THE 2017 BRAZILIAN LABOR REFORM:
a brief overview[1]

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ABSTRACT

This study seeks to present to a foreign audience a brief description of the development of the Brazilian Labor Law, up to the Labor Reform approved by Law No. 13,467/2017, which significantly altered the nature of labor relations through amendments made to the texts of the "Consolidação das Leis do Trabalho - CLT" (Consolidation of Labor Laws - CLT), of Law No. 6,019/1974 and of other labor laws. The aim of this study is to analyze the Labor Reform within the historical context, with emphasis on its material aspects especially regarding the Collective Labor Law and Labor Union Law.

Key words: Labor Reform; Labor Law; Collective Labor Law; Union Law; Outsourcing.

1. Economic crisis, social transformations, and ascension of a neoliberal ideology

Since the final decades of the 20th Century, many countries have seen ascension of neoliberal ideals. In some of the main centers of the capitalist system, the elections of Margaret Thatcher (in England, in 1979), Ronald Reagan (in the US, in 1980) and Helmut Kohl (in Germany, in 1982) clearly

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showed political victories of this neoliberal ideology. These victories marked the rise in power of a deregulatory approach to the Welfare State.

In the 1990s, Brazil also adopted this tendency, which supports reduced state intervention in the economic domain. This was seen, in different ways and on different levels, in the governments of Presidents Fernando Collor de Melo (1990-1992), Itamar Franco (1992-1994) and Fernando Henrique Cardoso (1995-2002).

However, in Brazil, this neoliberal tendency diminished during a period of more than 13 years, under the government of President Lula's Workers' Party and that of his successor Dilma Roussef.

But, since May 2016, when President Rousseff was impeached and Michel Temer became President, there has been a marked resumption of neoliberal policy, which argues for reduced state intervention in the economy and the carrying out of structural reforms, such as the Labor Reform and the Pension Reform.

The return of this tendency is undoubtedly the result of ongoing political and economic transformations affecting Brazilian society, such as the ageing of its population, the economic-financial crisis and the increase in the unemployment rate in recent years, the need to balance public accounts (especially regarding the social security system), the need for Brazilian companies to be able to compete with competitors on a global scale, technological innovations that have resulted in job losses, and the creation of new forms of work (home offices and work provided by companies existing only in digital form, such as Uber).

In the first half of 2017, the government of Michel Temer was in a hurry to get a Labor Reform bill passed in the National Congress. Favored by a fleeting parliamentary majority, the government managed to secure swift approval for broad, sweeping reforms to the CLT and other specific labor

laws. This Labor Reform resulted in significant changes to the rules of the Labor Law and Procedural Labor Law.

The ease with which the Labor Reform bill was passed was due to the fact that the CLT and the majority of the labor laws have the status of ordinary laws. So, in the National Congress, amendments do not require high or qualified quorums to open hearings or pass bills.

The Labor Reform bill was approved through Ordinary Law No. 13,467, of July 13, 2017, becoming effective 120 days after its publication (which is to say, on November 11, 2017).

2. The Labor Reform Act (Ordinary Law No. 13,467/2017)

Favored by the momentary support of a majority of parliamentarians, the government of President Michel Temer undertook to make significant changes to the CLT and certain other specific labor laws, the President's declaring that it would be necessary to "update" supposedly "old" and "outdated" legislation, to adapt it to the present time, in order to create jobs, and generate income and economic growth. Labor Judge MARLOS AUGUSTO MELEK formed part of a commission that helped draft the text of the new law. In his book, MELEK criticized the existence of the "anachronistic, old CLT which refers to 'typing', when we live in an age of 'smart phones'."[3]

However, the haste with which the Labor Reform bill was discussed in the House of Representatives and Federal Senate, and several incongruities and possible unconstitutionalities in its text, have been strongly criticized by Brazilian jurists.

