Employment Contract Terms (Brazil)

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A Note providing an overview of all the key contract terms that can be included in employment contracts in Brazil, practical guidance for drafting and reviewing the employment contract, and information about what rights an employee has on commencement of employment in Brazil.

In particular, it looks at rights acquired after continuous employment; probationary periods; mobility clauses; salary, bonuses, and benefits; holiday; working time; sick leave; termination; data protection; intellectual property (IP); restrictive covenants; governing law and jurisdiction; language of the employment contract; and execution.

Regulation of the Employment Relationship
- Express Terms
- Implied Terms
- Collective Agreements

Statutory Rights on Commencement

Continuity of Employment

Permission to Work

Probationary Periods

Job Duties
- Implied Duties

Mobility and Relocation of Employees
- Working Overseas
- Relocation Expenses

Salary and Bonuses
- Deductions from Salary
- Bonuses

Benefits
- Retirement
- Life and Medical Insurance
- Changes to Benefits

Holiday
- Minimum Holiday Entitlement
- Holiday Bonus

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- Public Holidays
- Carrying Over
- Untaken Holidays
- Excess Holidays Taken

Restrictions on Working Time

- Full-time Working Hours
- Part-time Working Hours
- Overtime

Illness and Injury of Employees

- Continued Employer Contributions to any Benefits
- Medical Examinations

Termination of Employment

- Notice Period for Employees
- Notice Periods for Employers
- Notice in Writing
- Payment in Lieu of Notice
- Termination Without Notice
- Employer's Obligations on Termination

Dismissal and Disciplinary Policies and Procedures

Data Protection

- Employees' Data Protection Rights
- Employer Data Protection Obligations
- Monitoring Employees

Intellectual Property (IP)

Restrictive Covenants

- Restriction of Activities During Employment
- Post-Employment Restrictive Covenants

Variation of Contract

Entire agreement

Survival of Obligations

Governing Law and Jurisdiction

Language

Execution

Counterparts

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This Note considers the rules and practice governing employment contract terms in Brazil. It sets out the key terms and any other commonly included terms or issues relating to the form and content requirements of written contracts, the terms that they contain, and the legal restrictions imposed.

Regulation of the Employment Relationship

Any person engaged in a form consistent with the legal definition of employment is deemed to be an employee and is entitled to the corresponding benefits. An employee is an individual who:

- Is paid to provide work or services personally to a company or another individual on a regular and continuous basis, under the co-ordination, supervision, and orders of the employer.
- Is duly remunerated for such work or services.
- Does not share in the risk of the employer's business.

Article 3 of the *Labour Code* sets out a basic framework of the employee's rights and duties and the employer's powers and obligations. The law can be supplemented by a CBA (see *Collective Agreements*). Employers are free to set their own internal rules and employment conditions, as long as they are not in violation of the statutory rules.

Employers must keep certain documents for governmental control and taxation, such as, at a minimum:

- Files recording the employees' personal and employment data.
- Occupational health documentation, regarding both the employees and the workplace.
- Payroll and payment slips
- Records of employees' holidays.
- Termination documents.
- Records of working hours control systems, for businesses with more than 20 employees only.
- Tax receipts and reports.
- Governmental reports on hirings and dismissals.

The employer must also make the appropriate entry in the employee's workers booklet called the *Carteira de Trabalho e Previdência Social* (CTPS), which now has an electronic format.

Express Terms

A written contract of employment is not required but it is recommended for evidential purposes so the employer can prove specific employment conditions, such as acknowledgement of internal policies (such as, on the use of information technology). In particular, provisions on telework (remote working) provisions must be in writing, if applicable.

In addition, the employer must include the following information in the CTPS:

- Employment start date.

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- Job title.
- Employer tax ID.
- Employees' salary.
- Any other data that the employer deems necessary.

