

# **Compensation in Brazil: an analysis based on brazilian legislation.**

## **Abstract**

The present article aims to analyze the remuneration in Brazil according to current legislation utilized a survey. Remunerations that comprise the base salary (commissions, cash shortage, allowance and gratuities) and variable remuneration (awards, participation in profits and results, shareholding - *stock options* - and remuneration for skills and competence) were analyzed. It was found that some types of remuneration are not governed by specific legislation and others are governed by incomplete or outdated legislation. Thus, there is a mismatch between the practice of private organizations and the legislation, with many issues without regulation or adequate legal treaty and conflicts causing.

**Keywords:** Variable remuneration. Functional remuneration. Brazilian legislation.

## **1 Introduction**

The business environment is undergoing several changes that reflect considerably in the management of organizations, so the early management models should be replaced by appropriate systems to the market changes, since significant changes were noted in work characteristics, organizational structures and characteristics of business management, generating new interpretations, including from the perspective of people management in business dynamics (Oliveira & Piccinini,2011; Dutra,2013).

Most organizations still apply traditional systems of remuneration, based on "descriptions of activities and responsibilities of each function" (Lima, 2009, p. 49). This is the functional

remuneration that is no longer enough to adequately reward the efforts made by the employees and is becoming an obstacle to the evolution of the organizational change process and the growth of the company (Lima, 2009; Gheno & Berlitz, 2011). Thus, many companies are replacing the functional remuneration by more flexible models, focused on goals and teamwork (Lima, 2009), as a means to boost the range of its expected results (Gheno & Berlitz, 2011). It is important that the organizations replace the vision of remuneration as a factor of cost for a vision of remuneration as a driving force of the competitiveness (Dutra, 2013).

According to Cavazotte *et al.* (2012), the fast pace of the transformations undergone by the business environment, takes the labor market to offer multiple opportunities that enables the employee to manage your career with more autonomy. Attractive and competitive salaries are objects of research and attention targets for employees and employers. This scenario demands innovative solutions and processes, requiring high levels of productivity, competitiveness, and also the incorporation of new principles relating to remuneration.

The variable remuneration brings a contemporary approach of remuneration, which should be linked to individual performance and employees contributions to the results achieved (Marras, 2012), besides being integrated to the strategic objectives of the organization (Armstrong, 2007; Jensen *et al.*, 2007; Lima, 2009). However, for your application, the organizations must proceed according to current labor laws. But, the Brazilian legislation about variable remuneration is recent, does not include all the tools that compose it and cannot cope with the fast pace of changes within organizations, causing discrepancy and lack of orientation to employers and employees in labor disputes, which leaves a gap to be explored in this article.

In face of this scenario, the present article is justified because it presents an analysis of the several forms of remuneration according to Brazilian legislation, because there is no an

appreciation of labor laws applicable to variable remuneration in Brazil and it is extremely important to study the relationship between employers and employees in the labor market. Therefore, the objective is to present an analysis of remuneration in Brazil according to the labor legislation, in the period from 1943 to 2013, as a reference for managers who use or intend to use it.

Another contribution of this essay refers to the temporality of work, because over time the tax revenues can be changed. In the case of Brazil, with tax reform, therefore, can be considered a topic that has remained stable in recent years.

The methodology is structured in a survey on Brazilian labor law for the private sector and employees, governed by the Consolidation of Labor Laws (CLT). The tax aspects associated to the remuneration were also analyzed. Finally, we emphasize that we adopted the word "employee" and "worker", because it is the term used by Brazilian law (Organisation For Economic Co-operation and Development, 2014).

## **2 Theoretical References**

**The Labor Legislation in Brazil** - The main Brazilian legislative rules relating to Labor Law and Procedural Labor Law are listed in the Constitution of the Federative Republic of Brazil (Federal Constitution), enacted on October 5, 1988, and in the Consolidation of Labor Laws (CLT), created by a legislative decree nº 5.452 in May 1, 1943.

The Federal Constitution organizes the State and defines fundamental rights and guarantees. The CLT was created to compile the existing labor legislation in Brazil, seeking to meet the need for worker protection. Its main objective is the regulation of individual and collective employment relations.

Complementing the role of the Federal Constitution and CLT, there is the labor union, who must defend the "rights and interests of the individual or collective category, including in

legal or administrative issues" (Constitution of the Federative Republic of Brazil, Art. 8º, III). The union is a form of professional association properly recognized by the State as legal personality representative of private law. One has to consider, in this universe, the Collective Labor Convention and the Collective Bargaining Agreement, which are direct products of the intervention of the Union.