Law No. 13,467/2017 amended over a hundred different items of the CLT, so it certainly deserved a more careful and considered debate, with broader

[3] MELEK, Marlos Augusto. *Trabalhista! E agora? Onde as empresas mais erram*. Curitiba: Estudo Imediato, 2016, p. 19.

discussions involving representatives of both workers and companies, and a debate with the general public. Unfortunately, this did not happen.

The Labor Reform bill (Bill No. 6,787) was presented by the Executive Branch on December 23, 2016 and was effectively discussed in Parliament for a period of, approximately, only four months. After being approved by the House of Representatives, the Federal Senate did not amend any provisions of the bill thus enabling the swift approval and enactment of the new law.

In addition to this, the Labor Reform Law text stated that it would come into effect after 120 days counted from the date of its publication, which constitutes a very short period of adaption, when compared to other laws of major importance and social consequence.

As if this were not enough, on November 14, 2017 (which is to say, less than a week after the new law came into effect), the Brazilian President issued Provisional Measure No. 808/2017, with new changes to aspects of the CLT that already had been amended by Law No. 13,467/2017.

As can be seen, the new government took advantage of the favorable political moment to approve, with obvious haste, significant changes to the Labor Law and Procedural Labor Law.

In this study, we intend to undertake an empirical and timely analysis of some of the main aspects of the Labor Reform Law, with particular emphasis on changes directly concerning the regulations of the Collective Labor Law and Union Law. We will also cite some amendments made to the Individual Labor Law that also have repercussions in the collective sphere.

As previously observed the reform was broad and amended the CLT in several areas. This study obviously does not intend to undertake a comprehensive analysis of the reform, but rather seeks to provide the foreign reader with a brief overview of some important and controversial points whose regulation was amended by Law No. 13,467/2017.

The significant changes made to the rules of the Procedural Labor Law will not be the object of the analysis of this brief study.

3. Collective bargaining agreements and collective agreements prevail over state legislation (article 611-A of the CLT)

The neoliberal character of the Labor Reform bill is clear in the many provisions that seek to prioritize clauses stipulated by contracting parties over those of the CLT and state legislation. This is referred to as the "prevalence of the negotiated over the legislated".

Within the scope of the Union Law, the 1988 Constitution and the CLT assert the existence of two types of agreements arising from collective negotiations: the collective bargaining agreement (a written agreement signed between the workers' union and the union representing the employers) and the collective agreement (a written agreement directly entered into by the workers' union and one or more companies).

These collective bargaining agreements and collective agreements create legal rules that regulate employment contracts. However, the courts and the jurists' opinions have historically imposed limitations on the terms that could be freely negotiated through these collective arrangements, establishing a series of restrictions regarding non-negotiable rights, which cannot be the object of waivers or settlements by the parties, either in individual or collective agreements.

As an example, we cite the minimum 1 hour work break for rest and meals of article 71, of the CLT, for continuous work lasting more than 6 hours, commonly referred as the "meal and rest break".

The idea has long prevailed that this interval could not be eliminated or reduced, even through collective or collective bargaining agreements, since it concerns an irrevocable right, directly related to occupational health.

Regarding this, Judicial Precedent No. 437, II, of the Superior Labor Court stated that this 1 hour minimum break was non-negotiable, even through collective negotiation involving the workers' union:

> *II – Any clause of a collective agreement or collective bargaining agreement concerning the elimination or reduction of the work break for rest and meals is invalid, because it constitutes a hygiene, health and work safety measure, guaranteed by the rule of public order (article 71 of the CLT and article 7, XXII, of the 1988 Constitution), and is not susceptible to collective negotiation.*

However, following the Labor Reform, Article 611-A of the CLT states that the clauses of collective arrangements shall prevail over state legislation when regarding, among other subjects, work breaks, while respecting the minimum limit of 30 minutes for shifts longer than six hours.

