# MANUAL

Urban employer

Embassies and international organizations

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## Summary

# Presentation

The Vienna Conventions on Diplomatic Relations (1961) and Consular Relations (1963) prescribe, in § 3 of articles 33 and 48 respectively, that locally contracted employees are protected by social security laws and statutes imposed to employers in the receptor country.

Furthermore, international praxis has resulted in the fact that in addition to the home country's employment regulations, employers have to comply with locally implemented employment relation norms, for all hired employees.

This Manual has the objective of informing embassies, consulates, international organizations as well as other public office individuals with international activities, on Brazilian labor legislation as well as its application.

As Brazilian labor legislation does differentiate an employer holding a title with privileges and immunity, this manual can also be used by any employer for the acquisition of knowledge related to the hiring and treatment of employees.

RUTH BEATRIZ VASCONCELOS VILELA

*Labor Inspection Secretary*

## 1. Employer

An employer is the entity or individual that assumes economic activity risks, employs, pays wages and directs the rendering of personal services (art. 2 of CLT).

The Consolidation of Labor Laws (CLT) also regards liberal professionals, recreational associations, and other non-profit institutions that employ workers as employers.

## 2. Employee

It is considered an employee the individual that renders non-occasional services to an employer, under his/her direction, and receives a salary (art. 3 of CLT).

Non-occasional services are services which are part of the normal work activities and which are rendered continuously, even if for a short period of time.

Direction is the compliance of the employee with the orders of the employer and salary is the amount paid by the employer for the rendered services.

## 3. Employment and Social Security Book (CTPS)

Is a document that is mandatory for the exercising of any employment and can be obtained free of cost at any of the following locations (articles 13 and 14 of the CLT):

a) regional Labor Offices (DRTs), Labor under-offices as well as Worker's Assistance Agencies;

b) through an agreement with direct or indirect federal administration organs, state or municipal;

c) if there is no agreement with the above mentioned organs or if these organs do not exist, it can be obtained through the respective labor unions.

The employee must personally request the Employment and Social Security Book to the issuing organ and present the following documents (articles 15 and 16 of the CLT):

a) any type of official identification document containing data on the full name, name of parents, date and place of birth;

b) two 3x4 centimeter frontal photographs.

The worker lacking the above documentation can obtain his/her CTPS, valid for a period of 90 (ninety) days and extendable for an equal period of time (Administrative Order nr.1, January 28, 1997), through a personal declaration co-signed by two witnesses (art. 17 of the CLT).

## 4. Employee registration book or file

Apart from the annotation on the employee's Employment and Social Security Book, which must be made within 48 hours, it is also mandatory to register the employee in the Book, employee registration files or respective electronic registration system(s) (articles 29 and 41 of the CLT):

a) a Book or employee registration file can be easily obtained in paper shops and can be kept in any model as long as it allows for the inclusion of the following mandatory data (art. 41, sole paragraph, of the CLT);

b) notes on alterations to the original employment contract as well as other annotations that are relevant to the protection of the employee;

c) notes on labor related accidents;

d) notes on employee holidays;

e) notes on payment of labor union fees;

f) the signature of the employee;

g) beneficiaries;

h) date of employment;

i) date of ending of employment;

j) date of registration;

k) date and place of birth;

l) method of salary payment;

m) a photograph of the employee;

n) position to which he/she was appointed;
o) work hours;
p) finger prints of the employee (to be used by analphabets in place of signature);
q) the employee's full name;
r) name of the employee's mother and father;
s) number and serial number of the Employment and Social Security Book;
t) labor union affiliation;
u) Social Integration Program number.

## 5. Hiring employees

The employee must provide the employer with his/her Employment and Social Security Book, who will provide the employee with a receipt. The employer will note the employment contract in the Employment and Social Security Book and must sign it and return it to the employee within a maximum of 48 (forty eight) hours (art. 29 of the CLT).

The following must be noted in the Employment and Social Security Book;

a) date of employment;
b) description of work activities assigned to the employee;
c) name and address of employer;
d) salary and, if applicable, commissions, percentages, etc.

## 6. Individual employment contract

An employment contract is the tacit or express agreement directly related to an employment situation (art. 442 of the CLT) and can be valid for a permanent period or a temporary period.

### 6.1 Permanent employment contract

This is the general form of employment according to Brazilian Law.