**Functional Remuneration and its variations** - Remuneration is the total of the installments paid by the employer to the employee in terms of the employment contract (Delgado,2011).

The remuneration management in organizations consists of three axis: (1) *functional remuneration*: it uses as a reference the position to consolidation of the plans of posts and salaries (monthly salary, 13th salary and vacation); (2) *Variable remuneration (VR)*: has as the central principle the recognition of the contribution of people as a factor to be paid (premiums, participation in profits and results, shareholding - *stock options* - and remuneration for skills and competence) (Ghenó & Berlitz,2011); (3) *benefits*: life insurance, health care, transportation, basic food basket, personal accident insurance, dental assistance and scholarship (Marras,2012).

In the current business scenario of uncertainty and profound and rapid changes (Lima,2009), changes are necessary to migrate from functional remuneration model to variable remuneration model with focus on the individual (Cardoso,2006; Marquart *et al.*,2012), investing in modern and satisfactory remuneration systems and encouraging the training of employees. This scenario requires that the focus is no longer in the post (functional remuneration) and pass to the person (variable remuneration). It must, therefore, pay according to the role that employees play, by their talents, skills and the ability to adjust quickly and appropriately to changes.

Some remuneration which, according to current legislation, composes the base salary, are likely to be confused with variable remuneration. As an example, we can cite commission, cash shortage, financial aid and gratuities, which will be addressed below.

**Commission** - Commission refers to the part of the salary of the sellers after the completion of a sale (Law No 3.207/57). The commissioning of sales employees should not be seen by the company as an expense to control, but as an investment portfolio to manage (Steenburgh & Ahearne, 2012).

According to the legislation (Law No 3.207/57; CLT, Art 457 and 466.), the payment of commissions: (a) should be done monthly (not exceeding a quarter), accompanied by copies of corresponding invoices and only is required after the completion of the transaction to which it relates; (b) the completion of the transaction will be considered accepted if the employer did not refuse it in writing, within 10 days from the date of the proposal; (c) for credit sales (successive installments), the payment of commissions will be executed according to the order of receiving installments by the company; (d) if the sale is canceled due to insolvency of the buyer, the employer may request the return of the commission by the employee.

The current legislation does not determine the percentage of commission to be implemented, which provides flexibility for companies to compensate employees. Thus, sellers can reach higher percentage of commissioning according to the effort expended (sales volume). On the other hand, the payment of commissions is applied differently in a same professional category, which can generate distortions in the salary policy of each sector.

**Cash shortage** - Cash shortage is the negative difference between the existing amount in cash and what it really should have according to the control notes of the entries and exits of cash. Organizations can discount the cash shortage of their employees since it has been

previously agreed in contractual instrument or in the event of willful misconduct of the employee (CLT, Art. 462, § 1).

There is no legislation on the mandatory payment of additional of cash shortage, but it is common that the Conventions or Collective Agreements determine such obligation in relation to those employees with a proven exercise in the cashier post. There are unions that establish the obligation to pay the additional even if no differences occurred in the cash during the exercise of the function. Generally, the percentage of the salary to be paid as additional of cash shortage is defined by the trade union. On the additional of cash shortage there is social security and land contribution and taxation of income tax.

**Allowance** - The allowance is set to the value that can be paid at once, or eventually, with the intention to cover unusual expenses, when tasks are performed in external service (CLT, Art 470; 8.212 / 1991 Law, Article 28, § 9, "g"). The allowance corresponds to one payment per trip and daily corresponds to the number of travel days, and the nature of both is indemnification (Carrion, 2009). The allowance is a budget used by companies to meet the needs of their employees such as food, fuel, housing, displacement and travel. It is noteworthy that the allowance does not pay the employee themselves, but it comes to reimburse the expenses incurred in the performance of their work.

It appears that Brazilian legislation, regarding the allowance, brings only the definition, mentions the salary character and predicts the tax incidence. Therefore, the regulation of its implementation is the responsibility of labor unions, which generates large discrepancy in the values applied to the professional ranks.

**Gratuities** - The gratuities are the values periodically paid on account of the result obtained. They are often used by large companies to compensate the employees of higher hierarchical levels. Are employed as an instrument to induce effort (Banker *et al.*,2012), encourage executives to perform the best of their abilities and achieve organizational performance goals

for the current year (Currim *et al.*,2012). The payment can be made to any employee, being derived from multiple modalities, called for attendance bonus, bonus for production or annual gratuity. The law provides that the bonuses are part of the employee's salary (CLT, art. 457, § 1) and that there should be the incidence of taxes on them.

