

# Brazil<sup>1</sup>

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N.B. Brazil is a federal state.

## **Note on coverage of leave entitlements**

Leave entitlements in Brazil are primarily governed by the Labour Law (*Consolidação das Leis do Trabalho - CLT*) which applies to the whole country, but only to employees with regular work contracts or those that contribute to the Social Security Institute (INSS). Only half of the Brazilian labour force works in formal jobs and are thus entitled to such benefits. The conventions and collective agreements negotiated by trade unions may eventually extend such rights.

For comparisons with other countries in this review on leave provision and early childhood education and care services, please see the [cross-country tables](#) at the front of the review (also available individually on the Leave Network website). To contact authors of country notes, see the [members](#) page on the Leave Network website.

## **1. Current leave and other employment-related policies to support parents**

### **a. Maternity leave (*licença-maternidade*) (responsibility of the National Institute of Social Security/INSS, Ministry of Social Security)**

*Length of leave (before and after birth)*

- 120 calendar days in the private sector, which can be extended to six months if the employer voluntarily adheres to the Company-Citizen Programme (*Programa Empresa Cidadã*). It may be taken from the eighth month of pregnancy.

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- Six months in the federal public sector: at state and municipal levels, entitlement to the additional months depends on the approval of the authorities (most state authorities approve this extended leave, but only a minority of municipalities do so).
- In the event of the death of the mother, the spouse is entitled to Maternity leave. The payment duration of the benefit is then calculated according to the period to which the woman would have still been entitled.
- Single adoptive fathers are entitled to Maternity leave.
- In homosexual couples, only one partner (man or woman) is entitled to Maternity leave.

#### *Payment and funding*

- 100 per cent of earnings, with no upper limit. In the case of a variable salary (i.e. because of commission, gratuity, overtime, or bonus pay), the payment is equivalent to the average of the last six months of work.
- If leave in the private sector is extended to six months, the benefit during those extra 60 days is paid by the employer with the costs covered by fiscal deductions.
- In case of miscarriage or legal abortion (on the grounds of rape, risk to the mother's life, or a foetus with anencephaly), the Maternity benefit is paid for two weeks.
- Funded for employees from contributions into a social security fund paid by employers and employees. Employers pay 20 per cent of their salary bill (domestic employers pay eight per cent of the domestic employee's salary as contribution). Employees pay on a sliding scale according to their salary: eight per cent if under BRL1,751.81 [€402.97]<sup>2</sup>; 9 per cent between BRL1,751.82 [€402.97] and BRL2,919.72 [€671.62]; and 11 per cent between BRL2,919.73 [€671.62] and BRL5,839.45 [€1,343.24], which is the upper limit for social security payments. For self-employed workers and business owners, leave is funded entirely by their own contributions.
- These payments do not affect pensions; contributions are paid by the state.

#### *Flexibility in use*

- Women may continue with paid work until the birth of their child if they explicitly declare that it is their personal decision to do so.

#### *Eligibility (e.g. related to employment or family circumstances)*

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<sup>2</sup> Conversion of currency undertaken for 24 June 2019, using: <https://www1.oanda.com/currency/converter/>

- All women who work and contribute to social security are eligible – whether this be through employment with a signed work card, as a temporary employee, or self-employed.
- If the mother has contributed to social security, the unemployed mother then has the right to Maternity leave for up to one year (after the termination of the last employment contract), or up to two years (if she received unemployment insurance), or up to three years (if she received unemployment insurance and contributed for 120 months or more). For self-employed and individual micro-entrepreneurs, they are eligible for up to one year after their last contribution or up to two years (if she contributed for 120 months or more). Individual/facultative taxpayers (who do not work) are eligible up to six months after their last contribution.
- Housewives or students who do not earn a salary, but who pay monthly optional social security contributions to retain coverage, can enjoy the same benefit as salaried workers after contributing for at least ten months. In this case, the amount of maternity benefit she will be paid is that of the reference salary contribution (e.g. if she contributes based on one minimum salary, she receives a minimum salary per month while on leave).
- The foreigner who works in Brazil can enrol in social security, make the monthly contribution, and have the right to Maternity leave, without the requirement of citizenship or permanent residency.

*Variation in leave due to child or family reasons (e.g. multiple or premature births; poor health or disability of child or mother; lone parent); or delegation of leave to person other than the mother*

- The mother has the right to a further 15 days' leave in some specific situations, such as when her life or the baby's life is at risk.
- If the mother dies during childbirth or during Maternity leave, the father can apply for the benefit and complete the remaining period of the leave.

