

## **LABOR RELATED ENCUMBRANCES**

There are many obligations regarding labor agreements:

### Employers' obligations due to the Government

Here we will describe the obligations that arise exclusively from labor relationships, and which, at least primarily, do not revert to the employees. These obligations are due to Governmental Entities. The social security obligations are described hereunder.

- (i) Withheld Income Tax - Employers must withhold Income Tax due by the employees, and pay it to Federal Tax Authorities. Taxation is applicable also to foreign employees.
- (ii) Other obligations - Brazilian legislation provides for many obligations of an administrative nature (as opposed to paid contributions) which must be observed. The furnishing of the Annual Report of Social Information (RAIS) to the authorities, which includes info about hired and discharged employees, the keeping of several documents to be checked by authorities such as receipts, proof of payment of Social Security contributions, proof of the FGTS deposit, control of employees work hours, books and other registers related to employees.

Work safety obligations are not hereby mentioned.

### Employers' obligations due to the employee

- (i) Wages - Generally, wages are agreed to by the employer and the employee. There is a minimum salary, as well as minimum levels, as provided for by relevant legislation, for some professional categories (doctors, engineers, etc.) There is also the possibility that, by means of collective provisions (arising from class agreements or rulings from the Labor Courts), other minimum levels be created and there are certain regional minimum limits.
- (ii) Vacations - Employees are entitled to a 30 day vacation after 12 months of employment, and from then on, once every 12 months. Employers must grant vacations to employees within the 12 following months subsequent to their acquisition of such right. The value of wages during vacations is the salary plus a 30% (thirty percent) bonus.
- (iii) 13th month wages - Employees are entitled to a 13th salary, paid in two partial equal payments the first due until November 31<sup>st</sup> and the second until December 20th, every year. In their first year, employees are entitled to a 13th salary to the proportion of the worked months.
- (iv) Transport coupons - The employer must pay for the employees' transportation expenses, to the value that exceeds 6% of their wages. Therefore, if the employee earns R\$ 1,000.00 and spends R\$ 100.00 on transportation, the

employer must pay what exceeds R\$ 60.00 (6% of R\$ 1,000.00), in this case, R\$ 40.00. Usually, the company buys and delivers to the employees coupons to be used on the public transportation services, deducting the employees' participation from their wages.

- (v) Other benefits - Setting other advantages to employees by means of collective class agreements or Labor Court rulings is a common occurrence.

The most common benefits include health insurance (due to the precarious national health system) , food coupons, salary increases (generally to the equivalent of the inflation of the past 12 months), and other types of bonus (annual bonus, tri-annual bonus etc.).

However, these and other benefits depend on agreements changing from time to time, between the *local* unions and the employees with the company, or on also time-limited Court Rulings, which makes it impossible to list them as definitive obligations. Consequently, a further study must be implemented.

There are heavy penalties imposed for failing to comply with the above listed obligations (and the social security payments). There are several penalties, which vary from administrative sanctions (i.e. fines) to criminal repercussions (i.e. in case of unmotivated retention of due wages). Not complying with rules related to the company premises (security etc) can cause its closing. From a labor standpoint, most of the penalties are fines, the values of which vary in accordance with the level of the infraction.

#### Social Security Related Obligations

There are two main species of contributions referring to social security:

- (i) Social Security Contribution - This contribution is owed both by the companies and the employees. Companies pay around 26,80% of the total wages, depending how risky the employment activity is. Apart from that, there is group of contributions ("terceiros") which involves amounts due to several entities (INCRA (Land Reform Institute), SENAI, SESI, SENAC, SESC (entities responsible for providing assistance to industrial and commercial workers), SEBRAE (assistance for small companies), etc...) and for other purposes (i.e. educational salary) according to the company activity.

The company also must deduct from employees' their social security contribution, up to the values of 8 to 11% of their wages, to the maximum value of Brazilian Reais established by the government periodically.

- (ii) Mandatory Retirement Pension Fund ("FGTS") - Employers must deposit monthly at Caixa Economica Federal (government-owned bank) the equivalent to 8% of paid wages to the employees. This value, paid by means of identified deposits, is destined to form a fund to which employees are entitled when they retire, or when they are fired without a just cause. If they are actually fired without cause, the company has to pay a penalty of fifty

percent on the amounts deposited during the current employment.

### Labor Unions

Both companies and employees make annual contributions to their respective unions.

The employees pay the equivalent of one day's salary (deducted by the company in March), which is paid to the class Union by April.

As for the employers, the Union contribution is equivalent to a percentage of the outstanding capital of the company, which varies in accordance to the Union, as defined by the applicable legislation.

Apart from that, the setting of other contributions in collective class agreements and internal deliberations of the Unions is also common. There is no limit imposed by the law.

However, these values are not significant enough to affect the financial situation of a company.