

## **The ideal Labor Code**

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The Consolidation of Brazilian Labor Laws (*Consolidação das Leis Trabalhistas do Brasil* - CLT) was introduced on May 1, 1943, and is now past the ripe old age of seventy. It came to light in an age of low industrialization with a largely unskilled workforce and a poorly structured labor union movement. The CLT sought to provide legal protection for workers, who were considered the weaker party, and it focused, naturally enough, on guaranteeing worker rights by means of a range of decidedly rigid laws.

There has been a significant change of scenario in recent decades: Brazil is now an important industrial nation and the labor force is more organized. The Brazilian economy has now significant regional diversities and a vastly increased spectrum of professions/occupations. The law, however, remains uniform and the same for everyone.

In addition to the fact that the legislation is out of step with economic and labor reality, it is also the cause of significant legal insecurity. Labor Courts frequently issue rulings that have retroactive effect and lead to onerous, unforeseen financial obligations for employers. The courts also intervene in direct negotiations between employers and staff<sup>1</sup>. Also it is not uncommon for the courts to declare that temporary agreements between employers and employees are to be deemed permanent. This in turn undermines collective bargaining and reinforces the notion of the fragility and vulnerability of workers.

Our code limits the freedom of negotiation between management and staff: an employee cannot *e.g.* request a shorter lunch break in order to be able to leave work earlier, or manage the 30 consecutive day vacation entitlement.

At the same time, those whose work is not covered by the CLT regime *e.g.* self-employed freelancers or business owners, have no option but to make their own arrangements for holiday provision, luncheon vouchers, season tickets for transport, and health and safety measures, with no support whatsoever.

It is clear that there is a pressing need for reform. The rigid and outdated legislation needs to be adapted to the modern day requirements of the economy and of workers. To start with, employees in 21<sup>st</sup> century Brazil should no longer be regarded as vulnerable as 70 years ago. Clearly, any legal reform must maintain their guarantees –there should be no social regression. Of course maintaining the delicate balance between adapting the law and maintaining adequate protection is a challenge for any country, anywhere in the world, but in Brazil, any mention of reforming the CLT is taboo. Its historical roots and political symbolism are still a barrier to change, even 70 years after its introduction.

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<sup>1</sup> The Brazilian Federal Constitution of 1988 makes express provision for a large number of worker rights but also admits the possibility of agreements and negotiations between parties in relation to wages and working hours.

The current economic situation calls for an overhaul of the legislation. In recent years the productivity of industrial workers has remained virtually stagnant (it advanced by only 3.7% between 2001 and 2011), whilst average salaries doubled in dollar terms. This situation is unsustainable. Increasing productivity at work is crucial and, for that, increased innovation, a better skilled workforce and a significant reduction in legal insecurity before Labor Courts are all essential.

It has been difficult to introduce measures and criteria to stimulate meritocracy because the law requires parity of position/function and salary regardless of results<sup>2</sup>. There is also little encouragement for the acquisition of skills/qualifications and training. The heavy burden on companies of employment costs (social security contributions and others) are not always beneficial to the workers. The statistics vary considerably depending on the underlying concepts used, but there is data, which shows that the dismissal of an employee who has been in post for over 12 months may cost the company as much as three times the employee's average monthly salary. There is little doubt that this is one of the root causes of high turnover of staff, which, in turn, is itself a disincentive to skills training and qualifications.

Changes clearly need to be made. The question is, how and in what direction? It is evident that overly rigid rules such as those set out in the 1943 Brazilian Consolidation need to be relaxed. Given the long tradition of protectiveness, the considerable influence wielded by the Labor Courts and the length of time the Worker's Party has been in government, many people fear that changes to the CLT might in fact lead to even more stringent rules. Both sides fear a regression, which to some extent explains the paralysis.

At the same time, our economy passed through a long period of low rates of unemployment, unlike the European economies, and this exceptional situation led to the urgent reforms being put off.

Recently, in the light of an unprecedented tax crisis and increasing unemployment in a scenario of low productivity, the Worker's Party government has introduced changes that, paradoxically enough, reduce some of the protections afforded to employees. The objective is to reduce government expenditure on social security in the form of unemployment benefit or social welfare

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<sup>2</sup> The 1988 Constitution introduced some changes in terms of worker rights, most notably the introduction of the possibility of profit sharing based on productivity. However, this advance has never really borne fruit. The Employment Court system, which in Brazil functions as an independent jurisdiction, soon intervened, with the courts defining the percentage amount that was to be distributed by private companies. Recently, Petrobras, which is passing through the worst financial crisis in its history, shared out amounts to its employees from a profit that did not in fact exist. This led to employees at other state companies demanding equal treatment and taking strike action when their demands were not met. They argued that employees were not responsible for the losses being experienced. This is just one example of the difficulties of adapting employment contracts and new forms of work relationships and protection of rights to the modern economic world which is more globalized and competitive and where production networks are more important than the individual companies in isolation.

payments. The recent changes, in sum, had three main effects: they increased the entitlement requirements for unemployment benefit; withdrew part of the tax benefits that were aimed at decreasing the cost of labor and introduced rules as to outsourcing.

These were isolated changes, based principally on fiscal policy criteria and introduced at a time when workers are most in need of protection. Unemployment levels are now skyrocketing with the young low skilled population being the most affected. Whilst it may be the case that there is little stimulus for legal reform of labor laws during periods of growth it is also the case that it would be better to hold off on piecemeal changes during a full-blown recession.

The changes that have been introduced are not part of a planned agenda of organized reform drawn up to help the country face up to its many difficulties. The current challenges include: an industrial base that is increasingly uncompetitive, high turnover in the workforce, low productivity, high employment costs, outdated labor union structures, legal insecurity, the need for new mechanisms for the protection of workers not covered by the CLT regime, incentives for training and skills acquisition etc.

Modernization of the CLT will not occur overnight. It is a long-term project that needs to be carefully organized and not rushed through in response to immediate economic pressures. Consideration needs to be given to the replacement of a Code in which the legal rules are set in stone with legislation that permits a greater degree of negotiation between the parties and which takes into consideration regional and sectorial characteristics and the specific needs of companies and their workers. Clearly, this must be done without losing sight of the fundamental rights of workers, which are already guaranteed by the Brazilian Constitution.