

QUESTIONNAIRE

"THE RIGHTS OF THE WORKERS IN CASE OF A SHUTDOWN OF THE COMPANY, WHATEVER THE CAUSES"

1. Are there any specific laws in your country regulating bankruptcy?

Yes, Law no. 11,101, dated February 9, 2005 (Bankruptcy Law), establishes the procedures for filing bankruptcy in Brazil. This law specifically deals with judicial and extrajudicial reorganizations, as well as bankruptcies filed by businessmen and companies.

The goal of the new law is to encourage a company to restructure so that it may continue in business rather than to encourage that it cease its operations. Another change instituted by the new law is the creation of a Committee of Creditors – among which is someone to represent the interests of the employee creditors –, as well as the appointment of a judicial custodian, who replaces the previous law's trustee.

The new law also calls for the debts to be immediately resolved after bankruptcy has been filed, while the previous law determined that the liabilities should first be added up before any assets could be auctioned and the proceeds divided among the creditors.

2. Who is responsible (government agencies, courts, etc.) for conducting the bankruptcy proceeding and who is responsible for dealing specifically with the resolution of labor disputes?

In Brazil, the Judicial Branch is responsible for handling any and all bankruptcies and judicial recoveries of companies through its general circuit courts, while the labor courts deal with any arising labor disputes, including those with preferential handling.

Filing for bankruptcy leads to the formation of the Universal Bankruptcy Forum, which will handle all claims, with the exception of labor claims, which are still dealt with by the labor courts during the discovery phase of the lawsuit (Bankruptcy Law, articles 6, § 2 and 76).

Nonetheless, some of the legal actions related to the payment of labor credits are taken under appreciation by the labor courts. Examples of such legal actions are the payment of the labor credits and the summoning of the judicial custodian to acknowledge the existence of a credit. If the judicial custodian of the bankruptcy proceeding decides to challenge the credit, this will be decided with the labor court system, as well as any appeals which are raised against the

court decisions in these matters.

Finally, once the amount and validity of the labor credits have been determined by the court, it will be listed along with all other credits in the Universal Bankruptcy Forum, which will allocate the bankrupt estate accordingly among the creditors.

3. When bankruptcy is filed, are the employment contracts automatically terminated or do they still remain valid?

Filing for bankruptcy does not prevent business operations to continue as usual, at least in the short term, and therefore all bilateral contracts may remain in place even though bankruptcy proceedings are in motion (Bankruptcy Law, article 117).

By the same token, employment contracts are not automatically terminated when bankruptcy is filed since the judicial custodian can ensure their continuation when this measure is helpful in avoiding the undue depletion of the bankrupt estate or when it proves necessary to secure the assets.

However, if the corporation does not stay in business after bankruptcy has been filed, all contracts are, as a result, terminated, including those contracts of employees with job protection.

Therefore, the automatic termination of labor contracts depends not on whether bankruptcy has been filed, but rather on whether the company stays in business after filing for bankruptcy.

4. In the countries in which the labor contracts are automatically terminated once bankruptcy has been filed, what benefits or entitlements are due to the employees?

Brazilian law does not dictate the automatic termination of labor contracts when a company files for bankruptcy.

However, if the company does not stay in business and all contracts, including labor contracts, are terminated, the employees are entitled to all the benefits which would be due to them in the case of dismissal without cause.

The main benefits they are entitled to are: a) all wages and back wages; b) severance pay equal to one month's wages; c) holiday pay and proportional holiday pay, with the addition one third the amount (1/3); d) Christmas bonus (13th salary); e) ability to withdraw the Government Severance Indemnity Fund (FGTS), an account maintained at a bank to which all business must make a deposit every month at the rate of 8% of the employee's monthly salary; f) compensation pay for dismissal without cause (in the amount of 40%

of the FGTS); g) all documentation necessary to claim for government unemployment benefits.

5. Can the labor contracts of one or more employees be terminated after bankruptcy has been filed? Under what circumstances can the judicial custodian terminate the labor contracts? What benefits or entitlements are due to the employees in this case?

As noted in the answer to question 3, the labor contracts are not automatically terminated when a company files for bankruptcy, but rather, when bankruptcy leads to the company's inability to stay in business.

The judicial custodian, with the concurrence of the Committee of Creditors, can, however, decide to terminate one or more labor contracts if maintaining them proves to be too expensive for the bankrupt estate.

In the situations in which the labor contracts are terminated after bankruptcy has been filed, the employee is entitled to the same benefits listed in the answer to question 4.

6. Do the labor credits have any privileges or preferences?

The new Bankruptcy Law states that labor credits shall have a preferential status, but only up to 150 times the amount of the current minimum wage.

Any amount over 150 minimum wages is classified as an unsecured credit.

These credits will be paid by the assets of the bankrupt estate, once they are sold.

7. Is there any institution that will take responsibility for the unpaid debts of the insolvent employer? If yes, please describe the extent of this responsibility.

There is no institution in Brazil which will take responsibility for any debts the insolvent employer has not paid in full.

Furthermore, the Bankruptcy Law (article 83, § 4) determines that the labor credits that are subrogated to third parties will not be considered completely unsecured.

8. Does this institution acquire all of the rights and privileges owed to the employee and are they enforceable in the bankruptcy proceedings?

As discussed, there is no institution in Brazil that can lay claim to these rights

and acquire the privileges guaranteed to the employees. If a party does acquire the worker's credit, this credit will then be reclassified as an unsecured credit.

9. Do the bankruptcy proceedings have any other effects on the employer-employee relationship?

There are no other effects to mention.

10. When a company that has filed for bankruptcy is sold in part or in full, are there any specific implications to the employee rights?

The current legislation (Bankruptcy Law, article 141) dictates that if a company that has filed for bankruptcy is sold in part or in full, the buyer is not responsible for any part of the debt, regardless of its nature. Thus, any taxes owed, any labor law entitlements due and any labor accident compensations are not transferred to the buyer.

However, all of the creditors, in order of preference, are entitled to the proceeds from the sale of the company.

11. Is there specific legislation to protect the employees if a company ceases its operations or if there are mass layoffs? Please describe.

There is no specific legislation to protect employees if a company shuts down or if there are mass layoffs. The State does ensure, however, that any employee dismissed without cause has access to government unemployment benefits if they meet the legal requirements.

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