## **b. Paternity leave (*licença-paternidade*)**

*Length of leave (before and after birth)*

- Five consecutive calendar days in the private sector for birth or adoption of a child. Twenty calendar days in the federal public

sector. At state and municipal levels, entitlement to the additional period depends on the approval of the local authorities. In the private sector it can be extended to 20 days if the employer voluntarily adheres to the Company-Citizen Programme (*Programa Empresa Cidadã*). In this programme, the benefit during those extra 15 days is paid by the employer with the costs covered by fiscal deductions.

#### *Payment and funding*

- Full earnings are paid by the employer under the provisions of labour legislation.
- These payments do not affect pensions.

#### *Eligibility (e.g. related to employment or family circumstances)*

- Fathers who work with a signed work card and in the public sector have the right to Paternity leave. Those making other types of contribution do not yet have this right (i.e. facultative, special insured, and individual micro-entrepreneur). Unemployed fathers have no right to Paternity leave.
- Foreigners who work in Brazil can also register for social security, make the monthly contribution, and have the right to Paternity leave, without the requirement of citizenship or permanent residency.

#### **c. Parental leave**

- No statutory entitlement.

#### **d. Childcare leave or career breaks**

- No statutory entitlement.

#### **e. Other employment-related measures**

#### *Adoption leave and pay*

- In the private sector, mothers who adopt a child are entitled to Maternity leave of 120 consecutive days paid at the rate of their full salary (the same as biological mothers). In the public sector,

mothers who adopt children are entitled to 180 consecutive days of leave paid at their full salary (also the same as biological mothers).

- If the adoptive mother dies, the spouse can use the leave for the remaining time. This is also the case for homosexual couples.
- When the adoptive mother does not pay social security contributions, all the benefits of Maternity leave go to the adoptive father (on the condition that he pays social security contributions).

#### *Time off for the care of dependants*

- Paid leave for up to two consecutive days is granted in the case of the death of a spouse, ascendant or descendant in family line, sibling or a person declared on the employee's work card (and for the purposes of social security) as financially dependent.
- In the public sector, leave is granted to care for a sick spouse or companion, parent, child, stepfather/stepmother, stepchild or dependent, subject to approval by an official medical board which must decide that the employee's direct assistance to the sick person is essential and must be during working hours.
- In the public sector, leave may be granted for up to 60 days at 100 per cent of earnings, after which a further 90 days of leave is possible, but with no payment. For the private sector, leave to care for a sick dependent can be part of a collective agreement, but not a labour law or regulation.
- Public servants who accompany their relatives with disabilities in health-related activities are entitled to special working time, without having to compensate the hours spent in caring: they receive their full salary during this period.

#### *Flexible working*

- See section below.

#### *Specific provision for (breast)feeding*

- The Labour Law allows for two 30-minute breaks during the working day for breastfeeding, up until the child reaches the age of six months.

## **2. Relationship between leave policy and early childhood education and care policy**

The maximum period of post-natal leave available in Brazil (for federal public sector workers) is six months, paid at full earnings replacement. There is no entitlement to ECEC. However, Labour Law (CLT) states that

every company with a workplace employing at least 30 women over the age of 16 must maintain a suitable place, in which female employees can leave their babies under supervision and with adequate care, up to the sixth month of the breastfeeding phase. As a substitute for this requirement, the company can adopt a childcare assistance system: instead of maintaining a nursery in the workplace, the company pays a monthly amount to female employees who have children. The idea is that with this money they can look for a nursery or nanny outside the company. In this case, the benefits must be granted to every employee with a young child, regardless of the number of female employees in the establishment, and they must be the object of collective negotiation. Levels of attendance at formal services for children under three are around the average for the countries included in this review and for OECD countries, but well below average for children over the age of three years. For attendance levels, see 'relationship between leave and ECEC entitlements' on the [cross-country comparisons](#) page.

### **3. Changes in policy since April 2018 (including proposals currently under discussion)**

There have been no significant changes to leave policies in the past year. A labour reform was approved in Brazil in 2017, but it did not change leave policies. The most recent change was the Project Legal Framework for Early Childhood approved in 2016 (Law 13.257/2016). It determines a set of actions for parents from the beginning of the child's life and up until the child is six years old. One of the innovations is the increase of Paternity leave from five to 20 days for employees from private sector companies that adhere to the Company-Citizen Programme (*Programa Empresa-Cidadã*). The financial value of these 15 additional days is paid by the company – and not by the Social Security Institute (INSS) as with mandatory Paternity leave – and then returned in the form of a discount on income tax the following year.

## **4. Uptake of leave**

### **a. Maternity leave**

There is no information available, but close to 100 per cent uptake is likely as leave is a legal entitlement, plus payment is made from the social security fund, not by the employer.

### **b. Paternity leave**

There is no information available, but we can suppose that the uptake is very high.

**c. Parental leave**

No statutory leave entitlement.