



# Going Global in Brazil!

Insights

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## Brazilian Basics

As a leading and influential economy in Latin America (and the world), Brazil is an attractive country for employers and employees. Among Brazil's positive attributes are its rich and warm culture, amazing sites, trendy fashion, and great food! Brazil's vast and vibrant economy sources include natural resources and raw materials, solar energy and other forms of alternative energy, tourism, manufacturing of numerous consumer products, agricultural goods, and environmental science services and technology. Indeed, Brazil led in the creation of Mercosur, the Free Trade Area of the Americas (FTAA), and the Group of 20 (G-20) coalition that represents developing country interests in the Doha Development Round of the World Trade Organization (WTO) negotiations. However, companies, including multi-national entities, doing business or planning to do business in Brazil should become knowledgeable about this country's generally employee-friendly employment and benefits laws. Here, we discuss the fundamentals of Brazil's employment laws, and some issues to follow to stay up to date.

Created in 1943, Brazilian labor and employment laws are directed by the Consolidacao das Leis do Trabalho (CLT) in conjunction with the Federal Constitution of 1988. The CLT consists of over 900 articles and provides legal standards in the following areas:

- Workplace Safety
- Working Hours
- Minimum Wage Requirements
- Vacation Time
- Employment Contracts
- Protection for Women and Children
- Worker's Health Regulations
- Union Organization and Union Fees \*

The CLT also established the legal framework for the Brazilian labor courts system and related agencies, and provides for rules and procedures for labor and employment proceedings. Since 1988, the CLT is interpreted and implemented hand-in-hand with the Federal Constitution of 1988. The institution of the Federal Constitution of 1998 introduced new labor rights, as well as enhanced

certain standards provided in the CLT. Utilized in conjunction, the CLT and the Federal Constitution of 1988 provide rules and legal standards in the following areas:

- Minimum Wage
- 44 hour work week (8 hours a day)
- Irreducibility of Wages
- Unemployment Insurance
- 13th Month Salary (also known as Christmas Bonus)
- Profit Sharing
- Overtime Compensation
- Annual Vacation requirements
- Maternity and Paternity Leave
- Prior Notice of Dismissal
- Retirement Benefits
- Industrial Accident Insurance
- Right to Strike
- Pregnancy and Work Related Injury Leave
- Executed Work Document (known as the Carteira de Trabalho e Previdencia Social)
- Compensation of Commissions
- Premiums (for night-shift, risk of work, transfers)
- Allowances (for family, education, food vouchers)
- Daycare Benefits

Under Brazilian law, an employer is anyone or any entity that assumes the risk of economic activity, and hires and manages personnel. An employee is any person providing services to an employer on a regular basis and receives a salary. Under this broad scope of employer-employee relationship, Brazil recognizes six types of working relationships:

### **Celetista**

This is an employee who has a written and signed Carteira de Trabalho e Previdencia Social (CTPS) with an employer, which then requires proper recordkeeping of all employment and payroll information, including but not limited to, job position, job description, salary, benefits provided (e.g. health care), contributions (e.g. social security), and taxes paid by the employer. Based on Brazil's 'principle of continuity' of employment, the general rule is that the CTPS is entered into for an indefinite time period. An employment for definite period of time is an exception to the rule, and is

permitted in limited circumstances (e.g. the nature of the work justifies the foreseeable period of time or if the contract is for the performance of a specific project).

### **Trabalhador Cooperado**

This is when an employee becomes a cooperative (or partner) of an employer. Once an employee becomes an cooperative, the employee is no longer governed or managed under a CTPS, but instead follow the cooperative's own statute or governing laws. Depending on the employer, some cooperatives may perform work similar to employees but are in reality cooperatives of the employer.

### **Trainees**

Trainees are recent graduates entering the professional world, and more often than not, enter into a CTPS with the employer. As trainees are new to the work force, they are provided training for the position they will eventually hold.

### **Interns**

Interns are students at public and private academic institutions, which include high school, technical school, and higher education, who are hired on a part-time basis. Interns can only work up to six hours a day and the part-time job position must be related to the major or a substantive course they are taking at their academic institution. Interns receive paid vacations and transportation benefits/reimbursements under the law, and no other benefits are legally required.

### **Self-Employment**

Self-employment is defined as any person who performs work or provides services to one or more companies without a traditional celetista employment relationship. This usually includes independent contractors, if one is truly an independent contractor, because a self-employed person does not take directives from anyone, and provides services at his or her own costs and risks without fixed working hours. A self-employed person is not entitled to benefits, such as paid vacations, 13th month salary, or meal and transportation reimbursements.

### **Domestic Worker**

A domestic worker is a person providing services to a domestic household or individual. The CLT provides specific rules and regulations for domestic workers, and are entitled to many of the benefits required by law for celetista employees, with some exceptions.

Under these six types of working relationships, employers must ensure that they comply with the CLT, Federal Constitution of 1988, as well as state and local laws, which can be more stringent and more employee friendly. Under the federal law, all state and local laws mimic the federal scheme and are permitted to provide more stringent requirements to protect employees and workers. For example, the federal minimum additional overtime pay is 50% of the regular hourly rate, but it may be higher if established under the state or local laws. Additionally, employers must be cognizant that collective bargaining agreements can also include a higher overtime compensation. Another example, the Federal Constitution and its corresponding federal agencies implement a fixed minimum wage every year, but some states and local laws, as well as collective bargaining

agreements, may place their own minimum wage on employers so long as the minimum wage is not inferior to the federal minimum wage.

### **Best Business Practice in Brazil**

Record keeping, especially payroll, is essential in Brazil because if an employee brings a grievance or complaint against an employer, it is the employer's burden to demonstrate that the employee was properly paid in accordance with the law. It is noteworthy to mention that payroll records should include holiday pay as required by law, as well as the 13th month salary as required by law. Any payroll recordkeeping that falls short of the legal requirements compensation can create a huge risk for the employer. The risk extends to companies who merge with or purchase another company in Brazil who did not employ the Brazilian employees before the acquisition. Thus, if your company is considering a merger or purchase in Brazil, please ensure that you attain and review all payroll documents to ensure pre-acquisition compliance.

### **Keeping Up With Brazilian Trends**

Once your company is operating globally in Brazil, please be mindful that employees who receive emails and telephone calls after office hours may be eligible for overtime compensation under recent legislation enacted in January 2012. Hence, many companies are instituting policies and procedures to ensure that the only emails sent by employees after the end of office hours are those that are both urgent and work-related.

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\* Since 1943, some laws in the CLT relating to employee rights (e.g. employee right to strike) have been amended.