Employment agreements, as well as collective bargaining agreements (CBAs) and collective labour agreements (CLAs) (see *Collective Agreements*) are structured in clauses. Both articles and clauses can have subdivisions called paragraphs, which may have subdivisions in roman numerals called items, which may have subdivisions in letters, also called items.

Implied Terms

Brazilian Law implies that employees:

- Must act in good faith.
- Have a duty of loyalty to their employer.
- Must comply with all orders given by the employer.
- Cannot disclose any information about the employer's business.
- Must be dedicated exclusively to their work during working hours.
- Have a duty not to compete with the employer.

The main provisions of the *Labour Code* (such as, among others, those regulating changes of work terms and conditions, suspension, termination, notice of termination and payment in lieu, protection against involuntary dismissal, force majeure, working hours, wages, telework, vacations, occupational health, 13th month salary, and any special conditions applicable to certain professions, such as bankers, journalists, and maritime workers) are implied into employment contracts and do not need to be included explicitly.

The provisions of any relevant CBA (see *Collective Agreements*) are also automatically implied into employment contracts.

An employer's internal rules are usually set out in writing, but they may be implied and will be valid if consistently observed.

According to the principle that substance prevails over form, non-written conditions that exist in practice will prevail over non-observed written stipulations. For example, the law sets out maximum working hours of eight hours per day and 44 hours per week, but it is quite common to work only 40 hours per week (eight hours per day Monday through Friday). In such cases, 40 hours per week will be the implied working hours and any hour in excess of that will be overtime.

Collective Agreements

Trade unions and their counterparts representing employees and trade associations, have statutory authority to negotiate a CBA to apply to all employment agreements within their territory of representation. In Brazil, CBAs are valid for 12 or 24 months.

Union representation is exclusive by trade and territory, for example, the metalworkers' union in the city of São Paulo does not represent workers from a different city, nor workers in São Paulo of a different trade.

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The application of any given CBA to all employees is automatic. CBAs usually provide for:

- A minimum wage.
- Annual salary adjustment.
- Overtime and night-work premiums.
- Protections against involuntary dismissal.
- Maximum working hours.

The CBA can provide for different conditions and benefits to the law in certain matters, such as lunch breaks, teleworking, and employees on-call and intermittent work among others (Law 13,467/2017). However, the CBA must not interfere with the employee's fundamental rights (see *Statutory Rights on Commencement*).

A company can enter into CLAs that apply to its employees only. The CLA may provide for different conditions and benefits to the CBA (Law 13,467/2017). The CLA usually addresses issues that are specific to a company, such as rotating work shifts, setting-off of overtime against time off, profit sharing, and so on.

Statutory Rights on Commencement

Under the Labour Code, an employee has the following statutory rights on commencement of employment:

- Limited working hours.
- Minimum number of hours off work between shifts.
- Meal and rest breaks.
- Premiums for nightshift work, overtime, and hazardous or unhealthy work.
- Paid weekly holiday.
- Right to take leave.
- Annual paid holiday and holiday bonus.
- Notice of termination.
- Constructive termination and severance fees.
- Protection against detrimental changes to working conditions.
- Right to equal pay for equal work.
- Annual salary adjustments as per the CBA.
- Transfer to a different location, subject to prior consent and transfer premium if the transfer is temporary.
- Safe working conditions.

It is not possible for workers to waive their rights.

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Several categories of employee receive special protection, including:

- Pregnant women.
- Union representatives.
- Members of work safety committees.
- Workers returning from medical leave due to a work accident or work disease.
- Disabled workers.

