

PRIMER OF LABOR AND SOCIAL INSURANCE RIGHTS FOR IMMIGRANTS AND REFUGEES



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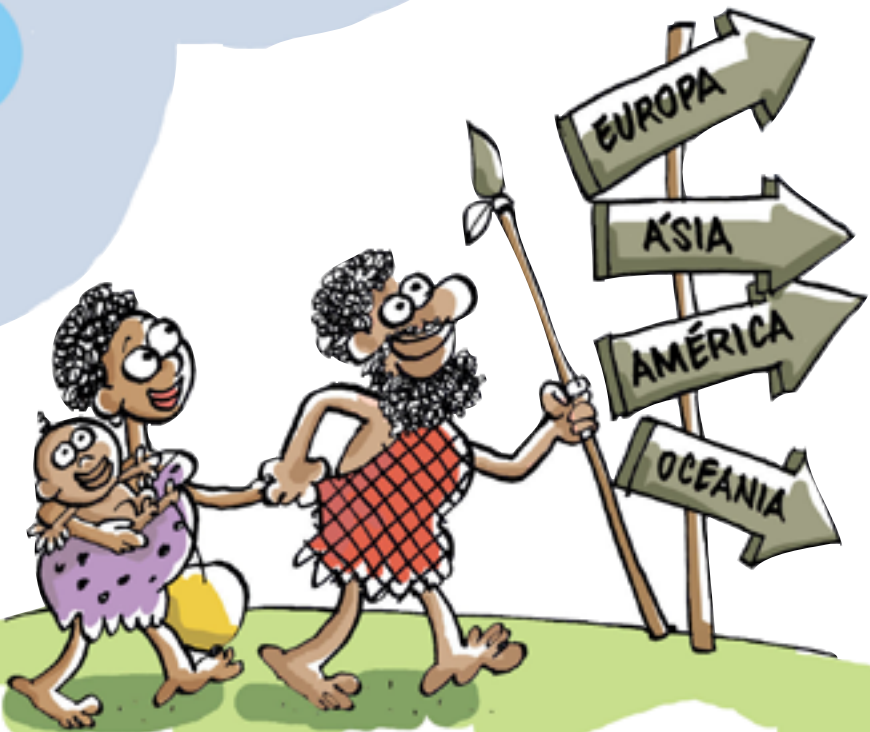
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INTRODUCTION

The migrant's condition

Dear migrant,

We know that migrating is proper to the human condition: our mankind has always seen population displacements, with people leaving the places where they were born to pursue a new reality. However, we also know that people often migrate against their own will, because they see no options in scenarios of war, social violence, or economic crisis. Leaving their homelands, families, and friends to earn a living from scratch in a new country may lead to situations that only those who have gone through them can understand.



**FIRST AND FOREMOST,
REGARDLESS OF THE REASONS FOR
LEAVING YOUR COUNTRY:**

MIGRATING IS A RIGHT!

When arriving in a new country, many situations may happen involving your rights: because of the language, of the lack of local knowledge, or even of the lack of friends and support. So, many barriers prevent migrants from having access to their rights, which are guaranteed by law.

Considering it—as difficult as it may be—, embracing this process of getting used to the new reality is necessary, e.g. building relationships with people, looking for jobs, and learning about the culture and traditions of the society that receives you.

How may knowing your rights help you?


Knowing which rights and duties migrants have where you arrived, as well as the ones of the rest of the population, may be an essential step for your integration with the local reality. It is so because, when you know the Laws, you reduce or eliminate the possibility of feeling out of place and become more confident to face the challenges of living in a different country.





Here comes the Primer!

This Primer is intended to help you with useful information about your human and social rights. These rights must be shared by everybody in a society, regardless of nationality, ethnicity, religion, etc. We especially approach labor and Social Insurance rights.



It is important to notice that, in our legislation, both migrants and Brazilian citizens have the same labor rights, including the right to access a formal, safe, and decent job. We display in this Primer answers to the most common questions that migrants have when they work in Brazil.

Our goal is to help everyone. To do so, it is worth mentioning that this Primer is aimed at everybody who has migrated to Brazil, despite their status, whether documented or undocumented. We make no distinction based on migration status, as migrants may be workers, students, refugees, asylum seekers, or undocumented. Except for some specific differences, they all have the same rights.

Structure and organization of this Primer

The Primer was structured in six sections, with questions concerning:

1. Rights of immigrants and refugees, with considerations on statelessness and types of prejudice suffered by this population, such as xenophobia.
2. Essential aspects about employment and other types of work, as well as elements presented in slavery-like labor—also known as labor analogous to slavery.
3. Core labor rights, that is, those referring to wages, limitations on the periods when people work daily or weekly (working hours), termination of labor contracts (contractual rescission, for instance), etc.
4. Rights related to Social Security, focusing on the Social Insurance ones, the situations in which you may retire, the benefits that may help you if you have a disability, etc.
5. Common violations that a migrant may face at the workplace (harassment, discrimination, etc.), as well as what to do in these situations.
6. Institutions that provide this population with assistance.



What is GEMDIT?

The Research Group on Migration and International Labor Law (*Grupo de Pesquisa em Migração e Direito Internacional do Trabalho* - GEMDIT), registered with the Research Commission of the University of Sao Paulo Faculty of Law (FD-USP) and with the National Council for Scientific and Technological Development (*Conselho Nacional de Desenvolvimento Científico e Tecnológico* - CNPq), seeks to promote many activities partnering with other groups, agencies, and non-governmental entities. Its leader is Associate Professor Antonio Rodrigues de Freitas Júnior, from the Department of Labor Law and Social Security Law (DTB). The GEMDIT counts on the participation of FD-USP Undergraduate and Graduate students, as well as of people from outside the USP. This Primer is the result of a Culture and Outreach Activity developed under the Group's technical supervision between January-July 2017 and January-July 2019. The information displayed here was updated until February 2020.



What is Caritas?

The Caritas Archdiocesan of Sao Paulo (CASP) is a civil society organization, registered as a non-profit association, that has been carrying out the Reference Center for Refugees (*Centro de Referência para Refugiados*) in the City of Sao Paulo for over 40 years. For this period, Caritas has already registered and assisted over 17,000 asylum seekers and refugees looking for one of the Reference Center's four programs: assistance, integration, protection, and mental health. The entity is associated with the United Nations High Commissioner for Refugees (UNHCR) and is an alternate member of the civil society representation in the National Committee for Refugees (*Comité Nacional para os Refugiados* - CONARE).



Enjoy your reading!

This Primer was made available due to a partnership between the CASP and the GEMDIT, focused on promoting labor and Social Insurance rights for all migrant populations in Brazil. We hope that the information offered here may function as a practical guide for migrants who work—or intend to work—in Brazil. We recommend you all do a careful reading to help you familiarize yourselves with the country.

Best regards,

*GEMDIT
CASP*

1

THE MIGRANTS' RIGHTS IN BRAZIL



Is there a Law to protect migrants in Brazil?

Yes! It is Law No. 13,445/2017, also called the new Migration Act (*Lei de Migração*). It has recently come into force—did so in November 2017—, was regulated by Decree No. 9,199/2017, and replaced Law No. 6,815/1980 (the old Foreigners’ Statute, *Estatuto do Estrangeiro*)—which had been ruling migration issues for decades.

The new Law established an important change in perspective about migrants in Brazil, altering the way the country sees them. When the old Foreigners’ Statute was elaborated, in the 1980s, Brazil was living in a different historical and social context. The protection of national security, of the nation’s interests, and of the Brazilian workers were considered absolute priorities. In that scenario, many aspects of the Foreigners’ Statute suggested that migrants could be a threat to these purposes.

The Migration Act follows the principles of universality of Human Rights, of non-criminalization of migration, of rejecting xenophobia, racism, and any kind of discrimination, besides the prohibition on collective expulsion and deportation practices. The Act intends to ensure equal treatment and opportunities for migrants in the social fields.

**AS AN EVOLUTION, THE NEW
MIGRATION ACT HAS AS ITS
MAIN GOAL THE PROTECTION
OF MIGRANTS WHO ARRIVE IN
BRAZIL OR LEAVE OUR COUNTRY,
REGULATING THEIR RIGHTS AND
DUTIES FROM A HUMAN RIGHTS
PERSPECTIVE.**



This Act brings a lot of changes that may help those who are arriving, or even the ones who have been in Brazil for some time. There are articles intending to regularize the migration status of people who are already in the national territory, while other articles deal with granting different types of visas according to the motivations to enter the country. The Act also guarantees forms of legal protection for stateless people and asylees, detailing other matters relevant to all migrants.

And a Law specifically about refugees?

Yes, indeed! It is Law No. 9,474/1997, which regulates and creates mechanisms to implement the Refugees' Statute (*Estatuto do Refugiado*) in Brazil. It is a specific Law, while the new Migration Act is a general one. The Refugees' Statute is applicable when the person was forced to leave his/her country of origin due to persecution or serious armed conflicts.

The Refugees' Act, as the Refugees' Statute is also known, protects at the very first moment the person who entered Brazil because of those reasons. As soon as the person requests to be recognized as a refugee in Brazil, he/she receives a document different from the one obtained by a migrant: the so-called Asylum Application Receipt (*Protocolo*

de Solicitação de Refúgio). This Receipt is the Identity Document (ID) of the person who wants to be recognized as a refugee in Brazil until the National Committee for Refugees (CONARE) reaches a decision about his/her case.