### 6.2 Temporary employment contract

A temporary employment contract is a contract which is valid for a pre-determined period and for the period of

execution of specific services or for a specific up-coming and pending event (§ 1 of art. 443 of the CLT).

A temporary employment contract cannot be valid for a period that is longer than 2 (two) years and can be agreed upon if:

a) it is an experience assessment contract;
b) if the determination of the period it is justified by the nature of the work or its periodical character;
c) if it is connected to periodical entrepreneurial activities.

### 6.3 Experience assessment contract

It is generally a contract that precedes the permanent contract and is drafted in order to allow the study of the contractual conditions by all the parties. The employer will have the opportunity to assess the quality of the rendered services and the employee the opportunity to assess the labor conditions offered by the employer (art 443, §2, line "c", of the CLT).

The employee's Employment and Social Security Book as well as the Employee Book or File should contain the following note: "Experience Assessment Contract valid for the period of ____days". If the Experience Assessment Contract is extended the following annotation should be written: "Contract extended by ____ days".

The Maximum duration for an Experience Assessment Contract is 90 (ninety) days. It agreed for a period that is inferior to 90 (ninety) days and can be extended for one single period as foreseen in CLT's art. 445.

If the employer has signed an experience assessment contract for 60 (sixty) days, the extension will be limited to 30 (thirty) days and the total period of the contract cannot exceed 90 (ninety) days.

Lack of compliance with any of the above mentioned provisions, more than one extension or more than 90 (ninety) days of employment, will imply that the contract will automatically be valid as a permanent contract (art. 451 of the CLT).

### 6.4 Transient activities contract

Is a contract valid for a determined period, including transient entrepreneurial activities, and that is justified by the transient nature of the work. This type of contract is an exception to the rule that should only be used for cases foreseen in Title IV of the CLT, approved by Executive Law nr.5.453, May 1st, 1943.

## 7. Work hours

The normal duration of a workday is in general 8 (eight) hours per day and 44 (forty four) hours per week (art. 58 of the CLT c/c insert XIII of CF's art 7) with the exception of cases where the Law or collective agreements have established a reduced work day period. The starting hour and the end of the daily work period depend on contractual provisions.

### 7.1 Overtime

The duration of the daily 8 (eight) hour work period can be extended by a maximum of 2 (two) overtime hours per day. All overtime must be preceded by a signed agreement between the employer and the employee. The agreement must include the value of the added work hour which must be at least 50% (fifty) percent higher than the value of the normal work hour (art. 59, §1 of the CLT).

The employer can be exempted from paying and increase for the overtime hours if supported by an agreement or collective pact that stipulates that the overtime hours will be compensated by the corresponding amount of hours during another work day, as long as the total work period during a year does not exceed the foreseen normal workweek duration period or the maximum limit of 10 (ten) hours per day.

## 8. Work breaks

### 8.1 Work breaks or food breaks

It is mandatory to grant a work break or food break for any continuous form or work, with a duration that exceeds 6 (six) hours, with a minimum break of 1 (one) hour and

no longer than 2 (two) hours if supported by a written agreement or collective pact. This work break is not part of the amount of daily working hours (art. 71 of the CLT).

The minimum break of one hour for rest or food can only be reduced with the authorization of the Ministry of Labor and Employment (MTE) as long as the work place meets all demands regarding cafeteria capacity and as long as employees are not subjected to overtime work (art. 71, §3 of the CLT).

### 8.2 Breaks between work days

It is mandatory to provide employees with a minimum of 11(eleven) consecutive hours of rest between two work days (art. 66 of the CLT).

### 8.3 Week breaks

An employee has the right to a minimum period of 24 (twenty four) consecutive and remunerated hours per week. This period, except when demanded by public convenience or imperious service requirements, must coincide with Sunday, in all or in part (art. 67 of the CLT).

Jobs that imply work on Sundays, with the exception of theatrical roll lists, must implement a monthly and organized shift work calendar that can be presented for inspection. The shift work calendar must guarantee each worker that at least one work free day will coincide with a Sunday for every passed period of 7 (seven) weeks.

## 9. Night work

It is considered night work all work between 22:00 (twenty two hundred hours) of one given day and 05:00 (five hundred hours) of the following day. One work hour during the night is, for all purposes, considered as composed of 52' 30'' (fifty two minutes and thirty seconds) of work time and is paid with a minimum increase of 20% (twenty percent) over the value of a normal daytime work hour (art. 73, §1 of the CLT).

Workers under 18 (eighteen) years of age are not allowed to perform work during the night (art.404 of the CLT).

