employment contract and they will not be considered as part of the employee's remuneration. **The employer must also explicitly and clearly advise the employees on precautions to be taken by them to avoid occupational accidents and illnesses.** The employee must sign a term of responsibility and undertake the commitment to follow such instructions (Art. 62, Item III, 75-A to 75-E, of the CLT).

Paid breaks during working hours

Situation before the new law: According to the CLT, when an employer did not provide breaks for resting and meals, the employer would be obliged to pay for the corresponding period with an increase of at least 50% over the value of the regular working hour (Art. 71, paragraph 4). In its interpretation of this provision, the Superior Labor Court consolidated the understanding in Precedent No. 437 that **non-provision or partial provision of the** minimum rest and meal break during working hours **implies full payment, as part of the salary**, of the corresponding period, and not only of the suppressed period.

What the new law provides for: It amends the law to provide that non-provision or partial provision of breaks during working hours implies **payment of only the suppressed period as an indemnity**, with an increase of 50% over the value of the regular working hour (Art. 71, paragraph 4, of the CLT).

Split vacation periods

Situation before the new law: The CLT provided that **vacations could only be split into 2 periods in exceptional cases**, one of which could not be shorter than **10 calendar days**, and employees **under 18 and over 50 years old could only take their vacations in a single period** (Art. 134).

What the new law provides for: According to the new law, **provided that the employee agrees**, vacations can be taken in up to **3 periods, one of which cannot be shorter than 14 days and the other ones cannot be shorter than 5 calendar days** each, including for employees under 18 and over 50 years old. In addition, it provides that vacations cannot begin to be taken in the 2-day period before a holiday or a weekly paid rest day (Art. 134 of the CLT).

Moral damages

Situation before the new law: **There was no specific legal provision for moral damages** in the labor law and its characterization and applicable indemnity depended on the interpretation of the labor courts.

What the new law provides for: **It regulates moral damages by defining them as damages resulting from an action or inaction that offends moral or existential aspects of a natural person** (in relation to his or her honor, image, intimacy, freedom of action, self-esteem, sexual orientation, health, recreation and physical integrity) **or of a legal entity** (in relation to its image, brand, name, business secret and confidentiality of correspondence), **which are the exclusive holders of the right to reparation**. It provides that all those involved in an offense against a legally protected right are to be held accountable for it proportionally to their action or inaction.

Assessments of moral damages must take into account the following aspects: I - the nature of the legally protected right; II - the intensity of the suffering or humiliation imposed; III - the possibility of physical or psychological recovery; IV - personal and social effects of the action or inaction; V - the extent and duration of the effects of the offense; VI - the conditions under which the offense or moral harm occurred; VII - the degree of intent or guilt; VIII - the occurrence of spontaneous retraction; IX - the actual effort to minimize the offense; X - tacit or express forgiveness; XI - the social and economic status of the parties involved; XII - the degree of publicity of the offense.

An award for material and moral damages must define the amounts of the respective indemnifications and the indemnity to be paid for moral damages must be based on the following parameters (which cannot be accumulated): I - for a light offense, up to three times the last contractual salary of the victim; II - for a medium offense, up to five times the last contractual salary of the victim; III - for a heavy offense, up to twenty times the last contractual salary of the victim; IV - for an extremely heavy offense, up to fifty times the last contractual salary of the victim. If the offended party is a legal entity, the indemnity is defined according to the same parameters in relation to the contractual salary of the offender. In the case of repeat offense between the same parties, the court may double the amount of the indemnity payable (Arts. 223-A to 223-G of the CLT).

15-minute break for extra hours worked by women

Situation before the new law: The CLT provided that, in the case of extension of regular working hours, the right to a minimum rest of 15 minutes before the beginning of the overtime should be observed (Art. 384).

What the new law provides for: It eliminated that obligation by revoking the provision.

Work of pregnant and breastfeeding women

Situation before the new law: The CLT **provided that pregnant or breastfeeding employees should be removed from any unhealthy activities, operations or workplaces during their pregnancy and breastfeeding period** and should only be allowed to work in safe workplaces (Art. 394-A).

What the new law provides for: It provides that, **without prejudice to their remuneration (including additional pay for working in unhealthy environments)**, **pregnant or breastfeeding employees should be removed from: I - extremely unhealthy activities during their pregnancy**; II - **activities with medium or minimum degree of unhealthiness upon submission of a medical certificate** issued by a physician in whom the woman trusts indicating that she should be removed from such activities during her pregnancy; III - **unhealthy activities in any degree upon submission of a medical certificate** issued by a physician in whom the woman trusts indicating that she should be removed from such activities during her breastfeeding period. When a female employee is removed from her workplace and cannot perform her activities in a healthy workplace in the company, this situation will be considered as a risk pregnancy and will entitle her to maternity pay according to the provisions of Law No. 8133/91 for the whole period of her absence from work. **The hiring company must provide hazard pay to pregnant or lactating employees to be compensated when its payroll contributions are paid** and other amounts are paid or credited, for any purpose, to the natural person who is providing the respective service to it. (Art. 394-A, CLT).

Breastfeeding breaks

Situation before the new law: **There was no legal provision** in the labor law defining special breaks to be taken by breastfeeding employees. The CLT provides that breastfeeding employees are entitled to two special half-hour breaks during their working hours to breastfeed their children until the age of 6 months (Art. 396).

What the new law provides for: It provides that breastfeeding breaks **are to be defined in an individual agreement between the breastfeeding employee and the employer** (Art. 396, paragraph 2, of the CLT).

Self-employed workers

Situation before the new law: **There was no legal provision** in the labor law on self-employed workers.

What the new law provides for: It provides that **the hiring of self-employed workers**, observing all legal formalities, **with or without exclusivity, whether for continuous work or not, does not characterize them as employees** as defined in Art. 3 of the CLT, according to which "an employee is any natural person who provides services on a non-sporadic nature to an employer on his or her premises and for a salary" (Art. 442-B of the CLT).

Intermittent work

Situation before the new law: **There was no legal provision** in the labor law on intermittent employment contracts.

What the new law provides for: It creates a **new modality of work contract for intermittent work according to which the rendering of services, with subordination, is not continuous**, and occurs with **alternation of periods of provision of services and inactivity** determined in hours, days or months, regardless of the type of activity of the employee and of the employer, except for aeronauts, whose activities are governed by a specific law. **The contract must be entered into in writing and specifically indicate the value of the working hour**, which cannot be lower than the hourly minimum wage or than the wage paid to other employees of the establishment performing the same function under an intermittent work contract or not. **The period of inactivity shall not be considered as time at the disposal of the employer**, and the self-employed worker may provide services to other contractors.

At least 3 calendar days in advance, the employer calls the employee, through any effective means of communication, to provide the services agreed upon between them, informing him or her about what the working hours will be. Once the call has been received, the employee has 1 working day to respond to it and non-response is presumed to be a refusal. Refusal of the offer does not override the relationship of subordination between the company and the employee.

Once the offer to show up to work is accepted, the party that fails to do so without good reason must pay to the other party, within thirty days, a fine of 50% of the remuneration that would be due, which can be compensated within the same period.

At the end of each period of service provision, the employer, upon delivery of a receipt with the amounts broken down, shall pay to the employee the following: I - remuneration; II - proportional vacation plus one-third vacation bonus; III - proportional thirteenth salary (Christmas bonus); IV - weekly paid rest; and V - additional pay as provided for in the law. The employer shall also pay his contribution to the social security system (INSS) and to the severance indemnity fund (FGTS) based on the amounts paid during the monthly period and will provide the employee with proof of compliance with these obligations.
At every twelve months, the employee acquires the right to take a one-month vacation in the twelve following months, during which period he or she cannot be called to provide services by the same employer (Arts. 443, paragraph 3, 452-A of the CLT).

Individual negotiation

Situation before the new law: The CLT provides that "Contractual work relationships may be freely stipulated by the stakeholders in any way that does not violate labor protection provisions, collective agreements applicable to them and decisions of the competent authorities" (Art. 444).