The most relevant statutory rights are:

- **The right to holiday and a holiday bonus**. For each 12 months of continuous employment, employees are entitled to 30 calendar days of holiday with salary and a holiday bonus (see *Holiday* and *Holiday Bonus*).
- **Payment of a thirteenth month's salary**. This is equal to the employee's highest monthly global compensation received during the year.
- **Funding of social security through contributions made by the employer**. Contributions vary according to certain work risk elements but are usually around 28% of salary. Such contributions are paid to the *Instituto Nacional do Seguro Social* (INSS) (a governmental institution) and are treated as proper taxes under the law. This means that they are subject to audits by the Federal Revenue Service, fines for payment in arrears, fines for unpaid amounts detected by the auditors, and prosecution in case of tax evasion.
- **Employer contributions to the Guaranteed Severance Fund (*Fundo de Garantia por Tempo de Serviço*).** These payments are made via monthly deposits into a bank account kept by a federal bank for the benefit of the employee. Deposits are equal to 8% of global compensation, including benefits in kind. The employee can only withdraw the funds in specific circumstances, one of which is termination without cause.

Continuity of Employment

Brazilian law recognises the concept of continuity of employment, that is, working for the same employer without a break in the employee's period of employment. The length of continuous employment gives certain rights to employees such as entitlement to increasing levels of severance pay and vacation days as their employment continues. How this works in practice will depend on the particular circumstances of employment.

Employees can also acquire a right to something that is repeatedly granted to them by their employer, such as more favourable working conditions than those originally provided in the employment contract. This would be the case, for example, if the employment contract provided for 44 weekly hours of work, but the employee consistently only worked for 40 hours (see *Implied Terms*). There is no set period necessary for a right to be acquired. The labour courts assess this on a case-by-case basis.

According to court precedents, a benefit can become an acquired right after six months. If an employer communicates to their employees that the benefit is temporary, then a right to it may not be considered to have been acquired. However, this will only be the case if the benefit is available for no longer than a moderate period, usually up to 12 months.

Permission to Work

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With increasing focus on illegal immigration and often significant penalties for non-compliance, every employer needs to ensure that their employees have the required eligibility to work in the relevant territory where they are being employed.

The employment contract can make employment conditional on a visa, work permit, or similar. In fact, the employment agreement can serve as a basis to apply for a work visa.

In certain circumstances, the employer may want to expressly include requirements in the employment terms to ensure that the employee is eligible to commence their employment. For example, the employer may want to make any offer of employment subject to the employee having the required qualifications.

The employment contract can make employment conditional on professional qualifications, licenses or standards being obtained or maintained by the employee. The forfeiture of a professional licence can result in the termination of the employment agreement for just cause.

An employer will also be keen to ensure that any new employee is not breaching any restrictive covenants or confidentiality obligations with their former employer, where applicable, when they commence their new employment.

The employment contract can include a warranty that the employee is not in breach of any agreement, contract or arrangement that prevents them from lawfully fulfilling their obligations to the new employer.

Probationary Periods

Probationary periods are recognised if the employee has not had a previous employment agreement with the employer. A probationary period must not exceed 90 days. If it does, the employment automatically becomes open ended. The probationary period is usually included in the employment contract, except in the case of a rehire of a former employee (in which case probation is not required).

Job Duties

The following contractual duties are understood by employees in Brazil, as long as they are clearly explained and communicated by the employer:

- To use best endeavours to promote and protect the interests of the employer and its related corporations.
- To faithfully and diligently perform all duties assigned by the employer in good faith.
- To comply with any policies and guidelines of the employer.
- To comply with all rules, regulations and guidelines laid down by any relevant authority or regulatory body.
- To comply with the employer's anti-bribery and anti-corruption policy and related procedures at all times.
- To avoid any position in which the employee's personal interests might conflict with their duties and obligations in the employment contract.

The following duties would not be acceptable in Brazil:

- Outside working hours, not be involved in any employment, trade, business, office, or work, or retain any fee, except with the written consent of the employer.

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- For the employee to devote themselves exclusively to the business of the employer.

A duty of exclusivity is implied into employment agreements, but only during working hours. Employees are free to undertake any other work or investment when off-duty to the extent that it does not constitute any conflict with, or detriment to, the employer's business and interests.