# 10. Salary

## 10.1 Fixed salary

A salary is considered as the direct payment by the employer for the services rendered by the employee. All moneys received by the worker from the employer are, for all legal purposes, considered as part of the worker's wage (art. 457 of the CLT).

## 10.2 Variable salary

A variable salary is the sum of the regular fixed salary and all commissions, percentages, travel allowances and all types of bonuses paid by the employer.

## 10.3 Mandatory salary add-ons

Considered as all payments made for work performed under exceptional conditions, such as:

a) overtime: an increased of at least 50% (fifty percent) over the value of the amount paid for a regular work hour (art.59, §1 of the CLT);

b) night work: an increase of at least 20% (twenty percent) over the value of the amount paid for a regular daytime work hour for urban workers (art. 73 of the CLT), and 25% (twenty-five percent) for rural workers (art.7, sole paragraph, Law nr. 5.889, June 8, 1973);

c) unclean work: additional remuneration can vary between 10% (ten percent) and 40% (forty percent) over the minimum salary and is directly proportional to the degree of minimum, medium or maximum uncleanness (art. 192 of the CLT);

d) dangerous work: an increase of 30% (thirty percent) of the employee's salary (art. 193, §1 of the CLT);

e) temporary transfer: an increase of a minimum of 25% (twenty-five percent) of the salary paid to the employee (art. 469, §3 of the CLT).

## 10.4 Travel costs and allowances

Travel costs and allowances are the sums paid by the employer to cover travel and subsistence costs whenever

the employee travels to another location at the service of the employer. Should the paid sums reach 50% (fifty percent) or more of the employee's regular salary, labor legislation will consider these costs and allowances as part of the employee's salary (art. 457, §2 of the CLT).

### 10.5 Date of salary payment

The employee's salary should be paid, accompanied by a statement, on a weekday at the workplace and up to the 5th (fifth) weekday of the subsequent month after it is due (articles 459,§1, 463, 464 and 465 of the CLT). Saturday is considered a weekday. A copy of the salary statement must be given to the employee.

### 10.6 Salary discrimination

The Federal Constitution (CF) forbids any discrimination in salary, job positions and employment procedures motivated by differences in sex, age, color or civil state as well as any salary discrimination for handicapped workers (CF, art. 7, inserts XXX and XXXI).

## 11. Christmas bonus or thirteenth month salary

The employer must pay the first installment of the thirteenth month (half of the wage amount) between February and November 30th of each year; the second installment must be paid until the 20th of December and should be based on the salary that is due for that month. The employer is not obligated to pay the first installment to all the workers at the same time (art.2, Law nr. 4.749, August 12, 1965). If an employee requests it during the month of January of the respective year, he/she can receive the first installment of the thirteenth salary together with the vacation salary.

### 11.1 Value of the thirteenth month salary

The thirteenth salary is calculated as follows: the December salary is divided by 12 (twelve) and the result is multiplied by the number of months the employee has worked during the year. A work period of 15 (fifteen) days or more is, for this purpose, considered a full month (art. 1, Law nr. 4.090, July 13, 1962).

## 12. Justifiable absence from work

It is considered absence from work when the employee does not come to the workplace. Absences can be justified to the employer. If the absence is not justifiable it will imply a loss of income for the absence day and the loss of the weekly rest period.

The following absences are considered justifiable and do not imply a loss of salary, according to the provisions of art. 473 of the CLT:

a) up to 2 (two) consecutive days due to the death of a spouse, parent, child, sibling or a person that is, according to the data included in the Employment and Social Security Book, a dependant of the employee;

b) up to 3 (three) consecutive days due to the employee's marriage;

c) for a period of five days during the first week following the birth of a child;

d) for one day every 12 (twelve) months for the purpose of voluntary blood donation, if proof of such a donation can be presented by the employee;

e) for up to 2 (two) days, not necessarily consecutive, in order to register as an elector according to the respective legislation;

f) during the period when the employee is required to present himself/herself for Military Service, according to point "c" of art. 65, Law nr.4.375, August 17, 1964 (Military Service Law);

g) during the day the employee can prove that he/she is performing a test in order to enter an higher education establishment;

h) for the necessary period if the employee is answering before a tribunal.