What the new law provides for: It preserves the general rule of free stipulation of contractual relations and adds that for **employees with a college degree earning a monthly salary equal to or higher than 2 times** the ceiling of the General Social Security System (RGPS) contractual work relationships **can be freely stipulated with the same legal effectiveness and prevalence over collective agreements in relation to matters that can be addressed through collective bargaining** (Art. 444, sole paragraph., of the CLT), such as: I - agreements on working hours, observing the constitutional limits; II - annual hour bank; III - breaks during working hours, observing the minimum limit of thirty minutes for working days longer than six hours; IV - adhesion to the Employment Insurance Program (PES); V - career, salary and job plan consistent with the personal condition of the employee, as well as identification of positions falling under the category of trust-based functions; VI - corporate rules; VII - workers' representative in the workplace; VIII - telecommuting, on-call regime, and intermittent work; IX - remuneration for productivity, including tips perceived by the employee, and compensation for individual performance; X - working hours registration modality; XI - holiday shifting; XII - legal classification of degree of unhealthiness; XIII - extension of working hours in unhealthy environments without prior permission from the competent authorities of the Ministry of Labor; XIV - incentive premiums in the form of goods or services that may be granted under incentive programs; XV - participation in the profits or results of the company (Art. 611-A of the CLT).

Business succession

Situation before the new law: **The CLT provides broadly that a change in the ownership or legal structure of a company does not affect the work contracts of its respective employees** (Art. 10 and 448). The prevailing case law is in turn one according to which labor obligations are the responsibility of the successor.

What the new law provides for: It expressly provides that, **once the succession of companies or employers is characterized**, labor obligations, including those contracted when the employees worked for the succeeded company, **are the responsibility of the successor**. But the succeeding company shall be jointly and severally liable with the successor when fraud in the transfer is proven (Art. 448-B of the CLT).

Uniforms

Situation before the new law: **There was no legal provision** in the labor law regarding the standardization of uniforms and cleaning of uniforms. However, **case law sometimes restricts the setting of dressing standards by companies and holds them responsible for keeping uniforms clean**, in particular those requiring special procedures for doing so.

What the new law provides for: It expressly provides that **it is the responsibility of the employer to set dressing standards for the work environment**, it being legally allowed to include in the uniforms logos of the company or of partner companies or other identification items related to the activity performed. In addition, it provides that **workers are responsible for keeping their uniforms clean**, except in cases where procedures or products different from those used for cleaning regular clothes are required (Art. 456-A of the CLT).

Items not included in the salary of workers

Situation before the new law: The CLT provided that **the salary of workers included** not only the **fixed amount stipulated** but also **commissions, percentages, bonuses agreed upon, per diems for travel expenses and bonuses** paid by the employer, **except for allowances and per diems for travel expenses not exceeding 50% of the salary** earned by the employee (Art. 457, paragraph 2). Precedent No. 101 of the Superior Labor Court also provides that per diems for travel expenses exceeding 50% of the employee's salary are to be considered as part of the salary, **for its total value and for indemnity purposes**, for as long as the trips continue.

What the new law provides for: It provides that **the established fixed amount, legal bonuses and commissions** paid by the employer are **part of the salary**. Albeit habitual, it excluded from **the salary paid to employees** amounts **paid as daily allowances, food allowances (which cannot be paid in cash), per diems for travel expenses, premiums and bonuses not included in the employment contract** and **not included in the tax base** for any

labor and social security charges. It also adds that amounts paid for medical and dental care, whether or not reimbursed, including reimbursement of expenses with medicines, spectacles, orthopedic appliances, prostheses, orthoses, medical and hospital expenses and the like, even when granted under different types of health insurance plans and coverage, are not to be considered as part of the employee's salary for any purpose, and neither the contribution salary for the Social Security System (INSS) (Arts. 457, 458, paragraph 5, of the CLT, and item q of paragraph 9 of Art. 28 of Law No. 8,212/1991).

Equal pay

Situation before the new law: The CLT determined that all work of equal value, **the function being the same,** done for the same employer in the **same location**, deserves equal pay, irrespective of the sex, nationality or age of the employee. It defined that work of equal value for this purpose would be that done with equal productivity and the same technical excellence among people whose **difference in terms of length of service did not exceed 2 years**. This rule would not prevail if the employer had staff organized around a career plan, in which case promotions would be alternately based on seniority and merit criteria within each professional category (Art. 461).

In interpreting this provision, the Superior Labor Court consolidated its understanding in Precedent No. 6 by setting the following guidelines: I- **a career plan is only valid when it is ratified by the Ministry of Labor,** expect for career plans of public-law entities under direct public administration, semi-governmental entities and foundations approved by an administrative act of the competent authority; II- **for the purposes of equal pay for equal work, the length of service in a function rather than in employment is computed**; III - equal pay is only possible if the employee and the paradigm employee (peer) perform the same function, carrying out the same tasks, regardless of whether the positions have the same title or not; IV- is not required that at the time of the filing of a claim for equal pay the claimant and paradigm employee still work for the employer, as long as the claim relates to a previous simultaneous situation; V- the assignment of employees to another entity does not exclude equal pay obligations, even if their function is performed at a governmental entity unrelated to the assigning company, if the assigning company pays the salaries of the paradigm employee and of the claimant; VI - once the requirements set out in Art. 461 of the CLT are met, **the circumstance that the difference in wages is due to a court decision** in favor of the paradigm employee **is irrelevant**, except: a) if it derives from a personal advantage or legal thesis that was superseded by the case law of a superior court; b) in the case of a sequence of equal pay claims, raised in defense, if the employer provides evidence of the alleged fact that modifies, prevents or extinguishes the right to equal pay in relation to the remote paradigm employee, for which purpose any difference in terms of length of service in the function exceeding two years between the claimant and the paradigm employees involved in the sequence of claims is considered irrelevant, except for the

immediate paradigm employee; VII- provided that the requirements set out in Art. 461 of the CLT are met, equal pay is possible for intellectual work, which can be evaluated for its technical excellence based on objective criteria; VIII - the employer has the burden proving the alleged fact that impedes, modifies or extinguishes the right to equal pay; IX- in an equal pay claim, the statute of limitations applies partially and only encompasses wage differences owed during the five-year period before the filing of the claim; X- **the concept of "same location" provided for in Art. 461 of the CLT refers, in principle, to the same municipality** or to distinct municipalities confirmedly belonging to the same metropolitan region.
It expressed its understanding in Case-Law Orientation OJ of SDI-1 No. 418 that **equal pay is not precluded by the existence of a career and salary plan** that, endorsed by a collective standard, **contemplates a criterion for promotions based solely on merit or seniority, meaning that it does not meet the requirement of alternating criteria** provided for in Art. 461, paragraph 2, of the CLT.

What the new law provides for: It provides that all work of equal value, the function being the same, done for the same employer **in the same commercial establishment** (formerly in the same location), deserves equal pay, irrespective of the sex, nationality or age of the employee. It defines that work of equal value for this purpose would be that done with equal productivity and the same technical excellence among people whose difference in terms of length of service **for the same employer does not exceed 4 years and whose difference in terms of time in the function does not exceed 2 years** (in the previous law, the difference was only that of time in the function not exceeding 2 years). This rule shall not prevail if the employer has staff organized around a career plan **or adopts, through an internal rule of the company or collective bargaining, a career and salary plan not subject to any ratification from or registration with a public agency** (in the previous law, equal pay could only be precluded by the existence of a ratified career plan). Promotions can be based on **merit it seniority, or on only one of these criteria**, within each professional category (according to the previous law, alternation between these criteria was mandatory). **Equal pay is only possible among contemporary employees working in the position or function, and the assignment of remote paradigm employees is not allowed**, even if the contemporary paradigm employee obtained an advantage in a lawsuit filed by him or her (according to the previous law, sequences of equal pay claims were allowed). In the case of **proven discrimination** by reason of sex or ethnicity, a court orders, in addition to the payment of salary differences owed, **payment of a fine in favor of the discriminated employee in the amount of 50%** of the ceiling of the General Social Security System (RGPS) benefits (Art. 461 of the CLT).

Incorporation of bonuses for high-ranking or trust-based functions into the salary

Situation before the new law: According to the CLT, the decision of an employer to assign an employee back to the regular position that he or she held previously, removing him or her from a trust-based function, is not considered a unilateral alteration (Art. 468, sole paragraph.). However, the Superior Labor Court consolidated its understanding in Precedent No. 372 that a **bonus received by an employee for 10 years or more cannot be eliminated** if an employer, without just cause, assigns him or her back to his or her regular position.

What the new law provides for: It preserves the possibility of removing an employee from a trust-based position and assigning him or her back to his or her regular position and provides that **such a decision, with or without just cause, does not ensure to the employee the right to continue to receive the corresponding bonus**, which shall not be incorporated into his or her salary, regardless of the length of service in the respective function (Art. 468, paragraph 2, of the CLT).