What does the term "statelessness" mean?



This topic is not the focus of our Primer, but, in general, a stateless person is not considered a citizen by any State, that is, does not have an “active nationality.” Statelessness has several causes, among them: the non-

recognition of everybody who lives in a country as citizens (when, for example, a country declares itself independent) and the discrimination that the Law in a country establishes against minority groups. Being recognized as a stateless person is fundamental for social protection under these circumstances and helps his/her naturalization.

In the process to acknowledge statelessness, it is verified whether a State granted its nationality to the person, which may involve documents and statements from national and international agencies and from the person who requests this status. In any case, the Brazilian Migration Act is in tune with international conventions, as the right to request the Brazilian nationality focuses on reducing the vulnerability of stateless people. Even if the stateless person does not want to immediately apply for naturalization, he/she has his/her residency application accepted in Brazil. And even if the statelessness is not acknowledged, the person must not be returned to countries where his/her freedom, life, or integrity is threatened¹.

1 For more information, go to: <https://www.gov.br/pt-br/servicos/ser-reconhecido-como-apatrida>.



What if I suffer discrimination?

XENOPHOBIA AND OTHER TYPES OF DISCRIMINATION

Xenophobia, in short, is the aversion to foreigners. The aversion may become aggression, which is of various kinds, not only physical but also verbal, for instance. Brazil punishes crimes that arise from prejudice or discrimination on aspects like ethnicity, origin, and religion. Xenophobia combined with violence (which may be physical, verbal) is an imprescriptible and non-bailable crime, as well as homophobia/transphobia (prejudice against the LGBTQ+ population, related to sexual

orientation and gender identity) and racism. In many cases, xenophobia is expressed with homophobia/transphobia and racism. If the discrimination for being a foreigner is terrible, mixing it with other types of prejudice makes the situation even worse. As migration flows intensify around the world, xenophobia and other discriminations have been growing at the pace of intolerance.



How can I identify if I am a victim of xenophobia?

If a person treats you using behaviors and attitudes that exclude, reject, or defame you, indicating that you are not part of the Brazilian society or of a community, this person is xenophobic towards you. Someone may clearly show his/her xenophobia through the hatred against you, but he/she may be more subtle, inciting and inducing other people to discriminate against you.



What should I do if I go through it?

You may denounce the case at a Police Station (*Delegacia de Polícia*), which will issue a Police Report (*Boletim de Ocorrência* - BO). Your case will be forwarded to Police Stations that deal with crimes of discrimination. Another way to denounce it is via *Disque 100* (Dial 100), of the Federal Government Ministry of Women, Family, and Human Rights. *Disque 100* is available 24 hours per day, including Saturdays, Sundays, and holidays. It is free of charge and accessible from anywhere in Brazil. You may anonymously report your case if preferring this way². Your complaint may contribute to the implementation of public policies to curb new cases of xenophobia. Nonetheless, it is worth looking for help from institutions that welcome migrants and refugees. We list some of them in Chapter 6 of this Primer.

2 More information at: <https://www.mdh.gov.br/informacao-aocidadao/disque-100-1>.

2

WHAT SHOULD I KNOW BEFORE WORKING?





Do I have the same rights as Brazilian citizens?

First of all, migrants arriving in Brazil should know that the rights and duties of everybody who lives in this country are regulated by the 1988 Federal Constitution. It guarantees equality between Brazilians and foreigners. Everyone has the rights to life, equality, freedom, property, and safety. From this idea, we draw a fundamental conclusion: the Brazilian Law, including human and social rights, applies to anyone who is in the national territory, regardless of his/her nationality.

Labor activities in Brazil are regulated, among others, by the Consolidation of Labor Laws (*Consolidação das Leis do Trabalho* - CLT). These norms promote decent and safe working conditions for everybody, as labor rights are fundamental human rights.

Even if you are an undocumented migrant, you count on the same rights as any Brazilian worker and should demand them. Since the promulgation of the Migration Act, legal labor obligations and protections in favor of workers have been guaranteed without any discrimination due to nationality or migration status.

Labor, employment...

What are the differences?

AM I AN EMPLOYEE?



To be considered an employee, the relationship with your employer needs to show five characteristics, as follows:

- The service is provided directly by you. It means that you may not ask your friends, relatives, or neighbors to work in your place when you are unable to do it. If an employer hired you, he/she expects that you—and only you—carry out the activity.
- Your employer has the authority to determine certain rules that you and your co-workers must comply with. For example, an employer may require that you work in specific shifts, wear a uniform, perform your activities in a particular way, as well as supervise the quality of your work, etc. However, bear in mind that employers must not give orders that are abusive or contrary to the labor norms.
- Because you perform a labor activity, you receive a certain remuneration, which must not be lower than the minimum wage or than the basic pay for your professional sector. The exceptions are in part-time or intermittent work—with zero-hour contracts—, in which the person is paid according to the period he/she effectively worked.

- Your employer is the one who bears the losses and earns the profits of the economic activity. So, regardless of his/her successes or failures in business, you may not be affected. He/she must pay your remuneration observing the values fixed at the time you were hired, in addition to the rights listed in collective labor conventions and agreements.
- Your work has a schedule. If you regularly work for your employer and follow agreed working hours, you must be an employee.

IF I AM NOT AN EMPLOYEE, WHAT IS MY STATUS?

It depends on the presence of the characteristics we mentioned. We display below the most common types of workers. If one of them corresponds to your situation, you should check which rights you have because they are different from those related to employees.

NOTE THAT THE EMPLOYER WILL NOT HAVE THE FINAL WORD ABOUT YOUR RIGHTS. THE LAW IS THE ONE THAT STATES WHO IS AND WHO IS NOT AN EMPLOYEE. THIS DIFFERENCE IS ESSENTIAL TO DETERMINE WHICH RIGHTS APPLY TO YOUR ACTIVITY.



Other types of workers

- **Interns** (*estagiários*) are students, properly enrolled in educational institutions, who look for practical experiences that complement their studies. In this situation, their working hours and remuneration are different from the ones of employees or of public servants, for instance. Interns work up to six hours daily and receive internship grants.
- **Self-employed workers or independent contractors** (*autónomos*) are the ones who work on their own accounts performing specialized services. It means they are their own bosses, plan their own schedules, and offer their activities to whomever they choose but also cope with the

occasional difficulties that arise from their work. For example, a craftsman who sells pieces of art he himself made may fit into this category. It is important to emphasize that self-employed workers, to access Social Insurance benefits, must register with the National Institute of Social Security (*Instituto Nacional do Seguro Social*- INSS) as individual ratepayers³, paying their own contributions.

- **Temporary workers** are employees of temporary work companies but meet occasional needs of other companies, according to Law No. 6,019/1974. In other words, a company hires a person to work in another company. This situation may happen, for instance, to replace an employee who is on vacation or to satisfy the increased demands at a moment of the year. It is the case with chocolate factories around Easter.
- **Casual workers** (*eventuais*), in turn, are the ones who work at specific moments for the same company. For example, someone hired to repair the plumbing or change the wiring of a telemarketing center.

3 Individual ratepayers are the ones who earn money through their own work without the employment status, such as the self-employed professionals, the business partners and owners, and the Individual Microentrepreneurs (*Microempreendedores Individuais* - MEI).

- **Workers hired for defined activities** (*avulsos*) are mentioned in article 9 of Decree No. 3,048/1999 and work for different rural or urban companies with the obligatory mediation of the Manpower Management Body (*Órgão Gestor de Mão de Obra* - OGMO)—if they are casual port workers—or of a trade union—in case of handling and transportation of goods in general.
- **Cooperative workers** are involved in cooperatives, which provide services for their members and for third parties. For instance, craftspeople, artists, and farm producers may create their own cooperatives.
- **Outsourced workers** (*terceirizados*) are those hired by a company—a legal entity which is their employer—to work in another one. The latter company, known as the user (*tomadora*), contracts the former to carry out determined activities. There is no employment relationship between the outsourced worker and the user company.

Your work may have all those characteristics of an employment relationship, but you are still considered a self-employed, temporary, casual, or another type of worker. It frequently happens because paying an employee may be far more expensive than paying another type of worker.

IF IT OCCURS, YOU MAY DEMAND YOUR RIGHTS AS AN EMPLOYEE IN COURT OR DENOUNCE THE CASE TO THE LABOR PROSECUTION SERVICE (MPT) OR TO YOUR TRADE UNION. YOU MAY THUS OBTAIN WHAT IS RIGHTFULLY YOURS.



What is slavery-like labor?

Slavery-like labor—also denominated labor analogous to slavery and modern slavery—is a crime in Brazil. It is noticed when a person is oppressed in a scenario of exhausting working hours or of forced labor. This situation may be verified in both degrading conditions and limitations to freedom, as it is linked to the money that the worker supposedly owes his/her employer.

If the employer, trying to keep the worker under his/her control, imposes strong surveillance in the workplace, prevents the worker from using transportation, or withholds the worker's personal objects and documents, he/she commits a crime. By the way, the penalty is higher if the employer acts against a child or an adolescent, as well as if he/she is motivated by ethnic or religious prejudices. We explain below some legal terms often utilized in this theme:

- **Forced or mandatory labor:** any activity that the worker does not want to perform, but that is required through physical or psychological violence.

