

# Labor law in need of reform



**Kalinka Iaquinto**, *Rio de Janeiro*

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THE LAW GOVERNING THE LABOR MARKET in Brazil has been the subject of discussion for decades. Workers, employers, legislators, jurists, and governments all agree that Brazil's 70-year-old labor law (CLT) needs reforms to align it with those of other countries. However, it is difficult to identify which points to reform. In Brazil, labor reforms, especially legal, induce insecurity; they affect not only relations between employers and workers but also the economy as a whole.

"More and more, investors are aware of the difficulty of predicting what will happen. Some say that in Brazil even the past is not predictable," says José Pastore, professor in the Economics and Business Department, University of São Paulo. In Brazil, changes in the law can often have retroactive effects. Examples are the changes made in 2011 in the law of prior notice (Law 12,506), which substantially

increased severance costs because employees with up to one year of employment who are laid off are entitled to 30 days notice or indemnity, plus three days for each additional year of service, up to a total of 90 days

Businesspeople agree with Pastore. Alexandre Furlan, chairman of the Labor Relations Council of the National Confederation of Industry (CNI) added that labor law in Brazil is too subjective and does not actually protect those who really need protection. That point was picked up by Luiz Guilherme Migliora, professor of labor law at the Getulio Vargas Foundation (FGV), who noted that "Our laws [give] the same level of protection and official procedure for everyone, from the factory floor worker to employees in executive positions." He noted that "Current law causes uncertainty, which generates expenses that raise the overall

cost of doing business.” Migliora estimates that on average for every R\$1 paid to the employee, the employer is actually paying out R\$1.54 to R\$1.65.

### Resistance

Pastore believes that labor reforms are necessary to boost competitiveness of the Brazilian economy as a whole and enhance job quality. Though he agrees that labor reforms are needed, Fernando de Holanda Barbosa Filho, researcher for the Brazilian Institute of Economics (IBRE) is pessimistic that anything will be done: “We tried to reform the labor laws when unemployment was 14% and reforms were rejected. With unemployment at 6%, certainly no one will accept it.”

Clemente Ganz Lúcio, technical director, Department of Statistics and Socioeconomic Studies (Dieese), advocates constant upgrading of labor laws to keep them current with the transformations in the world and society’s, but he points out that “many times the corporations want to cut back workers’ rights” and comments that “if reform means job instability or less workers’ rights, there is no union support.”

CNI’s Furlan thinks that is too pessimistic. He explains that recommended changes that CNI presented to the government last December take into account the preservation of workers’ rights guaranteed by the Constitution and law, but also deal with issues related to productivity and business competitiveness in a fast paced globalized economy with new technologies. “The world has changed and

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we are lagging behind. Today, the legal situation is different from what existed 70 years ago,” he adds.

One concept that underlies Brazilian labor law is that the worker is the weakest party in negotiations and must be protected. Yet both employers and employees agree that this is not necessarily so. “The labor law was implemented in a context where the government controlled negotiations between corporations and labor,” says Artur Henrique da Silva Santos, assistant secretary of international relations, Workers’ Central Union (CUT). He advocates greater autonomy and the

**Brazil payroll taxes are high, adding as much as 65% to the cost of hiring a worker.**

13th monthly salary	8.3%
Paid vacations	8.3%
Vacation bonus	2.8%
Guarantee Fund for Time of Service (FGTS)	8.0%
FGTS fine	4.0%
Social Security tax (INSS)	27.0%
Other taxes	6.8%
<b>Total</b>	<b>65.3%</b>

Source: Luiz Guilherme Migliora, FGV.

## Shorter workweek?

### Kalinka Iaquinto

In most countries a shorter workweek is one of the main demands when labor law changes are being discussed. In Brazil, the 1988 Constitution cut the workweek from 48 to 44 hours to reduce unemployment. Although it is not a priority topic today, a shorter workweek is still often a union demand, and current proposals are to first reduce the workweek to 40 hours and then to 36, without cutting wages. The International Labor Organization says that most countries now have a 40-hour workweek.

According to José Pastore, professor in economics and business administration at the University of São Paulo, government data show that half of the workers in Brazil already work 40 hours or less weekly. "But this is being done by negotiation," he says, pointing out that setting the same workweek for different sectors may abruptly raise costs, which could reduce investments and jobs.

Alexandre Furlan, who chairs the Council of Labor Relations of the National Confederation of Industry, agrees that a shorter

workweek discourages job creation. "You have a cost increase of at least 10% with no guarantee of growth in productivity," he says, adding that in the last 10 years industrial production grew only 4% while the minimum wage in U.S. dollars went up 100%.