It is noteworthy that the current labor legislation does not establish minimum or maximum limits in relation to the corresponding values for gratuities / bonuses paid by the employer to its employees, and also does not establish the procedures to be adopted by the company for such payment. The company should proceed to the notes as it thinks it fit or resort to collective documents, if any.

**Variable Remuneration** - The variable remuneration (VR) is the variable portion of remuneration linked to the results obtained in a given period, rewarding employees who create value for the company (Jensen *et al.*, 2007). It allows employees a participatory position because they start to see the company as an opportunity for personal growth, which reflects on the motivational aspect and on the quest for continuous improvement (Beuren *et al.*,2012). Thus, companies seek to attract, motivate and retain talents (Jensen *et al.*, 2007).

Any VR system moves through the employee performance and knowledge, skills and attitudes that he or she must have as essential characteristics (Marras,2012). Lima (2009) states that the models of RV must be aligned to the organizational context (strategy, structure, management style and vision) and Marras (2012) complements that your application requires innovative business management, autonomy of action, creativity and team work.

The RV has taken different forms in companies, because there is a great variation in the models applied, since each company adapts the program to its culture, its reality and its activity sector. Among the types of variable remuneration, the following are worthy of mention: awards, participation in profits and results, shareholding (stock options), remuneration for skills and competence (Marras,2012).

Stands out in this scenario the legal nature of the RV, which aims to support employer and employee in future problems in front of the Labor Court, as well as guide professionals who administer remuneration systems. The following types of RV will be presented, according to Brazilian legislation.

**Awards** - Awards consist of the payment, occasionally, by the reach of pre-established goals, with predetermined time duration. The awards are implemented through goods, services or travels. Aim to recruit and retain employees with the company desired profile (Lo *et al.*,2011). Includes, in most cases, the functional body and is, usually, linked to the degree of involvement in quality, security and development programs and achieved operational results. For the prize is characterized as a variable form, it is necessary that it be integrated with liberality and sporadically granted.

Currently, there is no specific legislation about this subject in Brazil. The awards distribution without the proper legal authorization can lead to compensation in accordance with just the hierarchical level, which generates large differences in the amount of awards within the organization and may produce dissatisfaction among the workforce. The lack of regulation leaves an important gap in the legal framework.

**Participation in profits and results (PLR)** - In this modality, the company distributes a portion of the income earned in a particular period to employees who make up its workforce (Barros *et al.*,2012). According to the literature, the PLR is used to: (a) increase productivity by encouraging employees to work effectively and efficiently to achieve organizational objectives (Guimarães & Gomes,2010; Barros *et al.*, 2012; Marras,2012); (b) attract and retain more qualified human capital, increasing the total remuneration over time and decreasing turnover (Long & Fang,2012); (c) integrate capital and labor, allowing the employee to take advantage of a portion of the wealth produced by him/her (Guimarães &

Gomes,2010); (d) encourage the unity among employees and teamwork (Gheno & Berlitz ,2011; Marras,2012).

The law does not differentiate participation in profits and results and does not define standard in relation to the amount to be paid and the rules for distribution of that value.

The PLR is supported by Law No. 10.101, of December 19, 2000, which provides guidelines to discipline the instruments of negotiation between employer and employee, in order to establish procedures that will be adopted by both parties.

It appears that the PLR, among RV tools covered in this article, is the tool that has more legal support so far. Therefore, there was an advance of Brazilian legislation, aiming to follow the changes and needs of the labor market.

**Shareholding (Stock Options)** - The shareholding is the distribution of stock options, which gives the employee the right to buy a lot of company stock for a given price, within a predetermined period (Marx & Soares, 2008; Marras,2012). Therefore, this method can only be used in corporations or in joint-stock company, not necessarily publicly traded.

The main objectives of shareholding are to attract, retain (Kalpathy,2009) and motivate employees (Farrel *et al.*,2011), align interests between managers and shareholders (Nunes, 2008; Chan *et al.*,2012; Perobelli *et al.*,2012) and maximize the long-term performance (Currim *et al.*,2012). It is expected that the ownership of shares by the employee expand its effort to improve the company's performance in order to increase the market price of the share, surpassing the strike price (Marx & Soares,2008; Nunes,2008; Perobelli *et al.*,2012). Thus, the beneficiary starts to profit reselling, later, the stock, or becoming a shareholder. It is, therefore, a long-term investment tied to company performance, increasing the wealth of the shareholder and of the employee (Perobelli *et al.*,2012).

In Brazil, there is no specific legislation on remuneration for shareholding. The Law 6404/76 (Art. 168, § 3) only provides that companies classified as corporation may grant the stock

options, since this option be inserted in a plan approved by the general meeting and is within the limit of authorized capital.

