

Limitation of enforcement proceedings in the Labor Courts

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The Employment Reform (Law 13.467/2017) made important changes not just to the substantive law governing labor and employment in Brazil, but also to the law governing proceedings in the Labor Courts, with the aim of providing a more effective administration of justice.

Among the various changes made to procedural law was the introduction of a limitation period that applies during the execution phase of proceedings before the Labor Courts. In practical terms, “intercurrent prescription” (*prescrição intercorrente*) means that claimants who fail to act will lose their right to enforce judgement in their favor. This limitation of execution proceedings is intended to uphold the right to a reasonable duration of administrative and judicial proceedings guaranteed under the Constitution of the Federative Republic of Brazil (article 5 (LXXVII)), but it has always been a subject of intense debate both in the Labor Courts and among employment law specialists because Brazil’s labor code, the Consolidation of Labor Laws (CLT – *Consolidação das Leis do Trabalho*) did not provide for it.

In an attempt to fill this gap in the legislation, Brazil’s constitutional court, the Supreme Federal Court, had issued Restatement of Precedents no. 327, stating that “employment law allows limitation of execution proceedings.” Subsequently, however, the Superior Labor Appeals Court (TST – *Tribunal Superior do Trabalho*), the third and highest instance in employment-related matters, took the contrary view and issued Restatement of Precedents no. 114, providing that “limitation of execution proceedings is inapplicable in the Labor Courts”.

The conflict between the two Restatements of Precedents resulted in immense uncertainty, and made it possible for the Regional Labor Appeal Courts to take diverging views on whether execution proceedings were subject to limitation or not.

The Employment Reform settled the matter by adding article 11-A to the CLT, reflecting the provisions of articles 15 and 924(V) of the Code of Civil Procedure:

Art. 11-A. The limitation period for execution of judgement in employment proceedings is two years.

§1. The limitation period begins to run when the execution creditor fails to comply with an order made by the court in the course of the execution.

§2. Expiry of the limitation period may be declared on application or ex officio at any instance of jurisdiction.

Article 11-A CLT is clear in establishing a period of two years from the execution creditor’s failure to comply with the court’s order to prosecute the

execution. However, in order for the limitation period to start running, the execution creditor must be served with process, because limitation of execution proceedings can apply only if the execution creditor has been given express notice to comply with a court order issued in the course of execution, according to article 1 of TST Recommendation no. 03/2018.

Once the execution creditor has been validly served, the limitation period will begin to run automatically, without need for any action on the part of the execution debtor, in all proceedings for execution of judgments issued by the Labor Courts after November 11, 2017. In proceedings for enforcement of judgments rendered before the Employment Reform came into force, the former rules apply, and there is no limitation of execution proceedings in the Labor Courts, respecting the principle against retroactive application of legislation, the immediate application of procedural rules, and respect for perfected juridical acts.

The legislator's intention in introducing article 11-A into the CLT was to establish a reasonable duration of proceedings in the Labor Courts by imposing a justifiable deadline for judgment creditors to enforce their claims. The new provision is a welcome change not just for execution debtors but also for the Labor Courts, because in addition to putting an end to stale proceedings, article 11-A upholds important principles of employment and constitutional law.

NOTES:

¹ Art. 15. In the absence of rules governing electoral, employment or administrative proceedings, the provisions of this Code will apply in a supplementary and subsidiary fashion.

² Art. 924. Execution [of judgment] will be extinguished when: ... V – the period for limitation of execution expires.