"We should be working to reduce working hours without loss of pay, providing more time for leisure, education, and family. Unfortunately there is strong opposition from business, which says that costs will be increased. Nobody talks about lowering profit margins," says Artur Henrique da Silva Santos, assistant secretary of international relations of the Workers Central Union.

A study by Fernando de Holanda Barbosa Filho and Samuel de Abreu Pessôa, IBRE researchers, found that part of the loss of labor productivity between 1982 and 1992 was due to the reduced workweek. Unions disagree. "Today we manufacture twice as many products as in the past with half the number of workers on account of more advanced technology and increased productivity," says Silva Santos.

validity of collective bargaining: "The labor law is very restrictive of collective bargaining . . . it does not promote direct negotiations between labor unions and representatives of businesses."

FGV's Migliora believes that the best reform would be to allow free bargaining

between workers and employers. "The labor legislation is not only expensive in terms of benefits, but also expensive in terms of management," he says.

Relatively simple company-labor agreements are not always respected by the courts. For instance, in some

companies, workers and employers agreed to reduce the time for lunch so that employees leave early or do not have to work on Saturdays, but the Labor Court has banned the practice.

Such court actions only bring losses for both parties. Companies lose because they risk prosecution, fines, and social charges, and workers lose because they are denied the working conditions they wish. "It's a huge waste of money, while the two parties could otherwise be in a win-win situation," Pastore says.

Although free bargaining between workers and employers is one of the few points where there is consensus between them, others disagree. Says Senator Paulo Paim (Workers' Party), "Who has more power in the negotiation, corporations or labor? Corporations. If employers say that they cannot meet some articles of the labor law, often employees will agree in order not to lose their jobs,"

Ives Gandra da Silva Martins Filho, Inspector General of the Superior Labor Court, believes that both legislators and judges are being paternalistic about workers, in many cases abolishing the role of unions. But he warns that not every category of workers is well-represented or has its interests protected. He also advocates reforming unions: "There is only a single union per category and they receive dues; today's union leaders do not want to change the system because they have easy money and a guaranteed monopoly. They do not negotiate in the best possible way and sometimes the worker is left unprotected and comes to the courts."

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Silva Santos of CUT admits that happens. He says some union representatives do not wish to change the status quo, and this insistence on relying on the state via union dues ultimately affects how these unions defend the interests of workers. "Some businesses call for more flexibility and changes in workers' rights under the law. We do not agree with this because first we need to have strong unions, truly representative. And that depends on changes in the structure of unions," he says. Some workers are asking that the government ratify Convention 87 of the International Labor Organization (ILO), which deals with freedom of association and protection of the right to organize. Silva Santos believes ratification of the ILO convention would reduce the number of worker suits against corporations.

### **Guarantee**

The disagreements do not stop there. Congress is considering a very controversial topic: Law 4330 of 2004 governing outsourcing. No one disputes that the matter should be regulated; after all there is a worldwide trend to use contract labor. However, corporations need to have

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security about the extent to which they can outsource services, and contracted workers need to have some rights guaranteed.

Today, about 11 million Brazilians are contract workers, and most have no rights guaranteed as workers covered by the labor law have. A Dieese survey in 2011 found that contract workers work about three hours more a day, earn 27% less than permanent employees, and have less job stability. Moreover, 8 out of 10 workplace accidents in Brazil involve contract workers.

In Latin America, only Brazil and Colombia have no regulations on contractual labor. "Outsourcing is an irreversible phenomenon," says da Silva Martins Filho. "We need to outsource, but outsourcing should be done well and be as fair as possible."

Furlan agrees, explaining that "Outsourcing is a modern way to organize economic activities." With outsourcing, companies have access to more know-how, better techniques, and greater efficiency, which are linked to productivity.

A CNI survey highlighted that in 12 of the 27 manufacturing sectors, the share of companies that contract with workers is more than 60%; on average for industry, the share of contract workers in the total workforce of a company is 14%. Of companies that contract for services, 91% do so to lower costs, 46% think it makes them more competitive, 75% monitor to ensure that companies they contracts with comply with labor laws, and the majority also monitor whether the contractor complies with health and safety regulations.

Representatives of the workers do not see the picture in such rosy terms. They argue that discussions on regulating outsourcing should be broader to prevent fraudulent companies from operating in the market. "We need to build a proposal that ensures workers rights," says CUT's Silva Santos.

"It's hard to change the CLT because we have a Workers' Party government and unions see the labor law as something sacred," Migliora says, adding that Brazil will nevertheless eventually have to reform it not only to make the country more competitive but also to encourage entrepreneurship. ■

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