Implied Duties

Law 9279/1996 implies rights on confidentiality and work made for hire into employment agreements. Although the employer’s confidential information is protected by law, express contractual provisions can help to improve employee awareness of their confidentiality obligations by providing details about the nature and form of proprietary information.

Work made for hire is the substance of the employee's work, that is, the work that the employee is paid for, in contrast to work that is not part of the employee's job but is done anyway, for example, a human resources manager who develops a new functionality for a payroll software.

Mobility and Relocation of Employees

Relocation generally requires employee consent. Mobility clauses are acceptable if the relocation is intrinsic to the employee’s job. Otherwise, explicit employee consent is required to relocate them.

Working Overseas

An employer must inform their employees of where they will be required to work and whether any changes to the place of work may be required. This is especially important when the place of work is outside the employee's current domicile.

If a change of place of work had not been previously agreed with an employee, and was made at the discretion of the employer, the employee's consent to the move and its timing are required.

The law does not require the employer to provide specific information in the employment agreement regarding the country in which the employee will be working. However, the employer has a general duty to provide all information that is relevant to the employment agreement.

Relocation Expenses

In certain circumstances, when an employee is relocated, particularly when the employee is relocated overseas, the parties will agree that certain expenses are reimbursed by the employer.

A clause stating that the employee must repay location expenses on termination of the agreement cannot be included in the employment contract as it would be in breach of the employer's duty to pay relocation expenses under Article 470 of the Labour Code.

Relocation expenses paid to an employee are not taxed as wages, provided they are a reimbursement of actual moving expenses. If the company pays an allowance to cover relocation without checking the actual expense report, the allowance might be taxed as wages.

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Salary and Bonuses

In Brazil, the gross annual salary that the employee will be paid is stated in the employment terms together with the frequency of payments, which is traditionally on a monthly basis (see *Express terms*). The maximum frequency of salary payment is every 30 days, which is the default provision in Brazil. If the employer chooses to pay an annual salary, it would need to grant a 13th month payment.

It is a legal requirement to adjust salary annually at least in line with inflation, according to the rates set out in the relevant CBA.

Salary reviews based on performance are a matter for an employer's internal policies. However, once an employer notifies their employees of this policy, it becomes binding on the employer.

Deductions from Salary

Wages are protected against discretionary deductions and the employee's consent to deductions must be specific. Tax withholding does not require the employee's consent as it is a legal requirement.

Deductions from salary require the employee's prior and express consent on every occasion they are made, unless the deduction relates to advance payment of compensation (that is, salary, commission, or bonus), in which case consent is unnecessary.

An employee can challenge their consent to deductions on the grounds of economic constraint. Repayment (as opposed to the employer making deductions from the employee's wages) is preferred.

An employer has the right to deduct the value of loans made to employees from severance payments, up to one month's salary. An employer's right to deduct amounts in excess of this are subject to the employee's specific and written consent.

Bonuses

An employee may also receive a bonus as part of their remuneration package.

Discretionary bonuses are allowed. Once the employer communicates an offer of a bonus to an employee in writing it becomes binding. Depending on its contents, an email from management could constitute a binding offer. If there is a binding offer, a clause which states that the bonus is not part of the employee's contractual remuneration will not be entirely enforceable. The clause will only bind the employer to the extent that it benefits the employee, it will not be binding if it is detrimental to the employee.

However, a binding offer would not be created where there is a clause which expressly states that the employer may pay a bonus in its absolute discretion, that any bonus does not form part of the employees' contractual remuneration, and that paying a bonus in one financial year does not oblige the employer to pay one in subsequent years.

If discretionary bonuses are repeatedly and consistently paid they may be implicitly incorporated into the employment agreement. This usually takes five years.

Clauses which also state that the employee will have no right to a bonus if they have not been employed for the full financial year or if they are under notice of termination at the time of payment have been contested. In these circumstances, the courts have held that prorated bonus payments should be made to employees on equitable grounds if the employment was terminated without just cause.

