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Decree 45/2009 of 14 August

The Labour Inspectors Regulation

Summary of key points

The role of labour inspectors includes: ensuring that the rights of workers representatives within the workplace are guaranteed; ensuring that companies comply not only with the law but with their internal regulations and collective bargaining agreements; overseeing health and safety in the workplace; ensuring appropriate first aid facilities and capacity; ensuring consultation and availability of information and instructions, and training for workers and their representatives; overseeing the legal requirement for professional training and transfer of knowledge by foreign employees to local staff; ensuring compliance with INSS; intervention in labour conflicts (Art 4)

The inspection service is required to furnish those entities which are the subject of inspection with information and clarifications requested (Art 6, para 2)

In its work the inspection service is to give precedence to the education of employers and workers and to voluntary compliance with the labour legislation (Art 7 para 1) When the infraction detected can be corrected or has caused only minor harm the inspectors can give a written notification indicating the infraction, the correction required and establishing a time period for compliance (Art 7 para 3)

If the infraction detected is considered sufficiently serious the inspectors have the right to suspend work at the inspection site immediately (Art 10)

Inspectors are required to, among other things, investigate the cause of work-related accidents and deaths, and undertake inspections of work premises (Art 11)

Inspectors powers include: the right to inspect unannounced any work premises; be accompanied by union representatives on such inspections; speak to any person found at the workplace on any matter related to the labour legislation; requisition records and information necessary for their work; take photographs, measurements or film; request information about the makeup of products in use, or take these for analysis; be accompanied by the police in certain circumstances (Art 12)

Inspectors must, in most cases, advise the employer or their representative of their arrival on site, and the employer and his representatives must provide such assistance as is requested by the inspectors. Inspections should not disrupt the normal functioning of the business. Inspectors must, in most cases, advise the employer of the outcome of the inspection prior to leaving site (Art 13)

Unless no infraction has been detected or the inspectors have opted to use an educational approach, a formal notification (*auto de notícia*) will be issued for any infraction detected, and this will automatically signal a fine. Inspectors are only permitted to apply fines at the minimum level provided in the labour legislation, however if the employer appeals the inspectors' superior reviewing the case has the right to increase the fine. The appeal period is equal to the time period given for the voluntary payment of the fine (Art 16)

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Autos de notícia are prepared in quadruplicate, with one copy being given to the employer, and the *auto* should include a deposit slip to allow for payment of the fine to be made (Art 17)

The *auto de notícia* having been verified by the inspectors' supervisor, the employer receives a second notification (*notificação*), to pay the fine or appeal within 15 days. This *notificação* can be served on the employer or on anyone present at the workplace at the time the document is served. The *notificação* must include a copy of the original *auto de notícia* and deposit slip for the fine (Art 18)

Employers must retain copies of all autos and *notificações* for a minimum of two years and present these to inspectors on request (Art 19)

Payment of fines must be made within 15 days of receipt of the *notificação*, and, if the fine is for not submitting documents or making compulsory communications these too must be made within the same 15 day period, the fine only being considered paid when it is proven that these obligations have also been fulfilled within the given time period. If the fine has not been paid and (where relevant) the necessary documents have not been demonstrated to have been submitted the process is passed to the courts (Art 20)

In the case of fines applied due to payments owed to workers or to INSS, these outstanding payments are to be lodged in an account indicated by the Ministry of Labour and, in the case of payments owed to workers, the employer is then required to inform the worker in writing that this is the case, so that the worker can then contact the Ministry of Labour to receive the money (Art 21)

If an employer has in his possession unclaimed salaries, or has levied a fine on any worker, these funds must be lodged with the Ministry of Labour (Art 23)

On receiving a *notificação* the employer may appeal, in writing, presenting such facts and proofs as serve to demonstrate why the fine was wrongly applied. The appeal has the effect of suspending the time period in which the fine must be paid. Appeals must be answered within 20 days of receipt by the Inspectorate. If, after 20 days, no reply has been received the appeal is understood to have been rejected and the time period for payment of the fine recommences. In the case of appeals which are successful or where the value of the original fine is reduced or increased as a result of the appeal, the time period for payment is a further 15 days beginning on the day immediately after the decision on the appeal is given. In any case the time between the decision about an appeal (be it tacit rejection of the appeal or a formal response) and the final date for payment, must be at least 5 days (Art 24)

Additional appeals to higher levels of authority have similar effects of suspending the time period for payment, and legal appeals are treated in the same way and must be presented to the appropriate court (Art 25)

Employers notified to appear before the Labour Inspectorate can designate a representative, but this person must be duly provided with the relevant documents to enable them to be considered a legal representative. If an employer is notified to appear and fails to do so and does not present a valid written justification of why they did not appear, within five days after the date scheduled for the appearance, legal sanctions will be applied (Art 31)

Labour inspectors must be duly identified with a badge and uniform (Arts 35 & 35)

Labour inspectors are not permitted to undertake work in their individual capacity which may be incompatible with their work (Art 39)

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Employers must notify the Labour Inspectorate of start of activity and of any changes to the information contained in that notification (including company name, type of activity, NUIT, headquarters and any other workplaces, articles of association, residence of managers, administrators or directors, and number of workers) within 15 days of this change taking place (Art 40)

Employers must notify the Labour Inspectorate of any accident or work-related illness within 48 hours of these coming to the employer's attention (Art 41)

Employers must inform the Labour Inspectorate quarterly of any work-related illness or accident which has resulted in a worker being off work for more than one day within the quarter to which the report refers. This report must be presented by the 10th of the month following the end of the quarter to which the report refers (Art 42)

The labour inspectorate is responsible for paying its own transport costs, and costs for food and accommodation (Art 46)

Employers are not allowed to refuse to present any documents requested by the Labour Inspectorate, and any refusal is subject to a fine of five times the minimum salary paid in the company in question. Non-compliance with that set out in articles 40, 41 and 43 (which refer to communication of changes to company information, information about illness and accident and submission of documents to the local department of the Labour Inspectorate) are subject to fines of five times the minimum salary paid in the company in question (Art 47)

The measures taken by the Labour Inspectorate must be proportionate and suitable to the infractions detected (Art 47)