Procedures for termination of an employment contract

Situation before the new law: The CLT provided that a **notification of resignation or dismissal or a receipt of discharge for termination of an employment contract signed by an employee with a length of service of more than 1 year is only valid when done with the assistance of the respective Union or before an authority of the Ministry of Labor**. This act would be carried out at no cost to the worker and to the employer and, at that moment, when due, the employer would be required to deliver proof of payment of his or her legal contributions to the severance indemnity fund (FGTS) and to unemployment insurance (Art. 477, paragraphs 1 and 7).

The payments indicated in the instrument of termination or receipt of discharge were to be made within the following deadlines: a) by the first immediate working day following the termination of the employment contract**; or b) up to the tenth day** from the date of the notification of resignation or dismissal, when prior notice is not given, indemnification for it or exemption from compliance (Art. 477, paragraph 6).

In Precedent No. 330, the Superior Labor Court states that **the receipt of discharge issued by the employee with the assistance of a trade union of his or her professional category to the employer is effective in relation to discharging the employer from the payments expressly indicated on the receipt**, unless the amount of one or more of those payments is expressly and specifically contested. The discharge did not cover payments not indicated on the discharge receipt and their effects. As regards rights which should have been observed during the employment contract, the discharge was valid for the period expressly indicated on the discharge receipt.

What the new law provides for: **It revokes the obligation that a notification of resignation or dismissal or a receipt of discharge for termination of an employment contract signed by an employee with a length of service of more than 1 year must be done with the assistance of the respective Union or before an authority of the Ministry of Labor**. Upon termination of the employment contract, the employer must record this fact in the employee's employment and social security card (CTPS), notify the competent agents of the discharge and pay the severance amounts (FGTS) due. **Within a single deadline of up to 10 days from the date of termination of the employment contract** the employer must submit the required documents confirming the communication and payment of the amounts indicated in the instrument of termination or discharge receipt. The record made in the employee's employment and social security card entitles him or her to apply for unemployment insurance and to withdraw his or her severance pay, provided that the competent agencies have been informed (Art. 477 of the CLT).

Equal individual, multiple and collective dismissal without just cause

Situation before the new law: Article 7, item I, of the Brazilian Federal Constitution provides that the employment relationship is protected against arbitrary dismissal or without just cause according to the provisions of the complementary law. Until the complementary law is enacted, Art. 10 of the Transitory Constitutional Provisions (ADCT) set this indemnity at 40% of the FGTS deposits made while the employment contract was in force. This provision **made no distinction between individual, multiple or collective dismissal**. However, **the case law of the Superior Labor Court consolidated the understanding that collective dismissal must be compulsorily preceded by negotiation** with the labor union (Collective Labor Dispute No. 003909-2009-000-15-00-4).

What the new law provides for: It provides that **individual, multiple or collective dismissals without just cause** are equal for all purposes **and do not require prior authorization from a union** or a collective agreement or convention to become effective (Art. 477-A of the CLT).

Voluntary or encouraged resignation plan

Situation before the new law: **There was no legal provision** in the law for this matter. However, the Superior Labor Court consolidated an understanding in Case-Law Orientation **OJ SBDI-I No. 270 that out-of-court settlements** involving the termination of an employment contract when an employee joins a voluntary resignation plan **would imply discharge of the payments and amounts indicated on the receipt only**. Later, the Federal Supreme Court (STF) reviewed this understanding in its judgment of extraordinary appeal (RE) No. 590,415 and consolidated the thesis that "**out-of-court settlements involving the termination of an employment contract when an employee joins an encouraged resignation plan voluntarily requires full and unrestricted discharge** from all payment

obligations contemplated in the employment contract, if this condition was not expressly included in the collective agreement that approved the plan, as well as in other contract-like instruments entered into with the employee."

What the new law provides for: It provides that **voluntary or encouraged individual, multiple or collective resignation plans** provided for in a collective agreement or convention **imply full and irrevocable discharge from obligations related to rights arising from an employment relationship**, unless stipulated otherwise between the parties (Art. 477-B of the CLT).

Just Cause - loss of professional qualification

Situation before the new law: **There was no legal provision** in the law for this matter.

What the new law provides for: It creates the hypothesis of just cause for termination of an employment contract by the employer, namely, **loss of qualification or of the requirements provided for in the law for the exercise of a profession** due to the employee's willful misconduct (Art. 482 of the CLT).

Termination of an employment contract by agreement

Situation before the new law: **There was no legal provision** in the labor law for this matter.

What the new law provides for: It provides that an employment contract **may be terminated by agreement** between an employee and an employer, in which case the following payments shall be due: I- **half the prior notice**, if indemnified, **and indemnity based on the balance of the severance pay (FGTS)**; II - **full payment of all other labor-related amounts**. With such an agreement, **the employee becomes entitled to withdraw 80% of the amount of his or her severance pay deposits**, but not to unemployment insurance (Art. 484-A of the CLT; Art. 20, item I-A of Law No. 8,036/1990).

Arbitration

Situation before the new law: **There was no legal provision** in the labor law for this matter.

What the new law provides for: It provides that **in individual employment contracts for work whose remuneration exceeds 2 times the ceiling set for the benefits of the General Social Security System (RGPS) an arbitration clause may be agreed upon**, provided that this is done at the initiative of the employee or with his or her express agreement (Art. 507-A of the CLT).

Annual discharge from labor obligations

Situation before the new law: **There was no legal provision in the labor law for this matter.**

What the new law provides for: **It allows employees and employers to sign a term of annual discharge from labor obligations, whether their employment contract is in force or not**, before the union of the employees of the professional category in question. The term shall set out the obligations to be imposed and observed monthly and shall include the annual discharge signed by the employee, which ensures actual discharge from the payments specified therein (Art. 507-B of the CLT).

Employee representation committee

Situation before the new law: Article 11 of the Brazilian Federal Constitution provides that **in companies with a staff of over 200, the employees shall have the right to elect a representative for the exclusive purpose of engaging in direct negotiations with the employers**.

What the new law provides for: **In companies with a staff of over 200,** the employees shall have the right to **elect a committee t**o represent them for the exclusive purpose of engaging in direct negotiations with the employers. The committee shall be made up of**: I - in companies with a staff of over 200 and up to 3,000 employees, three members; II - in companies with a staff of over 3,000 and up to 5,000 employees, five members; III - in companies with a staff of over 5,000 employees, seven members.** If the company has employees in several States of the Federation and in the Federal District, the election of a committee of employee representatives in each State or in the Federal District shall be ensured.

The committee of employee representatives shall have the following duties: I - representing the employees before the company's management; II - improving the relationship between the company and its employees based on the principles of good faith and mutual respect; III - promoting dialogue and understanding in the workplace with the aim of preventing conflicts; IV - seeking solutions for conflicts arising from the employment relationship in a fast and efficient way, with the aim of ensuring the effective application of legal and contractual norms; V - ensuring fair and impartial treatment to employees, preventing any form of discrimination based on sex, age, religion, political opinion or trade union activity; VI - reporting specific claims of the employees within the scope of their representation; VII - monitor compliance with labor, social security and collective bargaining laws and with collective bargaining agreements.

Elections to the committee are to be called at least 30 days before the expiration of the term of its previous members by means of a notice visibly displayed and widely publicized in the company for candidates to register their candidacy. An electoral commission made up of 5 non-candidate employees is to be set up to organize and monitor the electoral process without any interference from the company and from the union of the professional category in question.

Employees of the company may be candidates, except those with a fixed-term contract, with a suspended contract or with a prior notice of dismissal, even if indemnified, and the most voted candidates shall be elected in a secret ballot in which vote by representation is not admitted.
If the number of candidates is insufficient, the committee may be formed with a lower number of members than provided for in the law. If there are no candidates, minutes shall be drawn up and a new election shall be called within one year.

The members of the committee shall have a one-year term and may not suffer arbitrary dismissal (without disciplinary, technical, economic, financial reasons) from the date of registration of their candidacy until one year after the expiration of their term, during which their employment contract is not suspended or interrupted and they remain in their functions. A member who served as a representative of the employees in the committee in one period may not be a candidate in the 2 subsequent periods.

The documents related to the electoral process must be issued in two copies, which remain under the custody of the employees and of the company for a period of 5 years and available for consultation by any interested worker, by the Public Prosecution Service for Labor Affairs and by the Ministry of Labor (Art. 510-A to 510-D of the CLT).

Trade union contribution

Situation before the new law: The CLT provided that **trade union contribution was compulsory** for employees – every professional category – and employers – every economic category (Arts. 545 of the CLT).

