Overtime banks, five years later

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An overtime bank is a valuable ally to Brazilian companies when it comes to the rules governing the workday and payment of overtime. Essentially, under the overtime bank system, time worked beyond the number of hours fixed in an employee's contract on one day is compensated by reducing time worked on another day. As long as the compensation occurs within the period established when the overtime bank is set up, employers are not required to pay overtime.

For businesses, the great benefit of the overtime bank is that both reduces overtime expenses and provides greater flexibility in matching work demand to the amount of time employees are required to be at the employer's disposal. In Brazil, paying overtime has a high financial cost because each hour of overtime must be paid at a rate of at least 150%, and is included in the employee's salary for all purposes, so paid overtime also increases the cost of vacation pay, 13th salary, notice in lieu of pay, and so on.

The Employment Reform (Law 13.467/2017) made significant changes in the law on overtime banks. Prior to the reform, the Consolidation of Labor Laws (CLT – Consolidação das Leis do Trabalho) required overtime banks to be negotiated with workers' unions in a collective bargaining instrument, and limited to one year the period in which overtime could be compensated by time off on another day. At the end of the year, each employee's overtime "credits" and "debits" had to be settled, and a new overtime bank would start.

The Employment Reform introduced a new paragraph, §5, to article 59 of the CLT, making it possible for employers to negotiate overtime banks with individual employees, as long as banked overtime is compensated within six months.

The change gives priority to freedom of enterprise, since it does away with the collective bargaining requirement, and reduces employers' transaction costs. Employees are also benefited by the change, because their banked overtime will be compensated sooner, either in time off with in six months or in overtime pay at the end of that period.

Before agreeing on overtime banks with individual employees, however, employers should review the collective agreements and conventions applicable to their establishments, with a view to mitigating the risk of litigation: if a dispute arises because of differences between individual overtime banks and the overtime bank arrangement established by collective bargaining, the Labor Courts might well take the position that employees are entitled to the more favorable scheme.

From a formal point of view, employers should also be aware that overtime banks must be established in writing. And with a view to ensuring that the overtime arrangement is valid, the document should make express reference to article 59§5 CLT, stipulate the rate at which overtime will be compensated (for example, one hour off on another day for each hour of overtime banked), state the date on which the overtime bank will become effective, along with the dates on which outstanding balances of overtime will be calculated and paid.

Five years after the Employment Reform, it’s safe to say that individual overtime banks have been widely adopted by both employees and employers, largely because of the reduction in costs and other benefits offered by the arrangement.

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