In contrast to the text cited in Judicial Precedent No. 437 of TST (Brazilian Superior Labor Court), article 611-A of CLT proceeded to provide for the possibility of a reduction, through a collective bargaining agreement or collective agreement, of the work break for meals and rest, while respecting the minimum limit of 30 minutes for shifts longer than six hours. In other words, although article 71 of the CLT states the mandatory granting of a minimum interval of 1 hour for shifts longer than six hours, following the passing of the Labor Reform bill, article 611-A of the CLT established the possibility of reducing this interval if there were an agreement with the workers' union. The CLT is now effective with the following wording:

> *Article 611-A. Collective bargaining agreements and collective agreements, shall prevail over the law when concerning, among*

> *other things, the following matters:*
> *III – work breaks for rest and meals, respecting a minimum limit of thirty minutes for shifts longer than six hours; (…)*

Other examples of matters that can be negotiated through collective bargaining agreements or collective agreements, as expressly provided for by article 611-A of the CLT, include: payment of overtime through annual offsetting of overtime (the extra hours worked can be compensated by reducing the shift or granting other days off, and this compensation must occur within a period of up to one year); identification of positions of trust, without the need to control working hours (which is to say, those positions considered as management and administrative posts, with the possibility of limited work breaks and unlimited overtime); home office, on-call systems and intermittent work (zero-hours contracts); time control systems (decisions about the working hours recording system: if working hours shall be recorded through manual notes on time sheets, clocking in and out systems, electronic systems, biometrical systems, etc); holiday date flexibility (changing of dates of holidays); the selection of employees' representatives in the workplace, among other subjects.

It is emphasized that, due to the use of the expression "among others" in the text of the law, the list of matters of article 611-A of CLT has a merely exemplary character, which is to say, other matters besides the ones listed in the law have also become the object of free stipulation in collective bargaining agreements and collective agreements.

By contrast, article 611-B of the CLT was also introduced, which provides a complete list of those rights that may not be suppressed or reduced through collective bargaining agreements and collective agreements (notably those rights ensured in article 7 of the Constitution). It must be observed, in this

regard, that the law uses the expression "exclusively". This means that the list of subjects is comprehensive, which is to say, only those matters covered by article 611-B may not be the object of collective rules. According to the text of the law, this allows all other matters not listed in article 611-B to be freely negotiated through collective agreements or collective bargaining agreements.

4. Individual agreements prevail over state legislation (CLT, article 444, sole paragraph)

The liberal idea that prioritizes free will also gave rise to the insertion of article 444, sole paragraph, of the CLT. These new resolutions state, in individual employment agreements, that clauses established directly between employees and employers prevail over the provisions of state legislation regarding the same matters listed in article 611-A. However, this will only be possible in cases where the employee has a university degree and receives a monthly salary equal to, or greater than, twice the value of the highest pension benefit paid by the Public Social Security System.

In practice, this means greater freedom for inserting clauses in agreements entered into by employees who are college graduates and have a monthly salary equal to, or higher than, approximately US$ 3,200, according to the exchange rates currently in force (December/2017). The agreements of these employees may, for example, indicate a reduction in the work break for rest and meals (respecting the minimum limit of 30 minutes), the adoption of annual offsetting of overtime (with the compensation of overtime within a period of up to one year) and the altering of holiday dates.

The cited article 444, of the CLT, is now effective with the following wording::

Article 444 – Contractual working relationships may be the object of free stipulation by the interested parties concerning everything that does not contravene protective work provisions, collective arrangements that are applicable thereto and the decisions of the competent authorities.

Sole paragraph. The free stipulation referred to in the head provision of this article applies to the hypothesis stated in article 611-A of this Consolidation, with the same legal efficacy and prevalence over the collective arrangements, if the employee holds a university degree certificate and receives a monthly salary equal to, or higher than, twice the maximum limit of the benefits of the Public Social Security System. (Included by Law No. 13, 467/2017)

5. Collective agreements (entered into between the company and the union) prevail over the collective bargaining agreements (article 620 of the CLT)

As previously seen, the collective arrangements stated in the Constitution and in the CLT are the collective bargaining agreement (an agreement between the workers' union and the union representative of the companies) and the collective agreement (an agreement executed directly by the workers' union with one or more companies).

