K&L GATES

Brazil

Employer Guide

10TH ANNIVERSARY EDITION

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INTRODUCTION

In today's global economy, more companies than ever have employees in numerous countries, often relying on a mobile global workforce to expand into new markets and meet strategic and operational needs. Driven by the many questions we receive from our clients, in 2015 we released our first Global Employer Guide—your concise, easy-to-read guide to the basics of employment law across numerous countries.

Our updated release reflects the changes and requirements multiple countries may have gone through over the past year, focusing specifically on Brazil in this guide. Besides the recent changes, we also explain any preestablished visa processes, employee rights, contract requirements, transfer of business considerations, privacy standards, union involvement, and other issues all global employers may face.

EMPLOYMENT RELATIONSHIP

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

There are numerous types of visas and permits allowing foreigners to work in Brazil. Any foreigner wishing to work in Brazil must have either Brazilian residency or a work visa.

Foreign workers require a work permit (Autorização de Trabalho), and anyone applying for this document must also obtain the appropriate immigration visa (Vista) that is applicable to his or her individual case. Work visas are issued by the consulate of the applicant's country of legal residence under the authority of the Brazilian Ministry of Foreign Affairs (Ministério das Relações Exteriores).

In general, work visas and work permits will be issued only to employees of Brazilian-registered companies, subject to local tax and labor regulations. This means that a foreigner cannot work in Brazil while being paid by a company that is registered outside Brazil.

Reference/Background Checks

Although there is no specific local law on this matter, background checks are a sensitive topic in Brazil. As a general rule, background checks should concern only matters that are directly relevant to the future employment relationship. The employer must also avoid any unauthorized pre-employment investigation, and the applicant must be informed in advance of any background check that will be undertaken by the employer, including the information that will be queried and the parties from which it will be sought.

Police and Other Checks

There are no statutory or regulatory requirements for police and other checks. Employers have the discretion to require "criminal good-standing certificates" from the employee if the nature of the job requires this type of protective measure, and this practice is very usual and common across all sectors of the Brazilian employment market.

Medical Examinations

There is a pre-admittance medical exam that is mandatory under Brazilian law. It must be conducted before an employee commences work. The medical exam consists of a clinical evaluation of the patient (taking into account the patient's health history, any outstanding conditions present immediately prior to the beginning of his or her employment, and other evaluations), a physical and mental medical examination, and any necessary complementary exams.

Minimum Qualifications

Age Restrictions

As a general rule, it is strictly forbidden to hire children under the age of 14. Certain restrictions apply to the employment of children aged between 14 and 18 years old.

Nationality Restrictions

At least two-thirds of a Brazilian company's employees must be Brazilian, and at least two-thirds of a Brazilian company's payroll must be linked to payments to Brazilian employees. This provision applies to all employees, including managers and directors.

II. TYPES OF RELATIONSHIPS

Employee

Individuals can be employed on a full-time, part-time, or casual basis for an indefinite or fixed-term period.

Independent Contractor

An individual will be considered an independent contractor if in his or her employment relationship:

- He or she has independence to perform the work.
- He or she is not subordinated to a company's directives and regulations.
- No exclusivity is provided for in the relationship between the parties.

Independent workers may also be professionals organized under a legal entity to render services under a contract. These professionals are not covered by labor legislation.

Labor Hire

Outsourcing is generally deemed legal for labor purposes only if the services are not directly related to the company's core business. There are exceptions established by law for telecommunication and other public services.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Employers and employees are not required to execute written employment agreements. According to the Brazilian Labor Code, there is an employment agreement whenever an individual works personally for another individual or entity, on a regular basis with frequent payments, and is subject to the direct orders and supervision of the employing individual or entity. As a consequence, the employment conditions may be tacitly arranged, although the employer is required to register the predefined and agreed-upon arrangement on the employee's labor card. Employment conditions established by a written employment agreement signed by both the employee and the employer are enforceable, provided that they are consistent and in accordance with the Brazilian Labor Code, which governs most aspects of an employment relationship. An employment agreement subjects the parties to the applicable labor, social security, and tax laws. Finally, the employer is required to register the main work conditions with the registry systems kept by the social security system (Instituto Nacional do Seguro Social), the Ministry of Employment (Ministério do Trabalho), and the Federal Savings Bank (Caixa Econômica Federal), which handles the Employee's Severance Guarantee Fund (Fundo de Garantia do Tempo de Serviço).

