



BRAZIL

Decent Work Check 2019

Iftikhar Ahmad

WageIndicator Foundation - www.wageindicator.org

WageIndicator started in 2001 to contribute to a more transparent labour market for workers and employers by publishing easily accessible information on a website. It collects, compares and shares labour market information through online and face-to-face surveys and desk research. It publishes the collected information on national websites, thereby serving as an online library for wage information, labour law, and career advice, both for workers/employees and employers. The WageIndicator websites and related communication activities reach out to millions of people on a monthly basis. The WageIndicator concept is owned by the independent, non-profit WageIndicator Foundation, established in 2003. The Foundation has offices in Amsterdam (HQ), Ahmedabad, Bratislava, Buenos Aires, Cape Town, Islamabad and Venice.

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INTRODUCTION

Decent Work is the type of work for which all of us aspire. It is done under conditions where people are gainfully employed (and there exist adequate income and employment opportunities); social protection system (labour protection and social security) is fully developed and accessible to all; social dialogue and tripartism are promoted and encouraged; and rights at work, as specified in ILO Declaration on Fundamental principles and Rights at Work and Core ILO Conventions, are practiced, promoted and respected.

WageIndicator Foundation has been working, since late 2007, to raise awareness on workplace rights through a unique tool, i.e., **Decent Work Check**. The Decent Work Check considers different work aspects, which are deemed important in attaining "decent work". The work makes the rather abstract Conventions and legal texts tangible and measurable in practice.

The Decent Work Check employs a double comparison system. It first compares national laws with international labour standards and gives a score to the national regulations (happy or sad face). If national regulations in a country are not consistent with ILO conventions, it receives a sad face and its score decreases (and vice versa). It then allows workers to compare their on-ground situation with national regulations. Workers can compare their own score with national score and see whether their working conditions are consistent with national and international labour standards. The Check is based on de jure labour provisions, as found in the labour legislation.

Decent Work Check is useful both for employees and employers. It gives them knowledge, which is the first step towards any improvement. It informs employees of their rights at the workplace while simultaneously enlightening employers about their obligations. Decent Work Check is also useful for researchers, labour rights organizations conducting surveys on the situation of rights at work and general public wanting to know more about the world of work. WageIndicator teams, around the world, have found out that workers, small employers and even labour inspectors are not, sometimes, fully aware of the labour law. When you are informed - being a workers, self-employed, employee, employer, policy maker, labour inspector - there is a greater possibility that you ask for your rights (as a worker), you comply with rules (as an employer) and you strive to enforce these (as a labour inspector).

The work is relevant to the challenges posed to the future of work especially the effective enforcement of legislation in financially constrained states, rise of precarious employment and measuring the impact of regulatory regimes.

Currently, there are more than 100 countries for which a Decent Work Check is available here: www.decentworkcheck.org During 2019, the team aims to include at least 10 more countries, thus taking the number of countries with a Decent Work Check to 115!

Major Legislation on Employment and Labour

1. Constitution of Federal Republic of Brazil, 1988
2. Consolidated Labour Laws (Law No. 5.452 of 1943)
3. Decree No. 3.048/1999
4. Decreto n° 3048, de 6 de Maio de 1999
5. Lei n° 7.998, de 11 Janeiro de 1990

01/13 WORK & WAGES

ILO Conventions

Minimum wage: Convention 131 (1970)

Regular pay & wage protection: Conventions 95 (1949) and 117(1962)

Brazil has ratified the Conventions 95, 117 & 131 only.

Summary of Provisions under ILO Conventions

The minimum wage must cover the living expenses of the employee and his/her family members. Moreover, it must relate reasonably to the general level of wages earned and the living standard of other social groups. Wages must be paid regularly on a daily, weekly, fortnightly or monthly basis.

Regulations on work and wages:

- Constitution of Federal Republic of Brazil, 1988
- Consolidated Labour Laws (Law No. 5.452 of 1943)

Minimum Wage

The Brazilian constitution provides for a single national minimum wage which enables workers and their families to meet their basic living needs like housing, food, education, health, leisure, clothing, hygiene, transportation and social security with periodical adjustments to maintain the purchasing power of people. It also allows fixing minimum wages/base salary keeping in view the extent and complexity of work (sectoral or occupational as well as regional minimum wages allowed).

Minimum wage is minimum amount due and paid directly to the worker, including rural workers, without any distinction of sex, for regular day of work, which enables workers in every region of the country to satisfy their basic needs of food, housing, clothing, hygiene/health and transportation.

Under a new law, minimum wage is decided by the government alone through a decree thereby determining the hourly, daily and monthly minimum wage for workers for whom wages are not fixed through a federal law or collective bargaining agreement. Another law says that the real value of the minimum wage must correspond to R\$545.00 (R\$24.13 on daily basis and R\$3.29 on hourly basis).

The minimum wages can be set differently for different occupations and regions keeping in view the federally set minimum wage work as a floor. Minimum wages may be paid in kind however the in-kind portion cannot be greater than 70% of the minimum wage set for region, zone or sub-zone. Those working in hazardous conditions (electricity or with fuels or other flammable materials) are entitled an additional 30% pay on their base salary. Workers are also entitled to either 10% or 20% or 40% premium on minimum wage depending on the degree of unhealthiness and danger for working in unhealthy working conditions.

Compliance with the Labour Code, including minimum wage provisions, is ensured by the labour inspectors. Non-compliance with minimum wage provisions is punishable offence and a fine of R\$ 52,000 is imposed. The fine is doubled in the case of repeat offence.

Source: §7(IV) of the Constitution of Brazil, last amended in 2016; §76, 82, 120 & 192-193 of the Consolidated Labour Laws (Law No. 5.452 of 1943); §01 of Supplementary Law No. 103/2000; Law No. 12.382 of 2011

Regular Pay

In accordance with the Consolidated Labour Laws, wage period can't be longer than one month, except with regard to commissions, percentages and bonuses. When the wage period is one month, workers are to be paid their wages within five (5) days at the end of the month. Wages may be paid in cash or in kind. Wages are paid on a receipt signed by the employee or through fingerprint/thumb expression if the employee is illiterate. Wages are to be paid on a working day and in the working place during the working hours or immediately at the end of working except when deposited in the bank account.

Workers are provided an additional salary each year. The 13th salary is a gratification equivalent to a month salary and paid in two installments. It is paid in November and December.

Source: §459 & 763-467 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

02/13 COMPENSATION

Regulations on compensation:

- Constitution of Federal Republic of Brazil, 1988
- Consolidated Labour Laws (Law No. 5.452 of 1943)

Overtime Compensation

Maximum working hours are 8 hours a day and 44 hours a week for day-time workers. The standard eight-hour work day may be reduced in certain jobs where employees are exposed to the hazardous or dangerous working conditions either due to the nature of activity or fatigue. Similarly, for night workers, regular hour is reduced from 60 minutes to 52 minutes and 30 seconds which is equal to 7 hours. Workers and employer may determine the length of a working day however they cannot exceed the legal maximum. Working hours can be extended beyond the normal daily and weekly hours due to exceptional and extraordinary circumstances however these hours may not exceed 2 hours a day. The remuneration for overtime hours is 150% of the normal wage rate.

In line with Labour Law reform of 2017 (Law No. 13467/2017), daily working hours can be increased to 12 hours per day however weekly limit of 44 hours remains. Where a worker is working 12 hours per day, he is entitled to 36 hours of weekly rest.

Earlier, the part-time work was limited to 25 hours per week without the overtime option. Under the 2017 reform, the maximum working hours for part-time workers are 30 hours per week without overtime. The maximum working hours are 26 hours per week with the option of 6 overtime hours per week. While the salary of part-time workers is proportional to their working hours, they are eligible for the same paid annual leave.

