

University of Miami Law School  
**Institutional Repository**

---

University of Miami Inter-American Law Review

---

6-1-1977

Brazil

Follow this and additional works at: <http://repository.law.miami.edu/umialr>



Part of the [Comparative and Foreign Law Commons](#), and the [International Law Commons](#)

---

### Recommended Citation

*Brazil*, 9 U. Miami Inter-Am. L. Rev. 459 (2015)

Available at: <http://repository.law.miami.edu/umialr/vol9/iss2/13>

This Legal Memorandum is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Inter-American Law Review by an authorized administrator of Institutional Repository. For more information, please contact [library@law.miami.edu](mailto:library@law.miami.edu).

## THE NEW BRAZILIAN LAW ON LABOUR ACCIDENT INSURANCE

*Introduction*

President Geisel has sanctioned Law No. 6.367 of October 19, 1976, which was published in the Official Gazette of the Union on October 21, 1976. This new law deals with labour accident insurance. It became effective on January 1, 1977, replacing former Law No. 5.316/67.

The approval of this new law was subject to heated discussions in both houses of the National Congress. Many aspects of the new law were contested and some Congressmen even argued that the new law represents a step back and not a step forward in respect of the protection of workers. Others stressed the elimination of the individual tariff and concluded that employers will no longer have any interest in hiring accident prevention technicians, since the tariff they will have to pay will be the same regardless of their efforts or omissions in preventing labour accidents.

Although the Bill prepared by the Executive suffered more than a dozen amendments in the House of Deputies and in the Federal Senate, the points considered basic and fundamental by the Executive prevailed.

*Field of Application*

Article 1 and its two paragraphs of the new law lay down the limits for the application of the new legal provisions. This article stipulates that the mandatory insurance against labour accidents is to be made at the National Institute of Social Security (INPS) in favour of the employees enrolled with the social security system.

The new law has, however, maintained the principle of favouring only employees of companies which have adopted the system of the Consolidated Labour Laws. Rural workers will continue to be subject to separate legislation (Laws Nos. 5.889/73 and 6.195/74). Domestic employees are also not covered by the new labour accident insurance law.

Paragraph 1 of Article 1 has expanded the field of application of the law's provisions by including sporadic workers rendering services to several companies, regardless of whether they are or are not affiliated with a workers' union. These provisions will also benefit stevedores, checkers and prisoners doing remunerated work.

Paragraph 2 of Article 1 excludes from the scope of the new law owners of individual firms, directors, managing partners, co-partners,

quotaholders and industrial partners of any companies, who are not registered as employees. The same paragraph adds that the law will not apply to autonomous workers or to domestic employees.

### *Concept of Labour Accident*

The new law has extended the concept of labour accident as defined in the former law and has made slight alterations in the respective norms.

The former Law No. 5.316/67 considered labour accidents as being imprudent or negligent acts of third parties, including work colleagues. The new law has included a third possibility: unskillfulness on the part of a work colleague or of a third party.

A labour accident under the law is an accident which results from work done for the company and which causes bodily injury or functional disturbances leading to death or permanent or temporary loss or reduction of the work capacity. Included among labour accidents are the professional or work illnesses contained in the list approved by the Ministry of Social Security and Assistance, with the exclusion of degenerating illnesses, illnesses inherent to an age group and illnesses that do not lead to work incapacity.

### *Grace Period*

The general Brazilian social security system always requires a grace period for the insured party to acquire the right to its benefits and services.

This grace period, normally of twelve months, is dispensed with in the case of labour accident insurance. As under the former law, Law No. 6.367/76 assures the insured party and his dependents the right to receive the applicable social security payments, without requiring a grace period.

### *Benefits*

The benefits to which the insured party is entitled will be calculated, granted, maintained and readjusted in accordance with the social security system of the INPS, except in respect of the benefits provided in Article 5 of the new law. The illness allowance to which the insured party is entitled as from the 16th day after the accident will be calculated at 92% of his contribution salary on the date of the accident. As under the former law, the retirement payments in cases of invalidity continue at the level

of the contribution salary on the date of the accident and may not be less than the benefit salary. The benefit salary is the average between twelve or thirty six INPS contributions made by the insured party, depending on the benefit. If the insured party's contribution salary on the date of the accident is less than his benefit salary, the latter will prevail. The retirement payments in favour of the dependents of the insured party are equivalent to those for retirement as a result of invalidity, regardless of the number of dependents involved.

The former law gave the employee 100% of his contribution salary on the date of the accident and then deducted the 8% INPS contribution. The new law deducts the 8% right away and gives only 92%, thus resulting in the same amount.

### *Contribution Salary*

According to Paragraph 1 of Article 5 of Law No. 6.367, the determination of the contribution salary will not include any salary raises in excess of the legal limits nor voluntary raises granted during the twelve months immediately prior to the effectiveness of the benefit. These raises will only be included if they are the result of promotions within the company permitted by labour legislation, of normative decisions or of salary readjustments obtained by the respective professional class. This provision reflects the rule existing under the general system of social security.

The former law did not deal with the criteria for the determination of the benefit salary of an insured party who has suffered a labour accident, when such insured party was a sporadic worker or a worker receiving variable remuneration. Paragraph 4 of Article 5 of the new law establishes that for these cases the benefits will be calculated on the basis of the arithmetic average of the twelve highest contribution salaries ascertained over a period of eighteen months prior to the accident, if the insured party has made more than twelve contributions. The same basis will be used to calculate the benefits of a worker receiving variable remuneration.