**Remuneration for skills and competence** - The remuneration for skills, consists in remunerate linking the promotions and wage progression to the practical confirmation of the acquisition and improvement of skills (Cardoso,2006) progressions. Aims to pay professionals for their personal characteristics and align the employee skills with the organization's strategies (Carbone *et al.*,2011). It is characterized as a training, learning and a professional and individual development system, (Cardoso,2006; Marras,2012), requiring investment by the company in recruitment, selection, training and development (Marras,2012).

It's used in self-managed teams, based on participative management (Cardoso,2006). For the right application, it is necessary that the company define which skills should be developed, establishing the necessary steps for its development, as well as forms and rules for training and proof of skills and competencies developed / acquired (Gheno & Berlitz,2011).

The remuneration for competencies seeks to combine, synergistically, knowledge, skills and attitudes "expressed by the professional performance within a given organizational context that add value to individuals and organizations" (Carbone *et al.*, 2011 p.43). It applies more appropriately to employees in leadership, planning and control roles (Marras,2012).

There is no legislation about remuneration for skills and competencies. Therefore, the application of this tool is presented as a challenge for companies that want to embrace it, because it must adapt it to the needs of each organization and, at the same time, there is the possibility of facing any labor processes without prior legal support.

**Benefits** - The benefits comprise the remuneration of employees, being monetary or not. While salary is a direct compensation, due to the inherent tasks to a given position, the

benefits make up the indirect remuneration (Marras,2012), and should be part of the total rewards program (Kwon & Hein,2013).

There is no specific legislation to guide the application of benefits by the companies. The CLT only states that are not considered as salary: education (in education establishment itself or third parties), medical, hospital and dental care provided directly or through health insurance, life insurance and personal accident insurance, private pension and the corresponding value to the culture vouchers (art. 458, § 2, II, IV, V, VI and VIII). The benefits usually granted to the employee are incorporated into the contract and can only be changed or deleted by mutual consent, since do not result in prejudice to the employee (CLT, Art. 268).

It appears that the several benefits used by Brazilian companies have no legal support, leaving it to the unions the negotiations about these benefits. This can cause discontent among the parties, because each union negotiates and determine differently, and thus there can be no unity between the various professional categories.

### **3 Reflections on the remuneration management from the perspective of law**

It was evident that the legislation does not follow the changes occurring in the market, leaving a gap that limits the work of managers, compromising labor relations. It is necessary that the Brazilian legislation proceed more quickly and accurately seeking uniformity in the interpretation of concepts and facilitating its application, which would generate a scenario of greater stability and comfort for both employees and employers.

### **4 Final Considerations**

The current paper presents an analysis of remuneration in Brazil, according to the current labor legislation. The analysis showed that cash shortage, commission, allowance and

gratuity are not variable remunerations, since composes the base salary of employees. None of them is governed by specific legislation, but are covered superficially by an outdated and incomplete legislation, which complicate its application and better use. The temporal mismatch of laws has led to instances of litigation and losses to employers and employees due to conflicts, by the lack of laws that safeguard the rights and duties of the parties involved. In this attempt, the labor unions end up assuming a major role, even acting as legislators, in face of the attempt to supply the lack of legal support.

Among the tools of variable remuneration analyzed, it was found that participation in profits and results is the one that has specific legislation, thus allowing more legal support for your application. There is no legislation on awards, shareholding or on remuneration for skills and competencies. The absence of legislation allowing the adaptation of remuneration tools to the reality of each company. In this case, employers are obliged to take a higher risk, since, with labor discussions; they are susceptible to the understandings of the Courts, whose parameters are based on an outdated legislation that does not consider the reality of the current labor market in Brazil. This ends up leaving many issues with no regulation and without the proper legal treaty and conflicts causing. It was found; too, that even in the absence of detailed legislation about the application of the covered remuneration tools, there is legislation on the incidence or not of taxes on some of them. On the other hand, there is not a specific legislation about the various benefits used by companies, leaving it to the unions to determine its application by Convention or Collective Agreement.

The contribution of the study to the topic remuneration in Brazil demonstrated what remuneration is and what are not, which laws support the employer and the employee and the existing gaps. As managerial implications, we can point out that the study provides evidence that managers should stick to variable remuneration with caution, with constant help of existing legislation and the monitoring of negotiations determined by unions.

It is suggested, for future work, conducting research on labor processes linked to variable remuneration in order to check the main events and the volume of cases generated by the inadequacy of current legislation about the subject. It is suggested also research about the scope and the application of the variable remuneration in Collective labor convention or Collective Bargaining Agreement of various unions.

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