Art. 131:

a) ……..

b) during the compulsory absence of the female employee due to childbirth or a non-criminal abortion, as long as the requirements for receiving the motherhood-salary from the Social Security Services are observed;

c) due to a work related accident or illness that has been verified by the National Social Security Institute (INSS), with the exception of the hypothesis foreseen in point IV of art. 133. If the employee has received compensation installments

for a work related accident or illness for a period that is longer than 6 (six) months, even if not continuous, he/she will loose the right to paid holidays;

d) justified by the employer whenever the employee's absence does not imply a decrease of the corresponding salary value;

e) during a preventive suspension in order to be questioned in an administrative investigation or during preventive imprisonment, if the employee is subsequently acquitted or absolved;

f) during work free days, except in cases mentioned in point III of art. 133. The employee will loose the right to holidays if work is stopped for more than 30 (thirty) days and salaries for the corresponding period have been paid.

# 13. Holidays

An employee has the right to holidays if he/she has worked for 12 (twelve) months ("holiday acquisition period") and according to the following table (art. 129 and 130 of the CLT):

a) 30 (thirty) continuous days if the employee has not missed more than 5 (five) workdays;

b) 24 (twenty-four) consecutive days when the employee has missed between 6 (six) and 14 (fourteen) workdays;

c) 18 (eighteen) consecutive days when the employee has missed between 15 (fifteen) and 23 (twenty-three) workdays;

d) 12 (twelve) consecutive days if the employee has missed between 24 (twenty-four) and 32 (thirty-two) workdays;

e) the employee will loose his/her right to holidays if he/she has missed more than 32 (thirty-two) work days during the "holiday acquisition period".

## 13.1 Holiday period

The employer must grant the employee a holiday period during the 12 (twelve) month period that follows the" holiday acquisition period". The period of the holiday is decided by the employer as long as the employer respects the above right of the employee (art. 136 of the CLT).

The employer can divide holidays in 2 (two) periods as long as none of the periods is inferior to 10 (ten)

consecutive days (art. 139, §1 of the CLT). An employer is not allowed to divide the holiday period of employees with less than 18 (eighteen) years of age and over 50 (fifty) years of age (art. 134, §2 of the CLT).

The employer must inform the employee on the set the holiday period at least 30 (thirty) days before the start of the same (art.135 of the CLT).

The holiday payment, and its corresponding statement, must be effectuated at latest 2 (two) days before the start of the holiday period (art. 145 of the CLT) and should amount to one months salary plus 1/3 (one third) (CF, art. 7, point XVI).

The period of holidays must be noted in the Employment and Social Security Book (CTPS) and in the Employee Registration Book or File (art. 135,§§1 and 2 of the CLT).

The employee's holiday period must be counted as time of service.

Members of the same family working for the same employer have the right to enjoy their holidays at the same time provided it does not cause loss of revenue to the employer (art. 136, of the CLT).

### 13.2 Holidays outside of period

The employer must pay a double holiday salary when holidays are not granted within 12 (twelve) months after the "holiday acquisition period" (art.137, §1 of the CLT).

### 13.3 Holiday bonus

The employee is allowed to exchange 1/3 (one third) of his/her holiday period for a holiday bonus. If the employee has the right to 30 (thirty) days of holiday, he/she can take 20 (twenty) days off work and receive amount corresponding to 10 (ten) workdays in cash (art. 143 of the CLT).

In order to be eligible to the Holiday Bonus the employee must request it from the employer at least 15 (fifteen) days before he/she completes 12 (twelve) months of work ("holiday acquisition period") (art. 143, §1 of the CLT).

### 13.4 Collective holidays

An employer can grant collective holidays to all the workers in the firm, or to workers in one specific sector, provided the employer has informed the Ministry of Labor and Employment and the representative labor unions. The employer is also obligated to post the above mentioned information at the workplace at least 15 (fifteen) days in advance (art. 139 and following, CLT).

## 14. Unclean and dangerous work compensation

### 14.1 Unclean work compensation

Unclean activities or operations are those that due to their nature, conditions or method of work expose employees to amounts of health hazardous agents that above fixed tolerance limits, either due to the nature and intensity of the agent or the period of exposure (art. 189 of the CLT).

### 14.2 Objective and amount

The objective is to offer compensation for work that can be hazardous to the employee's heath. The compensation amount can be 10% (ten percent) – minimum hazard; 20% (twenty percent) – medium hazard; and 40% (forty percent) – maximum hazard (art. 192 of the CLT).

The degrees of hazard at a workplace are determined by the publication of an expert report.