Item II of Paragraph 4 of Article 5 also provides another calculation basis: the arithmetic average of the contribution salaries of the twelve months preceding the accident or of the above mentioned eighteen months, whichever is more, provided that the insured party has made twelve or less contributions over this period.

This new legal criterion offers better protection to the insured party and also discourages certain fraudulent practices to the detriment of

social security, the assets of which are mainly formed by the contributions made by the insured parties themselves.

Contrary to the former law which established two dates for the payment of the first benefit, the new law provides for the employer to pay the first fifteen days of absence from work, while the INPS is obliged to pay as of the sixteenth day of absence. A sporadic worker who has suffered a labour accident will receive his illness allowance directly from the INPS as of the day following the day of the accident.

#### *Accident Allowance*

Law No. 5.316 granted insured parties with permanent work impairment an accident allowance of more than 25%. Within the maximum limit of the social security contribution, this allowance could be added to the contribution salary for purposes of calculating any other benefits not resulting directly from the accident. If the reduction of the work capacity was by less than 25%, the insured party was entitled to receive the sum resulting from the application of the relevant reduction percentage to the amount of 72 highest minimum wages prevailing in the country on the date of its payment.

The new law has adopted a different position for both cases. Article 6 of the new law establishes that the right to receive the accident allowance does not depend on the percentage of reduction of the work capacity. It will now depend on the fact that the insured party is no longer able to do his normal work although he may still be able to do other work.

The accident allowance will be 40% of the retirement payment for invalidity, maintained and readjusted in accordance with the social security system.

According to Article 9 of the new law, a monthly allowance of 20% of the retirement payment for invalidity will be paid, as from the termination of the illness allowance, to workers who, in spite of the accident injury having healed, still have definite sequels, anatomic losses or work capacity reductions, as defined in the list prepared by the Ministry of Social Security and Assistance. This allowance is payable in cases where the results of the accident, although not hindering engagement in the same work, do permanently require more effort for the same work.

#### *Peculium*

Under the new law, the dependents of an insured party who has died as a result of a labour accident will be entitled to an amount of thirty

times the reference value fixed according to Law No. 6.205 of April 29, 1975. In the case of retirement due to invalidity, the insured party will receive a peculium of fifteen times the above mentioned reference value.

Comparing this new legal provision with Articles 8 and 9 of the former law, the conclusion is that the new law has increased the benefits offered to the family of the accident victim, while slightly reducing the benefits in the case of retirement for invalidity.

#### *Medical Assistance and Professional Rehabilitation*

Paragraph 3 of Article 5 of the former law included surgical, hospital, pharmaceutical and odontological assistance, as well as transportation of the accident victim, in the concept of medical assistance.

Article 10 of the new law confirms this concept of medical assistance and adds professional rehabilitation where appropriate, establishing that this kind of assistance will be mandatory. In this respect the new law is more favourable to the accident victim.

#### *Liability for Labour Accident Payments*

The former law stipulated that the employer was exclusively liable for the labour accident payments. The new law apportions this liability among the Federal Government, the employer and the employee. The exclusive liability of the employer has been increased by the following percentages applied to the payroll: (a) 0.4% for companies in which there are only slight risks of labour accidents; (b) 1.2% for companies with average risks; and (c) 2.5% for companies with great risks. The definition of the company's activities and the classification of the risks involved in its work will be determined by the Ministry of Social Security and Assistance.

A comparison of the liability criteria of the former law and of the new law shows substantial differences. Under the former law, the liability was distributed in the following manner: a contribution of 0.4% or 0.8% of the payroll, payable by the company, and, depending on the activities of the company, an additional contribution on the same payroll. The former law permitted companies to adopt individual tariffs if their labour accidents were infrequent.

The new law has eliminated this individual tariff and its Article 15 has introduced the criterion for liability for labour accident payments. This new criterion is expected to reduce the company's insurance costs

although the pecuniary benefits of the worker have increased. The new criterion has definitely made it impossible for companies to adopt artificial methods to obtain individual tariffs.

The law obliges the Ministry of Social Security and Assistance to review, at three-year intervals, the classification of the companies for purposes of their contributions to labour accident insurance. The contribution rates should thus decrease to the extent that the company manages to reduce its labour accidents.

### *Statute of Limitations*

Law No. 6.367 has established a statute of limitations of five years for all labour accident payment claims. The statute of limitations of the former law has thus been maintained.

Special attention should be given to item II of Article 18 of the new law, which fills in a gap existing under the former law as to the calculation of the statute of limitations. The new provision establishes that the five-year period will be calculated from the date "of submission of the benefit application to the INPS or of absence from work, when such absence began after the date of the application, in cases of professional illness, and of communication by the INPS to the patient of its recognition of the relation between the illness and the work, in other cases of labour illness. If this relation is not recognized by the INPS, the statute of limitations will begin on the date of the expert examination made to judicially determine the illness and its relation to the work."

### *Conclusion*

We do not share the opinion that the new labour accident insurance law represents a retreat in the battle to obtain better conditions for the salaried worker. As shown above, the new law has evidently offered workers more advantages than disadvantages.

On the other hand, the INPS, which is the governmental agency in charge of labour accident insurance, has been offered better possibilities of defending its assets, the majority of which ultimately belongs to the workers and other parties enjoying INPS insurance.

VIVIAN HOSSNE DE GODOY  
Pinheiro Neto & Cia.  
Sao Paulo, March 31, 1977