- **Exhausting labor:** working hours so mentally and physically intense and long that lead to the violation of workers' fundamental rights, like health, leisure, and rest.
- **Degrading working condition:** any threat to human dignity in the workplace, harming the worker's hygiene, health, and safety.
- **Restriction, by any means, of the worker's locomotion due to debt:** limitation on the fundamental right to come and go, given the alleged debt that the worker has to pay his/her employer.
- **Restriction on the use of any means of transportation:** limitation on private or public means of transportation to keep the worker in the workplace or in the accommodation.
- **Strong surveillance in the workplace:** full-time direct or indirect control or supervision led by the employer.
- **Withholding personal documents or objects:** unlawful possession of worker's documents or objects by the employer.



Which documents should I have to work?

DO I NEED DOCUMENTS?

As we said, the lack of documents does not prevent you from having labor rights or from demanding them. However, you should obtain the documents related to your professional life. The main document of the worker—regardless of his/her nationality—is the Employment Record Book (*Carteira de Trabalho e Previdência Social* - CTPS). It displays important

information, such as date of admission, contract termination date, starting salary, function, salary changes, vacations, among others. Therefore, the CTPS helps the access to many rights, like the Social Insurance benefits, the unemployment insurance, and the Severance Pay Fund (*Fundo de Garantia do Tempo de Serviço* - FGTS).

When the first CTPS is issued, the Ministry of Economy Secretary of Labor (*Secretaria de Trabalho do Ministério da Economia*), Federal Government, registers the migrant with the Social Integration Program (*Programa de Integração Social* - PIS) or with the Savings Program for Civil Servants (*Programa de Formação do Patrimônio do Servidor Público* - PASEP), so that the employer can pay the Social Insurance contributions.

Migrants with Residence Permits—either temporary or for an indefinite period—may apply for a CTPS. If you do not have a Residence Permit and want to work, it is necessary to request a Temporary Visa for Work in the Ministry of Economy Secretary of Labor. This Visa may be granted to the migrant who intends to carry out labor activities—with or without an employment relationship—in Brazil as long as he/she proves that he/she has a formal job offer from a legal entity operating in the country. This requirement is waived if the migrant holds a Higher Education degree or its equivalent.

The situation is different for asylum seekers and refugees. In the case of asylum seekers, the CTPS is valid for one year and needs to be stamped every time the Asylum Application Receipt is renewed. For those already recognized as refugees (as they hold Permanent Visas), the Work Permit does not need to be obtained, nor renewed every year.

As a victim of human trafficking in a scenario of forced labor or labor analogous to slavery, the migrant counts on special protection in Brazil, according to Decree No. 5,017/2004—which enacted the Palermo Protocol on the prevention, repression, and punishment of human trafficking. Many migrants in Brazil are deceived and threatened by networks of human traffickers because they do not have documents like the CTPS. The Palermo Protocol guarantees that the migrant in these irregular labor conditions is immediately protected and has his/her status regularized in Brazil.

BRAZIL—WITH ITS MIGRATION ACT, ITS REFUGEES’ STATUTE, AND THE PALERMO PROTOCOL—DOES NOT CRIMINALIZE THE MIGRANT’S CONDITION, INTENDING, IN EACH CASE, TO WELCOME AND PROTECT HIM/HER.



WHERE AND HOW CAN I GET A CTPS?

Just like a Brazilian citizen, you can obtain your CTPS for free at any service center of the Ministry of Economy Secretary of Labor⁴. The Secretary of Economic Development, State of Sao Paulo Government (*Secretaria de Desenvolvimento Econômico do Governo do Estado de São Paulo*), also offers the CTPS, through its Service Centers for Workers (*Postos de Atendimento ao Trabalhador - PAT*)⁵.

You need to present some documents, depending on your situation:

If you have a Temporary Visa, benefit from the Residence Agreement of MERCOSUR and other countries—that is, if your nationality is Argentinian, Paraguayan, Uruguayan, Bolivian, Chilean, Peruvian, Colombian, or Ecuadorian—, or live as a refugee with a National Migration Registry Card (*Carteira de Registro Nacional Migratório - CRNM*), hand in your:

- National Migration Registry Card (CRNM).
- Individual Taxpayer Registration (*Cadastro de Pessoa Física - CPF*).
- Proof of residence with zip code (CEP).

⁴ Access the website: <http://trabalho.gov.br/rede-de-atendimento/rede-de-atendimento-do-trabalho/rede-sp>.

⁵ See: <http://www.desenvolvimentoeconomico.sp.gov.br/pats/>.

If you have a Temporary Visa, benefit from the Residence Agreement of MERCOSUR and other countries—if you are Argentinian, Paraguayan, Uruguayan, Bolivian, Chilean, Peruvian, Colombian, or Ecuadorian—, or live as a refugee, but have only the CRNM request receipt of the Federal Police (*Polícia Federal* - PF), present your:

- Work Permit released in the Official Gazette of the Federation (*Diário Oficial da União* - DOU)⁶, with complete civil qualification and validity period, or the CRNM request receipt of the Federal Police.
- Processing status report in the Federal Police if the receipt lacks the complete civil qualification.
- Passport or another document to complement the civil qualification.
- Status report of the National Migration Registry System (*Sistema de Registro Nacional Migratório* - SISMIGRA) of the Federal Police.
- Personal document with your photo.
- Individual Taxpayer Registration (CPF).
- Proof of residence with zip code (CEP).

⁶ It may be obtained at: <http://www.in.gov.br>.

If you are an asylum seeker, show your:

- Asylum Application Receipt.
- Individual Taxpayer Registration (CPF).
- Proof of residence with zip code (CEP).

You must schedule an appointment online with a local Superintendence of Labor (Secretary of Labor, Ministry of Economy). *Poupatempos*—hubs to access many public services in the State of Sao Paulo—do not issue or renew the CTPS of asylum seekers. For more details, go to Caritas.

Other situations:

- If you no longer have your Application Receipt on Asylum, on Recognition of Statelessness, or on Political Asylum, you may show your Provisional Document of National Migration Registry (*Documento Provisório de Registro Nacional Migratório* - DPRNM).
- The support ticket for family reunion issued by the Federal Police, after the in-person meeting, may be accepted when requesting your CTPS.

- If the Application Receipts or the National Migration Registry Card (CRNM) do not display their specific legal bases, a statement of the Federal Police—issued via the National Migration Registry System (SISMIGRA) and with the Residence legal base for the migrant or cross-border migrant—may be accepted.

All documents to be presented in each situation are listed in the link: <http://www.trabalho.gov.br/carteira-de-trabalho-e-previdencia-social-ctps/documentacao-obrigatoria/estrangeiro>. Another relevant point is that the Employment Record Book (CTPS) has become digital in many cases. Further information at: <https://empregabrasil.mte.gov.br/carteira-de-trabalho-digital/>.

3

THE LABOR RIGHTS





As an employee, which rights do I have if I am fired or resign from my position?

IF YOU ARE FIRED

If the employer no longer needs your services, there is what we call discharge or dismissal. It means that the relationship between you and the company ceases to exist,

implying a series of duties for the employer and rights for the employee. The Brazilian Law determines that the dismissal generates the payment of certain amounts within a maximum period of 10 days after the dismissal. The company must observe, at least, the following rights:

1. “Remaining wage” (*saldo salarial*), i.e. the proportional payment for the days you worked in your last month in the job, from the beginning of the month to the termination date of your labor contract.
2. Unused and proportional vacation/holiday pay.
3. Christmas bonus (*13º salário*) proportional to the months you worked.
4. Access to your values in the Severance Pay Fund (FGTS).
5. A 40% termination penalty concerning your FGTS values.
6. Compensation/indemnity when there was not a 30-day notice.

SEGURO-DESEMPREGO



Unemployment insurance

Besides the amounts paid by the employer, it is also possible to receive unemployment insurance (*seguro-desemprego*), a temporary benefit paid in cash by the Government after your dismissal. You are eligible if you worked at least 12 months in the last 18 months for the same employer. If you fit into this situation, it is essential to take all the documents—that the employer gave you—concerning your dismissal to a *Poupatempo* or to a service center of the Ministry of Economy Secretary of Labor.



IF YOU RESIGN

The other situation is that the worker quits, resigns from his/her job. In this case, your duties and rights are:

1. Informing your employer in advance; you must not simply stop going to work because it is characterized as abandonment of employment.
2. Receiving the “remaining wage,” from the beginning of the month to the termination date of your labor contract.
3. Taking your unused and proportional vacation/holiday.
4. Receiving the Christmas bonus proportional to the months you worked.

After notifying your resignation to the employer, you may choose to work for the next 30 days. If you choose not to work, there is a deduction in your salary referring to the period you did not work.

Which rights do I have regarding my salary?

AM I ENTITLED TO A MINIMUM WAGE? MAY MY EMPLOYER PAY ME WITH MEALS AND ACCOMMODATION? MAY HE/SHE DEDUCT AMOUNTS FROM MY SALARY?

Minimum wage



You are entitled to earn a minimum wage (*salário mínimo*) that is periodically adjusted by the Government. It is currently R\$ 1,045.00 (*reais*). You may receive a higher amount stipulated

by your trade union for a 44-hour workweek, always limited to 10 hours per day. However, if you work less than 44 hours per week, the value may be proportionally reduced—as in the cases of part-time or intermittent work.

