

Recent Developments Regarding Connections Between Franchise and Labor Laws in Brazil

Brazil | March 24 2023

In 2019, a new Franchise Law (n° 13.966/2019) was published, introducing certain changes by bringing clarity to the business relationship between Franchisor and Franchisee with greater legal certainty, transparency, and simplification.

One of the highlights of the new Franchise Law is the insertion of certain rules already in place in the daily life of the parties, and even reflecting court decisions, such as the express provision that there is no employment relationship between the Franchisee and its employees with the Franchisor.

Since the publication of the new Franchise Law, several decisions, including from the Superior Labor Court, are ruling favorably to the validity of the franchise agreement signed between the Franchisee and the Franchisor, denying Franchisee's employees' request for an employment relationship recognition with the Franchisor.

Nonetheless, decisions that did not recognize the employment relationship between Franchisee's employees and the Franchisor are analyzed within the factual and legal contours of the case, the employment relationship being verified from the evidence, such as the business relationship, legal subordination, and the like. Another important nuance that Judges are seeking to analyze in similar cases is that the franchise agreement entered into between the parties generates obligations like any business relationship removing any attempt to be confused with an employment relationship.

It is important to point out that the business relationship between the Franchisee and the Franchisor must be detailed in the Franchise Offering Circular and executed through a robust and well-written contract, making clear the franchising strategies devised by the Franchisor, the management structure, the Franchisee's obligations and guidelines for all procedures, the use of the brand, know-how, technology and other Franchisor's assets, how the Franchisee will perform his work independently, and how Franchisee and Franchisor both benefit from the results obtained.

Therefore, recent decisions recognize contractual freedom, reinforcing the unique relationship between the Franchisee and the Franchisor, in which the contractual conditions agreed between the parties must be respected, bringing legal certainty to the franchise community.

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