Codes or Rules

Companies may have codes or rules that impose obligations in addition to those already provided for in Brazil's labor legislation.

Typical internal rules include:

- Clauses that establish the obligatory use of uniforms (in administrative areas or factory floors).
- Care in the handling of machinery and equipment.
- The correct use of computers and prudence when using company vehicles.
- General requirements for admission.
- Conditions for indemnity in case of damages caused to the employer by intent, fault, negligence, recklessness, or malpractice of the employee, which can affect third parties.
- Conduct towards superiors and co-workers.

- Rules regarding absence.
- Procedures and forms for requesting and granting holidays.
- Workplace transfers.
- Benefits.
- Dress code.
- Acting ethically, both inside and outside the company.
- Rules on handling confidential information of the company.

The codes and rules cannot violate rights already guaranteed by law. Codes and rules are deemed void when in conflict with any legal provision.

Registered Agreements

There are also collective labor agreements that are applied depending upon the business of the company and its location. They are mandatory regardless of union affiliation and valid for up to two years.

Policies

Please see the information above under “Codes or Rules” of this guide.

IV. ENTITLEMENTS

Minimum Employment Rights

The statutory labor rights include:

- A national minimum wage of R$1,518 per month (equivalent to approximately US$250 per month on January 2025).
- Thirty days of paid vacation per year (not affected by eventual contract suspension).
- A vacation bonus (one-third of the vacation payment).
- A “13th month” bonus.
- Guarantee Severance Fund (FGTS) at 8% of the monthly compensation.
- A minimum of 30 days’ notice for termination.
- Indemnity for unfair termination equal to 50% of the FGTS account balance.
- Overtime payment.
- Enrollment in social security.
- Shared payment of transportation costs.
- Weekly rest.
- Time off from work of at least 11 hours between eight-hour shifts.

Individual circumstances may also trigger other additional pay, mainly in the event of inherently hazardous or unhealthy work and night shifts or overtime.

Discretionary Benefits

Under Brazilian Labor Law, any awards or benefits routinely granted to employees in addition to their base salary may be considered fringe benefits. In such cases, the total amount of the employee’s earnings, including fringe benefits, must be included as income for payroll and tax purposes.

Generally, housing and car allowances granted to employees, as well as to foreign individuals working in Brazil, are fringe benefits and should be included as income for payroll purposes. However, there are exceptions to this (e.g., where such benefits are essential for the performance of the work).

TERMINATION OF EMPLOYMENT

I. GROUNDS

Termination Without Cause

Employees can be dismissed without cause at any time, subject to notice periods and severance pay, except in the case of protected and tenured employees. The employer is not required to formally justify the dismissal.

Termination With Just Cause

There are certain circumstances in which the employer has the right to dismiss the employee with cause, including, among other things, gross misconduct or material breach of contract.

Underperformance is not a cause for termination.

Constructive Dismissal

In certain circumstances, the employee is considered to be entitled to resign on the basis of constructive dismissal, for example, if the employee is assigned to tasks outside the scope of the services for which he or she was employed.

Termination by Mutual Consent

This is when both parties mutually agree to terminate the employment contract. This results in the payment of 50% of the prior notice (aviso prévio), FGTS, and full payment of other labor allowances due in a termination without cause.

Employee's Resignation

The employee has the right to receive his or her salary balance, proportional 13th month bonus, vacation plus one-third bonus, and proportional vacation plus one-third bonus.

II. MINIMUM ENTITLEMENTS

Payments/Notice

Employees can be dismissed without cause at any time, provided that they receive:

- Termination notice of at least 30 days plus three days for every year worked (the employer can pay in lieu of notice).
- Statutory severance pay.

Statutory Entitlements

Please see information above under "Minimum Employment Rights" of this guide. The referred section displays the statutory rights in the event of termination.

III. REDUNDANCY

There is no concept of redundancy in Brazil.

IV. REMEDIES

Dismissal Action

Written notification must be provided in cases of termination for cause. In the case of dismissal for any other reason (without cause), there is no prescribed procedure, but notice must be certain and is generally written.