It may happen that the Government of the State where you live adopts a minimum wage higher than the national one. In this case, you have the right to the highest minimum wage. The national legislation may offer a higher minimum wage for your profession—the so-called professional wage. Moreover, your professional sector may negotiate a differentiated minimum wage—known as “bargained wage” (*salário convencional*) or “basic wage” (*piso normativo*). You then qualify for a minimum wage that is higher than the national minimum wage.



Payslip/payroll deduction

It is possible to receive meals and accommodation as amounts of salary. If you work in an urban area, your employer may debit for meals a value that does not exceed 20% of your salary; for accommodation, the maximum limit is 25%. In rural areas, we have the opposite: deductions no greater than 20% of the salary for accommodation and no greater than 25% of it for meals. No amount may be deducted from your salary without your authorization, especially after Law No. 13,467/2017, the recent Labor Reform—except when there are payments in advance or legal requirements on this issue.

Beyond these possible deductions, you may notice in your payslip (*holerite*, *folha de pagamento*) the Social Insurance contribution to the National Institute of Social Security (INSS). We detail this topic in other sections of this Primer.



What about my working hours?

HOW MUCH TIME MAY I WORK DAILY? IF I WORK MORE, WILL I GET PAID FOR IT? DO I HAVE THE RIGHT TO REST? AND IF I WORK AT NIGHT, WHAT ARE MY RIGHTS?

Working hours

In general, the Consolidation of Labor Laws (CLT) establishes an eight-hour workday and a workweek of no more than 44 hours. By agreement, the employee may work up to two hours more than the ordinary workday and compensate them in up to six months (in case this negotiation is made individually with the employer) or within one year (if it is agreed upon between companies' trade unions and workers' ones). If the compensation deadlines and conditions are not complied with, the employee is entitled to overtime pay.

There are other, more specific models, like the "12x36 scheme" (12 hours on duty followed by 36 hours off duty), depending on the agreement between the parties too, based on the recent Labor Reform. This data must be recorded on the timesheet, in which the periods of work and of rest are displayed.



Overtime

When the employee exceeds the number of hours established in his/her labor contract, overtime pay is due. The extra hours are worth more than the regular working hours.

The overtime pay is 50% minimum more than the one for regular hours. If it occurs on holidays or on weekly rest breaks, the payment is doubled (a 100% increase), unless the employer provides another day off in the same week. Moreover, overtime must not exceed two hours a day.

Breaks

From a four-hour shift on, a 15-minute break must be granted. For a working day longer than six hours, it is mandatory benefiting from at least a one-hour rest, which may be extended to two hours maximum.



Night shift

When the employee works at night—between 10 pm and 5 am of the following day—, there is a 20% additional pay in the ordinary remuneration for each hour he/she works. Minors, people who are under 18 years of age, are prohibited to work at night.

In the case of rural workers, the norms about night shifts change according to the activity: working with animals (cattle raising/livestock) has its nightshift from 8 pm to 4 am of the following day; in agricultural services (tillage), it takes place between 9 pm and 5 am of the following day. The night bonus for both activities is 25%.

Summarizing it all:

Allowed working hours	Ordinarily, eight hours per day, but, depending on the work scheme, this number may vary.
	Maximum of 44 hours weekly.
Overtime	The extra hour is worth more than an ordinary working hour.
	The remuneration is at least 50% more than the ordinary working hour.
	During holidays and weekly rest breaks, the value for a working hour has a 100% increase.
	Overtime work is limited to two hours daily.
Breaks	After four working hours or more, a minimum break of 15 minutes is mandatory.
	For workdays longer than six hours, breaks vary from one to two hours.
Night shift	People under 18 years of age must not work at night.
	When urban workers carry out activities at night, between 10 pm and 5 am of the following day, there is a 20% increase in the ordinary remuneration for each hour they work.
	When rural workers carry out activities at night, there is a 25% increase in the ordinary remuneration for each hour they work according to their sectors (livestock or tillage).



I want to know about my vacation!

You have the right to take a 30-day vacation for every 12 months you work; the latter is named “acquisitive period” (*período adquisitivo*). If you are absent from work without any justification more than five times during these 12 months, you may count on shorter vacations. When the 12 months of work are fulfilled, your employer has a deadline of 12 months to grant your vacation. It is your employer who fixes when the first day of your vacation will be, but he/she must let you know the date 30 days in advance. Also, vacations are not to be scheduled to start two days before a holiday or a day off.

If your employer does not grant your vacation observing this deadline, you may go to Court—after his/her 12-month period—and demand a start date for your vacation. You may also agree to split your vacation into three shorter periods at most. If you choose it, one of the periods will necessarily have at least 14 days, and the remaining periods must cover five consecutive days minimum each.

The vacations are paid. Before tacking them, you earn your usual salary plus $1/3$ of its amount. You have the option to “sell” up to $1/3$ of your vacation too. For instance, if you have the right to a 30-day vacation and decide to sell $1/3$ of it, you may be 20 days off duty and will receive a payment referring to the 10 remaining days.

If you resign or are dismissed without just cause, or if your contract terminates before you can complete the 12 months of work, you receive vacation pay on a proportional basis. This value is related to the time you worked. For example, if you have worked for two months, you are entitled to $2/12$ of your salary plus $1/3$ of its amount, as the proportional vacation pay; if you have worked for six months, you receive $6/12$ of your salary and $1/3$ of it.





I am pregnant. What are my rights?

**MAY THE COMPANY FIRE ME?
IF I HAVE TO BE ABSENT FROM WORK DUE
TO PRENATAL CARE, MAY MY EMPLOYER
DEBIT MY SALARY?**

Stability

A woman who is pregnant or adopts a child in the context of a labor contract has the right to employment stability. It means that she must not be dismissed without just cause from the confirmation of her pregnancy until five months after childbirth or adoption; this period may be longer if it comes from collective bargaining, carried out by trade unions.

If she is dismissed, she qualifies for reinstatement, in other words, she may return to work or receive an equivalent compensation corresponding to the stability period. The calculation here is about the time she did not work because she was wrongfully dismissed.

The right to stability is assured to the pregnant woman, even if she or the company did not know about the pregnancy at the moment of dismissal. In case the pregnant woman is dismissed, she has the right to return to work in the same place.

The pregnant woman may also be absent from work up to six times for medical appointments, on condition that she presents medical certificates. When she gives birth or adopts a child, the migrant qualifies for maternity allowance (*salário-maternidade*), subject to certain requirements.

Maternity leave



The pregnant woman has the right to maternity leave (*licença-maternidade*), which lasts 120 days. It may start between 28 days before the foreseen date of childbirth and the day when the child is born—i.e. during the last month of pregnancy.

Breastfeeding

The employee is entitled to two breaks, 30 minutes each, to breastfeed her child until the baby turns six months old.

What about the baby's father?



PATERNITY LEAVE

The father has the right to five days of paternity leave (*licença-paternidade*), or to 20 days if the company joined the Corporate Citizenship Program (*Programa Empresa Cidadã*)⁷.

⁷ To check whether your employer joined the Program, check the list available at the following website: <http://receita.economia.gov.br/orientacao/tributaria/isencoes/programa-empresa-cidada>.

PRENATAL CARE

The employee may be absent from work twice to help his wife or partner in medical appointments or examinations during the pregnancy, with no reduction in his salary.

And a same-sex couple who adopts a child?

The rights described above apply to same-sex couples too.

Are minors allowed to work?



It is forbidden for people under 16 years of age to work as employees. The ones who are older than 14 may work as apprentices if specific legal requirements are met. If a teenager is between 16 and 18 years old, he/she may carry out activities, but not at night (from 10 pm to 5 am of the following day) and not in circumstances that threaten or damage his/her wellbeing (in unhealthy conditions, for example).

I work as a household employee. Which rights do I have?

The household/domestic employee—the one who provides services for homes, families, without any for-profit goal—has the same rights as an ordinary employee. However, there are some differences, like having a 30-minute lunch break—if it is provided for a written agreement—and earning a 25% bonus concerning each hour you work on trips/journeys—alternatively replaced by compensatory time off.



SINDICATO



Am I represented by any association?

You are represented by a group of people in your profession called trade union (*sindicato*). By paying a fee to the trade union, you can join it. The trade union may bargain with your employer, elaborating collective labor agreements and conventions. These documents present specific rules and rights on your profession and take precedence over the laws, as long as basic rights are respected.

Are there additional payments?

UNHEALTHINESS

All employees who work with chemical products—welds, greases, and others—and in places with noises and biological agents—hospitals, toilets, etc.—are entitled to the “health hazard pay” (*adicional de insalubridade*). Its amount varies, 10%, 20%, or 40% of the minimum wage, depending on the harmful agent to which they are exposed.

DANGEROUSNESS

Moreover, if the employee works with flammables—like gasoline, diesel, and gases—electricity, or armed guard/security, for instance, he/she may qualify for the hazard pay (*adicional de periculosidade*) equivalent to 30% of the salary.



I am concerned about my health and safety at work...

WHAT IS PERSONAL PROTECTIVE EQUIPMENT (EPI)? MAY THE EMPLOYER DEBIT ITS PRICE FROM MY SALARY? MUST I WEAR THIS PROTECTION EVEN IF IT CAUSES ME DISCOMFORT?