What the new law provides for: It provides that **contributions due to trade unions by members of the economic or professional categories** or independent professions represented by those entities shall, with the name of trade union contribution, **be paid and collected, provided that prior and express authorization is obtained for this purpose.** Employers are required to deduct from the payroll of their employees in the month of March of each year the union contribution of employees who previously and expressly authorized its collection to their respective unions.

Employers who choose to pay their union contribution must do so in January of each year or, for those who become employers after that month, when they apply for registration or license for exercising their activity with the competent agencies.

Employees who are not working in the month in which their union contribution is to be deducted from their salary and previously and expressly authorized its collection shall have it discounted from their salary in the first month following the one in which they resume work.
The union contribution shall be collected annually in one go and in the same amounts as currently: the amount of remuneration for one working day for employees, whatever the form of said remuneration, and an amount proportional to the capital stock of the firm or company for employers (Arts. 545 of the CLT).

Collective Bargaining – negotiations prevail over the law

Situation before the new law: Article 7, item XXVI, of the Brazilian Federal Constitution recognizes collective labor conventions and agreements as one of the rights of urban and rural workers. Despite the constitutional support and the emphasis on the topic in international conventions (ILO Conventions No. 98 and 154), collective bargaining faced an environment of legal uncertainty: collective bargaining clauses were often annulled by labor courts on the grounds that the labor rights provided for in the law could not be relaxed by collective bargaining. In its judgment of Extraordinary Appeal (RE) No. 590,415, the Federal Supreme Court stated that "Collective labor law is not marked by the same situation of asymmetry of power observed in individual labor relations. As a result, collective autonomy of the will is not subject to the same limits as those imposed on individual autonomy. 4. In its article 7, item XXVI, the Brazilian Federal Constitution of 1988 recognized the principle of collective autonomy of the will and self-resolution of labor conflicts, following the worldwide trend toward increasing recognition of the mechanisms of collective bargaining, as reflected in Convention No. 98/1949 and in Convention No. 154/1981 of the International Labor Organization. Recognition of collective bargaining agreements and conventions allows workers to contribute to setting the rules that will govern their own lives."

What the new law provides for: It sets benchmarks for collective bargaining. It provides that collective bargaining agreements and conventions prevail over the law **when they provide for the following topics, among others**: I - agreements on working hours, observing the constitutional limits; II - annual hour bank; III - breaks during working hours, observing the minimum limit of thirty minutes for working days longer than six hours; IV - adhesion to the Employment Insurance Program (PES); V - career, salary and job plan consistent with the personal condition of the employee, as well as identification of positions falling under the category of trust-based functions; VI - corporate rules; VII - workers' representative in the workplace; VIII - telecommuting, on-call regime, and intermittent work; IX - remuneration

for productivity, including tips perceived by the employee, and compensation for individual performance; X - working hours registration modality; XI - holiday shifting; XII - legal classification of degree of unhealthiness; XIII - extension of working hours in unhealthy environments without prior permission from the competent authorities of the Ministry of Labor; XIV - incentive premiums in the form of goods or services that may be granted under incentive programs; XV - participation in the profits or results of the company.

It also provides that collective bargaining agreements or conventions cannot suppress or reduce the following rights: I - professional identification standards, including records made in the employment and social security card (CTPS); II - unemployment insurance; III - FGTS; IV - minimum wage; V - 13th salary; VI - remuneration for night work higher than that for daytime work; VII - protection of salaries according to the law, willful retention of wages by the employer constituting a crime; VIII - family allowance; IX - paid weekly rest; X - remuneration for extraordinary service at least 50% higher than for regular work; XI - number of vacation days due to the employee; XII - annual vacation with pay at least one-third higher than the regular salary; XIII - minimum maternity leave of 120 days; XIV - paternity leave as provided for in the law; XV - protection of the labor market for women through specific incentives, as provided for in the law; XVI - prior notice proportional to the length of service and of at least 30 days, as provided for in the law; XVII - health, hygiene and safety at work standards provided for in the law or regulatory standards issued by the Ministry of Labor; XVIII - additional pay for painful, unhealthy or dangerous activities; XIX - retirement pension; XX - insurance against accidents at work, paid by the employer; XXI - legal action with respect to credits arising from employment relationships, with a limitation of five years for urban and rural workers, up to the limit of two years after termination of the employment contract; XXII - prohibition of any discrimination with respect to wages and hiring criteria for handicapped workers; XXIII - prohibition of night, dangerous, or unhealthy work for minors under eighteen years of age, and of any work for minors under sixteen years of age, except as an apprentice, for minors above fourteen years of age; XXIV - legal protection measures for children and adolescents; XXV - equal rights for workers with a permanent employment bond and for sporadic workers; XXVI - freedom of professional or trade union association for workers, including the right not to incur, without express and prior consent, any charge or deduction from their wages established in a collective labor convention or agreement; XXVII - right to strike, with the workers deciding on the advisability of exercising it and on the interests to be defended thereby; XXVIII - legal definition of essential services or activities and legal provisions on meeting urgent needs of the community in the event of a strike; XXIX - taxes and other credits of third parties; XXX - the provisions set forth in Arts. 373-A, 390, 392, 392-A, 394, 394-A, 395, 396 and 400 of these Consolidated Labor Laws (protection of women's work).

Rules on working hours and breaks are not considered as health, hygiene and safety at work standards and may be subject to collective bargaining.

In reviewing a collective labor convention or agreement, labor courts shall exclusively review the conformity of the essential elements of the legal transaction (competent agent, legal object, prescribed form or form not prohibited by law) and base their action on the principle of minimum intervention in the autonomy of the collective will.

The lack of express indication of reciprocal counterparts in a collective labor convention or agreement shall not invalidate it, as this does not characterize a defect in the legal transaction. However, if a clause is agreed upon to reduce wages or working hours, a provision should be included to protect employees against dismissal without just cause during the term of the collective instrument.

In the event of annulment of a clause of a collective labor convention or agreement, if it includes a compensatory clause it must also be annulled, without repetition of undue payment. The unions signing the collective instruments must participate, as necessary co-claimants, in individual or collective actions intended to annul clauses of these instruments (Arts. 8, paragraph 3, 611-A and 611-B of the CLT).

Collective Bargaining - applicability after abrogation

Situation before the new law: The CLT provided that **the duration of a collective labor convention or agreement could not be stipulated to exceed 2 years** (Art. 614, paragraph 3). Nevertheless, in 2012, applicability after abrogation was included in **Precedent No. 277 by the Superior Labor Court to determine the incorporation of collective standards into individual labor contracts** while a new collective bargaining process is not carried out. In the records of claim of non-compliance with a fundamental precept (ADPF) No. 323/D, which is under analysis at the Federal Supreme Court, a preliminary injunction was granted to suspend all ongoing proceedings and the effects of court decisions handed down by a labor court concerning the possibility of applying standards set in collective bargaining agreements and conventions after abrogation (pending judgment).

What the new law provides for: It ratifies that the **duration of a collective labor convention or agreement cannot be stipulated to exceed 2 years** and makes it clear that its **application after abrogation is not permitted** (Art. 614, paragraph 3, of the CLT)**.**

Collective bargaining agreement x Collective labor convention

Situation before the new law: The CLT provided that **the conditions set out in a collective labor convention would prevail over those provided for in a collective bargaining agreement when the conditions of the former were more favorable** (Art. 620).

What the new law provides for: It provides that **the conditions set forth in a collective bargaining agreement shall always prevail over those provided for in a collective labor convention** (Art. 620 of the CLT).

Ratification of out-of-court agreements

Situation before the new law: **There was no legal provision** in the law for this matter.

What the new law provides for: **It gave labor courts the power to decide on the ratification of out-of-court agreements as one of its competencies**.

The process of ratifying an out-of-court agreement is initiated by joint petition, and representation of the parties by an attorney is mandatory. Workers can be assisted by the lawyer of the union of their professional category. The petition for ratification of an out-of-court agreement suspends the statutory period of the lawsuit in relation to the rights specified therein, and that suspension will be lifted on the business day following the final adjudication of a decision to deny ratification of the agreement.

Execution of the agreement does not affect the deadline set in paragraph 6 of Art. 477 (delivery of documents confirming that the termination was reported to the competent agencies and that the amounts due for such termination were actually paid) and does not preclude the application of the fine provided for in paragraph 8 of Art. 477 (for failure to comply with the deadlines set forth in paragraph 6 of the same article).

Within 15 days from the distribution of the petition, the judge shall review the agreement, schedule a hearing, if deemed necessary, and render judgment (Arts. 652, item f, and 855-B to 855-E of the CLT).

