Hot topics in employment sector for 2021

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Employment & Immigration, Brazil

Introduction

Although the COVID-19 pandemic's full impact on employment is still unknown, it is possible to identify some of the main topics and issues that the pandemic has caused which will be of interest to employers and employees in 2021.

The number of contaminations in Brazil has increased, as some cities were waiting until after their municipal elections to start reducing the flexibility on social distancing and business operations.

Christmas is fast approaching and the economy slowing down at the busiest time of the year for several sectors is causing apprehension. On top of this, the government-adopted measures to save jobs and try to protect the economy are still being disputed.

Suspension of employment agreements and reduction of working hours and salaries

Law 14,020/2020 was published in July 2020, which aimed to protect employees' jobs and income while ensuring business continuity and reducing the social impact of the COVID-19 pandemic (for further details please see "New rules on reduction of working hours and salaries and suspension of employment agreements").

The suspension of employment agreements and reduction of working hours and salaries were extended until 31 December 2020 and the government-paid benefit was also extended on a lower amount.

The president had vetoed some provisions of Law 14,020/2020. This included dispositions about profit-sharing plans and a payroll exemption, which consisted of an optional social contribution levied on gross revenue in substitution of social security contributions on the payroll for some types of company.

However, in November 2020 Congress overturned the president's vetoes. Consequently, the payroll exemption is now valid until December 2021 for 17 sectors, including those that perform call centre, communication, IT, transport and construction activities.

This measure will allow companies to opt for the payment of 1% to 4.5% on their gross revenue instead of paying a 20% contribution on top of their payroll to social security (for further details please see "How has COVID-19 affected employees and workplaces?").

Congress's decision was based on the understanding that the 17 sectors generate approximately 6.7 million jobs in Brazil. However, although the measure aims to maintain employment, the government has already foreseen that approximately R3.7 billion will be accrued through the payroll exemption for such sectors in the 2021 budget.

Increase in number of labour claims

The number of labour claims will likely increase in 2021. A significant number of employment agreements have been terminated and all of the support that former employees covered thereunder enjoyed is ending. However, finding a new job during a period in which businesses are severely affected by the constant fear of a second wave of COVID-19 is difficult.

Moreover, some employees have been affected by companies' lack of resources or misuse of the government-issued legal options to maintain employment, which may also lead to labour claims.

In this context, the payroll exemption change would also be relevant. In the event of a labour court decision or homologation of an extrajudicial settlement in the courts, companies that adopted the payroll exemption do not need to pay the 20% social security contribution on the labour amounts during such a period.

Profit-sharing plans

There is also a risk of new tax and social security audits by the Federal Revenue. As the government's finances have been severely affected by the need to support the Brazilian population during the pandemic, it may try to recover part of the costs with taxes.

In addition to the possible audits connected with the tax exemptions granted during the pandemic, Congress's vetoes included rules for profit-sharing plans, which is a common topic in tax and social security audits by the Federal Revenue.

Among the changes in this regard is the fact that profit or result-sharing plans that are implemented before the payment of an advance or at least 90 days before the final payment are now considered valid. This is directly contrary to the Federal Revenue's position that profit or result-sharing plans should be signed before the relevant assessment period starts.

Profit or result-sharing plans can still be paid only twice a year, but now companies can set out individual targets as criteria for the payment, which means that it is possible to establish different targets for each of the company's departments.

Companies may also set out multiple profit-sharing plans as long as the payment is not made more than twice a year for the same employee or in less than one calendar quarter.

Congress's changes to the law also indicate that only payments that do not agree with the rules will be disregarded and not the entire plan, as commonly happened in the past, so that the possible amounts involved in tax assessments by the Federal Revenue in connection with profit or result-sharing plans have become more limited.

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