Every employee has the right to health and life protection. If the employee works in an environment that may harm his/her health or put his/her life and physical integrity at risk, the employer must make available—free of charge—the relevant Personal Protective Equipment (*Equipamento de Proteção Individual*- EPI). Examples are masks, gloves, and helmets. It is also the employer's duty to guide the employee as to how to utilize this Equipment, as well as to inspect its use and to replace it when worn out. The employer must not debit any amount from the employee's salary because of the EPI he/she offered, except when they agreed on it or the employee intentionally damaged the Equipment.

The employee must not reject the use of EPI. The employer may fire—based on a just cause—the employee if he/she does not utilize it.

4

AND SOCIAL SECURITY?



What is it?

Social Security (*Seguridade Social*) is the term defined in the Federal Constitution of Brazil for a set of actions aimed at social protection in three fields: Healthcare (*Saúde*), Social Assistance (*Assistência Social*), and Social Insurance (*Previdência Social*). As we said, we approach in this Primer the Social Security System by focusing on Social Insurance. In any case, it is important to know the differences among these fields.

Healthcare is wide open to the public (the core idea is universality) and does not require contributions to be accessed, that is, it is free of charges—no prior payments are needed. Explaining it better, any person in Brazil may access Healthcare services for free, without discrimination. It includes all foreigners in the country, even if they are just passing by (tourists). This field is managed by the Ministry of Health (*Ministério da Saúde*), with the structure of the Single/Unified Health System (*Sistema Único de Saúde* - SUS). Social Assistance, in turn, offers help to people who have basically no means of support; it thus

takes care of those who are most in need, without requirements on contribution. And Social Insurance is dedicated to workers and their economic dependents. Its goal is to prevent circumstances—social contingencies—that eliminate or reduce people’s capacities to make their own living. Social Insurance refers, for instance, to disabilities, aging, and death.

In both Social Assistance and Social Insurance, the National Institute of Social Security (INSS)—which we will approach in detail—plays an essential role. However, some benefits are not managed by the INSS. Perhaps the most famous example is the Family Grant Program (*Bolsa Família*), directed by the Ministry of Citizenship (*Ministério da Cidadania*), Federal Government.

Before talking further about the INSS, attention: Family Grant!



To take part in this Social Assistance program, the person—either working or being unemployed—has to prove that he/she lives in poverty, with a maximum monthly income of R\$ 178.00 per family member. There are some conditions to be fulfilled, like demonstrating that his/her children are enrolled in and attend school, and that their Vaccination Records are up to date. The amount of the benefit varies yearly.

To find out if you may obtain this benefit, you should consider how much you monthly earn and divide this sum by the number of people in your family. For instance, the family has four people: a father, a mother, and two children. The father works as a handyman and earns R\$ 400.00. The mother freelances and earns R\$ 200.00. So, they have 400 *reais* of the father + 200 *reais* of the mother = 600 *reais*, which is the total family income per month. Dividing this income by all the family members, we calculate $600 \div 4 = 160$. As the result R\$ 160.00 is lower than R\$ 178.00, this family is eligible for Family Grant⁸.

8 For further information, see: <http://www.caixa.gov.br/programas-sociais/bolsa-familia/Paginas/default.aspx>.



In my payslip, there is a deduction called INSS. What is it? What is its function?

INSS are the initials of a Federal Government body linked to the Ministry of Economy. It is the National Institute of Social Security. The INSS is responsible for collecting money from workers to fund benefits, such as retirement pension (*aposentadoria*), death pension (*pensão por morte*), sick pay (*auxílio-doença*), accident pay (*auxílio-acidente*), among others.

The INSS is vital for Social Insurance, which operates like an insurance contract, but with mandatory payments from both the employee and his/her employer. The contribution paid to the INSS helps to reduce the impacts that unpredictable events—e.g. accidents and diseases—and even predictable ones—such as aging—may cause. Contact the INSS at home by dialing 135 or by clicking on the website link <http://www.previdencia.gov.br/>.

Who can be insured by the INSS?

Everyone who contributes to the INSS, in other words, who monthly pays it. The insured person has the right to all benefits, as long as he/she meets the proper requirements.

Am I insured?

How can I contribute?

INSURED STATUS

Everybody registered with the INSS and that pays the Social Insurance on a monthly basis is insured. The INSS insured are the employees, the workers hired for defined activities (*avulsos*), the household employees, the individual ratepayers, as well as the specially and optionally insured.

It is possible that the person maintains his/her status in the INSS even if he/she does not pay the Social Insurance contributions. It is the so-called grace period (*período de graça*), which—depending on the case—may be of 12 months, or of 24 months if more than 120 monthly contributions have already been paid non-stop. Verify in an INSS service center if the grace period applies to you.

IF YOU ARE A(N):	YOU HAVE TO FULFILL THE REQUIREMENTS BELOW:
Employee	<p>Having a signed Employment Record Book (CTPS).</p> <p>Earning a monthly salary.</p>
Household employee	<p>Having a signed CTPS.</p> <p>Working at your employer's home at least three times a week.</p> <p>Earning a monthly salary.</p> <p>E.g. caregiver, babysitter, watchman, cook, private driver, house-sitter, gardener, launderer.</p>
Worker hired for defined activities (<i>avulso</i>)	<p>NOT having a signed CTPS.</p> <p>Earning a daily or weekly salary.</p> <p>Working for trade unions, ports, or mines.</p> <p>E.g. stevedore (a person that loads goods onto and unloads them from ships), fruit sorter, rigger, bagger.</p>
Individual ratepayer	<p>NOT having a signed CTPS.</p> <p>Being self-employed.</p> <p>E.g. entrepreneur, maid/housekeeper, taxi driver, marketer, physician, street vendor, dentist, engineer.</p>
Specially insured	<p>NOT having a signed CTPS.</p> <p>Planting, fishing, or extracting products from nature.</p> <p>Selling only part of the production, using the rest for subsistence.</p> <p>E.g. farmer/rural producer, sharecropper, rural tenant, rubber tapper, artisanal fisherman.</p>

SOCIAL INSURANCE CONTRIBUTION

See how you may contribute to the INSS:

Employee	Your employer pays the INSS contribution.
	The deduction is displayed on your payslip.
Household employee	Your employer pays the INSS contribution.
	The deduction is displayed on your payslip.
Worker hired for defined activities (avulso)	You pay the INSS contribution.
	You may print the Social Insurance Payment Form (<i>Guia da Previdência Social - GPS</i>) from the internet and pay it at bank branches (<i>agências bancárias</i>) or at lottery retailers (<i>casas lotéricas</i>).
Individual ratepayer	You pay the INSS contribution.
	You may print the Social Insurance Payment Form (GPS) from the internet and pay it at bank branches or at lottery retailers.
Specially insured	The person who buys the products pays the INSS contribution.

If the payments are correctly made, you are insured by the INSS. To confirm if everything is ok, you should always doublecheck your payslip or go to INSS, where you may access your insurance statement. It is also possible to request your benefit payment statement via the internet.



How can I be insured if I have never worked in Brazil?

In case you have never worked in Brazil, it is very likely that you are not insured by the INSS. Unless your country of origin has some kind of Social Insurance

agreement with Brazil⁹, it is probable that you have never contributed to the INSS. These international agreements, according to the Ministry of Economy Secretary of Social Insurance, mainly intend to guarantee the Social Security rights provided for the legislations of the participating countries. The goal is thus protecting these countries' workers and legal dependents, living or just staying in one of them.

There are, for example, the Multilateral Agreements of Ibero-America and of the MERCOSUR. The Multilateral Agreement of the Community of Portuguese-Speaking Countries (CPLP) is still awaiting approval. Furthermore, Brazil signed bilateral agreements with Belgium, Canada, Cape Verde, Chile, France, Germany, Greece, Italy, Japan, Luxembourg, Portugal, Quebec, South Korea, Spain, Switzerland, and the USA. Other agreements need the approval of the Brazilian National Congress, like the ones with Bulgaria, Israel, and Mozambique.

If you already have a job in Brazil, there are some specific conditions for your insured status. To solve your doubts, go to INSS or visit its website.

9 To check whether your country of origin has any type of Social Insurance agreement with Brazil, go to: <http://www.previdencia.gov.br/a-previdencia/assuntos-internacionais/assuntos-internacionais-acordos-internacionais-portugues/>.



I used to work, but I have been unemployed for more than 12 months...

It is possible that you are not insured. Migrants who do not work may no longer contribute to the INSS. However, if they start contributing, they will be insured in case of disease or accident and will be entitled to retirement. Therefore, for people who are 16 or older, anyone may become an optionally insured, working or not doing so. The person pays his/her own payment booklet—which he/she may print from the internet—at bank branches or at lottery retailers. Examples: housewife, student, intern, unpaid building manager, unemployed, prisoner/inmate in closed conditions who must not work.

How much is deducted from my salary for the Social Insurance contribution?

The parameter here is the so-called contribution salary (*salário de contribuição*), which has a broader idea than the salary that an employer pays his/her employee. For instance, considering a worker hired for defined activities (*avulso*) or an employee, his/her contribution salary is the remuneration

amount; considering a household employee, it is the remuneration displayed in his/her Employment Record Book (CTPS); considering an individual ratepayer, it is how much he/she earns in a month as self-employed; considering an optionally insured, it is the tax return he/she filled in. The contribution salary is the basis to calculate the Social Insurance contributions of the INSS insured. The aliquot, in turn, is the percentage of the contribution salary that the INSS collects. These terms are used in the tables below.