### 14.5 Dangerous work compensation

Dangerous activities or operations are those that due to their nature or method of work imply a frequent contact with inflammable agents or explosives and therefore expose workers to higher risk factors.

An employee that works with electric energy, inflammables and/or explosives is entitled to an additional 30% (thirty percent) of the effective salary as a form of compensation for the exposure to dangerous working conditions (art. 193 of the CLT, and Law nr.7.369, September 20, 1985).

Some dangerous activities require the investigation of an expert group in order to assess whether the work environment fills the requirements imposed by law.

## 15. Work stability

### 15.1 Accidents at the workplace

An insured worker that has suffered an accident at the workplace is guaranteed the continuation of his/her employment contract for a minimum period of 12 (twelve) months after the end of the treatment for the illness created by the accident, independent of the treatment (art. 118 of Law nr.8.213, July 24, 1991).

### 15.2 Accident Prevention Commission (CIPA)

It is unlawful to arbitrarily terminate, without justifiable cause, the contract of a worker elected to the post of director of the Accident Prevention commission, from the time of the registration of his/her candidacy and during one year after the date of the end of his/her mandate (ADCT, art. 10, point II, line "a").

### 15.3 Pregnancy

It is unlawful to arbitrarily terminate, without justifiable cause, the contract of a pregnant employee, from the time of the confirmation of the pregnancy and during five months after giving birth (ADCT, art. 10, point II, line "b").

### 15.4 Labor union mandate

It is unlawful to terminate the contract of an employee belonging to a labor union from the moment of the registration of his/her candidacy to the labor union leadership or as a labor union representative. If the employee is elected, even as a substitute, he/she cannot be fired during the period of one year after the end of the mandate, unless he/she has committed an serious unlawful act (CF, art. 8, point VIII).

# 16. Unemployment Guarantee Fund (FGTS)

The Unemployment Guarantee Fund (FGTS) is regulated by Law nr.8.036, May 11, 1990 that stipulates that employers must pay 8% (eight percent) of the wages paid or due to employees during the previous month to a corresponding bank account on the 7th (seventh) day of each month.

It is also the employer's obligation to deposit 0.5% (half a percentage point) of the wages paid or due to employees during the previous month, for social costs related to Complementing Law nr. 110, June 29, 2001.

The employee is allowed to withdraw his/her actual balance if his/her contract is terminated without a justifiable cause and in other situations foreseen in current legislation (art. 20 of Law nr. 8.036/90).

Payments to the Unemployment Guarantee Fund must be based on the employee's basic salary, including any *in natura* perks, plus any other paid remuneration such as:

a) basic salary, including any in natura perks;
b) overtime;
c) unclean, dangerous and night work compensation;
d) additional service time payments;
e) compensation for transfer to another work location;
f) family support salary that exceeds the mandatory amount;
g) holiday rewards, of any amount, conceded up to April 30, 1977;
h) holiday bonus or reward if it corresponds to more than 20 (twenty) paid work days and has been granted due to a contractual clause, company policy, convention or collective agreement;
i) the value corresponding to the 1/3 (one third) of the holidays;
j) commissions;
k) the total value of daily travel allowances if they exceed 50% (fifty percent) of the employee's salary and if the employee does not have to account for travel and subsistence expenses;

l) seafarer's allowances, in the case of seafaring workers;

m) tips;

n) a proportional part of a Christmas bonus, including the amount that is the portion of previous notice compensation and cases related to temporary or seasonal contract termination as well as one twelfth of any periodical contractual bonus;

o) any type of bonus, express or tacit, related to productivity, earnings, position or office;

p) payments for dismissals of non-employed directors if they are, according to the board, entitled to such payments by contracts signed with the employer;

q) leave rewards;

r) paid weekly rest as well as paid public and religious holidays;

s) previous notice period, as work or compensation;

t) cashier's bonuses.

The employer is also obligated to make payments to the Unemployment Guarantee Fund (FGTS) if the employee has, due to act of law or agreement between the parties, left his/her job but continues to receive wages and if the absence period is counted as if he/she remained at work, such as;

a) mandatory military service;

b) the first 15 (fifteen) days of leave for health treatment, except in cases when he/she is the beneficiary of other compensation from other sources and for the same illness, within 60 (sixty) days counting from the cessation of the previous compensation, according to what is foreseen in art.75, §3 of Decree nr.3.048, May 6, 1999 and in art. 26, point II of Decree nr. 99.684, November 8, 1990;

c) leave due to a work related accident;

d) maternity and paternity leave;

e) holiday leave;

f) trust appointment;

g) other remunerated leaves.