Source: §7(XIV) of the Constitution of Brazil, last amended in 2016; §58-65 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Night Work Compensation

Work performed between 22:00 hours and 05:00 hours is considered night work. Those working at night have to work only 7 hours to be eligible for full wages. In Brazil, night workers are also paid a premium rate for working at night which is 120% of the normal wage during the day. Rather their work hours are reduced from 8 hours to 7 hours.

Source: §7(IX) of the Constitution of Brazil, last amended in 2016; §73 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Compensatory Holidays / Rest Days

Workers may be given a compensatory rest day when they have to perform work on a weekly rest day or a public holiday.

Source: §58-65 of the Consolidated Labour Laws (Law No. 5.452 of 1943); §9 of the Law No. 605 of 1949

Weekend / Public Holiday Work Compensation

There is a premium pay for working on Weekly rest day/Sunday and Public Holidays. When a worker performs work on Sunday, he is entitled to 200% of the normal wage rate for a day (EWI). Working on public (civil and religious) holidays however if the technical requirements of companies require work on public holidays, workers receive a premium rate of 200% of the normal hourly wage rate.

Source: §70 of the Consolidated Labour Laws (Law No. 5.452 of 1943); §8-9 of the Law No. 605 of 1949

03/13 ANNUAL LEAVE & HOLIDAYS

ILO Conventions

Convention 132 (1970) on Holidays with Pay Convention Conventions 14 (1921), 47 (1935) and 106 (1957) for weekly rest days. In addition, for several industries, different Conventions apply.

Brazil has ratified the Conventions 14, 106 & 132 only.

Summary of Provisions under ILO Conventions

An employee is entitled to at least 21 consecutive days of paid annual leave. National and religious holidays are not included. Collective agreements must provide at least one day of annual leave on full remuneration for every 17 days on which the employee worked or was entitled to be paid.

A worker should be entitled to paid leave during national and officially recognized public holidays.

Workers should enjoy a rest period of at least twenty-four consecutive hours in every 7-day period, i.e., a week

Regulations on annual leave and holidays:

- Constitution of Federal Republic of Brazil, 1988
- Consolidated Labour Laws (Law No. 5.452 of 1943)

Paid Vacation / Annual Leave

Workers are entitled to paid annual leave with additional vacation bonus (of one-third of employee's monthly salary) in Brazil however its length depends on the number of absences during the year. Annual Leave in Brazil is not affected by the length of service/seniority. It is:

- 30 calendar days when the worker was absent for no more than 5 days;
- 24 days when the worker was absent between 6 and 14 days;
- 18 days when the worker was absent between 15 and 23 days; and
- 12 days when the worker was absent between 24 and 32 days

The qualifying period for annual leave is one year. The annual leave is granted during one year after a worker's entitlement to it. Workers may be granted annual leave in two different periods, none of which should be less than ten (10) calendar days. The timing of annual leave grant may take into account the interests of employer. If leave is granted after one year of its entitlement, employer has to pay double remuneration during annual leave. Employees are entitled to convert one-third of their annual leave to cash payment. Workers working less than or equal to 25 hours a week are considered part time workers. These workers are also entitled to annual leave as follows:

- eighteen days for workers working between 22 to 25 hours a week;
- sixteen days for workers working between 20 to 22 hours a week;
- fourteen days for workers working between 15 to 20 hours a week;
- twelve days for workers working between 10 to 15 hours a week;
- ten days for workers working between 5 to 10 hours a week; and
- eight days for workers working less than or equal to 5 hours a week

In line with Labour Law reform of 2017 (Law No. 13467/2017), the 30-day annual leave can be split, by mutual agreement, into three periods. One of the periods must be 14 consecutive calendar days while none of the split periods can be less than 5 calendar days. The annual leave must start within 2 days before the weekly rest day or public holiday.

Source: §7(XVII) of the Constitution of Brazil, last amended in 2016; §129-142 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Pay on Public Holidays

Workers are entitled to paid holidays during Festival (public and religious) holidays. These include memorial holidays and religious holidays (Christian origin). The Public Holidays are usually eleven (11) in number. Public Holidays in Brazil are of three types: national, state and municipal holidays> National Public Holidays are governed under Law No. 662 of 1949 and these are January 01, April 21, May 01, September 07, November 02, November 15 and December 25. The religious holidays are governed under Law No. 9.903 of 1995. Art. 2 of Law No. 9.903 provides that religious holidays are declared in municipal law according to the local tradition and can't be more than four in number. These four holidays include the Good Friday.

Source: §2 of the Law No. 9.903 of 1995; Law No. 662 of 1949

Weekly Rest Days

Weekly rest period is provided under the Constitution and Consolidated Labour Laws. Every worker is entitled to enjoy a weekly rest of 24 hours. The weekly rest day is Sunday. In jobs requiring continuous work, employer and worker may agree on some other day as the weekly rest day.

Working on weekly rest day is usually prohibited however it may be allowed by the competent authority, i.e., the Ministry of Labour, Industry and Trade considering the reasons of public convenience or unavoidable service requirements. If a worker has to work on weekly rest day, he is entitled to 200% of the normal wage rate.

Source: §7(XV) of the Constitution of Brazil, last amended in 2016; §66-70 of the Consolidated Labour Laws (Law No. 5.452 of 1943)



04/13 EMPLOYMENT SECURITY

Regulations on employment security:

- Constitution of Federal Republic of Brazil, 1988
- Consolidated Labour Laws (Law No. 5.452 of 1943)

Written Employment Particulars

A contract of employment may be tacitly agreed or expressly executed orally or in writing for a fixed term or an indefinite term. Fixed term contracts include contracts duration is pre-determined, whose duration depends on the performance of some specific service or some event whose end can be approximately predicted. Consolidated Labour Laws also require an employer to maintain employee data (in books) which will include civil or professional qualification of employees, duration of work contract, holidays, accidents and other relevant information. Although written contract is not mandatory however in order to get the carteira de Trabalho e Previdência Social (CTPS, the Work and Social Security Card), employer must provide the employee with a document containing information on the start date of employment contract, the nature of work, salary and form of payment.

Source: §13, 41 & 442-456 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Fixed Term Contracts

Brazilian labour Law prohibits hiring fixed term contract workers for tasks of permanent nature (EWI).

Fixed term employment contracts may be executed for a maximum period of two years and if the employment relationship continues after expiry of this two-year period, the contract is considered effective for an indefinite term.

In order to reform its labour laws, Brazil allowed the companies, in March 2017, to outsource any jobs, even those related to the core business of an enterprise. Under the Outsourcing Law (*Lei da Terceirização*), temporary employment contract can be used to meet the temporary replacement of the staff or complementary demand of services. This includes both foreseeable and unforeseeable demand and can be used to replace (illegally) striking workers. The initial term of the temporary contract is 180 days which can be extended by 90 days (whether consecutive or not). Outsourcing was earlier allowed only for ancillary activities case law precedent No. 331 of the Brazilian Superior Labor Court. However, with this law, outsourcing is allowed for virtually any activity. Under the new law, it is the joint liability of the service provider (temporary work agency) and the contract party. If the service provider does not pay the worker his dues or does not honour other commitments, the contracting party will be brought to justice to honour the commitments.

In line with Labour Law reform of 2017 (Law No. 13467/2017), there is a provision for intermittent work where a worker is informed of the work opportunity when there is demand. A worker may decline such work opportunity as well. Under this type of contract, there are periods of work and periods of inactivity. The workers with intermittent contract are eligible to wages and other benefits proportional to their workload.

Source: §445 of the Consolidated Labour Laws (Law No. 5.452 of 1943); Lei No. 13.429n

Probation Period

Maximum duration of probationary/trial period is fixed as 90 days. Probationary contract is like a fixed term contract and it may be extended only once. However, the total probationary period, even after extension can't be greater than 90 days. If an employee works beyond trial period, he is considered hired for an indefinite term.