Before the Labor Reform bill, article 620 of the CLT stated that "the conditions established in collective bargaining agreements, when more favorable, shall prevail over those established in the collective agreement". By using the expression "when more favorable", the law privileged the principle of the most favorable rule, concluding that the collective agreement and the collective bargaining agreement should be analyzed together, in a global form, to verify which is more favorable and should prevail in a certain specific

case.

However, the new wording of article 620, established by Law No. 13, 467/2017, is as follows:

> *Article 620. The conditions established in the collective labor agreement shall always prevail over those established in the collective labor bargaining agreement.*

The new rule contrasts with the previous one, by stating that the collective agreement shall "always" prevail over the collective bargaining agreement.

The application of this new provision may lead to intense discussion in the Brazilian courts, especially when the collective agreement is less favorable than the collective bargaining agreement or when it limits or suppresses labor rights.

GUSTAVO FILIPE BARBOSA GARCIA argues that the principle of the application of the most favorable rule should continue to prevail, due to the principle of protection guaranteed in the constitutional text:

> Thus, the constitutional interpretation shows that the conditions established in the collective labor agreement (always) prevail over those established in the collective labor bargaining agreement, but providing that those of the collective labor agreement generate more benefits than those of the collective labor bargaining agreement.
>
> Therefore, if the provisions of the collective labor bargaining agreement are more favorable, the constitutional understanding is that it should prevail."[4]

As can be seen, in the light of the constitutional rules, the interpretation of this provision may also generate broad discussion among jurists and in the Labor Courts.

6. Arbitration to resolve individual labor disputes (article 507-A of the CLT)

Article 507-A, incorporated into the CLT by Law No. 13, 467/2017, proceeded to consider the possibility of an arbitration clause in individual employment agreements providing that the resolution of conflicts between the parties (employee and employer) occurs by means of arbitration, and provided that the presence of this clause arises from the initiative of the employee him/herself or enjoys his/her express agreement.

According to article 507-A, the existence of an arbitration clause is only allowed when the employee receives a monthly remuneration greater than twice the highest value of the social security benefit paid by the Public Social Security System (in other words, higher than approximately US$ 3,200 by current values).

It is noteworthy that, in contrast to the provision of article 444, sole paragraph, article 507-A does not require that an employee have a college degree in order to insert an arbitration clause.

Article 507-A offers no other provision regarding which party shall bear the cost of the establishment and realization of the arbitration.

Furthermore, the provision regarding the possibility of the resolution of individual labor conflicts by means of arbitration shall be questioned before the Brazilian Courts, because the Arbitration Law (Law No. 9,307/1996) itself states that only conflicts concerning freely transferable property rights may be settled through this alternative method of dispute resolution.

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[4] GARCIA, Gustavo Filipe Barbosa. *Reforma trabalhista*, 2. ed. Salvador: Juspodivm, 2017, p. 294.

For this reason, regarding the Labor Reform bill, the prevailing understanding in the courts was that arbitration should be allowed only for the resolution of collective labor conflicts, but was incompatible with the resolution of individual conflicts. Subsection I for Individual Conflicts of the TST (Brazilian Superior Labor Court) expressly adopted this understanding.[5]

As asserted by HOMERO BATISTA, "there will be great judicial controversy in this regard, considering that, in similar cases, the Labor Courts did not accept this alternative form of conflict resolution on the understanding that labor credits are defined as unwaivable rights, being adverse to arbitration as stated in Law No. 9,307/1996".[6]

7. Union ratification is no longer mandatory in the termination of employment contracts already in force for more than 1 year (revocation of article 477, § 1, of the CLT)

Paragraph 1 of article 477 of the CLT was revoked by Law No. 13, 467/2017. This provision stated that a resignation request or receipt of a release agreement from an employment contract, signed by an employee who had provided more than one year of service to the company, would only be valid when made with the assistance of the respective union of the professional class or under the authority of the Ministry of Labor.

