

Union Reform following the Employment Reform

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Many changes were made by Law 13.467/2017, commonly known as the Employment Reform, which came into force five years ago, on November 11, 2017. Perhaps one of the areas that felt the greatest impact with the modernization of the Consolidation of Labor Laws (CLT – Consolidação das Leis do Trabalho) was union rights.

One of the main changes introduced by the Employment Reform was to put an end to compulsory payment of union contributions by employees: now, “prior, express authorization” is required before union dues can be deducted from employees’ pay (article 579 CLT). This was one of the most significant changes made by the Employment Reform, since until November 2017, unions in Brazil were funded in large part by compulsory dues equal to one day’s pay contributed by each employee represented by a union – and in Brazil, by law almost all employees are represented by a union, even if they aren’t union members. Added to that, studies show that in 2018 the percentage of employees opting to join unions was the lowest in seven years.

Law 13.467/2017 did not provide for any alternative source of funds for union organizations or even transitional rules. In legal circles, debate over the change was heated, with many arguing that doing away with compulsory union contributions was both formally and substantively unconstitutional. It’s no surprise that almost two dozen constitutional challenges were brought before the Supreme Federal Court to contest the change.

Another change introduced by the Employment Reform was to allow employees and workers’ unions to negotiate working conditions different from those provided for in the CLT, with the resulting collective bargaining agreement prevailing over legislation.

Law 13.467/2017 and the changes made to unions’ organization and prerogatives brought the debate over the need for broad union reform into the spotlight.

In 2019, three Proposed Constitutional Amendments (PECs – Propostas de Emendas à Constituição) were presented in Brazil’s Congress. The main one, PEC 196/2019, was presented by federal deputy Marcelo Ramos on November 11, 2019 and approved by the Chamber of Deputies’ Constitution and Justice Commission. The next step is an analysis of the merits of the PEC by a Special Commission.

PEC 196/2019 proposes to amend article 8 of the Federal Constitution to provide that the State may not require authorization for the founding of a union entity other than registration of its incorporating documents in the Civil Register of Legal Persons. Furthermore, organization of workers – and employers – into their respective union entities (in this article we will refer to

employer “unions” as employer associations) would be based on economic sector or business segment, and the territorial base of any workers’ union or employers’ association would be determined by the union or association, but cannot be smaller than a municipality. In addition, the PEC provides that participation by unions in collective negotiations involving the workers they represent is mandatory, and will be paid for by the beneficiaries of the negotiations, by deduction from their pay.

The proposal would also create a National Union Organization Council, which would be responsible for verifying that unions acting for private sector workers and public servants, as well as employers’ associations, are effectively representative, establishing regulations on the funding of the union system, and determining the scope of collective bargaining, among other things.

Even after the changes made by the Employment Reform under Law 13.467/2017, union reform remains on the agenda (and will likely remain there for the next few years), with the challenge of articulating transformations in employments relations with the legislation that governs unions.

NOTES

[1]

<https://censos.ibge.gov.br/2012-agencia-de-noticias/noticias/26423-taxa-de-sindicalizacao-cai-para-12-5-em-2018-e-atinge-menor-nivel-em-sete-anos.html>

[1] ADI 5794, ADI 5912, ADI 5923, ADI 5859, ADI 5865, ADI 5813, ADI 5885, ADI 5887, ADI 5913, ADI 5810, ADI 5811, ADI 5888, ADI 5892, ADI 5806, ADI 5815, ADI 5850, ADI 5900, ADI 5950, ADI 5945.

[1] PEC nº 161/2019, 171/2019 e 196/2019.

[1] Available at:
[https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=](https://www.camara.leg.br/proposicoesWeb/prop_mostrarintegra?codteor=1831736&filename=Tramitacao-PEC+196/2019)

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