Source: §445 & 451 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Notice Requirement

Either party which wishes to cancel an employment contract of indefinite duration without a just cause is required to give a notice or pay in lieu of notice to the other party as follows:

- i. eight days in advance if wages are paid weekly or at shorter intervals;
- ii. thirty days in advance if wages are paid on fortnightly or monthly basis or if the employee's length of service in the enterprise exceeds 12 months. However, according to a new Law No. 12.506 of 2011, notice period will be 30 days for workers who have a work experience of one year with the same company. The notice requirement will increase by 3 days for every year of service in the same company to a maximum of 60 days, thus making the total notice period for an employee with 20 years of service as 90 days.

In line with Labour Law reform of 2017 (Law No. 13467/2017), employers are not required to obtain the trade union's prior authorization or to enter into an agreement with trade union to implement collective dismissals. Now employment termination agreement can be done between the worker and employer. Similarly, irrespective of the worker's length of service, a worker's termination does not need ratification by the regional office of the Ministry of Labour.

Source: §487 of the Consolidated Labour Laws (Law No. 5.452 of 1943); Law No. 12.506 of 2011

Severance Pay

Workers are entitled to a termination payment (verbas rescisórias) in the event of dismissal. The legal obligations for the employers depend upon the duration of contract as well as the type of termination. For indefinite term contracts:

- i. employees are entitled to salary balance, prior notice period (30-90 days), pro-rated salary for 13th month, pro-rated vacations with one-third additional payment, and total balance available with Federal Service Indemnity Fund/Guarantee Fund for Severance Pay (FGTS) if it is a just-cause termination;
- ii. employees are entitled to salary balance, pro-rated vacations with one-third additional payment, pro-rated 13th salary and total balance available Federal Service Indemnity Fund (FGTS) if employment relationship is terminated on employee's intuitive (resignation);
- iii. employees are entitled to salary balance, prior notice period (30-90 days), pro-rated vacations with one-third additional payment, pro-rated 13th salary, total balance available Federal Service Indemnity Fund (FGTS) and a special fine of 50% of the total amount deposited in the FGTS (40% of this amount is paid to the worker while 10% to the government as special social security contribution) if it is an arbitrary/unfair or no just cause dismissal.

For definite term/fixed term contracts:

- i. employees are entitled to salary balance, pro-rated vacations with one-third additional payment, pro-rated 13th salary and total balance available Federal Service Indemnity Fund (FGTS) if employment relationship is terminated on employee's intuitive (resignation) or due to the expiration of fixed term contract;
- ii. employees are entitled to half of the amount he/she would be entitled to be paid from the dismissal date to the end of contract term, salary balance, prior notice period (30-90 days), pro-rated vacations with one-third additional payment, pro-rated 13th salary, total balance available Federal Service Indemnity Fund (FGTS) and a special fine of 50% of the total amount deposited in the FGTS (40% of this amount is paid to the worker while 10% to the government as special social security contribution) if it is an arbitrary/unfair or no just cause dismissal.

Federal Service Indemnity Fund, established under Law No. 8.036 of 1990, is a mandatory savings account for the benefit of employees who may withdraw funds deposited into under certain circumstances established under the law including retirement and severe diseases esp. in the event of unfair dismissal. Employers are required to make contributions to FGTS (Fundo de Garantia por Tempo de Serviço) in an amount of 8% of an employee's monthly remuneration. The company contributions are made in employee's limited/blocked access bank account managed by the Federal Savings Bank. If an employee is terminated for just cause or in the event of retirement or resignation, he/she gets the total amount deposited in the account plus any interest accrued over time. In the case of unfair dismissal, employer has to pay a penalty corresponding to 40% of the total amount deposited in FGTS to the employee and 10% of the total amount deposited in FGTS to the government. (Art. 477-500 of Consolidated Labour Laws & Art. 18 of Law No. 8.036 of 1990)

The text in this document was last updated in January 2019. For the most recent and updated text on Employment & Labour Legislation in Brazil in Portuguese, please refer to: <https://meusalario.uol.com.br>

In line with Labour Law reform of 2017 (Law No. 13467/2017), the employment contract can be terminated by mutual agreement between the parties, i.e., the worker and the employer. In such a case, worker is eligible for half the amount of dismissal notice (50% payment in lieu of notice) and the indemnity calculated on the Employee Severance Fund (FGTS)'s balance (20% fine over FGTS balance). The worker is allowed to withdraw from the FGTS account, up to 80% of the available balance. However, in such case, worker cannot apply for Government Unemployment Insurance Program.

Source: §477-500 of the Consolidated Labour Laws (Law No. 5.452 of 1943); §18 of the Law No. 8.036 of 1990

05/13 FAMILY RESPONSIBILITIES

ILO Conventions

Convention 156: Workers with Family Responsibilities Convention (1981)

Recommendation 165: Workers with Family Responsibilities (1981)

Brazil has not ratified the Conventions 156 & 165.

Summary of Provisions under ILO Convention

Paternity leave is for the new fathers around the time of childbirth and is usually of shorter duration.

Recommendation (No. 165) provides for parental leave as an option available to either parent to take long leave of absence (paid or unpaid) without resigning from work. Parental leave is usually taken once the maternity and paternity leave have been exhausted. For working parents, laws may define the portion of parental leave that has to be compulsorily taken by fathers or mothers.

Flexible Work Option for Parents / Work-Life Balance Recommendation 165 asks the employers to look into the measures for improving general working conditions through flexible work arrangements.

Regulations on family responsibilities:

- Constitution of Federal Republic of Brazil, 1988
- Consolidated Labour Laws (Law No. 5.452 of 1943)

Paternity Leave

Workers are entitled to five days of paid paternity leave on the birth of a child in accordance with the provisions of Constitution. Other than this, a 2016 law provides for 15 days of paid paternity leave for workers in the companies enrolled in Corporate Citizenship Program. The extended leave is available to the worker if he applies for the extension within two days of the birth of the child and provides evidence of his participation in the paternity orientation program or other equivalent activity. Workers are entitled to their full remuneration during the term of paternity leave and its extension. The first five days are paid by the employer while the extended 15-day leave is paid by the employer and is deducted from the payable income tax owed to the federal revenue.

Source: §7(XIX) of the Constitution of Brazil 1988, last amended in 2014; §10 of Transitional Constitutional Provisions Act, 1988; Law No. 11.770 of 2008, amended in 2016 (Lei N° 13.257)

Parental Leave

Workers are entitled to 120 days of leave and maternity pay, no matter what the age or sex of the adopted child.

Source: Law No. 12,873 of October 24, 2013

Flexible Work Option for Parents / Work-Life Balance

No provisions could be located in the law supporting work-life balance for parents or workers with family responsibilities.

06/13 MATERNITY & WORK

ILO Conventions

An earlier Convention (103 from 1952) prescribed at least 12 weeks maternity leave, 6 weeks before and 6 weeks after birth. However, a later convention (No. 183 from year 2000) requires that maternity leave be at least 14 weeks of which a period of six weeks compulsory leave should be after childbirth.

Brazil has ratified the Convention 103 only.

Summary of Provisions under ILO Convention

During pregnancy and maternity leave, a worker should be entitled to medical and midwife care without any additional cost.

During pregnancy and while breastfeeding, a worker should be exempt from work that might bring harm to you or your baby.

The total maternity leave should last at least 14 weeks.

During maternity leave, a worker's income should amount to at least two thirds of your preceding salary.

During pregnancy and maternity leave, a worker should be protected from dismissal or any other discriminatory treatment.

Workers have the right to return to same or equivalent position after availing maternity leave.

After childbirth and on re-joining work, a worker must be allowed paid nursing breaks for breast-feeding the child.