In the above mentioned cases payment to the Unemployment Guarantee Fund is calculated, for leave period, from the value of the contracted monthly remuneration including variable amounts, and according to CLT criteria and current legislation. The remuneration must be actualized every time there is a general wage raise for the employee's category.

The payments to the Unemployment Guarantee Fund (FGTS) and other social contributions should be made using the FGTS Collection Guide, Social Security Information (GFIP), FGTS and Social Contribution Rescission Collection Guide (GRFC), FGTS Debt Clearing Guide (GRDE) or the Specific Form for the Collection of FGTS (DERF).

## 17. Previous notice

Previous notice is the formal communication from one of the contractual parties to the other regarding the future termination of an employment contract. The notice must be delivered at least 30 (thirty) days ahead of termination (CLT, art. 487; CF, art.7, XXI).

### 17.1 Objective

To allow the employee the proper conditions to seek another employment and the employer to contract another employee.

### 17.2 Non-compliance

The absence of a previous notice from the employer gives the employee the right to the salaries that correspond to the previous notice period and the right to count that period as service time (art. 487, §1 of the CLT).

The absence of a previous notice from the employee gives the employer the right to withhold the salary that corresponds to the respective notice period (art. 487, §2 of the CLT).

### 17.3 Workdays during the previous notice period

An employee's normal workday during the notice period is reduced by two hours, without any reduction of

the integral salary of the employee, provided that the initiative for the the termination of the contract has been taken by the employer.

The employee may also choose to work without the two hour reduction to the workday and be absent from work for a period of 7 (seven) consecutive days during a 30 (thirty) day period (art. 488 of the CLT).

It is not legal to exchange the work reduction hours for money (Abridgement of Law nr.230/TST).

### 17.4 Reconsideration

An employment contract is terminated at the end of the previous notice period. The previous notice can be annulled at the initiative of the sender of the notice and with the agreement of the other party (art. 489 of the CLT).

### 17.5 Waiver

An employee cannot waive a previous notice (abridgement of Law nr. 276/TST). The employer must, in case of a waiver, ask the employee for proof that he/she has obtained a new job.

## 18. Termination of the employment contract

A request for termination, or the receipt for a notice from the employer dismissing the work contract, cannot be signed by a worker with more that 1 (one) year of service and is only valid when assisted by the labor union or in the presence of a representative from the Ministry of Labor and Employment (art. 477, §1 of the CLT).

Employees under 18 (eighteen) years of age are barred from terminating their work contract, and receive due compensation from the employer, without prior assistance and authorization from their legal guardians (art. 439 of the CLT).

### 18.1 Right to the thirteenth month salary in terminated work contracts

If an employment contract is terminated the employee has the right to receive a portion of the thirteenth month salary in proportion to the time he/she has worked. The

employer must pay 1/12 (one twelfth) of the amount received for each effective month of service. Any period equal or over 15 (fifteen) days is considered as a full month.

Cases when the employee deserves, or is entitled to, the thirteenth salary:

a) when the employee has been dismissed without justifiable cause;
b) when the employee has resigned from his/her employment;
c) when the employment contract is terminated for a determined time period.

An employee looses his/her right to the proportional thirteenth month salary if he/she is dismissed for a just cause.

In case of contract termination, the last received salary by the employee is the basis for the calculation of the thirteenth month salary.

### 18.2 Payment for holidays when a contract is terminated

Holiday payments must be increased by 1/3 (one third) of the value (CF, art. 7, XVI).

### 18.3 Earned holidays

An employee has the right to receive the value of earned holidays when his/her labor contract is terminated for any possible motive. The value of the compensation is directly proportional to the salary of the employee at the time of the termination of the contract. The value can be common or double (art. 146, caput of the CLT).

If the termination of the employment contract occurs during the 12 (twelve) months that followed the "holiday acquisition period", the employee is entitled to 1 (one) full month salary.

If the termination of the employment contract occurs after the 12 (twelve) months that followed the "holiday acquisition period", the employee is entitled to 2 (two) full month salaries.

### 18.4 Proportional holidays

If the termination of the employment contract occurs during the "holiday acquisition period", the employee has the right to be proportionally compensated according to the number of months he/she has worked (art. 147 of the CLT).

