The Labor Court is commonly known for its greater speed compared to the Common Court. Considering the procedure in the 1st and 2nd Instance, and including the Superior Courts, an action in the Common Court, takes an average of 3 (three) years to 3 (three) years and 11 (eleven) months, depending on the competence, if state or federal. On the other hand, an action along the same lines in the Labor Court has an average duration of 2 (two) years and 6 (six) months1.

However, since Law 9.307/96 ("Arbitration Law"), the possibility of arbitration has been instituted in Brazil, in which the parties are allowed to obtain a solution through private jurisdiction in relation to available rights.

The definition of arbitration can occur via arbitration commitment or arbitration clause, which materializes the manifestation of the will of the parties, having as an advantage in relation to public jurisdiction, the freedom of choice of arbitrators, flexibility in the rules, the arbitration chamber, secrecy, greater speed, among others; however, it should be noted that the arbitration decision is unappealable.

Until Law 13,467/2017 ("Labor Reform"), it was understood that individual labor rights were unavailable, making them incompatible with the arbitration. In effect, only disputes arising from collective rights were allowed to be submitted to such a procedure (art. 114, § 2 of the Federal Constitution2).

However, with the Labor Reform, the Consolidation of Labor Laws ("CLL") began to allow the use of arbitration to resolve conflicts related to Individual Labor Rights, provided that the employee's basic salary level requirement was met, providing a model innovative legal system in the labor field.

ARBITRATION COMMITMENT CLAUSE IN LABOR RELATIONS

First of all, it is important to distinguish between work and employment relationships. The first is any relationship in which there is the provision of services from one person to another, whether physical or legal.

In this model, there are self-employed workers, statutory directors, non-partner administrators, service providers through the formation of a sole proprietorship, commercial representatives, self-employed freight transporters, interns, individual micro-entrepreneurs, voluntary workers, and rural workers, among others, regulated by specific laws of the

matter and common civil law.

The employment relationship, on the other hand, is a kind of employment relationship regulated in the CLL, in which employees are registered, by the employer, by means of a tacit or written contract. In this model, there are 4 (four) requirements for its configuration: personhood, non-eventuality, subordination, and onerousness.3

Thus, due to the legal improvement obtained with the Labor Reform, an arbitration clause in the individual employment contract was allowed for employees with a salary twice the maximum limit established for social security benefits.

For the year 2023, with the ceiling of social security benefits at BRL 7,507.49 (seven thousand five hundred and seven reais and forty-nine cents), it is possible to insert the arbitration clause in the individual employment contracts of employees who receive a salary equal to or greater than R$ 15,014.98 (fifteen thousand, fourteen reais and ninety-eight cents).

The salary requirement is justified by the understanding that these employees have greater negotiation skills, making the relationship with the employer more balanced.

The possibility of agreeing to the clause is provided for in art. 507-A of CLL4, brought with the changes of the Labor Reform, which must be compatible with the general rules set forth in the Arbitration Law.

Considering that civil relations already allowed the use of the Arbitration Law, based on the systemic interpretation of art. 507-A of the CLL with the Arbitration Law and the common law, it is possible to extract the possibility of foreseeing that eventual discussions that transmute from the already exemplified labor relations, to an employment relationship claim, may previously establish that the discussion takes place, via arbitration, with the Labor Court ruling out such a request, including in the event of a request for an employment relationship, if covered by compliance with the consideration requirement twice as high as the maximum limit established for social security benefits.

RECOMMENDATIONS FOR COMPANIES AND EMPLOYERS

Once the inclusion of arbitration in labor relations is contextualized, we recommend that the arbitration clause in labor contracts be meticulously detailed, dealing with the number of

arbitrators appointed and validated by the parties (which may be one or three), the arbitration institution be specified, as well as their form of appointment.

It is also important to deal with the specifics regarding the procedure, the number of costs, fees for loss of suit, and the seat where the arbitration will be held.

The more detailed the clause, the less margin will be left for eventual discussions of nullity, however, nothing prevents that, even in the face of the agreement of the arbitration clause between the parties, they choose to give up resolving the conflict through arbitration, and the employer or employee duly express the non-exercise of the clause.

Furthermore, regarding the use of arbitration in labor relations in general, especially regarding outsourced workers and service providers, once the general discharge for the legal relationship is given, the discussion about the validity of the adopted procedure and search for the Labor Court remains weakened, since all the legal requirements obeyed.

Finally, we emphasize that if the parties opt for the arbitration clause, it will not be possible to appeal after the judgment has been handed down, since this is characterized as an enforceable title and cannot be discussed in the judicial sphere. However, the Judiciary may annul the sentence in the cases provided for in art. 32 of the Arbitration Law.