The employment reform five years later

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This year, 2022, marks five years since the reform of Brazil's employment and labor legislation. Although it won high praise from some, the Employment Reform has also been the object of fierce criticism by others, who call it unconstitutional and contrary to international conventions.

Five years on, Brazil's constitutional court, the Federal Supreme Court (STF – *Supremo Tribunal Federal*) has ruled that the Reform is constitutional, although the STF "reread" certain provisions in light of the Constitution (such as the "rates" established for damages for pain and suffering and other non-economic injuries) and declared other provisions to be unconstitutional (such as the stipulation that unsuccessful employee claimants, who are entitled to a waiver of court costs because of their financial circumstances, must nonetheless pay court-awarded honoraria to the employer's legal counsel).

Even five years later, the Reform still arouses interest, partly because some of the issues it addressed immediately became a central part of day-to-day work, and partly because some of the new provisions are only now being put into practice. There are still other issues that have lain dormant and may never play any significant part in employment relations in this country.

In the category of changes that have been successfully applied are the end of compulsory contributions to workers' unions, the possibility of splitting the 30 days of annual vacation into smaller periods, the end of payment for time spent travelling to and from work, and the end of union certification of terminations of employment and of court certification for settlements made between employer and employee.

The reforms that are now gaining momentum among employers even though the labor courts have not yet had much opportunity to consider them, are the possibility of direct negotiations between an employer and an employee who is "self-reliant" (defined as holding a university degree and earning more than twice the social security contribution ceiling), and the interpretation given to the term "premium" (*prêmio*), which the Reform excludes from payroll charges. The "prevalence of contract over law" is another issue that can be included in this list, but the STF has already begun to take a position on this matter, in its judgment of two constitutional cases, ADPF no. 381 and ARE no. 1.121.633.

More recently, pandemic lockdowns turned the spotlight on remote work and related questions, such as whether employers are required to provide employees with equipment and infrastructure, training, and cost allowances, and whether, in a telework scenario, employers are required to record the time worked by their employees. This issue became even hotter with Provisional Measure 1108, issued in March 2022, which introduced the concept of "remote work", in addition to the concept of "teleworking", which was part of the Reform.

Matters that have been put on the back burner are "intermittent" employment, part-time work, annual receipts to acknowledg that employers have fulfilled their employment obligations, and representation of workers at the workplace.

This retrospective look at the Employment Reform is not less important than its prognosis. After all, 2022 is an election year and each of the two candidates most quoted in the opinion polls have a clear – and opposing – agenda on labor and employment issues. New legislation is bound to come soon, and only time will tell whether it will build on the Reform, or bring a counter-reform.

The chapters in this e-book, prepared by BMA's labor and employment specialists, will examine (with no pretension to exhaust) the main subjects related to the Employment Reform that have arisen over the last five years. We will look at which changes have been readily accepted by the Labor Courts, and which remain unclear in their application, before considering what the next few years will bring: advances or retreats.

Happy reading!