Procedures for creating precedents

Situation before the new law: The requirements for **issuing precedents and other statements based on unitary case law were set out in the Rules of Procedure of each Court.** For example, according to the Rules of Procedure of the Superior Labor Court (RITST) one of the following conditions should be met: I - 3 appellate decisions of the Subsection Specialized in Individual Employment Disputes, showing unanimity on the thesis, provided that at least 2/3 of the permanent members of the body attend the proceedings; II - 5 appellate decisions of the Subsection Specialized in Individual Employment Disputes, rendered by simple majority, provided that at least 2/3 of the permanent members of the body attend the proceedings; III - 15 appellate decisions of five Panels of the Court, three of which rendered by each panel unanimously; Or IV - 2 appellate decisions of each of the Panels of the Court rendered by simple majority.

In the case of relevant public interest, it also allowed any court class or session, case-law committee, Labor Attorney's Office, the Brazilian BAR Association (OAB) or trade union confederation to propose to the Chief Justice of the Superior Labor Court the issuing of precedents by majority decision (Arts. 156-173 of the Rules of Procedure of the Superior Labor Court [RITST]).

What the new law provides for: It provides that for precedents and other statements of unitary case law to be issued both by the Superior Labor Court and by Regional Labor Courts (TRT), a vote of at least two-thirds of the members of the respective Full Court is necessary, if the same matter has already been identically decided upon by unanimity in at least two-thirds of the panels in at least 10 different sessions in each of them, and it also provides that by majority vote of two-thirds of its members it can be decided that the effects of such statements shall be restricted or that they shall only become effective after being published in the Official Gazette.

Such judgment sessions shall be public and announced at least 30 days in advance and in them the Attorney General for Labor Affairs, the Federal Council of the Brazilian Bar Association, the General Counsel to the Federal Government, and trade union confederations or national professional associations shall be entitled to oral argument (Art. 702 of the CLT).

Deadlines in labor lawsuits

Situation before the new law: The CLT provided that **deadlines in labor lawsuits excluded the day of filing and included the day of expiration and were continuous and non-relaxable**, but they could, however, be **extended by a judge or court for the time strictly necessary in the case of duly proven force majeure**. Deadlines expiring on a Saturday, Sunday or holiday expired on the first following business day (Art. 775).

What the new law provides for: It provides that procedural deadlines **shall be calculated in working days and shall exclude the day of filing of a lawsuit and include the day of expiration**. Deadlines can be **extended,** for the time strictly necessary, **in the following cases: I - when the court deems necessary; II - by virtue of duly substantiated force majeure**. It is up to the court to extend procedural deadlines and alter the order of production of evidence, adjusting it to the needs of the dispute, to give greater effectiveness to the legal protection of a right (Art. 775 of the CLT).

Ceiling for procedural costs

Situation before the new law: The CLT provides that in individual and collective labor disputes, in lawsuits and procedures under the jurisdiction of labor courts, as well as in

lawsuits brought before a state court with jurisdiction to judge labor disputes, costs related to the cognizance procedure would be charged at a rate of 2%, observing the minimum amount of R$10.64, **without setting a ceiling** (Art. 789).

What the new law provides for: It preserves the provisions of the CLT, but it sets the maximum ceiling for costs related to the cognizance procedure at **4 times the maximum ceiling of the benefits of the General Social Security System (RGPS)** (Art. 789 of the CLT).

Granting of free legal aid

Situation before the new law: The CLT provided that judges, judging bodies and chief judges of labor courts of any instance have the authority to grant, upon request or on the their own initiative, the benefit of free legal aid, including transcripts and instruments, **to individuals earning a salary equal to or less than twice the legal minimum wage or who declared**, under the penalties of the law, that they **could not afford the procedural costs** without affecting their own livelihood or that of their family (Art. 790, paragraph 3).

What the new law provides for: It confirms that the benefit of free legal aid, including transcripts and instruments, can be granted, but changes the reference income **to individuals earning a salary equal to or less than 40% of the maximum ceiling of the benefits of the General Social Security System (RGPS).** It adds that the benefit will be granted to the party that proves his or her inability to afford payment of court costs. It also excludes the possibility of granting free legal aid based on a mere statement by the plaintiff that he or she cannot afford payment of procedural costs without affecting his or her own livelihood or that of his or her family (Art. 790, paragraphs 3 and 4, of the CLT).

Expert fees

Situation before the new law: The CLT provided that the **responsibility for paying expert fees lies with the succumbing party in the claim for which expert evidence is produced, unless he or she is a beneficiary of free legal aid** (Art. 790-B), in which case the Superior Labor Court consolidated the understanding in Precedent No. 457 that **the federal government would be responsible** for paying the expert fees.

What the new law provides for: It preserves the provision that the responsibility for paying expert fees lies with the succumbing party in the claim for which expert evidence is produced. But **it adds that this responsibility prevails even if the succumbing party is a beneficiary of free legal aid**, in which case the federal government shall only pay those fees

if the beneficiary does not obtain credits in court that are sufficient to cover that expense, even if in another proceeding.

It also adds the following: i) a maximum ceiling for the amount of expert fees, which is the one set by Superior Labor Justice Council (CSJT), ii) possibility of payment of expert fees, and iii) prohibition of the requirement of advance payment of expert fees for producing expert evidence (Art. 790-B of the CLT).

Costs of loss of suit

Situation before the new law: **There was no legal provision** in the labor law for this matter. On the subject of fees, the Superior Labor Court consolidated the understanding in Precedent No. 219 that: I - in a **labor court, an award for fees of counsel is not simply derived from loss of suit**, and the party must, concurrently: a) be assisted by a trade union of the professional category; b) prove that he or she earns a salary of less than twice the minimum wage or is in an economic situation that does not allow him or her to sue without affecting his or her own livelihood or that of his or her family (Art. 14, paragraph 1, of Law No. 5,584/1970); II - an award for fees of counsel is possible in a motion for relief from judgment in labor proceedings; III - attorney's fees are due in cases in which the trade union is a procedural substitute and a substitute in disputes not related to an employment relationship; IV - in motions for relief of judgment and in disputes not related to an employment relationship, the responsibility for paying fees of counsel for loss of suit is subject to the discipline of the Code of Civil Procedure (Arts. 85 and 86); V - in the case of legal aid from a union or trade union procedural substitution, except in cases where the Public Treasury is a party, attorney's fees are due between a minimum of ten and a maximum of twenty percent of the amount awarded, of the economic gain obtained or, if it is not possible to measure it, of the updated amount in dispute (Art. 85, paragraph 2, of the Code of Civil Procedure - CPC); VI - in cases in which the Public Treasury is a party, the specific percentage of fees of counsel contemplated in the Code of Civil Procedure shall apply.

What the new law says: **It regulates the costs of loss of suit in labor courts without changing legal aid costs**. It determines that the attorney, even if acting on his or her own behalf, is entitled to fees for loss of suit set at a minimum of 5% and a maximum of 15% of the amount resulting from the liquidation of the award, of the economic gain obtained or, if it is not possible to measure it, of the updated amount in dispute.

In setting the fees, the court shall observe the following: I - the degree of professional zeal; II - the location in which the service was provided; III - the nature and importance of the case; IV - the work performed by the lawyer and the time required for his or her service. In the

case of partial grant of a claim, the court shall arbitrate fees for reciprocal loss of suit, offsetting of fees being forbidden.

It incorporated part of Precedent No. 219 of the Superior Labor Court by providing that fees are also due in claims against the Public Treasury and in lawsuits in which a party is assisted or replaced by the union of his or her professional category.

If a beneficiary of free legal aid loses a suit, provided that he or she has not obtained in court, even if in another case, sufficient credits to bear the expense, the obligations arising from loss of suit shall be subject to a condition precedent for liability and can only be executed if, in the two years after transit in rem judicatam of the decision that certified them the creditor proves that the situation of inability to afford payment that justified the granting of free legal aid ceased to exist, thus extinguishing, after that period, such obligations of the beneficiary.
It provides that fees for loss of suit are due in counterclaims (art. 791-A of the CLT).

Liability for procedural damages

Situation before the new law: **There was no legal provision** in the law for this matter. The **labor courts applied the civil procedural law in some cases** (Arts. 79-81 of the Code of Civil Procedure - CPC), which provided that an individual who litigates in bad faith as a plaintiff , defendant or intervener is liable for damages and losses if he or she: i) asserts a claim or defense against a text of law or incontrovertible fact; ii) alters the truth of facts; iii) uses legal proceedings to achieve an illegal purpose; iv) resists the progress of proceedings for unjustified reasons; v) acts in a reckless manner in any procedural incident or act; vi) causes a manifestly unfounded incident; and (vii) files an appeal with the clear intent of delaying proceedings. In these cases, on his or her own initiative or upon request, the judge shall sentence the litigant in bad faith to pay a fine higher than 1% and less than 10% of the updated amount in dispute to indemnify the other party for damages and to bear the attorney's fees and all the expenses incurred by the other party.