Thus, there is no longer any need for assistance by the union in the termination of the employment contracts of employees who have provided more than one year of service to the same employer.

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[5] TST (Brazilian Superior Labor Court), SBDI-I, E-ED-RR-79500-61.2006.5.05.0028, Labor Justice Rapporteur: João Batista Brito Pereira, DEJT: March 30, 2010.

[6] SILVA, Homero Batista Mateus da. *Comentários à reforma trabalhista*. São Paulo: Editora Revista dos Tribunais, 2017, p. 70.

8. Ratification of extrajudicial agreements (article 855-B and the following of the CLT)

The Labor Reform bill inserted an additional chapter into the CLT, which stated the possibility of approval, in the Labor Courts, of extrajudicial agreements entered into between the parties.

In order to avoid possible frauds, especially in cases of individual agreements, article 855-B states that the parties may not be represented by the same lawyer. It also states that the employee, if he chooses, may be assisted by the lawyer of the workers' union.

A petition where approval of the extrajudicial agreement is required suspends the statute of limitation of the action regarding the rights specified therein (article 855-E of the CLT).

9. Elimination of mandatory union dues

Mandatory union dues used to be payable every year. According to GUSTAVO FILIPE BARBOSA GARCIA, this obligation "restricted freedom of association (labor union freedom) and was incompatible with the ILO Convention 87, as said duty was owed regardless of any declared intent or agreement between the employee or employer, or affiliation with the union."[7]

Companies were required to deduct from their employees' payroll the sum equivalent to one day's salary every March (as stated in former articles 580 and 582 of CLT). Employers' union dues also had to be paid every January (article 587, CLT).

The novelty introduced by the Labor Reform bill, in this regard, was the abolition of the mandatory payment of such union dues, which no longer have the status of a tax and are now optional and voluntary. By changing articles

[7] GARCIA, Gustavo Filipe Barbosa. *Op. cit*, p. 223.

578, 579, 582, 583, 587 and 602 of the CLT, Law No. 13,467/2017 states that union dues will only be payable upon prior and express authorization by workers and companies. In other words, the Labor Reform bill has put an end to annual mandatory union dues.

In this same regard, article 611-B, XXVI, CLT, expressly prohibits clauses in collective bargaining agreements or collective labor agreements providing for the payment of union dues.

The aim is for unions to be supported exclusively by optional and voluntary contributions previously authorized by their members, in accordance with the idea of freedom of association.

However, while the Labor Reform has granted greater powers and responsibilities to Brazilian unions (particularly with regard to the prevalence of clauses in collective bargaining agreements or collective labor agreements over state legislation, as per article 611-A, CLT), the cessation of this source of income may create serious financial problems for the unions, which have received annual union dues since the 1930's (the Vargas Period).

To allow for a period of adjustment to the new rules, many people expected that the President would later enact, by means of a Provisional Measure, a transitional rule providing for the gradual termination of said union dues. Provisional Measure No. 808/2017, however, did not contemplate any such thing. Therefore, the payment of mandatory union dues was summarily terminated.

Although the ending of mandatory union dues represents progress regarding freedom of association, Brazil has unfortunately not ratified the ILO Convention 87 and the centralized union regime remains in force in Brazil.

10. The annual certificate of discharge before the employee's union (article 507-B of the CLT)

The inclusion of article 507-B in the CLT allows employers and employees to call on the assistance of the union to secure an annual general release agreement regarding labor obligations. The new article states the following:

> *Article 507-B. Employees and employers may, during the term, or following termination, of an employment contract, sign an annual agreement of release from labor obligations before the workers union.*
>
> *Sole Paragraph. The agreement shall specify the monthly obligations fulfilled and shall include the annual release granted by the employee, effective for the release from the sums specified therein.*

As has been observed, the assistance of the unions in the termination of employment contracts effective for more than one year is no longer necessary, due to the repeal of article 477, paragraph 1, of the CLT. However, the Labor Reform law now provides for the assistance of the unions in the execution of an "annual release agreement regarding labor obligations". And the law states that this agreement "is effective regarding release from the sums specified therein". In other words, the sums listed in said release agreement (e. g., vacation, thirteenth salary, FGTS – Workers Severance Guarantee Fund, profit sharing, transportation vouchers, meal tickets, etc) cannot, in principle, be subsequently challenged and claimed by employees, even if the sums have been paid incorrectly.