For employees (pink GPS), household employees (green GPS), and workers hired for defined activities (*avulsos*) (blue GPS), the contribution observes tables¹⁰. The deduction takes place in 2020 as follows—in tune with the Social Insurance Reform, which was approved through the Constitutional Amendment No. 6/2019:

Contribution table for employees, household employees, and workers hired for defined activities as of January 1st, 2020

CONTRIBUTION SALARY	INSS ALIQUOT TO BE PAID
Up to R\$ 1,830.29	8%
From R\$ 1,830.30 to R\$ 3,050.52	9%
From R\$ 3,050.53 to R\$ 6,101.06	11%

¹⁰ Tables available at: <https://www.inss.gov.br/servicos-do-inss/calculo-da-guia-da-previdencia-social-gps/tabela-de-contribuicao-mensal/>.

Contribution table for employees, household employees, and workers hired for defined activities as of March 1st, 2020

CONTRIBUTION SALARY	INSS ALIQUOT TO BE PAID
Up to R\$ 1,039.00	7.5%
From R\$ 1,039.01 to R\$ 2,089.60	9%
From R\$ 2,089.61 to R\$ 3,134.40	12%
From R\$ 3,134.41 to R\$ 6,101.06	14%

For individual ratepayers and optionally insured, there are contribution plans:

Low Income Optional Plan	Only for those who: (i) are registered with the Single Registry for Social Programs (<i>Cadastro Único para Programas Sociais - CadÚnico</i>); (ii) have a family income of up to two minimum wages; (iii) do not have their own income (rents, pensions, etc.); (iv) do not have any kind of paid work, dedicating themselves only to tasks of their own homes.
	Benefits: old-age retirement pension, disability retirement pension, sick pay, imprisonment aid (<i>auxílio-reclusão</i>), and maternity allowance.
	It does NOT give the right to retirement due to contribution period or to the Contribution Period Certificate (<i>Certidão de Tempo de Contribuição - CTC</i>).
	Contribution salary: R\$ 1,045.00 (minimum wage).
	INSS aliquot to be paid: 5%.

Simplified Plan	Benefits: old-age retirement pension, disability retirement pension, sick pay, imprisonment aid, maternity allowance, and death pension.
	It does NOT give the right to retirement due to contribution period or to the Contribution Period Certificate (CTC).
	Contribution salary: R\$ 1,045.00 (minimum wage).
	INSS aliquot to be paid: 11%.

Normal Plan	It gives the right to all Social Insurance benefits.
	Contribution salary: from R\$ 1,045.00 to R\$ 6,101.06.
	INSS aliquot to be paid: 20%.

For the specially insured (yellow GPS), the value is 2.3% of the gross amount of their production.

My employer has not paid the contribution. What can I do?



It is possible to make a request to the INSS called Administrative Justification (*Justificação Administrativa*). The purpose of this request is to submit all documents—and the missing ones—that prove the worker contributed to the INSS. Nevertheless, we always recommend contacting institutions dedicated to migrants to clarify your situation.

To have your request considered, you must present: (i) the completed form¹¹; (ii) documents proving that you have worked for the mentioned period (signed Employment Record Books, statements, payslips, etc.); (iii) from three to six witnesses. Your request is analyzed by the INSS and, if approved, the corresponding debt will be charged to the people who caused it.

If your request is denied, you may file a lawsuit at the Federal Courts (*Justiça Federal*). We suggest here that you contact the Federal Public Defender's Office (*Defensoria Pública da União - DPU*), a body that offers free-of-charge legal assistance to those who earn up to R\$ 2,000.00 monthly. If your income is higher than this, you should—before hiring a private lawyer—search for help from institutions specialized in migration issues.

11 Form available at: <http://www.previdencia.gov.br/forms/formularios/form020.html>.

I work as an employee and as an independent contractor too. May I contribute as an individual ratepayer?

The insured who are employees and also provide services as self-employed may pay both contributions. However, this double contribution observes the monthly contribution cap of the INSS. In practice, if you earn a salary of R\$ 6,101.06 or higher, you may not pay another contribution. It is so because your employer is responsible for deducting the contribution based on its maximum percentage established by the Law—11% or R\$ 671.12.

For example: if you earn R\$ 1,500.00 monthly, your employer will deduct 8% of it to pay your mandatory contribution—referring to the Social Insurance table—, which means R\$ 120.00 from your salary. If you also work as an independent contractor and receive R\$ 1,500.00 additionally per month, you may choose to contribute as an individual ratepayer using the Normal Plan. The contribution in this situation is R\$ 300.00, corresponding to 20%. So, the total contribution is R\$ 420.00, which is your calculation basis for benefits.



If I pay a contribution higher than the Social Insurance cap, will I receive higher benefits?

The maximum value—or the cap—of contribution salary is stipulated by the Law and periodically changes. If the insured paid contributions higher than the cap, it is possible to ask the Brazilian Federal Revenue Service (*Receita Federal do Brasil*- RFB) to refund the overpaid amount. The deadline is five years from the date when the contribution was overpaid.

I want to retire!

The retirement (*aposentadoria*) pension is the monthly amount that a person receives when he/she reaches a certain age and/or a contribution period. You should be aware of the waiting period (*período de carência*), that is, the minimum number of months in which a person must pay the INSS to access a benefit. There are types of retirement, such as the special one and the one for rural workers. It is important to verify if your Social Insurance contributions have been regularly paid because the INSS will consider them when analyzing your right to retire.

It is vital to pay Social Insurance contributions: the older you get, the harder it is for you to keep working.

WHAT IS OLD-AGE RETIREMENT?

It is a right of older workers. To receive the benefit, the person must:

1. Be regularly registered with the National Registry of Social Information (*Cadastro Nacional de Informações Sociais* - CNIS).
2. Be older than 65 (for men) or than 60 (for women).
3. Comply with the waiting period, i.e. contributing to the INSS for at least 15 years.

Your age considered alone does not guarantee the benefit.

WHAT IS RETIREMENT DUE TO CONTRIBUTION PERIOD?

It is based on paying the INSS for a long period. The person must:

- 1.** Be regularly registered with the National Registry of Social Information (CNIS).
- 2.** Have contributed to the INSS for at least 35 years (for men) or 30 years (for women).

WHAT IS DISABILITY RETIREMENT?

It is a right of workers who—because of diseases or accidents—have been deemed seriously and permanently disabled to perform their professions and any other labor activity. This type of retirement is denied to a worker who already had the disability-related illness or injury before registering with the INSS. The exception is the case in which the labor activity has worsened the conditions of this illness or injury. The benefit may stop being paid when the worker recovers and returns to work. To access the benefit, the person must:

- 1.** Be regularly registered with the CNIS.
- 2.** Have contributed to the INSS for at least one year (12 months) in case of illness, but no contribution is needed in case of accident.
- 3.** Undergo medical examinations carried out by the INSS every two years to confirm his/her disability to work.

I can work, but I got sick or injured because of my labor activities...

SICK PAY AND INJURY PAY



If the worker needs to take time off work due to illness or injury, he/she is entitled to earn part of the salary until he/she recovers. The employer may not dismiss him/her during this period. If you have been off work for more than 15 consecutive days—and count on a related medical certificate—, the INSS may grant you a benefit called sick pay (*auxílio-doença*). Depending on how badly your injury is or on which disease you contracted, the INSS medical examination will rely on different criteria to decide whether the benefit is due.

The severity of your injury or illness is essential here. If you have been partially or totally disabled to work for some time, you are entitled to sick pay. If you have been partially disabled for the rest of your life—you are able to work, but face a lifelong disability—, you will also receive sick pay until you are rehabilitated to perform another function.

The minimum contribution period to qualify for this benefit is 12 months. No previous contribution is demanded if the person is off work due to an occupational disease—or to any other disease mentioned by the Law—or to any sort of accident. If you have contributed for some time, but lost your job and have not worked for more than one year, it is expected—when you are hired again—that you contribute for at least four months more to receive this benefit.

If you suffer from any permanent sequelae and from limitations in your labor capacities, you have the right to another benefit: injury pay (*auxílio-acidente*). It does not prevent you from working and may be granted when you are no longer on sick pay. For injury pay, there is no minimum contribution period.

I am pregnant and unemployed. Do I get help?

MATERNITY ALLOWANCE



Yes. It is necessary, depending on your case, to comply with a waiting period of 10 months—during which you worked—and prove that you are insured by the INSS. You may demand maternity allowance (*salário-maternidade*) directly in the INSS right after childbirth.

My husband/wife is in prison...

IMPRISONMENT AID

The imprisonment aid (*auxílio-reclusão*) is paid monthly and for a certain period to dependents of somebody who is in prison, aimed at: children who are under 21 years old—or regardless of age if they have disabilities—, the spouse or partner, parents, and siblings under 21—or regardless of age if they have disabilities. Their economic dependence on the imprisoned person must be proven. This person, in turn, must be insured on the date of his/her arrest and earn less than R\$ 1,425.56 (this amount may vary) in his/her last job. The benefit only applies to prisoners/inmates who are in closed or semi-open conditions, as they may not work to provide for their families. Besides, we highlight that the imprisoned person must have contributed for at least 24 months before his/her arrest.

I have children and stepchildren who go to school and do not work...