When there are 2 or more malicious litigants, the judge shall sentence each of them proportionally to their respective interest in the case or sentence jointly and severally those who contrived with each other to harm the opposing party.

Where the amount in dispute is negligible or inestimable, the fine may be set at up to 10 times the value of the minimum wage. The value of the indemnity shall be set by the judge or, if it is not possible to assess it, it shall be settled by arbitration or by common proceedings, in the case records themselves.

What the new law provides for: It **reproduces the text of the civil procedural law in the CLT** and only changes the ceiling of the fine in cases in which the disputed amount is

negligible or inestimable, setting it at **2 times the maximum ceiling of the benefits of the General Social Security System (RGPS)**. It also adds that **a fine is to be imposed on a witness** that intentionally alters the truth of the facts or omits essential facts for judging a case in line with the same parameters applied to malicious litigants, which shall be executed in the same suit (Arts. 793-A to 793-D of the CLT).

Objection to jurisdiction

Situation before the new law: The CLT provided that **once an objection to jurisdiction was filed, the party against whom the objection was filed would be granted access to the case file for 24 hours with no extension** and that a final decision should be rendered at the first hearing or session held after that access was granted (Art. 800).

What the new law provides for: **It sets out a new procedure for objection to jurisdiction**, which must be filed **within 5 days from the day of notification of the defendant**, before the hearing and in a paper signaling the existence of the objection. Once the petition is registered, the proceedings shall be suspended and **the trial hearing shall not be held until a decision is rendered on the objection**. The case shall be immediately held by the judge under advisement, who shall inform the claimant and, where appropriate, the co-claimants to make their statements within the common deadline of 5 days. If the judge considers it necessary that oral evidence be provided, a hearing shall be scheduled for this purpose, **ensuring the right of the party that raised the objection and its witnesses to be heard, through a letter rogatory**, in the court that this party indicated as competent. Once a decision on the objection to jurisdiction has been rendered, the proceedings shall be resumed with the scheduling of a hearing, the defense case statement and the stage of presentation of evidence before the competent court (Art. 800 of the CLT).

Burden of proof

Situation before the new law: The CLT provided that **it was incumbent upon the plaintiff to provide evidence of the allegations** (Art. 818). In its interpretation of this provision, and sometimes using the provisions of civil procedural law (Art. 373 of the Code of Civil Procedure, for example), the Superior Labor Court consolidated specific understandings on some topics (burden of proof for equal pay, dismissals, control of working hours, overtime, among others).

What the new law provides for: It reproduces, to a large extent, the provisions of civil procedural law, setting forth that **the burden of proof lies with: i) the claimant, regarding the fact constitutive of his or her right; and ii) the defendant, regarding the existence of a fact impeding, modifying or extinguishing the claimant's right**. In cases provided for in the law or if the case has peculiarities related to the impossibility or excessive difficulty to bear

the burden of proof or to obtaining proof of the contrary fact, **the court may assign the burden of proof in a different way, provided that it does so by reasoned decision**, in which case it should give the party the opportunity to discharge the burden attributed to it. This decision shall be rendered before the opening of the investigation and, at the request of the party, it shall imply adjournment of the hearing and shall make it possible for the facts to be proven by any means permitted by law, **which cannot lead to a situation in which the discharge of the burden by the party is impossible or excessively difficult** (Art. 818 of the CLT).

Labor claim - application and withdrawal

Situation before the new law: The CLT provided that a labor claim could be made in writing or verbally and, if it was made in writing, **it should indicate the President of the Board or the law judge to whom it was addressed, identify the claimant and the claimee, provide a brief background of the facts leading to the grievance, the request, the date and the signature of the complainant or of his or her representative** (Art. 840). There was no specific legal provision in the labor law for the withdrawal of a claim, but civil procedural law was applied (Art. 485, paragraphs 4 and 5), according to which **once an answer is filed, the claimant cannot, without the claimee's consent, withdraw the claim**.

What the new law provides for: It preserves the current rule, including with regard to the possibility of jus postulandi, but it provides that **the claim must be certain, determined and provide an indication of its value**, or else it can be dismissed without a decision on its merits. It also incorporates the rule that, once an answer is filed, even if through electronic means, the claimant cannot, without the claimee's consent, withdraw the claim (Arts. 840 and 841, paragraph 3, of the CLT).

Representative

Situation before the new law: The CLT provides that the employer **may be represented in a hearing by a manager or any other agent** who is aware of the fact, and whose statements will be binding upon the offeror (Art. 843, paragraph 1). The Superior Labor Court consolidated an understanding in **Precedent No. 377** that, except for claims filed by domestic workers, or against micro or small entrepreneurs, **the representative must necessarily be an employee of the claimee**.

What the new law provides for: It preserves the rule that the employer **may be represented in a hearing by a manager or any other agent** who is aware of the fact, but expressly adds that **the representative must not necessarily be an employee of the claimee** (Art. 843, paragraph 1, of the CLT).

Effects of non-attendance of the claimant and of thed claimee at a hearing

Situation before the new law: The CLT provides that **non-attendance of the claimant at a hearing leads to the dismissal of the claim, and non-appearance of the claimee leads to default judgment**, as well as to confession as to the fact of the case (Art. 844, *caput*). In Precedent No. 122, the Superior Labor Court consolidated the understanding that **when a claimee fails to attend a hearing at which he or she was expected present his or her defense, he or she shall be considered to be in default, even if his or her attorney is present** with a power of attorney, and such default judgment can only be rebutted on presentation of a medical certificate that must expressly state the impossibility of locomotion of the employer or of his or her representative on the day of the hearing.

What the new law provides for: It ratifies that non-attendance of the complainant at a hearing leads to the dismissal of the claim, and non-attendance of the claimee leads to default judgment, as well as to confession as to the fact of the case. However, it points out that, **if the claimant fails to attend a hearing he or she shall be sentenced to bear the costs** of the cognizance procedure, even if he or she is a beneficiary of free legal aid, unless he or she proves, within 15 days, that his or her absence was due to a legally justifiable reason, and **payment of those costs shall constitute a condition for filing a new claim**. It also emphasizes that default judgment does not imply a confession as to the fact of the case if: I - in the case of multiple claimees, some of them contest the claim; II - the dispute is related to unavailable rights; III - the initial petition is not accompanied by an instrument considered by law as indispensable for proving the act; IV - the fact allegations made by the claimant are unlikely or contradict the evidence contained in the records. **Even if the claimee is absent, if his or her attorney is present at the hearing, the answer and any documents presented shall be accepted** (Art. 844 of the CLT).

Disregard of legal personality

Situation before the new law: There was no legal provision in the labor law on the matter, but Normative Instruction No. 39/2016 issued by the Superior Labor Court noted that the incident of disregard of legal personality applied to labor proceedings **regulated by civil procedural law (Arts. 133-137 of the Code of Civil Procedure - CPC)**.

What the new law provides for: It expressly states that **the incident of disregard of legal personality provided for in articles 133-137 of the CPC shall apply to labor proceedings**, as follows (Art. 855-A of the CLT):

Art. 133. The incident of disregard of legal personality shall be commenced at the request of the party or of the Public Prosecutor's Office, when it is incumbent upon it to intervene in the proceedings.
Paragraph 1 - The request for disregard of legal personality shall comply with the requirements provided for in the law.
Paragraph 2 - The provisions of this Chapter apply to the hypothesis of inverse disregard of legal personality.

Art. 134. The incident of disregard is applicable at all stages of the cognizance procedure, in the enforcement of the award and in execution based on an extrajudicial executive title.
Paragraph 1 - Commencement of the incident shall be immediately communicated to the clerk of court for the notes due.
Paragraph 2 - Commencement of the incident shall be waived if disregard of legal personality is requested in the initial petition, in which case the partner or the legal entity shall be mentioned.
Paragraph 3 - Commencement of the incident shall suspend the proceedings, except in the case provided for in paragraph 2.
Paragraph 4 - The request must show that all the specific legal requirements for disregard of legal personality have been met.

Art. 135. Once the incident has been commenced, the partner or legal entity shall be summoned and required to serve an answer and request the appropriate evidence within fifteen (15) days.

