

# BRAZIL'S SUPREME COURT SUSPENDS ALL CASES DISCUSSING CONTRACTOR RECLASSIFICATION: WHAT BUSINESSES NEED TO KNOW

Insights  
Jun 3, 2025

Brazil's Federal Supreme Court recently suspended all pending lawsuits alleging that contractors should be reclassified to employees. The suspension, which was issued last month, covers both contractors who are engaged through a business entity and self-employed workers. In light of growing legal uncertainty and an overwhelming number of cases raising misclassification issue, the full Supreme Court is expected to reach a binding decision on the matter that will apply to all courts in Brazil. Here's what businesses operating in Brazil need to know and what you can do to prepare.

## Why This Issue is Significant

Under Brazil's main law regulating labor and employment (the Consolidated Labor Statutes), individuals are considered "employees" if four factors are met:

1. the individual provides personal services;
2. on a frequent basis;
3. under payment; and
4. most importantly, under the control of the service taker.

If these elements are met, a contractor will be reclassified as an employee despite a contractual agreement stating otherwise and even if the worker expressly opted out of being classified as an employee.

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**Nan Sato, CIPP/E, CIPP/C**  
Partner

[610.230.2148](tel:610.230.2148)

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The distinction is significant, as contractors and self-employed workers are not entitled to certain benefits provided to employees, such as:

- vacation pay and vacation bonus;
- social security benefits;
- overtime pay;
- unemployment compensation;
- notice prior to termination; and
- severance pay.

As a result, it is considerably more costly for companies to hire employees in Brazil than to engage contractors.

## **The Legal Issues**

Engaging individuals as contractors is very common in Brazil, particularly in sales, healthcare, delivery services, and information technology. As a result of this common practice, there is great controversy over whether these engagements are legal or are used by companies to avoid the costs and risks of hiring employees.

In 2024, contractors in Brazil initiated almost 300,000 lawsuits requesting to be reclassified to employees. In light of case overload, the Supreme Court suspended all litigation to give it time to issue a binding judgment that will provide a roadmap for lower courts.

According to the Justice responsible for the suspension, Labor Courts are not following the guidelines previously set by the Supreme Court when judging cases of this nature. As a result, there is now legal uncertainty, and many litigants are appealing and overloading the Supreme Court by seeking to overturn Labor Court decisions.

## **What to Expect Next**

The Supreme Court will decide on three issues:

1. Whether engaging contractors and self-employed workers – rather than employees – is legal;
2. The jurisdiction of Labor Courts to judge alleged misclassification in commercial contracts; and

3. The burden of proof in these cases: whether it rests with the individual filing the lawsuit (and seeking employment reclassification) or with the contracting company (the alleged employer).

Once the Supreme Court reaches a decision, it will be binding on all courts in Brazil.

### **What Should You Do?**

There is no expected date for this judgment, and we're not likely to see a resolution in 2025. When the Supreme Court does reach a decision, however, companies that engage contractors or self-employed workers in Brazil will need to be ready to reassess their engagements in accordance with the decision.

No matter how the Supreme Court rules, more legal and social scrutiny of contractor misclassification is expected. Therefore, businesses hiring contractors in Brazil should review their relationships under the classification rules discussed above and correct any misclassifications as the topic is now front and center in the public view. Our [International Practice Group](#) can help your business navigate these changes.

### **Conclusion**

We will continue to monitor developments related to employment law changes in Brazil and, specifically, the ultimate ruling in this matter by the Supreme Court. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [International Practice Group](#).