Regulations on maternity and work:

- Constitution of Federal Republic of Brazil, 1988
- Consolidated Labour Laws (Law No. 5.452 of 1943)
- Decree No. 3.048/1999

Free Medical Care

There is no special provision in the law for maternity related care. Medical services including general, specialist, dental and maternity care as well as hospitalization and medicine (on cost sharing basis) is provided to all citizens under the Unified Health System of Ministry of Health.

Source: ISSA Country Profile for Brazil

No Harmful Work

If current job could pose risk to the health of a pregnant worker, she will be transferred to a suitable alternative job and shall be reinstated in her regular job as soon as medically possible and the health condition no longer exists.

Source: §392(4)(II) & 394(A) of the Consolidated Labour Laws (Law No. 5,452 of 1943 & Law No. 13,287, of 2016)

Maternity Leave

Female employees are entitled to 120 days (around 17 weeks) of paid maternity leave and extension by a maximum of 4 weeks on medical grounds (two weeks prior and two weeks after birth).

Through Corporate Citizenship Program (Programa Empresa Cidadã) established under Law 11.770 of 2008, organizations may extend the maternity leave for their workers by an extra 60 days. The total cost of this 60-day leave is borne by the employer however this amount can be deducted from the organization's corporate income taxes.

Women workers who adopt or obtain legal custody of a child are granted maternity leave in accordance with the Consolidated Labour Laws, i.e., 120 days. A man/partner is also allowed to take two days of leave for attending wife/partner's medical appointments and other complementary examinations during pregnancy.

Source: §7(XVIII) of the Constitution of Brazil, last amended in 2016; §392 & 473 of the Consolidated Labour Laws (Law No. 5.452 of 1943); Law No. 11.770 of 2008, amended in 2016

Income

Maternity leave of 120 days (around 17 weeks) is a fully paid leave. It is paid by the Social Security Institute. Maternity Benefit is paid for a period of 120 days, from 28 days before and 91 days after the expected date of childbirth. The next 60 days, if allowed by the organization, are paid by the employer which can later be deducted from employer's corporate income taxes.

Source: §393 of the Consolidated Labour Laws (Law No. 5.452 of 1943); §93(1-5), 100-101 & 195 of the Decree No. 3.048 of 1999

Protection from Dismissals

A women worker can't be dismissed during the period of her pregnancy (from the date pregnancy is confirmed to five months after delivery). A woman worker can't be discriminated or terminated because of getting married or being pregnant.

Source: §10(2)(b) of the Temporary Constitutional Provision Act; §373(A) & 391 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Right to Return to Same Position

Right to return is guaranteed under the Consolidated Labour Laws and a woman worker is entitled to return to her previous position after availing her maternity leave and even extended leave.

Source: §392(4) & 393 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Breastfeeding

Consolidated Labour Laws require employers to provide two nursing breaks, each of 30-minute duration, for new mothers to breastfeed their child(ren) until a child is six (06) months old. This period can be extended to one year if justified on medical grounds. Organizations employing at least 30 women over the age of 16 years are required to have a place to keep their children under surveillance and breastfeeding them during specified periods.

Source: §389 & 396 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

07/13 HEALTH & SAFETY

ILO Conventions

Most ILO OSH Conventions deal with very specific Occupational Safety hazards, such as asbestos and chemicals.

Convention 155 (1981) is the relevant general convention here.

Labour Inspection Convention: 81 (1947)

Brazil has ratified both Conventions 81 & 155.

Summary of Provisions under ILO Conventions

The employer, in all fairness, should make sure that the work process is safe.

The employer should provide protective clothing and other necessary safety precautions for free.

Workers should receive training in all work-related safety and health aspects and must have been shown the emergency exits.

In order to ensure workplace safety and health, a central, independent and efficient labour inspection system should be present.

Regulations on health and safety:

- Constitution of Federal Republic of Brazil, 1988
- Consolidated Labour Laws (Law No. 5.452 of 1943)

Employer Cares

The Federal Constitution gives workers the right to "reduction in occupational hazards by means of safety, health and hygiene rules (Art. 7.XXII). Employers are also required to take measures in order to make the workplace more hygienic place such as ventilation and lighting and comfort of women as determined by the competent authority.

Companies must also follow and enforce occupational safety and health standards.

No establishment may start its activities without prior inspection and approval of their premises by the relevant competent authority on OSH.

Source: §7(XXIII) of the Constitution of Brazil, last amended in 2016; §157 & 389 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Free Protection

Employers are required to provide free personal protective equipment (PPE) to the workers in order to avoid the occurrence of workplace hazards. Such equipment should be appropriate to the risks present at the workplace and when general measures don't provide complete protection against accidents or injury to the health of employees. Workers are also required to use the personal protective equipment provided by the company.

Law also requires that PPE may be used or offered for sale only after a certificate of approval from Ministry of Labour. Labour law further quires an employer to provide different types of personal protective equipment like goggles, ear plugs, gloves, masks, safety shoes, etc, to the workers to ensure their safety.

Source: §158, 166-167 & 389 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Training

Employers are required to instruct their employees, through work orders, on necessary precautions to be taken in order to avoid workplace accidents and occupational diseases. Employees are also required to comply with the instructions issued by the employer and observe safety standards at the workplace (157-158 of Consolidated Labour Laws). Different Regulatory Standards, taking into account working in different sectors and conditions, require the employer to provide instructions in writing to their employees as well as training (before they start their work) about the precautions to be taken to prevent accidents at work or occupational diseases. Thirty-six (36) regulatory standards have been issued so far to protect the safety and health of workers at the workplace. (<http://portal.mte.gov.br/legislacao/normas-regulamentadoras-1.htm>)

Source: §157-158 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Labour Inspection System

The Federal Constitution allows the Union to "organize, maintain and carry out inspection work". Consolidated Labour Laws deal with the enforcement of Labour laws and prosecution and imposition fines if these laws are violated. Labour Inspection Secretariat deals with labour inspections in the country. The other relevant laws are Law No. 10.593 which provides for organization of labour inspection career. Presidential Decree No. 4.552 of 2002 approves the regulation of labour inspection. The Labour inspection regime seems closer to the provision of convention 081.

Source: §21(XXIV) of the Constitution of Brazil, last amended in 2016; §626-634 of the Consolidated Labour Laws (Law No. 5.452 of 1943); Law No. 10.593 for organization of labour inspection career; Presidential Decree No. 4.552 of 2002

08/13 SICK LEAVE & EMPLOYMENT INJURY BENEFIT

ILO Conventions

Convention 102 (1952), Conventions 121 (1964) and 130 (1969) concerning Social Security, Employment Injury Benefits and Medical Care and Sickness Benefits

Brazil has ratified the Convention 102 only.

Summary of Provisions under ILO Conventions

A worker's rights to work and income should be protected when illness strikes. The national labour law may provide that sickness benefit may not be paid during the first 3 days of your absence. Minimally, a worker should be entitled to an income during first 6 months of illness. This income should be at least 45 per cent of the minimum wage. (Countries are free to opt for a system which guarantees 60 per cent of the last wages during the first 6 months of illness or even during the first year). A worker must be entitled to paid sick leave.

During illness, a worker should be entitled to medical care without any additional cost. Employees and their family members should have access to the necessary minimal medical care at an affordable cost.

During the first 6 months of illness, a worker should not be fired.

If a worker is disabled due to an occupational disease or accident, he/she must receive a higher benefit. In the case of temporary or total incapacity/disability, a worker may at least be provided 50% of his average wage while in the case of fatal injury, the survivors may be provided with 40% of the deceased worker's average wage in periodical payments.