Art. 136. Upon completion of the investigation, if necessary, the incident shall be settled by interlocutory order.
Sole paragraph. If the decision is rendered by the judge-rapporteur, an interlocutory appeal may be filed.

Art. 137. Once a request for disregard is accepted, alienation or encumbrance of property in the case of fraud to execution shall be ineffective in relation to the claimant.
Paragraph 1 - Interlocutory decisions to accept or reject the incident:
I - in the stage of cognizance, interlocutory decisions are not immediately appealable, as provided for in paragraph 1 of article 893 of this Law;
II - in the execution phase, interlocutory decisions are appealable, regardless of the posting of an undertaking;
III - interlocutory appeals may be filed against an interlocutory decision issued by the judge-rapporteur in an incident originally commenced in the court.
Paragraph 2. The commencement of the incident shall suspend the proceeding, without prejudice to the granting of interlocutory relief as a provisional remedy as provided for in Art. 301 of Law 13,105 of March 16, 2015 (Code of Civil Procedure).

It also provides that an interlocutory decision to accept or reject the incident: I - is not immediately appealable in the stage of cognizance; II - in the execution phase, interlocutory decisions are appealable, regardless of the posting of an undertaking; III - interlocutory appeals may be filed against an interlocutory decision issued by the judge-rapporteur in an incident originally commenced in the court. Commencement of the incident shall suspend the proceeding, without prejudice to the granting of interlocutory relief as a provisional remedy (carried out by means of provisional attachment, sequestration, listing of assets, registration of protest against alienation of assets and any other suitable measure designed to ensure the right - Art. 301 of the Code of Civil Procedure - CPC).

Execution of social contributions

Situation before the new law: **The CLT provided that social contributions due as a result of a decision handed down by labor judges and courts would be executed on their own initiative**, resulting from conviction or ratification of an agreement, including social contributions on wages paid during the recognized contractual period (Art. 876, sole paragraph.). As of 2004, Article 114, item VIII, of the Brazilian Federal Constitution, provides that **it falls within the jurisdiction of labor courts to execute, on their own initiative, the social contributions provided for in its article 195, I, a, and II** (social contributions due by employers, companies and entities defined by law as being comparable to companies, on the payroll and other labor earnings paid or credited, on any account, to individuals who provide services to them, even without an employment relationship; and of workers and other social security insured persons, no contribution being assessed on retirement pensions and other pensions granted under the General Social Security System - RGPS) and their lawful additional charges, resulting from judgments rendered by them. The Superior Labor Court consolidated its understanding in Precedent No. 368, item I, that "I - Labor Courts have the jurisdiction to order the payment of tax contributions. In relation to the execution of social security contributions, the jurisdiction of labor courts is limited to money judgments rendered by them and to the amounts contemplated in a ratified agreement that make up the salary based on which social security contributions are calculated (*salário contribuição*)."

What the new law provides for: **It replaces the text of the CLT with that of the Constitution** to define that labor courts may execute, on their own motion, the social contributions provided for in sub-item a of item I and in item II of the *caput* of Article 195 of the Federal Constitution (social contributions due by employers, companies and entities defined by law as being comparable to companies, on the payroll and other labor earnings paid or credited, on any account, to individuals who provide services to them, even without an employment relationship; and of workers and other social security insured persons, no contribution being assessed on retirement pensions and other pensions granted under the General Social Security System - RGPS) and their lawful additional charges, related to the subject matter of the conviction contemplated in judgments rendered by them and in agreements ratified by them (Art. 876, sole paragraph, of the CLT).

Execution on own motion

Situation before the new law: The CLT provided that **execution could be promoted by any interested party or** by the competent judge or chief judge or court on their own motion and, in the case of a decision of the Superior Labor Court, it could be promoted by the Public Prosecutor's Office for Labor Affairs (Art. 878).

What the new law provides for: It provides that execution can only be promoted **by the parties**, **execution on own motion being allowed only in cases where the parties are not**

represented by an attorney, and it revokes the possibility of execution being promoted by the Public Prosecutor's Office for Labor Affairs (Art. 878 of the CLT).

Objection to calculations

Situation before the new law: The CLT provided that, once the amounts due were calculated and converted into net figures, the judge **could set a successive period of 10 days** for the parties to present a reasoned objection indicating the items and amounts being objected to, under penalty of preclusion. Therefore, setting such a deadline, which was one of 10 successive days, was optional (Art. 879, paragraph 2).

What the new law provides for: It provides that, once the amounts due are calculated and converted into net figures, the judge **shall set a common deadline of 8 days** for the parties to present a reasoned objection indicating the items and amounts being objected to, under penalty of preclusion. Therefore, according to the new law, setting such a deadline, which was redefined as a common deadline of 8 days, became mandatory (Art. 879, paragraph 2, of the CLT).

Indexation of labor debts and administrative fines

Situation before the new law: Article 39 of Law no. 8,177/1991 provides that labor debts of any nature, when not settled by the employer within the deadlines set forth in the law, in a collective agreement or convention, in a normative ruling or in a contractual clause, shall bear interest for late payment calculated based on the daily reference rate (TRD) accumulated over the period between the maturity date of the obligation and actual payment. Nevertheless, in 2015 the Superior Labor Court eliminated the application of the TRD and determined that the Special Extended National Consumer Price Index (IPCA-E) would be applied. In the records of Claim No. 22,012/RS, which is under review at the Federal Supreme Court, a preliminary injunction was granted to suspend the application of the IPCA-E as an index for indexation of debits and preserve the TRD. As for administrative fines, there was no uniform criterion for indexing them.

What the new law provides for: It adopts the referential rate (TR) set by the Central Bank of Brazil for indexing credits resulting from judicial conviction, pursuant to Law 8,177/1991.
Regarding administrative fines, it provides that the amounts, expressed in Brazilian currency, shall be indexed annually according to the referential rate (TR) set by the Central Bank of Brazil or to any index that might replace it (Arts. 634, paragraph 2, 879, paragraph 7, of the CLT).

Guarantee of execution

Situation before the new law: The CLT provided that a debtor who failed to pay a claimed amount **could guarantee execution by: i) depositing the updated amount plus court expenses, or ii) offering property to be levied upon**, according to the preferential order provided for in Art. 835 of the Code of Civil Procedure - CPC (Art. 882). Based on Art. 835, paragraph 2, the Superior Labor Court consolidated an understanding in Case-Law Orientation OJ SBDI-II No. 59 that **a bank guarantee letter and a court surety bond, provided that in an amount not lower than that of the debt in execution, plus 30%**, are equivalent to money for the purposes of gradation of attachable assets, as provided for in Art. 835 of the CPC (the attachment shall preferably observe the following order: I - money, in cash or in deposit or financial investment in a financial institution; II - government bonds issued by the Brazilian federal government, state governments or the Federal District with market quotation; III - securities with market quotation; IV - land vehicles; V - real estate; VI - movable property in general; VII - livestock; VIII - ships and aircraft; IX - shares and quotas in general partnership and business companies; X - percentage of the turnover of a debtor company; XI - precious stones and metals; XII - acquisition rights derived from a promise of purchase and sale and of secured fiduciary sale; XIII - other rights).

What the new law provides for: It provides that **a debtor who fails to pay a claimed amount may guarantee execution by i) depositing the updated amount plus court expenses, ii) posting a court surety bond, or iii) offering property to be levied upon**, according to the preferential order provided for in Art. 835 of the Code of Civil Procedure - CPC. Therefore, a new means for guaranteeing execution (court surety bond) was added, partially incorporating case-law provisions.

The requirement of a guarantee or attachment does not apply to philanthropic entities and/or to those who make up or made up the board of such institutions (Art. 882 of the CLT).

National Database of Labor Debtors

Situation before the new law: Trough Administrative Resolution No. 1,470/2011, the Superior Labor Court established the National Database of Labor Debtors (BNDT) with the necessary data to identify defaulters with the labor court system in relation to obligations: I - established in matter adjudged, res judicata or in judicial labor agreements; or II - resulting from the execution of agreements entered into before the Public Prosecution Service for Labor Affairs or the Preliminary Conciliation Committee. According to the Resolution, a debtor would be compulsorily included in the National Database of Labor Debtors (BNDT) and duly informed about this inclusion if the debtor failed to settle the debt or to comply with the obligation to do or not to do, within the deadline set forth in the law.

What the new law provides for: It provides that a res judicata court decision can only be submitted to a protest notary and lead to the inclusion of the name of the debtor **in lists kept by credit protection agencies or in the National Database of Labor Debtors (BNDT)**, pursuant to the law, **after the expiration of a 45-day deadline from the summons of the debtor, if there is no posting of an undertaking** (Art. 883-A of the CLT).