FAMILY ALLOWANCE

If you are INSS insured, earn up to R\$ 1,425.56 (this amount may vary), and have children under 14 years old—or children with disabilities, regardless of their age—you qualify for family allowance (*salário-família*). It is R\$ 48.62 for each child or stepchild.

My husband/wife used to provide for our family but died. Can I get help?

DEATH PENSION

Yes. If he/she used to work, your family may have the right to a monthly amount called death pension (*pensão por morte*). This benefit may be paid for a determined period or for life, taking into account the dependent's age when the INSS insured died.



And if I have siblings with disabilities and elderly parents who live with me?

CONTINUED PAYMENT BENEFIT (BPC)

People with disabilities who cannot work may receive an amount to help with family expenses. The same applies to the elderly over 65 years of age. We mention here a Social Assistance protection called Continued Payment Benefit (*Benefício de Prestação Continuada - BPC*). Its requirements are:

1. Having disabilities or being at least 65 years old.
2. Counting on a monthly family income per capita of less than $1/4$ of the minimum wage.
3. Proving they cannot provide for themselves or be provided for their family.

The BPC may not be granted if you already have other Social Security benefits or schemes, except for medical assistance, special compensation pensions, and remuneration of apprenticeship contracts. As the BPC is a Social Assistance benefit, it is not expected the person contributed to the INSS to access it.

5

COMMON PROBLEMS AT THE WORKPLACE AND HOW TO ADDRESS THEM



My employer refuses to register my position in my CTPS. What should I do?

Every employer must register in the Employment Record Book (CTPS) the data regarding labor contract, function, and remuneration. His/her failure to do so may lead to uncountable violations of workers' rights, hinder their access to INSS benefits, and harm their reintegration into the labor market. Having a signed CTPS is particularly important for migrants who need to prove that they have been working in Brazil.

The worker must present the CTPS to the employer, while the employer must give the worker a receipt about it. Within five working days, the employer must include the relevant information in the worker's CTPS.



What is labor discrimination?

Labor discrimination involves treating people less favorably, based on criteria not linked to qualifications for carrying out professional activities, such as gender, sexual orientation, nationality, ethnicity, age, religious beliefs, among others.

In Brazil, everybody has the right to work in an environment free from discrimination and prejudice of any kind.

How to identify if I am a victim of labor harassment?

Harassment may be verified in prolonged and repeated exposures of the worker to intimidating, embarrassing, or humiliating situations, aiming to damage his/her physical, psychological, social, and personal integrity.

The harasser may be anyone in your working environment. In most cases, harassment takes place in hierarchical relationships, in which bosses demonstrate this kind of behavior. Nonetheless, harassment may come from people who hold the same position as you and even from the ones who work for you. You should pay attention to the following situations, when someone:

- Restricts or limits your freedom (e.g. deterring you from going to the toilet).
- Criticizes your work unfairly or excessively (e.g. being gentle with everybody, but approaching you harshly).
- Takes away activities that you regularly carry out (e.g. when you have no tasks at work, but the people in the same position as you continue working as usual).
- Imposes different, useless, or more laborious working conditions and rules on you (e.g. demanding that you go to work earlier and stay there until later, without overtime pay, while your colleagues may observe the ordinary hours).
- Assigns no task or activity to you (e.g. preventing you from working, even if you want to help).
- Deprives you of the necessary instruments to correctly perform your activities (e.g. hindering your use of the company's safety equipment).
- Prevents or hinders your promotions (e.g. damaging your reputation so that you may not achieve higher positions in the company).
- Assigns embarrassing or humiliating activities to you (e.g. telling you to do something just to belittle you).
- Invades your privacy, gathering your personal information (e.g. violating your private mailings, your personal emails).

- Avoids directly communicating with you (e.g. talking to you only through electronic means or third parties).
- Adopts behaviors or gestures that demonstrate discomfort, antipathy, or contempt towards you (e.g. “giggles,” glances, sighs, “chitchats,” shrugs).
- Sneers at your characteristics, like your ethnicity, gender, religion, physical and psychological traces, or political and philosophical convictions (e.g. making fun of the way you speak some words).
- Harms your credibility in front of colleagues, superiors, or subordinates (e.g. failing to attribute to you a good job that you did).
- Spreads hearsay, rumors, and gossip (e.g. making up stories about you).
- Teases or disregards your opinion (e.g. ignoring that you are capable of giving opinions at work).
- Engages in verbal or physical contacts of a sexual nature (e.g. making sexual insinuations and innuendos).
- Assaults or threatens you physically or verbally (e.g. cursing you).

How to address these problems?



If you find yourself in one of these situations—or in any other problematic ones—at the workplace, you may notify the company so that internal and legal measures are taken. You may make anonymous complaints through the own company’s communication channels. There is support from the trade union of your professional sector, from the Ministry of Economy Secretary

of Labor, and from the Labor Prosecution Service (*Ministério Público do Trabalho* - MPT), that may file a formal complaint. You may go straight to the Labor Courts (*Justiça do Trabalho*) and sue your employer too. Nevertheless, we always recommend—before making any decision—that you go to an institution dedicated to migrants to be properly guided.

In some cases, you may access the Judicial System without the assistance of a lawyer. We have here the so-called *atermação*. It is a very straightforward service, in which a civil servant of the Courts listens to your statement and writes it down, issuing a document called *termo*. It is thus forwarded to the judge. However, we suggest that a lawyer advises you because he/she will work to guarantee your rights.

YOU ARE NOT ALONE!

6

WHERE MAY I LOOK FOR HELP?



As you may have already noticed, Sao Paulo counts on many entities that provide assistance to the migrant population. We list here some of the contacts where you may search for help:

Associação Brasileira dos Coreanos /

Brazilian Association of Koreans

Address: Rua dos Parecis, 107 – Cambuci –
CEP 01527-030 – São Paulo – SP

Phone: (11) 3208-6860

Email: haninbrasil@k1.net

Website: under construction

Service: representation in general.

Associação Compassiva / **Compassionate Association**

Address: Rua da Glória, 900 – Liberdade –
CEP 01510-000 – São Paulo – SP

Phone: (11) 2537-3441

Email: contato@compassiva.org.br

Website: <http://compassiva.org.br/>

Services: handicraft classes, assistance for families, home visits, music classes, Portuguese classes, validation of academic degrees, legal aid, sports, guidance on the labor market and on official social programs, food donation.

Caritas Arquidiocesana de São Paulo /

Caritas Archdiocesan of Sao Paulo (CASP)

Address: Rua José Bonifácio, 107 – 2º andar – Centro –
CEP 01003-000 – São Paulo – SP

Phones: (11) 4890-0350; (11) 4873-6363 (Reference Center
for Refugees)

Emails: caritassp@caritassp.org.br; caritasarqsp@uol.com.br

Website: <https://www.caritassp.org.br>

Services: all sorts of aid and assistance to asylum seekers and
refugees, including legal assistance, integration into the local
routine, referral to courses and access to the labor market,
mental health and social aid.

Centro de Direitos Humanos e Cidadania do Imigrante /
Human Rights and Citizenship Center for Immigrants (CDHIC)

Address: Rua Luís Ferreira, 142 – Tatuapé –
CEP 03072-020 – São Paulo – SP

Phones: (11) 2257-3467; (11) 95327-8158

Emails: secretaria@cdhic.org; contato@cdhic.org;
espacomigrantes@cdhic.org

Website: <https://www.cdhic.org.br/>

Services: legal assistance, information for regularizing migration
and labor status, social and human rights support.

Centro de Integração da Cidadania do Imigrante /
Citizenship Integration Center for Immigrants (CIC)

Address: Rua Barra Funda, 1.020 – Santa Cecília –
CEP 01152-000 – São Paulo – SP

Phone: (11) 3115-2048

Emails: spereira@sp.gov.br; cicdoimigrante@sp.gov.br;
cicdoimigrante@gmail.com

Website: <http://justica.sp.gov.br/index.php/coordenacoes-e-programas/integracao-da-cidadania-cic/>
Services: computer and Portuguese courses, *AcessaSP* service center—a digital inclusion program of the State of Sao Paulo Government—, State of Sao Paulo Public Defender’s Office (*Defensoria Pública do Estado de São Paulo*, DPE-SP), and Service Center for Workers (PAT) specialized in migration issues.

Centro de Referência e Acolhida para Imigrantes /
Reference and Reception Center for Immigrants (CRAI-SEFRAS-SMDHC)

Address: Rua Major Diogo, 834 – Bela Vista – CEP 01324-000 – São Paulo – SP

Phones: (11) 2361-5069; (11) 2361-3780

Emails: adm.crai@sefras.org.br; crai@sefras.org.br

Website: <http://www.sefras.org.br/novo/servicos/sao-paulo/crai/>

Services: information about the regularization of documents and certificates, professional training and Portuguese courses, guidance on jobs, social assistance.

Centro Scalabriniano de Promoção do Migrante /
Scalabrinian Center for Migrants (CESPROM)

Addresses: Rua Teresa Francisca Martim, 201 – Canindé – CEP 03030-040 – São Paulo – SP; Rua Joaquim Piza, 153 – Cambuci – CEP 01528-010 – São Paulo – SP

Phones: (11) 3229-5698; (11) 3207-4667

Email: cesprompari@gmail.com

Website: <http://www.cesprom.com.br/>

Services: basic training—computer, dressmaking and sewing, hairdressing, manicure, baking courses—, monthly professional training meetings.