Most employees – as they are subject to the employer's rules, due to their economic subordination and fear of losing their jobs – will have little power to

refuse or question their employers when invited to sign such release agreements before the unions. This fact will likely give rise to discussions regarding effective freedom and absence of coercion or consent by the employee in the execution of said release agreements.

The annual release agreement cannot serve as some kind of pretext for granting remission or forgiveness to defaulting employers who incorrectly perform labor obligations guaranteed by the law or Constitution.

11. General discharge in the Voluntary Resignation Plans (article 477-B, of the CLT)

The Labor Reform added to the text of the CLT an understanding already adopted in 2015 by the Full Bench of the STF (Brazilian Supreme Court):

> "An out-of-court settlement regarding the termination of the employment contract due to the employee's voluntary adherence to a voluntary redundancy program entails a full and general release from all payments in the employment contract, if this condition is expressly included in the collective agreement that approved the plan, as well as all other arrangements agreed with the employers."[8]

Law No. 13,467/2017 included the following article in the CLT:

> *Article 477-B. Voluntary Redundancy Program for individual, multiple employees or collective dismissal, provided for in collective bargaining agreements or collective labor agreements,*

[8] STF (Brazilian Supreme Court), Sitting *en banc*, Extraordinary Appeal 590,415/SC, Justice-Rapporteur Luís Roberto Barroso, judged on April 30, 2015.

entails a full and general release from the rights resulting from the employment relationship, except when agreed to otherwise by the parties.

Therefore, as long as the Voluntary Redundancy Program (a program that offers advantages and consideration for employees that leave the company) results from collective negotiation and is duly provided for in a collective agreement or collective bargaining agreement subscribed to by the workers' union, the employee's voluntary and spontaneous adherence to such a program entails a full, general and irrevocable release from the rights arising from the employment contract. This means that the employee will have no further claims following the termination of the employment contract.

12. Collective or multiple dismissals without the need for previous negotiation with the employee's union (article 477-A of the CLT)

Article 477-A was added to the CLT stating that collective dismissals or multiple employee dismissals do not depend on previous negotiation with the workers' unions, as occurs in individual dismissals.

A collective dismissal is the dismissal of a large number of workers for the same reason: the company's need to reduce employee numbers due to economic, technological, structural or related reasons.

Multiple employee dismissal is the dismissal of several employees at the same time, but for specific reasons, related to each employee's specific conduct, which is to say, there is no common motive for the different individual or singular dismissals.

Article 477-A of the CLT provides that neither collective nor multiple employee dismissals depend on prior communication or negotiation with the workers' union:

> *Article 477-A. Groundless individual, collective or multiple employee dismissals are considered equivalent for all intents and purposes, and there is no need for previous authorization by the union or the execution of a collective bargaining agreement or collective labor agreement for their effectiveness.*

This article tends in the opposite direction of the prevailing understanding of the Brazilian Labor Courts, including the Superior Labor Court, which required prior collective negotiation before mass dismissals.[9]

It also tends in the opposite direction of the ILO Convention 158. It should be pointed out that Brazil has ratified Convention 158 and has incorporated its terms into Brazilian legislation by Decree No. 1855/1996. However, soon afterwards, the Brazilian Government denounced this Convention through an act registered before the ILO on November 11, 1996. To date, the Action for a Declaration of Unconstitutionality No. 1625-3 challenging the validity of said denunciation is pending trial before the STF (Brazilian Supreme Court).