Regulations on sick leave & Employment Injury Benefits:

- Constitution of Federal Republic of Brazil, 1988
- Consolidated Labour Laws (Law No. 5.452 of 1943)
- Decree No. 3.048/1999

Income

Sick workers are entitled to paid sick leave in the event of sickness. During the first 15 days of sickness, full salary is paid by the employer to the worker. From 16th day onwards, sickness benefit is paid from the Social Security. The monthly sickness benefit is 91% of the average earnings (100% of the minimum wage for rural workers). The insured worker must have paid contributions in the last 12 months. There is no limit to the duration of sickness benefits.

Source: §59-63 of the Law No. 8.213 of 1991

Medical Care

Employment contract of an employee is temporarily suspended if an employee is ill due to a non-work-related cause. During the period of sickness, employee is considered to be on unpaid leave. Labour Law does not define the limit of sick leave. Employment of a worker is secure during the term of his sick leave. A worker may be fired only when he returns from his sick leave but during the currency of sick leave.

Source: §476 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Job Security

Medical benefits are available to the insured workers (including dependents). These include medical, surgical, pharmaceutical and hospital care from the beginning of disease. There is no limit to the duration of medical benefits.

Source: ISSA Country Profile for Brazil

Disability / Work Injury Benefit

Work injuries are divided into four categories: (i) permanent total incapacity (ii) permanent partial incapacity (iii) temporary incapacity and (iv) fatal injury leading to death of a worker.

There is no minimum qualifying period and injuries on the way to and from workplace are covered. (Art. 30)

In the case of permanent total incapacity/disability, 100% of the insured's earnings is paid. Average earnings used to calculate benefits are based the best 80% of total monthly earnings. If the disabled worker needs constant attendance, 25% is added to this amount.

In the case of permanent partial incapacity (when the disabled can do some kind of work) 50% of average earnings is paid. Average earnings used to calculate benefits are based on the best 80% of total monthly earnings. (Art. 104)

In the case of temporary disability, from first to 15th day 100% of the wage is paid by the employer. From the

16th day and to unlimited time, social security provides 91% of the insured's earnings. Average earnings used to calculate benefits are based on the best 80% of total monthly earnings. For rural workers, average earnings are 100% of the legal monthly minimum wage. (Art. 39 and 71-72)

In the case of fatal injury, 100% of the pension the deceased received or was eligible to receive is paid and split equally among eligible survivors. If one survivor ceases to be eligible, the pensions for the remaining survivors are recalculated.

Eligible survivors include the widow(er) or partner and children younger than age 21 (no limit if disabled); if there is no widow(er), partner, or child, other eligible survivors include (in order of priority) parents and brothers and sisters younger than age 21 (no limit if disabled). (Art. 105-115)

Source: Decreto n° 3048, de 6 de Maio de 1999; Law No. 7.855 of October 24, 1989; Decree -Law No. 229 of February 28, 1967; ISSA Country Profile for Brazil

09/13 SOCIAL SECURITY

ILO Conventions

Social Security (minimum standards): Convention 102 (1952). For several benefits somewhat, higher standards have been set in subsequent Conventions

Employment Injury Benefits: Conventions 121 (1964),

Invalidity, Old age and survivors' benefits: Convention 128(1967)

Medical Care and Sickness Benefits: Convention 130 (1969)

Unemployment Benefits: Convention 168 (1988).

Brazil has ratified the Convention 102 & 168 only.

Summary of Provisions under ILO Conventions

In the normal circumstances, the pensionable age may not be set higher than 65 years of age. If retirement age is fixed above 65 years, it should give "due regard to the working ability of elderly persons" and "demographic, economic and social criteria, which shall be demonstrated statistically". Pension can be set as a percentage of the minimum wage or a percentage of the earned wage.

When the breadwinner has died, the spouse and children are entitled to a benefit, expressed as a percentage of the minimum wage, or a percentage of the earned wage. This must at least be 40% of the reference wage.

For a limited period of time, the unemployed has a right to unemployment benefit set as a percentage of the minimum wage or a percentage of the earned wage.

Invalidity benefit is provided when a protected person is unable to engage in a gainful employment, before standard retirement age, due to a non-occupational chronic condition resulting in disease, injury or disability. Invalidity Benefit must at least be 40% of the reference wage.

Regulations on social security:

- Decreto n° 3048, de 6 de Maio de 1999
- Lei n° 7.998, de 11 Janeiro de 1990

Pension Rights

Age pension (social insurance): a worker must have attained 65 years of age (60 for women). Rural workers must have attained the age of 60 (55 for women) for rural workers. 180 months of contributions are required (rural workers have to prove that they have worked for 180 months in the rural sector). Retirement is not necessary. The monthly benefit is 70% of the insured's average earnings plus 1% of average earnings for each year of contributions, up to 100%. Average earnings used to calculate benefits are based on the best 80% of total monthly earnings.

Contributory pension (social insurance): The insured must have at least 35 years of contributions (men) or 30 years of contributions (women); for arduous employment, 15 years to 25 years. 100% of the insured's average earning is paid. Average earnings used to calculate benefits are based on the best 80% of total monthly earnings, multiplied by the Factor Previdenciario. The Factor Previdenciario is not applied to arduous work with 15, 20, or 25 years of contributions. Retirement is not necessary.

Early pension: Age 53 with at least 30 years of contributions (men) or age 48 with at least 25 years of contributions (women).

Source: §39, 51-64 & 188 of the Decreto n° 3048, de 6 de Maio de 1999; ISSA Country Profile for Brazil

Dependents' / Survivors' Benefit

Survivor's benefit is provided to the widow(er) or partner and children younger than age 21 (no limit if disabled); in the absence of the above (in order of priority), parents and siblings younger than age 21 (no limit if disabled). The pension is split equally among eligible survivors. If one survivor ceases to be eligible, the pensions for the remaining survivors are recalculated. 100% of the pension the deceased received or was eligible to receive is paid; 100% of the minimum wage for rural workers.

Source: §39 & 105-115 of the Decreto n° 3048, de 6 de Maio de 1999; ISSA Country Profile of Brazil

Unemployment Benefits

Workers are entitled to unemployment benefit if they have been employed during the previous 6 months and have contributed to the Guarantee Fund for Severance Pay (even as an autonomous worker) for at least 15 months in the last 24 months. Unemployment benefit is not paid by Social Security System: employers contribute 8% of earnings to the Federal Service Indemnity Fund/Guarantee Fund for Severance Pay (FGTS) and the Caixa Econômica Federal provides for benefit when needed. The duration of the benefit depends on the months worked and it is provided for a maximum period of 4 months.

The monthly benefit varies according to average earnings in the last three months of employment and it can't be less than the legal monthly minimum wage.

Source: Lei nº 7.998, de 11 Janeiro de 1990; ISSA Country Profile for Brazil

Invalidity Benefits

Disability pension is paid to the insured assessed with a permanent incapacity to work and having at least 12 months of contributions. 100% of the average earnings in the 80% of the worker's contribution period is paid.

Source: §29, 32, 39 & 43-50, Decreto nº 3048, de 6 de Maio de 1999; ISSA Country Profile for Brazil

10/13 FAIR TREATMENT

ILO Conventions

Convention 111 (1958) lists the discrimination grounds which are forbidden.

Convention 100 (1952) is about Equal Remuneration for Work of Equal Value.

Brazil has ratified both Conventions 100 & 111.

Summary of Provisions under ILO Conventions

At workplaces, equal pay for men and women for work of equal value is a must, regardless of marital status. Pay inequality based on race, colour, sex, religion, political opinion, national extraction/place of birth or social origin is also forbidden. A transparent remuneration system and the clear matching of pay and position should be in place and to help prevent wage discrimination.

Not clearly provided in ILO Conventions. However, sexual intimidation/harassment is gender discrimination.