Calculation of proportional holidays is achieved through the division of the employee's salary by 12 (twelve) and by multiplying the result with the number of worked months. Any working period of equal or over 15 (fifteen) days is considered a full month for calculation purposes.

Workers employed under an experience assessment contract have the right to proportional holidays.

### 18.5 Unemployment Guarantee Fund (FGTS)

A contract terminated by the employer obligates the same to deposit all amounts related to the termination period, as well as amounts that are due, in the employee's Unemployment Guarantee Fund account and without any deductions for legal sanctions.

If an employer terminates and employment contract without justifiable causes the employer must deposit in the respective FGTS account 50% (fifty percent) of all previously deposited amounts made during the contract's validity period including monetary corrections and interest rates and without taking into account any eventual withdrawals from the account.

The employee must present him/herself to any agency of the Caixa Economica Federal and present the homologated Contract Termination Record (TRCT) in order to be able withdraw the full amount of the FGTS deposited in his/her account.

## 19. Transportation voucher

All employees that incur transportation expenses in order to travel from the residence to work and vive-versa have the right to a transportation voucher, according to Law nr. 7.418, December 16, 1985, and Decree nr.95.247, December 17, 1987, valid for either public urban transportation,

transportation between municipalities or inter-state transportation.

The transportation voucher must be valid for all forms of public urban transportation.

This obligation is imposed on all employers, legal entities and individuals, and is not considered as salary, does not affect FGTS payments, is not considered for tax revenue purposes (art. 2, Law nr.7.418/85) and is not taken into account for thirteenth month calculations (art. 6, point III of Decree nr. 95.247/87).

The employee contributes to the cost of the voucher with a sum corresponding to 6% (six percent) of his/her basic salary excluding bonuses. The employer is responsible for covering the amount that exceeds the employee's percentage (art. 4, Law nr. 7.418/85).

The employer can avoid this obligation if he/she/it provides the corresponding transportation in adequate vehicles.

The exchange of transportation vouchers for money is forbidden.

## 20. Labor union fees

Employers have the obligation to deduct from the employee's salaries all labor union fees that are due to the respective labor unions. The deduction must be made every year during the month of March. The collection of labor union fees for free-lancers is made every year during the month of April and the collection of labor union fees for agents, self-employed workers and the liberal professions is made during the month of February (articles 582 and 583 of the CLT).

## 21. Statute of limitation/prescription

The rights of an employee are limited to 5 (five) years during the validity of the employment contract and 2 (two) years after the termination of the contract. There is no statute of limitation/prescription period for minors under the age of 18 (art. 7, XXIX of the CLT).

# 22. Moral and sexual harassment

Moral and sexual harassment at the work place is not a new phenomenon. Related legislation has helped to decrease the incidence of the problem but has not solved it. There is a need for an increased awareness of the problem both amongst victims and aggressors alike and to create actions and attitudes that further the principles of respect and dignity and thereby help create an enjoyable and productive environment at the workplace.

## 22.1 Sexual harassment

It is considered sexual harassment to approach and individual, without his/her consent, with sexual intentions or the inappropriate sexually motivated insistence by a person that has a privileged hierarchical position, formalized or not, and uses that position in order to get sexual favors from junior employees or dependents.

Sexual harassment is a crime and is the subject of art. 216 – A of the Brazilian Penal Code and specified by Law nr.10.224, May 15, 1991.

## 22.2 Moral harassment

Both current jurisprudence and passed judgments by the Regional Labor Courts have acknowledged that violence against human dignity entitles the victim to compensation for moral damages. Many municipalities have also adopted laws against that type of violence directed at the dignity of workers.

Moral harassment is any type of abusive conduct (gesture, word, text, behavior, attitude, etc.) that is intentionally and frequently directed at an individual with the objective of degrading or hurting the psychological or physical integrity of the same and becomes a threat to the employees work and degrades the quality of the work environment.

The most common types of moral harassment are:

– to give the employee confusing and incomplete instructions;

- to intentionally place performance hindrances and create work difficulties;
- to accuse the employee of committing non-existent mistakes and errors;
- to demand urgency when not necessary;
- to give the employee a disproportionate amount of work;
- to cause embarrassment to an employee through demeaning treatment;
- to impose different work hours without plausible justification;
- to withhold an employee's work instruments/tools;
- to injure an employee, physically or verbally;
- to perform vexing visitations;
- to hinder an employee from using toilets;
- to threaten or insult;
- to further the isolation of an employee.

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