ABSTRACT

This chapter analyzes the evolution of employment regulation in Brazil in order to understand the current moment that it is experiencing. In the current political, economic, and social crisis scenario, the protection system, which is historically valid and justified by the intense social inequalities, is questioned as the country is trying to deal with the urgencies of a big economic downturn without trust of local and international investors in internal market. An intensely advanced legal and judicial system in terms of constitutional principles and guarantees faces a number of structural problems that affect its effectiveness, while at the same time, in the middle of the scenario, the effectiveness and immediacy of the legal and judicial solutions becomes urgent. This chapter finally aims to analyze, in a historical and systematic way, and through statistical data related to employability, GDP and litigation linked to the subject of labor relations, how this Latin “giant” stands and seeks the solution between proposals for legislative reform.

Brazil’s Employment Regulation and Outsourcing

INTRODUCTION

Brazil is really “in the spotlight”, standing out in national and international headlines, either due to its current troubled political scenario, or because of a false propaganda of being the dreamland for tourists.

Behind the jargon “beach, samba and soccer” (and now, corruption) there are millions of Brazilians eager for what the political and economic future hold. Historically, the dominance of a society based on the market, mixed with a culture of deep application of non-compliance mechanisms, have generated an intense crisis that pushed the political and economic boundaries, and destabilized the already fragile framework of labor guarantees actually observed.

Under the paradox of a comprehensive - and rated as highly protectionist - labor legislation, Brazil has been experiencing the reality of a high rate of failure to comply with laws and of conflicts that achieves the Judiciary, aggravated by the use of precarious forms of work and attempts to “tailor” solutions in jurisprudence to situations outside the law. In this context, an enormous reform in labor laws becomes to increase this discussion.

What are the origins and the limits of casualization of labor law in Brazil? Ultimately, what are the (wrong) choices that led to uncertainty and calamity, which affect not only the labor market, but also the institutions of law in Brazil?

This work does not aim to reach a single answer. However it assuredly encourages the reflection about such an important topic affecting the reality of the current Brazilian labor market.

A CYCLICAL HISTORY OF LOSS OF JOB SECURITY

The State Fragmentation Reaches the Worker’s Life

In Brazil, the history of labor law expresses in its evolution the very concept of the relationship it aims to provide. As a result of the large discrepancy between the subjects that make up the working relationship, the economic hierarchy and the social inequality permeating the history of the Brazilian society are also reflected on the way their social and political subjects behave, as well as on their legislation.

There is no doubt there is a reciprocal relationship of “cause and effect” among relationships covered by the branch of law studying the expenditure and the use of the workforce and its nuances, and each historical moment involved. Not accidentally, the regulation of labor relations, in analysis of its higher flexibility or rigidity, shows a pendular and cyclical movement, sometimes tending towards a greater regulation.
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