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In a recent case, it was held that "the plaintiff actively contributed to the achievement of goals set to receive the profits that are divided between the employees, and it cannot be considered that the mere dismissal on a date before that stipulated for the profits distribution negates the right for the employee to be paid the portion of profits they were entitled to" (*ATSum 1000874-28.2023.5.02.0471, 1st District Labor Court of São Caetano do Sul, Regional Labor Court of São Paulo, 2nd Region (TRT02*)).

Benefits

Retirement

The official government retirement plan applies by default. It is funded by statutory contributions made to the INSS (see *Statutory Rights on Commencement*). As it is a strict statutory entitlement, no additional provisions need to be made in the employment contract with regard to any INSS contributions.

Private pension plans are voluntary, and they are not subject to employment laws, but rather to the regulations of Law 109/2001.

Life and Medical Insurance

Life and medical insurance benefits are not required by law but may be required by the applicable CBA. If required by the CBA, they may be effective as of the first day of employment. In any case, even if they are strictly voluntary benefits, labour courts have decided that they amount to social support and therefore are not taxable benefits.

Changes to Benefits

Any change to the employee's individual benefits requires the employee’s prior, express consent. Any changes that would adversely affect the employee are not permitted under Brazilian law, and the employee's consent is invalid if the change results in a loss to the employee (Article 468, Labour Code).

A change to the collective benefits provided for in a CBA requires a new CBA.

A change to the benefits provided for in an employer’s policy requires only the formal amendment of the policy, provided it does not result in any loss to the employee, for example, a change of healthcare carrier.

Holiday

Minimum Holiday Entitlement

For each 12 months of continuous employment, employees are entitled to 30 days of paid holiday (see *Statutory Rights on Commencement*).

Unless there is an agreement in writing, all 30 days of holiday must be taken in one block. If there is an agreement in writing, the 30-day period can be split into three periods. One of these periods must have at least 14 days and the other two must have at least five days each. Holiday can also be split in cases of shut down for year-end holidays. This depends on union approval.

Holiday must be taken within the 12 months of completion of the corresponding accrual period by the employee. By way of example, an employee hired on 1 November 2023 will accrue their full holiday entitlement on 31 October 2024, which must

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then be used in full by 31 October 2025. The following holiday allowance will accrue on 31 October 2025 and must be used by 31 October 2026. Unused holidays cannot be carried over (see *Carrying Over* and *Untaken Holidays*)

Holiday Bonus

Employees are also entitled to a holiday bonus. This is an incremental premium equal to one third of the employee's monthly global compensation (their salary plus average variable compensation and benefits in kind). The holiday bonus is accrued together with the employee's yearly paid holiday.

The employer pays the bonus when the employee goes on holiday, at least two days before the beginning of holiday period. If the employee takes holiday in more than one period, the bonus will be proportional to each period and paid at least two days before the beginning of the relevant holiday period.

Public Holidays

There are seven federal holidays, plus two or three state or local holidays. These are in addition to the paid holiday employees are entitled to.

Carrying Over

Unused holiday does not carry over to the following year. Untaken or untimely holiday (that is, holiday granted after the period in which it can be taken has expired) requires the employer to indemnify the employee by doubling their holiday pay.

Untaken Holidays

It is mandatory that all holiday is taken. If it is not taken, or granted after the appropriate term, the employer must pay an indemnification equal to the holiday allowance, therefore doubling the employee's holiday pay (Articles 129 to 145, Labour Code).

The employer may also have to pay an administrative fine.

Excess Holidays Taken

Employers cannot grant holiday before it is due, so it is not possible for an employee to build up excess holiday entitlement or pay.

Restrictions on Working Time

Full-time Working Hours

Working hours are capped at eight hours per day and 44 hours per week, although some professions and workplaces (for example, oil rigs) have special rules. If the work-shifts rotate, then the maximum hours will be six hours per day and 36 hours per week.

