
THE RISKS AND ADVANTAGES OF THE ARBITRATION IN THE TERMINATION OF BRAZILIAN EMPLOYMENT CONTRACT

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Nowadays, the number of companies turning to arbitration as an alternative resolution method to solve labor conflicts is growing substantially.

The possibility of using arbitration to solve conflicts was made possible under Law number 9.307 of 1996, popularly known as Arbitration Law.

Since then, this practice has grown in several areas of law, most notably after 2001 when the Supreme Federal Court (STF) judged the Arbitration Law constitutional, validating its application nationwide. However, the use of arbitration in the labor area, particularly for individual employment contracts is still under dispute as to their legal certainty.

This is due to the fact that the Arbitration Law states that the only subject for negotiation under arbitration methods are disposable equity rights. Thus, by this understanding, many judgments have understood that workers' rights are not disposable and therefore not subject to arbitration.

Until now, this understanding had only been formalized in decisions given by first instance judges or by the Regional Labor Court, on appeal level. However, on October 21st, 2008, the Superior Labor Court, the highest body in labor sphere, held as valid the ratification of the termination of an individual employment contract by an Arbitration expert.

In that understanding, it was concluded that the arbitration proceedings related to the individual employment contracts may be valid and effective if there is no error in the decision given by the Arbitration Judge.

This understanding validates the use of arbitration in labor disputes, which, in addition to providing benefits to companies with its fast and low cost solution, it could also be the answer for the relieving of the thousands of cases currently in the Judicial System.

However, despite the current positive wave of acceptance of Arbitration as means of solving conflicts arising from the employment contract, it is important to emphasize that this method still offers the risk of being deemed invalid by the courts.

This is because the decision of the Superior Labor Court is isolated and applies to a precise case and does not rely on specific and general understanding of the subject.

Thus, the validity of labor arbitration remains uncertain as a result of several actions brought by the Public Ministry of Labor against the Arbitration Councils that apply such procedures for the resolution of labor disputes.

For that matter, despite the fact that arbitration is being a method increasingly targeted by companies, it lacks the necessary legal certainty, due to the

constant and common annulments by the Labor Court decisions made by an Arbitral Judges.

The labor sector of Almeida Advogados's team does not only has extensive experience in analyzing and assisting companies to adopt arbitration procedure, but also on defending companies which are a part of an employment dispute in the judicial, administrative or arbitral sphere, a such remaining at your disposal for any clarification or assistance on the subject.