An employer can't discriminate against you on in any aspect of employment (appointment, promotion, training and transfer) on the basis of union membership or participation in union activities, filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, age, trade union membership, disability/HIV-AIDS, or absence from work during maternity leave. (Conventions 111, 156, 158, 159 and 183)

People have the right to work and there can't be occupational segregation on the basis of gender.

Regulations on fair treatment:

- Constitution of Federal Republic of Brazil, 1988
- Consolidated Labour Laws (Law No. 5.452 of 1943)

Equal Pay

The Federal Constitution prohibits differences in wages, in performance of duties and hiring criteria by reason of sex, age, colour or marital status. In accordance with the Consolidated Labour Laws, equal work should draw equal pay regardless of gender, nationality and age. Work of equal value means work done with the same productivity, technical expertise and with similar length of service not exceeding 2 years. It means law allows wage differentials on the basis differences in productivity, technical expertise and seniority exceeding two years. Law provides for equal pay for equal work without any discrimination on the basis of gender.

In line with Labour Law reform of 2017, equal pay is available to workers who meet the following conditions: the workers have worked for the same employer for at least four years, have equivalent job description/responsibilities, have similar professional skills and work performance, work in the same business unit and have equivalent seniority (less than two years in the same position).

Source: §7(XXX) of the Constitution of Brazil, last amended in 2016; §5 & 461-462 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Sexual Harassment

Sexual harassment is defined in the Criminal Code as an act " to impose upon someone with the purpose of obtaining favours of a sexual nature, abusing the relationship of authority or superiority inherent to the discharge of one's position or function". The civil code however recognizes harassment by direct or indirect hierarchical superior of the victim. Sexual harassment is considered a crime in Brazil and perpetrator may be have to face one to two years of imprisonment. The imprisonment may be increased to three year if the victim is under the age of 18 years. The law however does not recognize harassment by a co-worker or subordinate. Since employers are required to keep their workplace free from of risks to the employees, they may be found liable for acts of their employees and representatives in the performance of their services. A sexually harassed employee may claim compensation from the employer based on sexual harassment in the workplace. Harassment at the workplace may also cause an employee to terminate his/her employment contract.

Source: §483(1)(b & d) of the Consolidated Labour Laws (Law No. 5.452 of 1943); §932 of the Civil Code; §216 of the Criminal Code

Non-Discrimination

The Federal Constitution prohibits differences in wages, in performance of duties and hiring criteria on grounds of sex, age, colour or marital status. Similar safeguards have

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been recommended for handicapped/disabled workers. The Constitution considers it one of the fundamental objectives of the state to promote the good of everyone, without distinction as to origin, race, sex, colour, age and any other forms of discrimination. The Constitution further provides that all individuals are equal and punishes all forms of discrimination against fundamental rights and freedoms. Discrimination on racial grounds is a very serious crime which is not subject to bail and is not time-barred.

The Consolidated Labour Laws prohibits certain discriminatory practices like:

- i. advertising a job/employment offer in which there is reference to sex, age, colour, or family situation unless the nature of activity performed so requires;
- ii. refusing employment, promotion or dismissing a worker on the basis of sex, age, colour, family situation and pregnancy;
- iii. considering sex, age, colour or family situation for determining variable remuneration (or raising salary), training and career opportunities;
- iv. pregnancy discrimination by requiring the workers to submit the certificate as a condition of hiring or continued employment;
- v. denying registration for job competitions in the private companies based on sex, age, colour, family situation or pregnancy; and
- vi. requiring female employees to submit to intimate inspections.

Law 9.029 of 1995 prohibits discrimination on the grounds of sex, origin, race, colour, marital status, family status or age for access to employment or its retention. It is considered a crime, with an imprisonment of one to two years and a fine, if employer asks the employee to provide certificate that she is not pregnant or promotes birth control. Law No. 7.716 of 1989 prohibits discrimination on the grounds of race, colour, ethnicity, religion or national origin and provides for different types of penalties (imprisonment terms ranging from 2-5 years). The Racial Equity Statute (Law No. 12.288 of 2010) requires the government to take actions for promoting equal opportunities for black population. Law No. 10.741 of 2003 prohibits discrimination on the grounds of age (over 60 years) in employment. Older workers have the right to engage in any professional employment activity and any discrimination in the hiring process based on age of workers is prohibited. Law No. 7.783 of 1999 prohibits discrimination against union workers or strike. The Federal Constitution prohibits anti-union discrimination of those employees who are candidates or are current holders of union leadership.

Law no. 12984 of 2 June 2014 considers it a crime to discriminate against HIV carriers and AIDS patients. That person is punishable by imprisonment of one (1) to 4 (four) years and a fine.

Source: §3(IV), 5(XLII), 7(XXX & XXXI) & 8(VIII) of the Constitution of Brazil, last amended in 2016; §5, 373(A) & 461-462 of the Consolidated Labour Laws (Law No. 5.452 of 1943); §1 & 2 of the Law No. 9.029 of the 1995; §38-42 of the Racial Equity Statute (Law No. 12.288 of 2010); §26-28 of the Law No. 10.741 of 2003; Law No. 7.783 of 1999; Law No. 7.716 of 1989

Equal Choice of Profession

Women can't work in the same industries as men as law requires that women should not be involved in work requiring greater physical effort. Women workers are however allowed to work at night with a premium rate of 120% of the normal wage rate for the day.

Source: §198, 381 & 390 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

11/13 MINORS & YOUTH

ILO Conventions

Minimum Age: Convention 138 (1973)

Worst Forms of Child labour: Convention 182 (1999)

Brazil has ratified both Conventions 138 & 182.

Summary of Provisions under ILO Conventions

At workplaces, children may not be forced to perform work that could harm their health and hampers their physical and mental development.

All children should be able to attend school. Once this is safeguarded, there is no objection against children performing light jobs between the ages of 12 and 14. The general minimum age is 15 years however developing countries may set this at 14 years. The minimum age for hazardous work, work that is likely to jeopardize the health, safety or morals of young persons, is 18 years. It can also be set at a lower level of 16 years under certain circumstances

Children should not be employed in a work that is likely to harm the health, safety or morals of children. It is considered one of the worst forms of child labour. The minimum age for such hazardous work is 18 years.

Regulations on minors and youth:

- Constitution of Federal Republic of Brazil, 1988
- Consolidated Labour Laws (Law No. 5.452 of 1943)

Minimum Age for Employment

Minimum age for work has been set as 16 years in the Constitution. Apprentices may start work at 14 years of age (Art. 7.XXXIII). Chapter IV of the Consolidated Labour Laws provides for various protections for the child workers. Workers from the age of 16 to 18 years are considered to be minors. Minors are not allowed to work in dangerous or unhealthy workplaces or work affecting their morals. For apprentice, age range starts from 14 years. If work hinders school attendance, such work by minors is prohibited.

Source: §7(XXXIII) of the Constitution of Brazil, last amended in 2016; §402-414 of the Consolidated Labour Laws (Law No. 5.452 of 1943); §60-69 of the Child and Adolescent Law No. 8.069 of 1990

Minimum Age for Hazardous Work

Minors under the age of 18 years may not engage in unhealthy or hazardous work as well as night work, executed between 22:00 and 05:00 hours. Decree No. 20 of 2001 lists 81 such activities in which employment of workers under 18 years is prohibited. Decree No. 6.481 of 2008 prohibits employment of workers under 18 years in hazardous activities. It lists 13 occupational classifications and 93 such activities which are considered worst forms of child labour. The occupational categories include agriculture, livestock, logging; fishing; mining; manufacturing; construction; transpiration, health services; and domestic services among others.

Source: §7(XXXIII) of the Constitution of Brazil, last amended in 2016; §402-405 of the Consolidated Labour Laws (Law No. 5.452 of 1943); Decree No. 20 of 2001; Decree No. 6.481 of 2008

12/13 FORCED LABOUR

ILO Conventions

Forced labour: Conventions 29 (1930)

Abolition of Forced labour: Conventions 105 (1957)

Forced labour is the work one has to perform under threat of punishment: forfeit of wages, dismissal, harassment or violence, even corporal punishment. Forced labour means violation of human rights.