Appeal for review - motion for annulment for refusal of relief

Situation before the new law: Art. 896 of CLT, as amended by Law no. 13,015/2014, provided that, **under penalty of non-cognizance, it is incumbent on the party lodging an appeal for review to: I - indicate the section of the contested decision that provided the grounds for the motion on the claim for which the review for appeal was lodged**; II - indicate, in an explicit and reasoned manner, the contradiction with a provision of law, precedent or case-law orientation of the Superior Labor Court that conflicts with the decision of the regional court; III - set out the reasons for the appeal for review, challenging all the legal grounds of the contested decision, including by means of an analytical demonstration of each provision of law, of the Brazilian Federal Constitution, precedent or case-law orientation.

What the new law provides for: **It expressly extends the applicability of these requirements to the motion for annulment for refusal of relief** by requiring that the appeal for review **transcribes the section of the motion for clarification in which the court was requested to decide on the matter addressed in the ordinary appeal and the section of the decision handed down by the regional court rejecting the motions related to the request** (Art. 896, paragraph 1-A, clause IV, of the CLT).

Incident of standardization of case law by regional labor courts

Situation before the new law: The CLT provided that regional labor courts were compulsory required to standardize their case law and apply, in cases within the jurisdiction of labor courts, as appropriate, the incident of standardization of case law provided for in the CPC. After an incident is judged, only precedents issued by a regional labor court or a legal thesis prevailing in a regional labor court and which is not in conflict with a precedent or case-law orientation issued by the Superior Labor Court would serve as a paradigm to enable cognizance of an appeal for review to be taken, by divergence (Art. 896, paragraphs 3-6).

What the new law provides for: **It revoked the obligation of case-law standardization by regional labor courts and eliminated the exclusivity of a precedent issued by a regional court or legal theory prevailing in regional labor courts** which is not in conflict with a precedent or case-law orientation issued by the Superior Labor Court **as a paradigm** to

enable cognizance of an appeal for review to be taken, by divergence (Art. 896, paragraphs 3-6, of the CLT).

Appeal for review - admissibility requirements

Situation before the new law: **There was no legal provision** in the law for this matter. However, it was already a **practice adopted by the Superior Labor Court to deny an appeal for review**, through a monocratic decision, in the event of untimeliness, dismissal for failure to pay the appeal bond, irregularity of representation or absence of any other extrinsic or intrinsic assumption of admissibility, based on Precedent No. 435, which consolidated the understanding that Article 932 of the CPC (Item III - the judge-rapporteur should not take cognizance of an inadmissible or mooted appeal or one does not specifically challenge the grounds of the contested decision) applies to labor proceedings.

What the new law provides for: It expressly provides that the **judge-rapporteur of the appeal for review may deny the appeal, through a monocratic decision, in the event of untimeliness, irregularity of representation or absence of any other extrinsic or intrinsic assumption of admissibility** (Art. 896, paragraph 14, of the CLT).

Appeal for review - transcendence

Situation before the new law: The CLT **provides that the Superior Labor Court, in an appeal for review, shall first check its transcendence** in relation its general economic, political, social or legal consequences (Art. 896-A). The matter should be regulated by the Rules of Procedure of the Superior Labor Court (RITST) (Art. 2 of Provisional Measure [MPv] No. 2,226/2001), but it has not been regulated so far.

What the new law provides for: **It preserves the provision that in an appeal for review the Superior Labor Court shall first check its transcendence** in relation to its general economic, political, social or legal consequences and **regulates such transcendence (revoking the jurisdiction of the Superior Labor Court to do so)**, characterizing the following indicators of transcendence, among others: I - economic transcendence is characterized by the high value of the cause; II - political transcendence is characterized by disregard on the part of the appealed court of the case law of the Superior Labor Court or of the Federal Supreme Court; III - social transcendence is characterized by the postulation, on the part of a claimant-appellant, of a constitutionally ensured right; IV - legal transcendence is characterized by the existence of a new issue related to the interpretation of the labor law. If transcendence is not demonstrated, the judge-rapporteur may deny the appeal for review through a monocratic decision, against which a plea may be filed, with the possibility of oral argument on the transcendence issue for five minutes during the session.

Subject to the judge-rapporteur's vote on the non-transcendence of the appeal, an appellate decision shall be drawn up with a brief statement of reasons, which shall constitute a decision that cannot be appealed against in the court.

A monocratic decision of a judge-rapporteur on an interlocutory appeal in motion to review that dismisses the transcendence of the matter as irrelevant cannot be appealed against.

The review of a motion for review as to its admissibility by a chief judge of a regional labor court is limited to a review of the intrinsic and extrinsic assumptions of the appeal and does not cover the criterion of transcendence of the issues addressed in it (Art. 896-A of the CLT).

Appeal bond

Situation before the new law: The CLT provided that **an appeal bond deposited** in the employee's FGTS bank account **would be indexed according to the rates applied to savings accounts plus an interest capitalization rate of 3% per annum** (Art. 13, Law No. 8,036/1990 combined with Art. 899, paragraph 14, of the CLT).

What the new law provides for: It expressly sets out in the CLT itself that **the appeal bond shall be deposited in an account linked to the court and indexed according to the rates applied to savings accounts**. It adds that the value of the appeal bond shall be reduced by half for non-profit organizations, domestic workers, individual microentrepreneurs, microenterprises and small businesses and that beneficiaries of free legal aid, philanthropic entities and companies in receivership are exempt from the appeal bond requirement. Posting of an appeal bond may be replaced by a bank guarantee or court surety bond (Art. 899, paragraphs 4, 5, 9, 10, 11 of the CLT).

Outsourcing

Situation before the new law: **Outsourcing was regulated by Law No. 13,429/2017**, which amended Law No. 6,019/1974. The main provisions of the law are the following ones:

- It regulates outsourcing without limiting it to a specific type of activity. However, it did not make it clear that outsourcing core activities is allowed;
- It defines the secondary liability of the contracting company in relation to labor obligations due to the employees of the contracted company;
- It provides that a company rendering services to third parties must have a capital stock compatible with the number of employees (for example, companies with a staff of up to 10 employees must have a minimum capital stock of R$10,000.00 and companies with a staff of more than 100 employees must have a capital stock of at least R$250,000.00);

- It determines that a contract for provision of services to third parties shall identify the parties, specify the service to be provided, the deadline for completing the service and its price;
- It sets out that the contracted company hires, pays and guides the work performed by its employees, but it emphasizes that the contractor must ensure conditions of safety, hygiene and health to the employees when the work is carried out on its premises or at a previously agreed site;
- It allows the contractor to extend to the employees of the company that provides services to third parties the same medical and outpatient care and meals as it does to its employees; and
- It forbids the use of employees in activities other than those contemplated in the contract entered into with the service provider.

What the new law provides for: It amends the regulation of outsourcing to make it clear that (Arts. 4-A, 4-C, 5-A, 5-C, 5-D of Law No. 6,019/1974):

- Services provided to third parties consist in the transfer by the contracting company of **any of its activities**, including of its **core activity**, to a service-providing private-law legal entity with economic capacity compatible with the service to be provided;
- When and while providing services, **which can consist in any of the contractor's activities**, to the contracting company on its premises, the employees of the service-providing company shall enjoy the same conditions: I - in relation to: a) meals offered to the employees of the contractor, when offered in cafeterias; b) the right to use transportation services; c) medical or outpatient care available on the premises of the contractor or at a site designated by the contractor; d) appropriate training, provided by the contractor, when the activity requires training; II - sanitary conditions, measures to ensure health and safety at work and appropriate facilities for the provision of the service;
- The contracting and the contracted company may agree, if they wish to do so, that the employees of the contracted company are entitled to a salary equivalent to that paid to the employees of the contracting company;
- In contracts involving the use of employees of the contracting company in a number equal to or greater than 20% of its employees, the contracting company may provide meals and outpatient care to its employees at other appropriate sites with the same standard of care, with the aim of keeping existing services fully operational;
- Contracting company refers to an individual or legal entity that enters into a contract with a company that provides services related to any of its activities, **including to its core activity**;
- The contracted company cannot be a legal entity whose owners or partners provided services to the contracting company as an employee or worker without an employment bond in the previous 18 months, unless such owners or members are retired individuals;

- An employee who is dismissed will not be allowed to provide services to the same company as an employee of a service-providing company before a period of eighteen months from the date of dismissal of the employee expires.

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