



The Brazilian labour reforms: a grave attack on workers' rights

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Brazil has been in crisis since a parliamentary coup installed a right wing president, Michel Temer. Temer came to power with the mission to dismantle most of the social advances that had been consolidated since the 1930s - in particular, the pension law and the labour law – along with efforts to privatise firms such as Petrobras, state-owned electricity firms and public banks. Complementing such proposals, austerity measures have been enacted that restrict budgets for education and health care.

Temer, who was vice president between 2010 and 2016, broke up the electoral coalition with the PT (*Partido dos Trabalhadores*, Workers' Party in Portuguese) and allied with right wing political parties, took over the Brazilian presidency through a parliamentary coup in May 2016, when President Dilma Rousseff was impeached. A process that was a new form of 'Legal' *Coup de Etât* aimed to dismantle the Consolidation of Labour Laws (CLT), which dates from the 1940s, the social legacy of the 1988 Constitution - and the advances made during the Workers Party (PT) governments from 2003 to 2016, such as the real increases in the minimum wage, the support to family agriculture, and the procedures to eradicate forced labour, among others. Despite his very low public support - no more than 5%, according to current polls - he has maintained the position of president due to the support of bankers, media, private employers and the right wing parties in the parliament, who have all benefited from lots of pork barrel (Greenwald, 2016). The whole set of neoliberal policies that have already been implemented will affect Brazil for many years, until a progressive government can take the presidency back and reverse those policies.

This article will deal with the particular case of the attack on the Labour Laws. The reformed law was put into practice last November. The first consequences have already been felt by workers, such as the 1200 teachers at a private university who were summarily dismissed with the intention of hiring most of them

again, but under a more precarious contract with lower wages.

Solidifying the employers' dream

A wave of labour reforms swept several Latin American countries recently, starting in Colombia and followed by Mexico and Brazil. The next country in line is Argentina. In spite of the different characteristics of their labour legislations, a common thread of these recent reforms is the inclusion of new and flexible forms of labour contracts.

From 1943 until 2017, Brazil's CLT's provisions included mandatory vacations, the payment of an additional month's wages each year (the so called 13th cheque), a fund from which to be paid in case of dismissal, rules for hiring and firing, overtime payments, and other social benefits. Also the labour justice system was an important protection against employers' efforts to circumvent or violate labour law, a tendency that resulted in many legal suits initiated by workers.

The base of the Brazilian labour reform is a proposal disclosed in 2013 by the Confederation of National Industry (CNI), the main employer organisation. CNI justified changes in labour law as a tool for achieving higher competitiveness and productivity, and to 'implement less restrictive rules consistent with present day employment relationships' as employers' public relations teams love to say. The reform approved by the parliament changes about a hundred articles of the existing labour code. The main changes can be sorted into four major themes. These are that what has been bargained rules over what is legislated; flexible contracts, and in particular intermittent ones; restricting workers' to access the labour courts; and attacking trade union organising and financing.

The first appears to enrich collective bargaining but actually intends to replace labour rights guaranteed by the traditional labour code since the 1940s with conditions that are otherwise unregulated, or worse

than before, dictated by the employers through 'negotiations'. These new conditions can also be applied directly to individual workers who earn higher wages, without any consultation or bargaining process.

The intermittent labour contracts solidify the dream of any Brazilian employer of having his employee at hand the entire month but only paying him for the time he effectively works. In this kind of labour contract, slack time is not remunerated, and if the employee doesn't show up when summoned to work he can be punished with fines.

Labour justice courts were founded in Brazil in the 1930s and workers access to them had always been free, whether they won or lost their cases. Now under the new rules, the workers can be charged for the trials when the labour court rules against them. In a recent case brought by an employee against one of the biggest Brazilian banks, which started long before the approval of the labour reforms, the judge gave her partial rights regarding certain compensations demanded after her dismissal by the bank but at the same time denied others. As a result, she obtained R\$7500 as compensation but was ordered to pay R\$ 75 000 - ten times more – for the costs of the case.

Finally, labour organising and financing were traditionally imposed by law through compulsory trade union membership and financing by a tax of one day's wages a year collected from all the workers whether affiliated or not to their local unions. Aside from eliminating the tax, the reform introduced trade union representatives elected by the workers at the shop floor and independent of the existing local union.

These two measures also sound like initiatives to enforce free labour organisation but actually they aim to weaken the existing trade unions. The main Brazilian trade union federation, the CUT, has always been critical of trade union unity imposed by law as well as the compulsory tax, and is therefore better prepared than the others to face the new situation. However, the dependence of the tax is high for unions in sectors with high turnover and lower organisational density, like commerce and

construction workers, and they will certainly face difficulties maintaining their organisational capacity.

A menace for the working class

As a part of a general thrust to dismantle the social and labour protection structures contained in the 1988 Constitution, labour law reform undermines the bargaining situation of most Brazilian workers. It is a menace for the working class. The labour federations mobilised against the reform and called a successful general strike in April 2017, but the action was nevertheless insufficient to block the approval of the new labour code against a strong front of government, employers and media.

At present labour is resisting through some allies inside the labour courts who are able to question aspects of the reform and to explore its gaps before the relevant group of judges in the Supreme Labour Court rule in the coming months, as well as through mobilisations and local strikes to force better negotiations with the employers.

However, there are only two possibilities for workers to overcome the effects of the reform. One, in the short term, is the abrogation of the entire reform if the Brazilian people manage to elect a progressive president in 2018, and the other is to live with the new rules and to change the present forms of trade union organisation to tackle the new reality and global production chains. But this is another issue.

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Reference

The Intercept. (2016) <https://theintercept.com/2016/11/25/in-brazil-major-new-corruption-scandals-engulf-the-faction-that-impeached-dilma/> Accessed January 2, 2018.



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