

**BRAZIL**  
**Prepared by Ricardo Sanches**  
**Felsberg Associados**

**1. Are there any laws that govern a layoff of employees? If so, what do the laws require?**

Brazilian Labor law does not regulate mass termination procedures. Therefore, there is no mandatory negotiation/notification involving the labor union in case of such dismissals. In this regard, the individual dismissal without cause procedures established by Brazilian Labor must be applied.

Dismissal without cause is permitted but is subject to the employer giving the employee a 30-day minimum advance notice (which is increased by certain collective bargaining agreements) and in addition to the severance payments due in case of an employee's requested dismissal, the employer will also have to pay a dismissal indemnification of fifty percent (40% to the employee and 10% to the Brazilian Federal Savings Bank) of the balance in the employee's accrued severance fund ("FGTS ") account.

**2. Are there any formal requirements for terminating an employee or groups of employees?**

Regardless of the dismissal form (with cause, without cause, breach of contract by the employer or request for termination by the employee), the employee is entitled to receive his/her severance payments until the 10<sup>th</sup> day after the dismissal in case of dismissal with an indemnified 30-day advance notice or until the first working day after the worked advance notice.

However, if the employment contract has been in force for more than 12 months, then termination must be signed in the presence of and approved by the Labor Union officer or the competent authorities at the Local Office of the Labor Department.

Furthermore, please note that under Brazilian Labor Law, employees in certain conditions have job tenure, and may not be dismissed without cause. Brazilian legislation provides for temporary job tenure in the following circumstances, among others, provided by law or the applicable collective bargaining agreement:

- (i) union leaders - from the employee's registration as a candidate to one year after the end of his/her term;
- (ii) expectant mothers – from the confirmation of the pregnancy to 5 months after the birth;
- (iii) employees who have suffered a workplace accident or are receiving social security allowances due to labor-related illness - for 12 months after their return to work;
- (iv) members of the Internal Commission for Accident Prevention ("CIPA") - from the employee's registration as a candidate to one year after the end of his/her term.

**3. Are there special legal requirements for a layoff caused by redundancy in the workforce?**

No.

**4. Are there employment laws that laid-off employees can use to challenge their inclusion in the layoff?**

Yes. The employer may not use discrimination practices in establishing the dismissal of employees (whether individual or collective dismissals). In any case, the employee may file a labor claim requiring reinstatement at work and pain and suffering damages, although such claims are not as common as in the U.S., especially in layoff scenarios. On the other hand, it is very common that former employees file labor claims against their former employers seeking allegedly unpaid overtime, salary differences, bonuses or damages for unfair practices.

**5. What sanctions or penalties may be imposed against employers for violating any of the requirements mentioned in Nos. 1-4 above?**

Under Brazilian Labor Law employers who do not provide the mandatory advance notice shall indemnify it by means of one additional monthly salary plus FGTS, Christmas bonus and vacation pay differences, calculated as if the employee had worked during the notice period. Additionally, if mandatory severance is not paid within the terms determined by Brazilian labor law, then the employee is entitled to one additional monthly salary as indemnification. Administrative penalties may also be applied if the company is subject to an audit procedure by the Regional Office of the Ministry of Labor.

**6. What are the one or two most common mistakes that employers make that lead to liability for a layoff?**

Employers fail to duly calculate and pay the severance payments within the 10-day period in case of an indemnified advance notice.

Employers fail to verify whether the employees are entitled to any form of legal or collective bargaining agreement establishing job tenure.

**7. What other employment issues are likely to arise from a layoff in your jurisdiction that you have not addressed in your answers to the previous questions?**

Please note that, despite the absence of specific provisions regarding mandatory negotiations and restrictions on mass dismissals, recent precedents in the Regional Labor Courts of São Paulo and Campinas have determined: (i) the suspension of layoffs – especially those which took place in 2009 due to the global economic crisis; (ii) that companies were obliged to previously negotiate with the labor union for other alternatives to the layoffs (i.e. salary reduction, suspension of contracts and voluntary dismissal programs) and, if such measures are not sufficient, negotiate additional benefits for the employees dismissed. The most relevant case, involving an Aircraft Company which dismissed more than 4,000 employees, which occurred quite recently,

— was one of such precedents. In this case, the Regional Labor Court of Campinas determined the suspension of all such dismissals and, after the negotiations, ordered the company to pay additional severance benefits. However, in April/2009 the Superior Labor Court overruled the suspension of the dismissals and granted the company's motion to recognize that the dismissals were effective. The Court also ruled that the employer had no obligation to negotiate such layoffs with the labor union, although the company accepted the additional benefits determined by the Regional Labor Court.

Finally, please note that under the Brazilian Federal Constitution, employees have: (i) five (5) years to file a suit in order to claim any rights during the employment relationship; and (ii) two (2) years from the end of their (alleged or formally recognized) employment relationship to file suit for labor rights, whilst such rights may be claimed for a period of up to five (5) years before the filing of such a lawsuit. On the other hand, the statute of limitations on FGTS contributions is thirty (30) years.