Instituto de Reintegração do Refugiado /
Institute for the Reintegration of Refugees (ADUS)

Address: Avenida São João, 313 – 11º andar –
Centro – CEP 01035-000 – São Paulo – SP

Phone: (11) 3225-0439

Email: atendimento@adus.org.br

Website: <http://www.adus.org.br/>

Services: legal assistance, counseling about jobs and incomes, classes of Portuguese and of other languages.

Missão Paz / **Mission Peace**

Address: Rua Glicério, 225 – Liberdade –
CEP 01514-000 – São Paulo – SP

Phone: (11) 3340-6950

Emails: contato@missaonspaz.org;

comunica@missaonspaz.org

Website: <http://www.missaonspaz.org/>

Services: legal assistance, information on regularization of documents, social assistance, Portuguese classes, intermediation of labor market opportunities.

Projeto de Promoção dos Direitos de Migrantes / **Project for the Promotion of Migrants' Rights (ProMigra)**

Address: Praça Doutor João Mendes, 62 – 17º andar –
Centro – CEP 01501-000 – São Paulo – SP

Phone: (11) 3113-3220

Email: comunicacao.projeto migracao@gmail.com

Website: <https://www.facebook.com/ProMigra/>

Services: legal guidance on migration, labor, family, and consumer rights, among others.



THE TRAJECTORY OF A RIGHTS PRIMER

The struggle to promote human rights, especially for people in vulnerable conditions, requires from us extra attention to their stories. Without them, it will be very difficult, if not impossible, to bring back the memories about the needs and purposes of many of their demands.

The story of this primer is no different.

During the years I was in the Direction of the City Council of Sao Paulo Parliament School (*Escola do Parlamento da Câmara Municipal de São Paulo*), three courses named “Sao Paulo of All Immigrants” occurred, with the presence of scholars, researchers, professionals who support migrant communities, and, especially, with the presence and voice of migrants and their leaders.

In one of the course editions, a well-known migrants’ rights activist in Sao Paulo came personally to express a demand: could the Parliament School provide a “social rights primer” for migrants, especially focusing on those living or staying in Sao Paulo?

I thought the idea was interesting and challenging, but then I asked that activist if she was aware of similar initiatives by some public bodies, like the Prosecution Service, the Federal Police, and institutions alike. Her answer, somewhat disconcerting but predictable, was kind of this: “Professor, migrants are afraid of badges and distrust official guidance from authorities. We want a text elaborated by people who sympathize with our afflictions and that point out not only the already-recognized rights, but also those that can be object of claim and struggle.”

I perfectly understood the meaning of the request and told her that perhaps the Parliament School might not be the best-equipped institution for what she needed. I immediately thought the University of Sao Paulo Faculty of Law - USP was an option, where we were considering creating and running a study, research, and outreach group—to provide services to society. It was in this scenario that GEMDIT - Research Group on Migration and International Labor Law was created shortly afterward. The Group is formalized at USP and registered with the National Council for Scientific and Technological Development - CNPq, having as its first mission the challenge to prepare the content of this primer.

Let us bear in mind that, at the time we started our activities, the ill-fated “Foreigners’ Statute” was still in force. It was a product of the military dictatorship installed in Brazil in 1964 and that stubbornly survived years after the emergence of the Brazilian Democratic Constitution, promulgated on October 5th, 1988.

Now that the old “Foreigners’ Statute” was revoked by a new, much more open, and contemporary law (Law No. 13,445/2017), aligned with the innovative Law No. 9,474/1997 (known as the “Refugees’ Statute” in Brazil), we are thrilled to offer this primer as a gift to celebrate the 30th anniversary of the 1988 Brazilian Constitution. We are aware that the effectiveness of each of these norms relies on knowledge, but, above all, on the struggle for its recognition and preservation.

Sao Paulo, Spring of 2018.

*Antonio Rodrigues de Freitas Júnior
Professor at the USP Faculty of Law*

Sinopse – Cartilha GEMDIT em inglês

O Grupo de Pesquisa em Migração e Direito Internacional do Trabalho (GEMDIT) da Faculdade de Direito da Universidade de São Paulo (FD-USP) foi formado em 2016 e está regularmente inscrito na Comissão de Pesquisa da FD-USP e no Diretório dos Grupos de Pesquisa no Brasil do Conselho Nacional de Desenvolvimento Científico e Tecnológico (DGP-CNPq). O Líder do Grupo é o Prof. Antonio Rodrigues de Freitas Júnior (FD-USP), e o Vice-Líder, o Prof. Jorge Cavalcanti Boucinhas Filho (Escola de Administração de Empresas de São Paulo da Fundação Getulio Vargas, EAESP-FGV). O GEMDIT vem promovendo pesquisas para a elaboração, a publicação e a periódica atualização da “Cartilha de Direitos Trabalhistas e Previdenciários para Imigrantes e Refugiados” – iniciativa que conta com o importante apoio da Caritas Arquidiocesana de São Paulo (CASP). Para tal, o GEMDIT cria Atividades de Cultura e Extensão a cada semestre no âmbito da

FD-USP, o que viabiliza a participação não somente de alunos de Graduação e de Pós da Faculdade, mas também de pessoas sem vínculo com a USP. A relevância desse material advém, por um lado, da ausência de informações firmes sobre o tema – as quais deveriam ser prestadas por autoridades brasileiras – e, por outro, da desconfiança que parte dos trabalhadores estrangeiros possuem quanto aos auxílios já existentes – pois não sabem se estes auxílios farão em seguida com que sejam, por exemplo, expulsos do Brasil. A Cartilha procura abordar, com linguagem clara e direta, alguns dos principais direitos sociais – com foco nos trabalhistas e previdenciários – e as formas de implementação deles, de modo que imigrantes e refugiados – sejam eles documentados ou não – possam buscar melhores condições de vida no país. O GEMDIT divulga a Cartilha – e atualizações dela – por meio de palestras e reuniões com organizações não governamentais (ONGs) e demais associações interessadas. Na presente edição, colegas da Faculdade de Filosofia, Letras e Ciências Humanas (FFLCH) da USP revisaram o texto em português – com a supervisão da Profa. Adriana Zavaglia – e o traduziram para o inglês – conduzidos pela Profa. Lenita Maria Rimoli Pisetta. Agregamos, ainda, os recursos que vieram da aprovação do projeto “Diagramação e ilustração da Cartilha de Direitos Trabalhistas e Previdenciários para Imigrantes e Refugiados (GEMDIT-FD-USP)” no 5º Edital Santander / USP / FUSP de Fomento às Iniciativas de Cultura e Extensão. Tais recursos foram conquistados graças à parceria do GEMDIT com o Prof. André Chaves de Melo Silva e com a Dra. Leandra Rajczuk Martins, ambos da Escola de Comunicações e Artes (ECA) da USP.

Synopsis – GEMDIT Primer in English

The Research Group on Migration and International Labor Law (*Grupo de Pesquisa em Migração e Direito Internacional do Trabalho* - GEMDIT) of the University of Sao Paulo Faculty of Law (FD-USP) was created in 2016 and is regularly registered with the FD-USP Research Commission and with the Directory of Research Groups in Brazil (DGP) of the National Council for Scientific and Technological Development (*Conselho Nacional de Desenvolvimento Científico e Tecnológico* - CNPq). The Group's Leader is Prof. Antonio Rodrigues de Freitas Júnior (FD-USP), and its Vice-Leader is Prof. Jorge Cavalcanti Boucinhas Filho (Sao Paulo School of Business Administration of Fundacao Getulio Vargas, EAESP-FGV). The GEMDIT has been promoting research for the elaboration, publication, and periodic update of the “Primer of Labor and Social Insurance Rights for Immigrants and Refugees” –initiative which counts on the important support of the Caritas Archdiocesan

of Sao Paulo (CASP). To do that, the GEMDIT creates Culture and Outreach Activities every semester at the FD-USP, enabling the participation not only of its Undergraduate and Graduate students, but also of people from outside the USP community. The relevance of this material comes, firstly, from the lack of solid information about the theme—for which Brazilian authorities are responsible—and, secondly, from the distrust that some migrant workers have about the existing assistance—as they do not know if it, for instance, would make them be expelled from Brazil. This Primer aims to approach, with clear and direct language, some of the main social rights—focusing on labor and Social Insurance ones—and the paths to implement them, so that—either documented or undocumented—immigrants and refugees can pursue better living conditions in the country. The GEMDIT promotes the Primer—and its updates—through lectures and meetings with non-governmental organizations (NGOs) and other interested associations. In this edition, colleagues from the USP Faculty of Philosophy, Languages, and Human Sciences (FFLCH) proofread the text in Portuguese—under the supervision of Prof. Adriana Zavaglia—and translated it into English—conducted by Prof. Lenita Maria Rimoli Pisetta. We also added the resources that came from the approval of the project “Layout and illustration of the Primer of Labor and Social Insurance Rights for Immigrants and Refugees (GEMDIT-FD-USP)” in the 5th Notice Santander / USP / FUSP for the Promotion of Culture and Outreach Initiatives. These resources were obtained thanks to the GEMDIT partnership with Prof. André Chaves de Melo Silva and with Dr. Leandra Rajczuk Martins, both from the USP School of Communications and Arts (ECA).



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