

# **NORONHA ADVOGADOS BRAZIL'S GLOBAL LAWYERS**

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## **GENERAL OVERVIEW ON BRAZILIAN LABOUR LEGISLATION AND IMIGRATION RULES FOR FOREIGN WORKFORCE**

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# 1. Expatriated Constitutional Isonomic Treatment

“We are all equal to the law, making no distinctions of any nature, warranting to Brazilians and to foreigners that live on the country the inviolability of the right to life, to freedom, to equality, to safety and to property...”

(Article 5<sup>th</sup> of the Federal Constitution)



# 1.1. Relation: Brazilian workers *vis a vis* Foreigners workers

Article 352 combined with Article 354, CLT - Brazilian Labor legislation provides that the hiring of foreigners is conditional upon a proportion of hiring of Brazilian citizens. For instance, companies that explore public services by means of concession are obliged to maintain in its staff a proportion of 2/3 (two third) of Brazilians.

However, the above mentioned rule shall not be applied to workers that exercise technical specialized functions.

## 2. Employment Relationship - I

### Employee/ Employer

An employee/employer relationship exists (and a labour agreement will be implied if a written agreement does not exist) where one party, who must be a natural person, habitually renders services for payment, and is subordinate to and otherwise under the direction of the other party.



Source: Articles 2 and 3 of the Consolidated Labour Laws - CLT .

## 2. Employment Relationship - II

### Types of Employment Agreement

- Oral ; or
- In writing;
- For indefinite term; or
- For definite term:
  - a) maximum of 2 years; or
  - b) for probation purposes (maximum of 90 days).

### 3. Trade Unions Relations - I

“Nothing shall prevent the worker's affiliation to trade unions.”  
(Article 8<sup>th</sup>. of the Federal Constitution)



# 3. Trade Unions Relations - II

## I - Trade Unions – Definition

Permanent associative entities, which regionally represent employees and employers linked by professional and labour ties, aiming at solving collective labour matters and granting additional rights and benefits, which have not been established by the Federal Constitution and the Consolidated Labour Law.

## II – Classification

In general, key employer's economic activity shall determine the Employee and Employer's union classification.

## 4. Employee's Constitutional Guarantees - I

### Minimum Wage

The minimum wage in Brazil as of 01 February 2009 is R\$ 465,00 reais (approximately \$ 270 US dollars) per month. The minimum wage can vary depending on the professional category of the employee.

## 4. Employee's Constitutional Guarantees - II

### Working hours

The Federal Constitution provides for “normal working hours not to exceed 8 hours per day and 44 hours per week.” The Constitution also provides that the “rate of pay for overtime (must be) at least 50% higher than that of normal work.” Employees are also entitled to a weekly rest of at least 24 hours (usually taken on Sunday).

## 4. Employee's Constitutional Guarantees - III

### Holidays

For every 12 months of employment an employee is entitled to be paid Holidays (vacation), with remuneration at least  $\frac{1}{3}$  higher than the normal salary, which is a constitutional right granted to all employees.



## 4. Employee's Constitutional Guarantees - IV

### Thirteenth Salary

Employers are required to pay an annual year-end bonus, equal to one month's salary, which is known as the "13th salary".

## 4. Employee's Constitutional Guarantees - V

### Mandatory Fund for Employment Benefit

Each month, the employer is obligated to deposit an amount corresponding to 8% of the employees' gross salary in a bank account, in the name of the employee as a contribution to the Employee Dismissal Fund ("Fundo de Garantia por Tempo de Serviço" – FGTS).



## 4. Employee's Constitutional Guarantees - VI

### Protective Measures for Expectant Mothers

The law grants expectant mother employment stability from the moment the employer is notified of her pregnancy until 5 months after childbirth. The employee also has the right to a remunerated maternity leave of 120 days to be granted during the period closest to childbirth (normally 28 days before childbirth and 92 days after childbirth).



# 4. Employee's Constitutional Guarantees - VII

## Social Security

**a) Employer's Contribution** – Employers are required to contribute with:

- 20% of his gross salary to the Social Security National Institute – INSS- plus;
- Between 2,5% and 5,8%, to cover other social services; and
- Between 1% and 3% for occupational accident insurance.

**b) Employee's Contribution** - Employee must also contribute a variable percentage (between 8% and 11%) of his or her gross monthly salary to the Social Security National Institute. This contribution applies only to the capped amount of R\$ 3.218,90 of an employee's monthly salary.



## 5. Dismissal Payments - I

- I. **Prior Notice** - provide at least a 30-day notice to the other party (employee or employer), or pay an amount equivalent to a monthly salary as compensation;
- II. **Salary Balance** – Receive the salary related to the days worked during the dismissal month;
- III. **Pro Rate Vacation Days** - Receive a remuneration for unused holiday proportionate to the number of months worked in the prior year plus a remuneration of at least one third higher than the normal salary ;
- IV. **Pro Rate 13<sup>o</sup> Salary** – Receive a share of the 13th salary corresponding to the actual period the employee worked that year;

## 5. Dismissal Payments - II

**V. Additional rights** - Raised under any Collective Labour Agreement (“ACT”) or Collective bargaining (“CCT”) entered into with the employee’s trade union. Such Agreements can create additional rights but cannot restrict rights otherwise legally assured. Each professional category in each region has a different ACT;

**VI. Punitive fine** - Receive the equivalent to 40% of the amount deposited in the FGTS -Employee Dismissal Fund, in case of dismissal without any of the justified causes established in the article 182 of the Consolidated of Labour Law.