Brazil has ratified both Conventions 29 & 105.

Summary of Provisions under ILO Conventions

Except for certain cases, forced or compulsory labour (exacted under the threat of punishment and for which you may not have offered voluntarily) is prohibited.

Employers have to allow workers to look for work elsewhere. If a worker is looking for work elsewhere, he/she should not be shortened on wages or threatened with dismissal. (In the reverse cases, international law considers this as forced labour).

If the total working hours, inclusive of overtime exceed 56 hours per week, the worker is considered to be working under inhumane working conditions.

Regulations on forced labour:

- Constitution of Federal Republic of Brazil, 1988
- Consolidated Labour Laws (Law No. 5.452 of 1943)

Prohibition on Forced and Compulsory Labour

Forced Labour and slavery (slave labour) is prohibited under the Criminal/Penal Code. It is defined as "reducing someone to conditions akin/similar to slavery. Subjecting someone to forced labour, exploitative and degrading working conditions such as long work days, unhygienic working conditions, extremely arduous work or work performed in degrading work conditions. Law provides for penalty of imprisonment of a term ranging from two to eight years as well as fine for violators of this provision. Ministry of Labour also publishes a "dirty list" every year to name and shame those enterprises involved in slave labour.

Source: §149 of the Penal Code

Freedom to Change Jobs and Right to Quit

Either party can terminate the employment contract after serving necessary notice (30 + 60 (3 days for every of service) or paying in lieu of it. For more information on this, please refer to the section on employment security.

Source: §487 of the Consolidated Labour Laws (Law No. 5.452 of 1943); Law No. 12.506 of 2011

Inhumane Working Conditions

Working time may be extended beyond normal working hours of forty-four hours per week and eight hours a day. However, total hours of work inclusive of overtime must not exceed ten hours a day in case emergency. The standard eight-hour work day may be reduced for night workers and in certain jobs where employees are exposed to the hazardous or dangerous working.

For more information on this, please refer to the section on compensation.

Source: §7(XIV) of the Constitution of Brazil, last amended in 2016; §58-65 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

13/13 TRADE UNION

ILO Conventions

Freedom of association and protection of the right to organize:
Convention 87 (1948)

Right to Organize and Collective Bargaining: Convention 98 (1949)

Brazil has ratified the Convention 98 only.

Summary of Provisions under ILO Conventions

Freedom of association means freedom to join a trade union. This is part of the fundamental human rights. Employees may not be put at a disadvantage when they are active in the trade union outside working hours. The list of exclusions for sectors of economic activity and workers in an organization should be short.

Trade unions are entitled to negotiate with employers on term of employment without hindrance. The freedom of a trade union to negotiate with employers to try and conclude collective agreements is protected. (The ILO has a special procedure for handling complaints from unions about violation of this principle).

Workers have the right to strike in order to defend their social and economic interests. It is incidental and corollary to the right to organize provided in ILO convention 87.

Regulations on trade unions:

- Constitution of Federal Republic of Brazil, 1988
- Consolidated Labour Laws (Law No. 5.452 of 1943)

Freedom to Join and Form a Union

Constitution and consolidated labour laws provide for freedom of association and allow workers and employer to join and form unions as well as professional associations (except for armed forces, uniformed police and firefighters). Workers are allowed to join unions without prior authorization. Similarly, no one can be forced to join or not join a union. Law also requires that there can be only one trade union to represent an occupational or economic category in a given area, as defined by workers and employers.

In line with Labour Law reform of 2017 (Law No. 13467/2017), union contribution is now voluntary (earlier it was compulsory) and depends on the worker's prior and express consent to it. Moreover, though the affiliation with trade union is voluntary, trade unions have the right to represent all workers within their trade or territory to conclude collective bargaining agreements.

Source: §8 of the Constitution of Brazil, last amended in 2016; §511-514 of the Consolidated Labour Laws (Law No. 5.452 of 1943)

Freedom of Collective Bargaining

Right to collective bargaining is guaranteed under the Constitution as unions are required to participate in the collective negotiations and regulated under the Consolidated Labour Laws. Unions and employers can reach agreement on various working conditions. However, according to the Consolidated Labour Laws, a collective agreement may be declared null and void if it conflicts with the government economic or financial policy or the wage policy in force.

Certain provisions must be added in a collective agreement. These include information about the parties concluding the agreement, validity period of agreement, categories or classes of workers covered by the agreement; etc. Parties to a collective agreement are not allowed to stipulate duration of a collective agreement that exceeds two years. Consolidated Labour Law requires that a new collective agreement must be signed within 60 days before expiration of a collective agreement in place.

Economic and Social Development Council (CDES) is the permanent tripartite-plus advisory body which has 108 members. The Council is convened by the President of the Republic and has the right to issue its opinions. It is responsible for advising the President on formulation of specific policies and guidelines for economic and social development.

In line with Labour Law reform of 2017 (Law No. 13467/2017), the collective bargaining agreements prevail over the provisions of Labour Law in respect of the following matters: working hours; annual hours banking; meal and rest breaks; employee representatives in the enterprises; annual holiday exchange, incentive and profit-sharing plans, telework and intermittent work and other topics as specified article 611-A of the Labour Law.

Source: §8(IV) of the Constitution of Brazil, last amended in 2016; §611- 625 of the Consolidated Labour Laws (Law No. 5.452 of 1943); Medida Provisória N° 782, De 31 De Maio De 2017

Right to Strike

Right to strike is guaranteed under the constitution subject to limits on strikes in the essential services (art. 9). The right to strike is also guaranteed for civil servants however no legislation has been passed to allow it (Art. 37.VII of Federal Constitution). Right to strike of public sector employees is regulated under Law No. 7.783 of 1989. Employers are prohibited to terminate employment contract of striking workers as well as hiring of replacement workers. List of essential services is defined in art. 10 of the law and workers are required to ensure minimum needed service during strike period.

Source: §9 & 37(VII) of the Constitution of Brazil, last amended in 2016; Law No. 7.783 of 1989



DECENT WORK QUESTIONNAIRE

The text in this document was last updated in January 2019. For the most recent and updated text on Employment & Labour Legislation in Brazil in Portuguese, please refer to: <https://meusalario.uol.com.br>

DECENTWORKCHECK.ORG

Check

Decent Work Check Brazil is a product of WageIndicator.org and
www.meusalario.uol.com.br



National Regulation exists



National Regulation does not exist

01/13 Work & Wages

	NR	Yes	No
1. I earn at least the minimum wage announced by the Government		<input type="checkbox"/>	<input type="checkbox"/>
2. I get my pay on a regular basis. (daily, weekly, fortnightly, monthly)		<input type="checkbox"/>	<input type="checkbox"/>

02/13 Compensation

3. Whenever I work overtime, I always get compensation <i>(Overtime rate is fixed at a higher rate)</i>		<input type="checkbox"/>	<input type="checkbox"/>
4. Whenever I work at night, I get higher compensation for night work		<input type="checkbox"/>	<input type="checkbox"/>
5. I get compensatory holiday when I have to work on a public holiday or weekly rest day		<input type="checkbox"/>	<input type="checkbox"/>
6. Whenever I work on a weekly rest day or public holiday, I get due compensation for it		<input type="checkbox"/>	<input type="checkbox"/>

03/13 Annual Leave & Holidays

7. How many weeks of paid annual leave are you entitled to?*		<input type="checkbox"/> 1 <input type="checkbox"/> 2	<input type="checkbox"/> 3 <input type="checkbox"/> 4+
8. I get paid during public (national and religious) holidays		<input type="checkbox"/>	<input type="checkbox"/>
9. I get a weekly rest period of at least one day (i.e. 24 hours) in a week		<input type="checkbox"/>	<input type="checkbox"/>