Once notice is given, termination becomes effective upon expiration of the respective period of notice. If the employer reconsiders the dismissal before the end of the notice period, the worker may accept or reject that decision. If the worker accepts the reconsideration or continues to work after the notice period expires, the employment contract will remain valid as if no notice had been given.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

Employees are transferred by law in the event of business transfers in the following circumstances:

- *Group company transfer* – Employees automatically transfer as part of a business transfer between two members of the same group of companies.
- *Employer transfer* – Employees automatically transfer in the context of an acquisition or transfer of business (all assets and employees are transferred and the same activities and core business are to be maintained). If the transferee replaces the transferor as the employer because the transferee has assumed ownership of the transferor's business, it employs the transferor's employees automatically without having to rehire them.

In these two cases, the transferee is the transferor's legal successor and is responsible for any employment-related liabilities and obligations.

II. RESTRUCTURING

Notification

Employers are not required to notify unions, works councils, or employees when completing a major transaction (such as an acquisition, merger, or joint venture).

Consultation

Employers are not required to consult unions, works councils, or employees when completing a major transaction (such as an acquisition, merger, or joint venture).

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Confidentiality and nondisclosure obligations are inherent to the employment relationship, and any breach of those obligations is viewed as a cause for dismissal.

II. CONTRACTUAL RESTRAINTS AND NONCOMPETES

During the employment contract, an employee may be subject to noncompete obligations as a result of receiving salary from the employer. It is advisable to put those commitments in writing. This is commonly part of the employment contract in Brazil for senior employees, particularly those occupying managerial positions.

Post-Employment Restrictive Covenants

Under the right of freedom to work contained in the Constitution of the Federative Republic of Brazil (Federal Constitution), an employer cannot require an employee to refrain from working for a competitor or an entity that is in direct competition with the terminating company after termination of employment. Therefore, any noncompete clause will only have a moral effect and will not be legally enforceable unless the noncompete clause clearly sets out the following:

- The scope of restrictions on competition after employment termination.
- A specific payment (indemnity) in consideration for the noncompete obligation equivalent to at least 50% of the last month's salary per month of noncompetition according to caselaw interpretation.
- A specific period no longer than 24 months according to caselaw interpretation.
- A reasonable geographical area.
- A prohibition of disclosure of employer know-how.

III. PRIVACY OBLIGATIONS

The Federal Constitution protects the privacy of all citizens residing in Brazil. Breach of the right to privacy may entitle the employee to a claim for damages.

IV. WORKPLACE SURVEILLANCE

There is no specific legislation governing this matter in Brazil. Therefore, the labor courts tend to use common sense when determining whether limitations on employees' privacy are acceptable in light of employers' justifiable interest. The Brazilian Superior Labor Court (Tribunal Superior do Trabalho) has ruled that video surveillance in restrooms is a violation of employees' constitutional right to privacy. However, the same court has repeatedly confirmed the right of employers to monitor employees by video surveillance for safety reasons and even as a legitimate way to supervise and control certain activities.

V. WORKPLACE INVESTIGATIONS

The Federal Constitution grants citizens, including applicants and employees, the right to privacy. An employer may investigate any suspicious conduct of its employees, but it may not conduct an investigation in a way that unreasonably infringes upon an employee's privacy right. Brazilian courts consider whether the employer's right to conduct business outweighs the employee's right to privacy on a case-by-case basis. There is no clear line, and an investigation must be conducted in a reasonable manner using the least-invasive procedures available and avoiding methods that cause embarrassment or harm to the reputation of the employee.

The Brazilian Clean Company Act (Law No. 12,846) provides credits for companies that have implemented a compliance program.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

The main concerns for an employer managing behavior and performance are the following:

- Performance is not grounds for termination with cause.
- Employees are entitled to privacy at the workplace.
- The Federal Constitution forbids any kind of discrimination.

II. BULLYING AND HARASSMENT

Bullying

Brazilian employees are entitled to protection in case of bullying in the workplace. Examples of bullying include excessively harsh treatment by superiors, humiliation, constant threats, and the continuous questioning of an employee's capacity. In these instances, the employee may terminate his or her agreement with cause and file a claim against the company for damages.

Harassment

There are no specific employment laws protecting employees from harassment. Harassment, except for sexual harassment, is not a criminal offense. However, caselaw provides that the employer can be liable for moral and material damages caused by harassment under the rights provided by the Federal Constitution.

There is no minimum period of continuous employment an employee must serve before he or she can bring a claim for harassment.