## 5.1. Employee's Resigning or Expiring Employment Contract Payments

The employee is entitled to any salary owed for worked performed; pay of unused holiday; and a “pro rata” share of the 13th salary.

## 6. General Aspects of Immigration

### ***Laws:***

Law 6,815/1980, Normative Resolution n. 61, 62, 74, 79 and 80 from Ministry of Labor and Employment and the National Council on Immigration.



## 6.1. Work Permit

The legal entity interested on the so called foreign labor, must either temporarily or on a permanent basis, request a work permit on the Ministry of Labor and Employment's General Coordination of Immigration, by presenting the application form, the company and the foreign worker's documentation.



## 6.2. Key Visas

**Key visas for foreign who intends to come to Brazil on business:**

6.2.1. Temporary Visa item “V” with urgency;

6.2.2. Temporary Visa item “V” with labor agreement;

6.2.3. Temporary Visa item “V”, technical assistance and technical cooperation; and

6.2.4. Permanent Visa – legal representatives.

## 6.2. Key Visas

### *6.2.1. Temporary Visa item “V” with urgency*

#### **Characteristics:**

- a) Situation where the need of foreigners on Brazil is urgent;
- b) Work without any employment relationship with company located on Brazil;
- c) Valid only for a 30-days period;
- d) Not extendible;
- e) Granted to the same Foreigner once every 90 days;
- f) Inapplicable in cases of administrative, financial and managerial functions.

## 6.2. Key Visas

### *6.2.2. Temporary Visa item “V” with labor agreement*

#### **Characteristics:**

- a) Upon the signing of a labor agreement between the Brazilian company and the foreign worker;
- b) Work with employment relationship between the Brazilian company and the foreign worker;
- c) Mandatory payment of work related rights (item 4);
- d) A 2-year time limit;
- e) Extendible (in the maximum of 2-year).

## 6.2. Key Visas

### *6.2.3. Temporary Visa item “V”, technical assistance and technical cooperation - I*

#### **Characteristics:**

- a) Emergency situation, transference of technology and rendering of technical assistance;
- b) Throughout the signature of a contract of services rendering between the Brazilian company and the Foreigner ;
- c) Without labor relations with the company in Brazil;
- d) Inapplicability in the hypothesis of functions which are merely administrative, financial and of management;

## 6.2. Key Visas

### ***6.2.4. Temporary Visa item “V”, technical assistance and technical cooperation - I***

e) Duration of 12 month;

f) Can be extended for the same period, provided that the necessity is proved, except in cases of contracts with guarantee clauses (in which the successive extensions will be possible while the guarantee is still in force);

g) Monthly gross salary totally payed by the foreign company (this expatriate cannot receive payment from the Brazilian company).

Obs: If the value of the salary does not reach the minimum standard required by the Ministry of Labor and Employment, the request for authorization to work will have low chances of approval.

## 6.2. Key Visas

### *6.2.5. Permanent Visa – legal representatives*

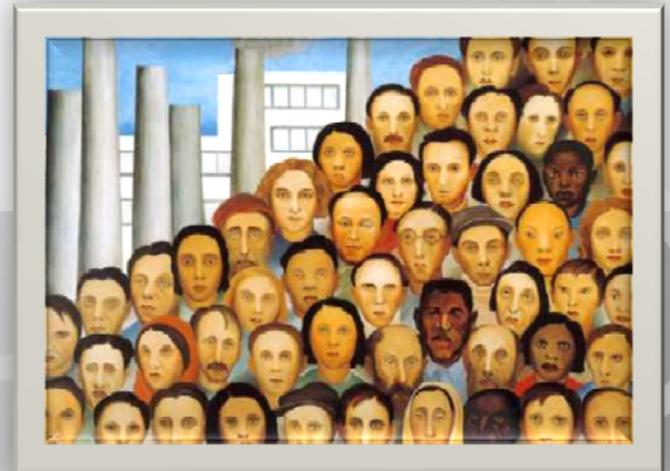
#### **Characteristics:**

- a) Transfer of executives to Brazil in order to legally represent the subsidiary/affiliated Brazilian company;
- b) Concurrent exercise of a diversity of functions related to management by the same foreigner executive;
- c) Possibility of concomitantly assume managerial duties on other Companies of the same Group, as long as the Ministry of Labor and Employment issue a permit for it;
- d) Granted during the duration of the contract or for the length of time stipulated on the records.

## 6.3. Risks - Breaking the Law

The major risks due to breaking the Law are:

- Not granting/revocation of the work permit;
- Application of administrative fines;
- Deportation.



**THANK YOU !**



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