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Brazil's labour and employment landscape is undergoing profound transformation. What was once a relatively rigid framework, heavily tilted towards worker protection and resistant to change, is now being reshaped by legislative reform, constitutional debate and shifting corporate practices. Companies operating in Brazil face a dual challenge: ensuring compliance with long-established employee safeguards while adapting to the demands of a modern, flexible workforce and international standards of corporate governance.

Three developments stand out as particularly decisive for employers, investors and senior professionals navigating this changing environment. The first is the legal recognition of the "highly qualified employee" – a status that gives certain professionals greater autonomy in contract negotiation. The second is the growing use of arbitration in resolving sophisticated employment disputes, a trend which mirrors practices in commercial law and international investment. And the third is the spread of independent service-provider arrangements – popularly known as *pejotização* – which allow individuals to operate through their own legal entities, but which remain under definitive review by the Federal Supreme Court.

Taken together, these trends reflect both domestic pressures and global influences. On the one hand, they respond to Brazil's need to modernise labour relations in an economy still marked by structural inequalities. On the other, they reflect the integration of Brazil's labour market into international investment flows, cross-border corporate transactions and governance norms. For businesses, mastering the interplay of these factors is not a theoretical exercise but a practical necessity: it determines how risks are mitigated, how competitive compensation packages are structured, and how flexibility can be preserved without breaching constitutional protections.

Highly Qualified Employees

Origins of the concept

Federal Law No 13,467/2017 – widely referred to as the Labour Reform – introduced the category of the "highly qualified employee". The reform amended Article 444 of the Consolidation of Labour Laws (CLT), recognising a class of employees who, by virtue of their education and salary, are deemed to possess greater bargaining power.

To qualify, two conditions must be met: the individual must hold a university degree and must earn a monthly salary equal to or greater than twice the ceiling of the General Social Security Regime (GSSR). For 2025, the ceiling has been set at BRL8,157.41, meaning the minimum remuneration for "highly qualified" status is BRL16,314.82 – roughly equivalent to

USD 3,000.

The legislature's intention was clear: to soften the rigidity of the protective principle that has long characterised Brazilian labour law. The underlying assumption is that employees with high salaries and advanced qualifications are less vulnerable, and therefore capable of negotiating their own terms on a more equal footing with employers.

However, this autonomy is not absolute. Negotiations must still comply with the minimum legal standards enshrined in Article 7 of the Federal Constitution and Article 611-B of the CLT. These provisions safeguard issues such as health and safety, and the proper classification of payments for tax and social security purposes. The law therefore creates room for contractual freedom but prevents the erosion of fundamental guarantees.

In practice, an employment contract signed by a highly qualified employee has binding force equivalent to a collective bargaining agreement. This is a striking departure from the traditional assumption that only unions, representing the collective will, can validly negotiate exceptions to statutory rules.

The matters typically addressed in such contracts are sophisticated and go well beyond basic salary and working hours. They include:

- variable remuneration linked to individual and corporate performance;
- performance-related bonuses, annually or tied to specific targets;
- short- and long-term incentive schemes, such as equity awards and deferred compensation;
- restrictive covenants, including non-compete and non-solicitation clauses;
- confidentiality obligations covering sensitive corporate information; and
- intellectual property clauses regulating ownership of innovations created during employment.

The Federal Supreme Court (STF) reinforced this contractual autonomy in its ruling on Theme 1,046 of General Repercussion. The court confirmed that negotiated terms take precedence over statutory law, even where collective agreements reduce or waive rights set out in legislation below the constitutional threshold. The essential safeguard is that constitutional guarantees must remain intact.

This precedent reinforces the legitimacy of arrangements reached either through collective bargaining or directly with highly qualified employees. It ensures that contractual flexibility can co-exist with core protections, provided negotiations respect constitutional boundaries.

For companies, this framework offers a valuable tool in managing senior professionals and specialists. It allows for incentive structures aligned with corporate strategy, and for covenants that protect business interests in competitive sectors. Yet the balance remains delicate. Employers must draft contracts with precision, ensuring that autonomy is exercised without straying into prohibited territory. Future salary adjustments may also be subject to negotiation, offering further flexibility.

Ultimately, the category of highly qualified employee represents a recalibration rather than a dismantling of protective principles. It acknowledges that not all employees require the same degree of protective safeguards, while reaffirming the constitutional floor below which no negotiation can fall.

Arbitration

Why *arbitration matters in employment*

The flexibility granted to highly qualified employees naturally intersects with the question of dispute resolution. Traditional labour disputes in Brazil are handled by the Labour Courts, which are renowned for their protective stance towards workers and their high volume of claims. For complex contracts involving senior professionals – often with bespoke incentive schemes, equity components and restrictive covenants – the Labour Courts may not always be the ideal forum.

Arbitration, by contrast, offers technical expertise, confidentiality and procedural agility. It is particularly suited to disputes where the sums at stake are high and the contractual structures resemble those found in corporate law. Article 507-A of the CLT expressly allows arbitration agreements for highly qualified employees, provided certain safeguards are met.

The validity of arbitration hinges on compliance with three main requirements.

- Employee qualification – only those meeting the legal definition of “highly qualified employee” may be bound.
- Express consent – the employee must clearly and unequivocally agree to arbitration, with no ambiguity that could suggest defective consent.
- Transparent drafting – the arbitration clause must be explicit, preferably set out in clear language in the employment contract or in a separate agreement.

An arbitration agreement may take two forms. It can be a clause inserted into the employment contract at the outset, or a separate agreement signed once a dispute arises.

The agreement designates the arbitral chamber, defines the number of arbitrators and establishes procedural parameters.