Despite the statements of article 477-A of the CLT, cases have been filed in the courts and there is already a debate as to whether this new provision of the CLT is valid and constitutional.

13. Outsourcing (amendments to Law No. 6,019/1974)

Although a thorough analysis of this subject is also beyond this study's scope, it should be noted that the Labor Reform allowed the outsourcing of any activity, including the company's main activity, according to article 4-A of Law No. 6,019/1974:

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9 TST (Brazilian Superior Labor Court), SDC, RODC 309/2009-000-15-00.4, Labor Justice Rapporteur Mauricio Godinho Delgado, DEJT: April 9, 2009.

> *Article 4-A. Outsourcing is considered as the transfer by the contracting party of the performance of any of its activities, including its main activity, to a private legal entity that renders services and possesses economic capacity compatible with the performance of such activities. (Wording by Law No. 13, 467/2017)*

In other words, employees from external companies are now allowed to provide all services. For example, a school may now choose not to have any direct employees and to hire an outsourcing company to provide the teachers, inspectors, receptionists, doormen and cleaners necessary to render the services.

The Labor Reform bill (Law No. 11,467/2017) enacted these changes by amending Law No. 6,019/1974, which previously only provided for temporary work.

These changes represent a huge backward step and will damage employment relationships.

It should be noted that the new wording of the law (article 4-C of Law No. 6,019/1974) does not even ensure equal pay for the contracting company's direct employees and the outsourced employees, even if they perform identical activities at the same workplace, in violation of the provision of the Universal Declaration of Human Rights (UN, 1948) in its article 23. 1. According to this article, equal pay is only a choice, not an obligation:

> *Article 4-C. (…) Paragraph 1. Contracting party and outsourcing company may establish, if they so wish, that the outsourcing company's employees be entitled to payment equal to that received by the contracting party's employees, in addition to other rights not*

foreseen herein. (Added by Law No. 13,467/2017)

Understandable, this amendment has been object of harsh criticism, such as that expressed by FÁBIO VILLELA:

> "(...) it is now been shamelessly authorized to lease out labor, as if an outsourced worker were merchandise or commercial property. The human being is being reduced to the status of a material object in employment relations.
> Thus, it is now possible to open companies without employees or even for workers to coexist in the same environment and perform the same activities, but receive different treatment, in flagrant violation of the principle of equal protection (...)."[10]

With regard to Collective Labor Law, it should be pointed out that outsourced companys' employees are, in principle, affiliated with unions that are different from those of employees working directly for the companies where they perform their activities.

This fact will create further inequality between workers who perform identical activities for the same company, since the rights and benefits foreseen in collective agreements or collective bargaining agreements executed with the respective labor unions will be different.

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[10] VILLELA, Fábio Goulart. A terceirização na reforma trabalhista: a "legalização" da intermediação de mão de obra. In: TUPINAMBÁ, Carolina; GOMES, Fábio Rodrigues (Coord.). *A reforma trabalhista*: o impacto nas relações de trabalho. Belo Horizonte: Fórum, 2018, p. 153.

14. Conclusion and future perspectives

This study is not comprehensive and does not cover all the issues included in the 2017 Labor Reform bill. Some equally important aspects – such as the creation of so-called "intermittent employment contracts" and the possibility of the termination of employment contracts by "mutual agreement" between the parties – were not even mentioned here, likewise changes regarding Procedural Labor Law and the new rules applicable to judicial resolution of labor claims.

However, the issues included here demonstrate that the Labor Reform bill enacted by Law No. 13,467/2017 has a strongly neoliberal tendency and seeks to give prevalence to rules negotiated by the parties themselves (both in the collective and individual sphere) over statutory rules. In other words, the reform clearly aims at reducing government interference in employment relationships.

There represents a clear effort, regarding employment relationships, in order to leave the public into the private sector, which is – in some ways – highly risky in a country still marked by extreme social inequality and where workers generally do not negotiate on equal terms with the other contracting party.