An employer can agree shorter working hours with employees but not longer hours. Overtime is allowed, with some exceptions (for example, rotating shifts) (see *Overtime*).

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The Labour Public Attorney's Office has been very active in suing employers that impose regular and excessive overtime on their employees.

The rules on breaks are the same for all workers. If working hours are in excess of six per day the employee has the right to a break of between one and two hours. However, the parties can agree to reduce it to at least 30 minutes. If working hours are less than six per day, the employee has the right to a 15-minute break.

Part-time Working Hours

Part-time workers can only work for either:

- 30 hours per week, with overtime prohibited.
- 26 hours per week plus up to six hours of overtime.

Benefits are the same, but salary is prorated as compared to full-time workers.

Overtime

Overtime is limited to two hours per day, except in emergency situations.

Overtime payment is mandatory with three exceptions:

- Employees in management positions.
- Employees engaged in outdoor work that makes it impossible to keep track of working hours.
- Employees who mainly work from home using computers or telecom devices under the Telework Regime, if the employer has not stipulated any practical mechanism to keep track of working hours. The Telework Regime is recognised by the Labour Code.

The employer may have a specific agreement to give time off in lieu of overtime pay. The hour bank or hour account agreement (which is a formal agreement, like a set-off agreement, through which the company gives the corresponding time off instead of simply paying for overtime) must be agreed with the relevant trade union if time off will be taken in a period of up to one year. Individual agreements between the employer and the employee are permitted if time off is taken in a period of up to six months (or 30 days with a mechanism that is simpler than the hour account).

Illness and Injury of Employees

Employees are entitled to take time off in the case of illness or injury if medically prescribed. Employers may grant time off, at the employee's request and without a medical prescription, at their discretion.

An employer must pay their employees for the first 15 days of time off in the case of illness or injury.

For longer periods of leave, payment will be made by the government, based on a medical prescription by an INSS expert.

An employer can agree with the government that the employer will pay for such extended time off in return for setting these payments against the social security taxes levied on its payroll. Such arrangement might be required by the applicable CBA.

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Continued Employer Contributions to any Benefits

There is no general legal requirement for the employer to continue making payments to the employee's pension or retirement scheme during any period of incapacity, but it may be required by the pension scheme's rules, or by a CBA.

Medical Examinations

Employers cannot require employees to undergo medical examinations at any time by including such a clause in the employment contract. However, the law requires specific examinations paid for by the company, mainly upon engagement and dismissal, or returning from long medical leave. These examinations are meant to determine if the individual is fit for work.

Termination of Employment

Notice Period for Employees

Employees must give 30 days' notice before leaving employment (Article 487, Labour Code).

During the probation period, no notice is required for the employee to terminate, although the employee must indemnify their employer for proved losses and damages. The amount of the indemnification cannot exceed the amount the employee would have been entitled to in the event of termination by the employer (that is, half the wages due to the employee from the date of termination until the completion of the probation) (Article 480, Labour Code) (see *Notice Periods for Employers*).

The employment agreement can provide additional notice terms but only if they benefit the employee, not the employer.

Notice Periods for Employers

Employers must give 30 days' notice plus three days for each year served from the second year onwards, up to a maximum of 90 days’ notice. The additional days beyond 30 days must be given as payment in lieu of notice.

During the probation period, no notice is required, but the employer must pay half of the wages that would be due from the date of termination until the completion of the probation (Article 479, Labour Code).

Notice in Writing

There is no requirement to give notice in writing, but it is advisable to do so for evidential purposes.

Payment in Lieu of Notice

The party terminating the agreement may choose to make a payment in lieu of notice of termination.

Termination Without Notice

An employer can terminate their employee's employment without notice if they have just cause as provided by the Labour Code (Article 482). This would consist of a serious breach of the employee's contractual or legal duties. Gross misconduct can constitute just cause depending on the circumstances and consequences of it.