04/13 Employment Security

10. I was provided a written statement of particulars at the start of my employment		<input type="checkbox"/>	<input type="checkbox"/>
11. My employer does not hire workers on fixed terms contracts for tasks of permanent nature <i>Please tick "NO" if your employer hires contract workers for permanent tasks</i>		<input type="checkbox"/>	<input type="checkbox"/>
12. My probation period is only 06 months		<input type="checkbox"/>	<input type="checkbox"/>
13. My employer gives due notice before terminating my employment contract (or pays in lieu of notice)		<input type="checkbox"/>	<input type="checkbox"/>
14. My employer offers severance pay in case of termination of employment <i>Severance pay is provided under the law. It is dependent on wages of an employee and length of service</i>		<input type="checkbox"/>	<input type="checkbox"/>

05/13 Family Responsibilities





15. My employer provides paid paternity leave <i>This leave is for new fathers/partners and is given at the time of child birth</i>		<input type="checkbox"/>	<input type="checkbox"/>
16. My employer provides (paid or unpaid) parental leave <i>This leave is provided once maternity and paternity leaves have been exhausted. Can be taken by either parent or both the parents consecutively.</i>		<input type="checkbox"/>	<input type="checkbox"/>
17. My work schedule is flexible enough to combine work with family responsibilities <i>Through part-time work or other flex time options</i>		<input type="checkbox"/>	<input type="checkbox"/>

06/13 Maternity & Work





18. I get free ante and post natal medical care		<input type="checkbox"/>	<input type="checkbox"/>
19. During pregnancy, I am exempted from nightshifts (night work) or hazardous work		<input type="checkbox"/>	<input type="checkbox"/>
20. My maternity leave lasts at least 14 weeks		<input type="checkbox"/>	<input type="checkbox"/>

* On question 7, only 3 or 4 working weeks is equivalent to 1 "YES".





DECENTWORKCHECK.ORG

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 21. | During my maternity leave, I get at least 2/3rd of my former salary |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 22. | I am protected from dismissal during the period of pregnancy
<i>Workers can still be dismissed for reasons not related to pregnancy like conduct or capacity</i> |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 23. | I have the right to get same/similar job when I return from maternity leave |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 24. | My employer allows nursing breaks, during working hours, to feed my child |  | <input type="checkbox"/> | <input type="checkbox"/> |





07/13 Health & Safety

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 25. | My employer makes sure my workplace is safe and healthy |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 26. | My employer provides protective equipment, including protective clothing, free of cost |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 27. | My employer provides adequate health and safety training and ensures that workers know the health hazards and different emergency exits in the case of an accident |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 28. | My workplace is visited by the labour inspector at least once a year to check compliance of labour laws at my workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |









08/13 Sick Leave & Employment Injury Benefits

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 29. | My employer provides paid sick leave and I get at least 45% of my wage during the first 6 months of illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 30. | I have access to free medical care during my sickness and work injury |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 31. | My employment is secure during the first 6 months of my illness |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 32. | I get adequate compensation in the case of an occupational accident/work injury or occupational disease |  | <input type="checkbox"/> | <input type="checkbox"/> |













09/13 Social Security

- | | | | | |
|-----|---|---|--------------------------|--------------------------|
| 33. | I am entitled to a pension when I turn 60 |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 34. | When I, as a worker, die, my next of kin/survivors get some benefit |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 35. | I get unemployment benefit in case I lose my job |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 36. | I have access to invalidity benefit in case I am unable to earn due to a nonoccupational sickness, injury or accident |  | <input type="checkbox"/> | <input type="checkbox"/> |



10/13 Fair Treatment

- | | | | | |
|-----|--|---|--------------------------|--------------------------|
| 37. | My employer ensure equal pay for equal/similar work (work of equal value) without any discrimination |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 38. | My employer take strict action against sexual harassment at workplace |  | <input type="checkbox"/> | <input type="checkbox"/> |
| 39. | I am treated equally in employment opportunities (appointment,promotion, training and transfer) without discrimination on the basis of:* |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Sex/Gender |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Race |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Colour |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Religion |  | <input type="checkbox"/> | <input type="checkbox"/> |
| | Political Opinion |  | <input type="checkbox"/> | <input type="checkbox"/> |




* For a composite positive score on question 39, you must have answered "yes" to at least 9 of the choices.

Nationality/Place of Birth		<input type="checkbox"/>	<input type="checkbox"/>
Social Origin/Caste		<input type="checkbox"/>	<input type="checkbox"/>
Family responsibilities/family status		<input type="checkbox"/>	<input type="checkbox"/>
Age		<input type="checkbox"/>	<input type="checkbox"/>
Disability/HIV-AIDS		<input type="checkbox"/>	<input type="checkbox"/>
Trade union membership and related activities		<input type="checkbox"/>	<input type="checkbox"/>
Language		<input type="checkbox"/>	<input type="checkbox"/>
Sexual Orientation (homosexual, bisexual or heterosexual orientation)		<input type="checkbox"/>	<input type="checkbox"/>
Marital Status		<input type="checkbox"/>	<input type="checkbox"/>
Physical Appearance		<input type="checkbox"/>	<input type="checkbox"/>
Pregnancy/Maternity		<input type="checkbox"/>	<input type="checkbox"/>
40 I, as a woman, can work in the same industries as men and have the freedom to choose my profession		<input type="checkbox"/>	<input type="checkbox"/>





11/13 Minors & Youth

41. In my workplace, children under 15 are forbidden		<input type="checkbox"/>	<input type="checkbox"/>
42. In my workplace, children under 18 are forbidden for hazardous work		<input type="checkbox"/>	<input type="checkbox"/>

12/13 Forced Labour

43. I have the right to terminate employment at will or after serving a notice		<input type="checkbox"/>	<input type="checkbox"/>
44. My employer keeps my workplace free of forced or bonded labour		<input type="checkbox"/>	<input type="checkbox"/>
45. My total hours of work, inclusive of overtime, do not exceed 56 hours per week		<input type="checkbox"/>	<input type="checkbox"/>

13/13 Trade Union Rights

46. I have a labour union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
47. I have the right to join a union at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
48. My employer allows collective bargaining at my workplace		<input type="checkbox"/>	<input type="checkbox"/>
49. I can defend, with my colleagues, our social and economic interests through "strike" without any fear of discrimination		<input type="checkbox"/>	<input type="checkbox"/>

DECENTWORKCHECK.ORG

Results

Your personal score tells how much your employer lives up to national legal standards regarding work. To calculate your DecentWorkCheck, you must accumulate 1 point for each YES answer marked. Then compare it with the values in Table below:



is your amount of "YES" accumulated.

Brazil scored 48 times "YES" on 49 questions related to International Labour Standards

If your score is between 1 - 18

This score is unbelievable! Does your employer know we live in the 21st century? Ask for your rights. If there is a union active in your company or branch of industry, join it and appeal for help.

If your score is between 19 - 38

As you can see, there is ample room for improvement. But please don't tackle all these issues at once. Start where it hurts most. In the meantime, notify your union or WageIndicator about your situation, so they may help to improve it. When sending an email to us, please be specific about your complaint and if possible name your employer as well. Also, try and find out if your company officially adheres to a code known as Corporate Social Responsibility. If they do, they should live up to at least ILO standards. If they don't adhere to such a code yet, they should. Many companies do by now. You may bring this up.

If your score is between 39 - 49

You're pretty much out of the danger zone. Your employer adheres to most of the existing labour laws and regulations. But there is always room for improvement. So next time you talk to management about your work conditions, prepare well and consult this DecentWorkCheck as a checklist.