Sexual Harassment Prevention and Workplace Violence

Since 2023, companies required to have a CIPA (Internal Committee for Prevention of Accidents and Harassment) must adopt measures to prevent workplace violence and sexual harassment. This includes incorporating policies for handling complaints, providing anonymity for complainants, and conducting annual training on workplace safety, diversity, and equality. Employers must implement procedures to manage complaints and monitor adherence to these policies.

III. DISCRIMINATION

The Federal Constitution forbids any kind of discrimination, including discrimination by race, religion, gender, and sexual orientation.

There is no minimum period of continuous employment an employee must serve in order to bring a claim for discrimination.

Equal Pay for Equal Work

As per Law No. 14.611/2023 and Decree No. 11,795/2023, companies with 100 or more employees are required to publish salary transparency reports biannually (March and September). These reports must include anonymized data comparing salaries of men and women, as well as across different ethnicities, nationalities, and ages. Employers must address any identified disparities with an action plan, including goals, deadlines, and training programs. Noncompliance can result in fines of up to 3% of company payroll, capped at 100 minimum monthly wages (approx. R$151,800 in 2024).

IV. UNIONS

Representation

Employees are free to organize professional and union associations, but they cannot organize more than one association representing the same professionals in the same municipality. No specific number of workers is required to form a union. In Brazil, unions are most common in industries such as commerce, metallurgy, and chemical manipulation. Currently, employees must pay annual contributions to their respective unions, equivalent to one day's salary, and this contribution is typically paid in March. Employers now also have this same obligation, but their annual contributions are calculated according to percentages of their share capital, and their contribution must be paid in January.

However, a labor reform extinguished these mandatory union dues as of 11 November 2017, and it is expected that the federal government will present bills to the National Congress of Brazil regarding rules for new types of union dues to be mandatory in case of collective bargaining.

Industrial Disputes

Unions are generally authorized to declare a strike after unsuccessful negotiations with employers, pursuant to the employees' decision to do so and provided that they observe certain legal conditions, including a minimum 48-hour notice period depending on the nature of the business.

During the strike, any of the parties, as well as the public attorney, may file a collective lawsuit for the Labor Court of Appeals to decide on the legal grounds of the strike and the merits of the claims brought by the declarant union. In practice, before that occurs, labor courts end up acting like mediators and seek to seal an agreement to end the strike. During the strike, employment agreements are suspended and, therefore, cannot be terminated. Days not worked cannot be deducted from the striking employees' salary, except if expressly negotiated with the Federal Union or if the strike is considered abusive by the Labor Court of Appeals. The employer cannot hire substitutes unless necessary for the conservation of goods, assets, and equipment. During the strike, the union should guarantee a sufficient number of employees to ensure essential activities listed by the law.

V. REMOTE/HYBRID WORK

Brazilian employment law allows hybrid and remote work regimes. The employer must provide hybrid and remote workers with all necessary equipment for work, including laptops and work phones. The employer is also required to cover all additional costs associated with working for the business, which could include higher energy bills and Internet as a result of working from home. However, there is no mandated amount to cover the costs, which creates a need for the company to review allowances on a case-by-case basis. The employer must follow ergonomic and health and safety (H&S) standards that apply equally to home and office workers.

It is necessary that the company and the employee enter into a specific type of employment contract under the Consolidation of Labor Laws (CLT), which is the Brazilian employment code. Within this contract, the employee must acknowledge that he or she has received specific training related to ergonomic standards and occupational H&S. In this contract, the parties agree to the regime and must define which party will be responsible for acquiring and providing the work tools, as well as the reimbursement of expenses incurred by the employee. Also, employees must sign a term of responsibility to acknowledge their own responsibility for their health at home and also to confirm they agree and understand the safety instructions and the risks for working remotely. Hybrid and remote work regimes can be changed to in-office, as determined by the company, with a minimum transition period of 15 days, with corresponding registration in an amendment of the employment agreement.

According to the CLT, remote and hybrid workers must be available for work during their assigned shifts. Time worked in excess of the shift will be treated as overtime. If the employee is available as scheduled, the entire shift will be considered work time regardless of whether work is available for the entire period.

Telework Regulations (Law No. 14.442/2022)

This 2022 federal law updates the rules regarding telework (remote work), specifying that it is not necessary to control working hours for employees engaged in telework. Additionally, the law ensures that meal vouchers (vale-alimentação) must only be used for food-related expenses, prohibiting their use for any other purchases.

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