In the event of a dispute, the claim is filed before the chosen chamber. Arbitrators are then appointed: either a sole arbitrator agreed by both parties, or a panel of three – one chosen by each side, with the third selected jointly or by the chamber.

Once constituted – usually within 30 to 60 days of filing – the tribunal establishes the procedural rules, deadlines, language of the proceedings and the venue. The case then progresses through pleadings, the production of documents and hearings. In general, arbitration lasts six to 12 months, a fraction of the time typically required by the Labour Courts.

At the conclusion, the tribunal issues an arbitral award. This decision has the same binding force as a court judgment and is directly enforceable under the Arbitration Act (Law No 9,307/1996). In the employment context, however, enforcement must pass through the Labour Courts to ensure proper collection of taxes and social security contributions, and registration of obligations on the eSocial platform (a government platform that encompasses payroll information).

For validity and effectiveness, an arbitration agreement in the employment context should include:

- clear consent of the parties;
- choice of arbitral forum and confirmation of enforceability;
- language of the proceedings;
- number of arbitrators (minimum one and maximum three);
- allocation of costs, including registration, administrative fees and expert reports;
- provision for interim measures through the courts, without waiving arbitration; and
- confidentiality of the entire process.

Once agreed, disputes covered by the arbitration clause cannot be brought before the Labour Courts. The competence of the arbitral tribunal is exclusive.

Arbitration does entail higher costs, particularly in terms of administrative fees and arbitrator remuneration. However, these costs often deter frivolous claims and are proportionate to the financial stakes involved in senior employment contracts. Moreover, the confidentiality of proceedings protects corporate reputation and sensitive information, an advantage particularly valued in competitive industries.

Arbitration therefore stands as an effective mechanism for resolving disputes involving highly qualified employees. It combines expediency with technical sophistication and ensures that complex contractual structures are adjudicated in a forum capable of understanding their commercial logic.

Independent Service Provider (*Pejotização*)

Alongside formal employment relationships, Brazil has seen the rapid expansion of independent service provider arrangements, known as *pejotização*. The expression comes from the abbreviation "PJ", short for *pessoa jurídica* (legal entity), and describes the practice of engaging individuals through their own companies rather than hiring them as employees.

Once restricted to niche fields such as IT consultancy, creative industries and medical services, the practice has now permeated sectors from logistics and finance to manufacturing. For start-ups and fast-growing firms, it is often seen as a pragmatic way to scale while reducing payroll costs. For established corporations, it can form part of wider cost-containment strategies.

From the employer's standpoint, service provider arrangements can reduce exposure to payroll taxes, mandatory benefits and severance obligations. It introduces flexibility in contracting and termination, allowing companies to adapt more swiftly to market conditions.

In M&A transactions, particularly where venture-backed companies are involved, acquirers frequently encounter workforces composed substantially of service providers rather than employees. While this enhances flexibility, it raises significant due diligence challenges. Investors must weigh the risk of judicial reclassification – with all attendant liabilities – and often insist on indemnities or escrow arrangements to mitigate exposure.

Historically, the Labour Courts have been sceptical. Judges have not hesitated to pierce the corporate veil of service contracts where the reality of the relationship reveals the classic hallmarks of employment. The criteria typically examined are:

- subordination – whether the individual is subject to orders, schedules and supervision;
- personal service – whether the work must be carried out personally, without substitution;
- continuity – whether the services are ongoing rather than project-based; and
- remuneration – whether payments resemble a salary structure.

Where these elements are present, the courts reclassify the arrangement as employment. This retroactively grants the worker full labour entitlements and exposes the company to fines and arrears in social security contributions. The predictability of this judicial approach has fuelled a culture of litigation, leaving employers in a climate of uncertainty.

The Federal Supreme Court is now poised to redefine the legal landscape. In April 2025, Justice Gilmar Mendes suspended all ongoing litigation concerning *pejotização* (called Theme 1,389), recognising its systemic importance. The court is expected to address three pivotal questions.

- Is *pejotização* substantively lawful as an alternative to employment?
- Which courts – labour or civil – have jurisdiction over such disputes?
- Where does the evidentiary burden lie in classification disputes?

This intervention has immediate implications. In shareholder arbitrations, for instance, the classification of service provider contracts can materially affect company valuation and risk allocation. A definitive precedent from the Supreme Court would not only stabilise employer practice but also reassure financial markets, where labour liabilities are increasingly seen as a key determinant of deal feasibility.

Until the Supreme Court rules, uncertainty prevails. Employers must weigh the efficiency gains of *pejotização* against the risk of reclassification and associated liabilities. Investors must build contingencies into transaction structures. Employees and service providers remain in a state of legal uncertainty, unsure whether their contracts will ultimately be upheld as genuine entrepreneurship or reclassified as disguised employment.

Conclusion

Brazilian labour law is evolving in ways that reflect a broader global shift: a recognition that worker protection and business flexibility are not mutually exclusive but must be carefully balanced. The recognition of highly qualified employees introduces contractual autonomy where it is most appropriate – among senior professionals with bargaining power. Arbitration offers a sophisticated forum for resolving disputes that exceed the capacity of traditional labour litigation. And *pejotização*, though controversial, represents an alternative model whose legitimacy will soon be tested at the highest judicial level.

For international investors and multinational corporations, these developments are not abstract. They directly affect how workforces are structured, how deals are valued and how risks are mitigated. As the Supreme Court's ruling on Theme 1,389 approaches, businesses

should monitor developments closely and prepare to adapt their strategies.

The convergence of these three themes – highly qualified employees, arbitration and alternative engagement models – will shape the Brazilian labour market for years to come. For companies willing to engage with the complexity, the rewards include greater flexibility, competitiveness and compliance in one of Latin America's most dynamic economies.