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A clause allowing immediate termination without notice for gross misconduct in an employment contract is permissible but not necessary as this type of termination is expressly provided for by Article 482 of the Labour Code.

Employer's Obligations on Termination

No filings on termination of employment are required under the law. Filings may be required depending on the provisions of the relevant CBA.

The employer must arrange a medical examination for the employee on termination.

Provision for payment of additional discretionary indemnification on termination, notably to executives, may have been included in the employment agreement.

Dismissal and Disciplinary Policies and Procedures

The law does not provide for disciplinary procedures, except for the dismissal of a union representative (in which case, there is a special judicial procedure).

The employer has the right to follow disciplinary procedures for breach of legal or contractual duties by the employee. The employer may ignore the breach, or excuse it, or it may start an investigation as it believes necessary or convenient. Evident cases of gross negligence or misconduct may result in summary dismissal.

However, employers do not have to follow the disciplinary procedure in the event of termination for convenience (the right to bring the contract to an end without the need to establish that the other party is in default).

The employer can terminate employment for convenience at any time, except if the employee is entitled to statutory temporary protection due to a special condition, such as pregnancy.

The disciplinary procedure to be followed, if any, is for the employer to determine at its discretion. It is advisable not to incorporate the disciplinary procedure into the employment contract, but rather make reference to it in a separate policy so that changes can more easily be made.

The disciplinary procedure must comply with general legal principles and individual rights., such as good faith, confidentiality, immediacy, proportionality, equal treatment, and non bis in idem (disciplinary action cannot be applied twice to the same employee). The employer cannot detain an employee and prevent them from leaving company premises as part of their disciplinary investigations.

Disciplinary actions can include reprimand, suspension, and termination for just cause.

Any review of an employer's disciplinary rules and policies must not adversely affect the employee's rights (for example, cancellation of a healthcare plan) or importantly, the employee's compensation.

Data Protection

Employees' Data Protection Rights

A clause which states that the employee consents to the employer holding, processing, and disclosing personal information to third parties (within and outside Brazil, for example to company headquarters, other offices, the national tax office, pensions

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trustees, benefits providers, contractors, advisers, purchasers, and so on) would not fulfill the statutory requirements of the Brazilian General Personal Data Protection Law (13,709/18) (LGPD). The National Data Protection Authority (ANPD) is responsible for supervising and editing rules on personal data processing (Law No. 14,010/2020).

Employers should review employment contracts and internal policies and practices to fully comply with the LGPD. The LGPD replicates key points of the EU General Data Protection Regulation (GDPR), but it is drafted specifically for Brazil and differs in some areas. Compliance with the GDPR does not ensure compliance with the LGPD.

The LGPD applies to any agent (individual, legal entity, or public agency) who performs data processing. Under this legislation, data processing is "any operation carried out with personal data". This ranges from:

- Access to the data of employees, suppliers, and consumers.
- The storage, transfer, classification, and erasure of personal data.
- Any other handling of such personal data.

The legislation is relevant to various departments within companies, including marketing, HR, IT, legal, and compliance. The LGPD applies to companies established in Brazil, to any entities which process or collect data in the Brazilian territory, and to companies that aim to offer or supply goods and services to individuals located in Brazil.

The international transfer of data is only authorised in the circumstances set out in the LGPD, which include, but are not limited to:

- Transfer to countries that provide a level of protection deemed appropriate by the competent data protection authority.
- Transfer by means of standard contractual clauses, by which the data controller guarantees compliance with the law.

It should be noted that data from and to other countries that are only passing through Brazil, without undergoing any processing, may not be subject to the law.

Employers have rights and duties to process any information that is necessary or relevant to employment procedures. Usually, this brief mention of the employer's rights and duties when handling employees' personal information will be included in the contract of employment, with a reference to the employer's policy for more exhaustive details.