It is also evident that the Labor Reform, in many regards, sought to challenge prevailing precedents of the Superior Labor Court.

The possibility of outsourcing all of a company's activities (amendment to Law No. 6,019/1974) will produce potentially adverse consequences that represent an affront to the principle of equal pay (equal pay for equal work), and may cause a deterioration in employment relations.

Throughout the swift processing and approval of the Labor Reform in the Brazilian Congress, the government alleged that the CLT was "old" and was one of the causes of the high unemployment rate and the country's huge

number of labor claims. The government stated the need for "modernization" in order to improve employment opportunities, income and economic development. Such claims, however, have no empirical or scientific basis, despite being repeated like mantras.

Although the 2017 Labor Reform may seem, in many regards, to be a backward step regarding the protection of social and labor rights, the information contained in this study is not intended to cast Brazil in a negative light or as representing a negative view of the country's future.

If, on the one hand, the Reform is considered a regression, on the other hand, in recent decades, institutions like the Labor Prosecutor's Office and Labor Inspection Agencies have become much stronger, better prepared and better organized. They have also hired more staff and gained greater autonomy.

Labor Prosecutors and Labor Inspectors already play – and will continue to play – a very important role in monitoring the main challenges in the labor sector, including the guarantee of dignity in the workplace.

Over the last thirty years, ideas regarding the recognition of the effectiveness, normative strength and binding nature of constitutional rules have gained strength, which is extremely important. All areas of Brazilian Law are now governed and construed in accordance with the rules and principles of the 1988 Constitution, including the Labor Law and Procedural Labor Law.

According to Justice LUÍS ROBERTO BARROSO, the emergence of a constitutional feeling in the country – creating a sense of respect and even affection towards the Constitution – must be celebrated.[11]

So, some legal provisions included in the Labor Reform should be read and

[11] BARROSO, Luís Roberto. *O direito constitucional e a efetividade de suas normas*, 6. ed. atualizada. Rio de Janeiro: Renovar, 2002, p. 322.

interpreted according to the rules and principles of the 1988 Constitution and to International Conventions ratified by Brazil.

Brazil currently possesses a well-developed structure for resolving labor claims, with specialized and independent Labor Courts and Judges.

The Brazilian Supreme Court (STF) has performed a consistently important and admirable role as the guardian of the Constitution, including in Labor Law matters.

Despite its many challenges, Brazil has overcome difficult periods in the past, including dictatorships. But, inspired by the 1988 Constitution, Brazilian society is being built on republican and democratic values.

Brazil has made significant progress in reducing child labor and eliminating degrading working conditions, thanks to the important work performed by the Labor Prosecutor's Office, the Labor Inspection Agencies, Police, Unions and the Courts.

Among many other issues, the country has made progress in regulating domestic employment relationships, student internships, prior notice in the termination of employment contracts without cause, and parental protection issues (including adoption).

The same applies to other areas, such as the fight to reduce corruption, inflation rates and extreme poverty.

According to the former President of the Brazilian Supreme Court, Justice CARLOS AYRES BRITTO, "democracy does not win by knockouts, it wins on points, it is a process… The implementation of Democracy is gradual."[12]

Despite the challenges and obstacles along the way, we believe that Brazil remains resolute in its arduous and daily struggle to consolidate its

[12] BRITTO, Carlos Ayres. Carlos Ayres Britto: interview [May 2017]. Interviewer: Pedro Bial. São Paulo: Globo, 2017. Interview aired on May 22, 2017 in TV program "Conversa com Bial".

democracy.

Japanese use to say that it is necessary to work hard and tirelessly – with focus, patience and resilience – in order to overcome difficulties and, thus, to achieve important goals.

As the Japanese say, ローマは一日にしてならず (Ro-ma wa ichinichi ni shite narazu).

In other words, "Rome wasn't built in a day."

The same principle applies to the Brazilian Democracy.

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