The employee's consent is not required for the employer to be able process any information that is necessary or relevant to employment procedures (for example, employee's taxpayer registration number and bank data), or where consent has been tacitly given (for example, data from an employee's spouse or children for healthcare insurance).

Employer Data Protection Obligations

Employers must preserve the confidentiality of employee data as necessary according to the circumstances.

Brazilian law also stipulates severe fines for breaches of data privacy obligations. The ANPD, the regulatory body responsible for overseeing, implementing, and supervising compliance with the LGPD in Brazil (see *Employees' Data Protection Rights*) administers these fines.

Monitoring Employees

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Employers can monitor and record electronic communications, and it is not necessary to include a provision to this effect in the employment contract, although it is advisable to make reference to monitoring powers in the employer's policies on the use of company email and internet. However, employers are not entitled to read employees' private messages or materials.

Intellectual Property (IP)

If creating IP is part of the employee's job, the employer owns the IP rights resulting from the employee's work (except for moral rights in artwork). Otherwise, the employer and the employee have co-ownership of the rights if the creation was made during working hours and using the company's equipment.

If the IP was created outside of working hours with the employee's own resources, then the employee owns the resulting IP rights.

Normally IP clauses regulating the ownership of any IP created by the employees are not included in employment contracts, with the exception of certain areas of business (for example, IT companies) and job level (management).

Restrictive Covenants

Restriction of Activities During Employment

It is possible to restrict an employee's activities during employment, and a clause to this effect can be included in the employment contract. However, as stated in *Job Duties*, exclusivity only during working hours is a legal duty for employees, unless the employer agrees otherwise.

Post-Employment Restrictive Covenants

Restrictive covenants on former employees are only enforceable if:

- The employee consents to them.
- The employer indemnifies the employee against losses related to them.
- They do not apply for an unreasonable length of time (a maximum period of 12 months, or in some cases 24 months).
- They are necessary to protect the employer's confidential information.

The following types of restrictions are common in Brazil:

- Non-compete.
- Non-solicitation.

Indemnification, which would be the monthly salary amount multiplied by the number of months for which the covenant is effective, must be proportional to the restriction that is imposed on the employee. The employee's salary is the usual benchmark, but if the restriction is limited to one or few competitors, then the compensation may be partial.

Variation of Contract

Usually, an employer can only change the non-essential terms of employment with the employee's consent.

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A general consent clause in the employment contract which states that the employee consents to the company varying any non-essential term of their contract (with whatever notice period) does not provide the required consent; the employee's consent must be specific to the non-essential term being amended.

However, if only a very minor modification is being made to a non-essential term of the employee's contract (for example, a change of workplace within the same geographical location), the employee's consent is not necessary so a clause in the contract permitting non-essential terms of employment to be changed by the employer giving notice would not be relevant.

Entire agreement

Entire agreement clauses are generally superfluous because any superseding terms are only valid if they benefit the employee, so this would happen irrespective of any such provision.

Survival of Obligations

A clause which states that certain provisions of the employment contract will continue to be enforceable beyond its expiration or termination can be included in the employment contract. These clauses are effective with respect to confidentiality obligations and can be effective with respect to certain restrictive covenants as long as they are reasonable and justifiable (see *Restrictive Covenants*).

Governing Law and Jurisdiction

Brazilian law usually regulates employment contracts effective in Brazil. It is possible for an employee who has relocated to Brazil to choose the jurisdiction of their original domicile for cross-border provisions but doing so does not eliminate the jurisdiction of the Brazilian courts on local employment matters.

Language

An employment agreement should be in Portuguese to ensure that it is binding on the employee, unless the employer can prove that the employee is proficient in the language in which the agreement is written.

To be valid before public authorities, an employment agreement must be in Portuguese. A sworn translation of an executed document in a foreign language is also sufficient.

Execution

There are no specific execution formalities for employment contracts in Brazil.

Counterparts

A counterparts clause can be used in employment contracts in Brazil.

END OF DOCUMENT

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