This piece is the third chapter of my senior honors thesis in History, entitled “From a ‘Foot in the Kitchen’ to a ‘Foot in the Door’: Domestic Work in Transition in 21st Century Brazil.” The two preceding chapters are “Domestic Service – What Counts, Who Counts?” and “Hiring a Maid in the Digital Age”. As an undergraduate, the Duke Global Brazil Lab has piqued my interest in learning about Brazil, and I have been fortunate to visit three times – in December of 2014 and 2015, and in August 2016. One thing that struck me about Brazilian culture was the pervasiveness of service occupations. Almost every apartment I visited had two elevators – “social” and “service” – and small windowless room next to the kitchen that functioned as the maid’s quarters. Domestic workers in Brazil and worldwide are often poor women of color, and they have continually been denied basic rights. To tell the story of domestic service – and its political mobilization – is to explore questions of class, gender, and race. This chapter examines the passage of a constitutional amendment in Brazil to recognize and regulate more than seven million domestic workers, at long last ending almost a century of second-class status in the eyes of the law.
Uniform in the Eyes of the Law:
The Global Fight for Domestic Workers’ Human Rights in Brazil

On April 29th of 2014, the Brazilian Federal Chamber of Deputies held a special session. Its purpose was to commemorate the National Day of the Domestic Worker (O Dia Nacional da Empregada Doméstica), which honors Saint Zita, the patron saint of domestic workers. Virtually every occupation in Brazil, still a predominantly Catholic nation, has its patron saint. And this was not the first time the Chamber had held a session to commemorate this “holiday”; federal deputies have recognized it 60 times since 1971. One individual, Deputy Benedita da Silva (PT-RJ), has made six of these tributes, more than any other member of Congress. Benedita is one of the most renowned politicians in Brazil; in a federal legislature that self-declares as only 20% non-white, and in which women hold just one-tenth of the congressional seats, Da Silva has transcended her status as “three times a minority” – female, Afro-Brazilian, and favelada – to represent Rio de Janeiro as a federal deputy, senator, and governor.

Yet this day was different than other years. Benedita took to the podium of the imposing Chamber clad in the iconic maid’s uniform (fardinha) – a collared navy-blue dress with white lace bordering its sleeves and apron (see Image 3.1). She indicated that the uniform was, in fact, her own. When Da Silva was a child (with 14 siblings) growing up in Rio’s Chapeu Mangueira favela, she worked alongside her mother as a laundress for the household of Juscelino Kubitschek, the future president of Brazil; she characterizes their relationship as “like that of master and slave”. After making the remarkable ascent to the Chamber of Federal Deputies in Brasilia, where she served as a deputy alongside Kubitschek’s daughter, Benedita was still the victim of discrimination. She reflected in her memoir, “sometimes when I open the door to my apartment in Brasilia, people ask me to call the owner”. Thus for Benedita to don her maid’s uniform - even after three decades in the highest rungs of political office - was a brave and humble act. She approached the microphone, and
addressed an intimate audience of leaders – mostly female – of NGOs and domestic workers’ associations. She began her tribute:

> Our feelings for decades and decades have not really been rewarded… the way to honor [domestic workers] was, in fact, to be here with this uniform that I once wore…it is not of demagogy that I am here. It is something of the skin, the heart, and the veins, and the fight. Being here means that all of us domestic workers can, through understanding, make sure that everyone can be with us in this great battle… to be here is to arrive with delay, although we are paying tribute today to the wonderful day of domestic workers.¹²

Benedita’s commemoration took place just one year after Brazil’s legislature approved and promulgated a constitutional amendment to recognize domestic workers (empregados domésticos) as equal to all other urban and rural labor sectors. At first sight the change seems simple: a redaction of a line in Article 7 of the Citizen’s Constitution of 1988 that limited one labor sector – that of domestic work – to just nine of the 34 labor rights granted to all other Brazilian workers (see Figure 3.1). Brazil today has 7.2 million domestic workers – the largest contingent in the world.¹³ This lone provision in Article 7, however, reinforced their longstanding second-class status.¹⁴ In April of 2010, deputy Carlos Bezerra (PMDB-MT) proposed Constitutional Amendment No. 478, which would eventually become the PEC das Domésticas. He made a statement to the Chamber of Deputies:

> The Brazilian state has long been charged with the initiative to correct a historical process of discrimination against domestic workers… I have decided to assert the responsibility to myself, because I consider it unacceptable to live within a normative system that allows for the existence of a “second class” of workers, a true stain on the 1988 Citizen’s Constitution.

One year later, senator Ana Rita (PT-ES) recognized the Day of the Domestic Worker.¹⁵ A long-time advocate of domestic workers’ and women’s rights, Senator Rita had proposed legislation in the Senate to regulate domestic work that was parallel to Carlos Bezerra’s. She declared:

> Domestic workers, who are not all that rarely beaten at bus stops on the way home, are humiliated in the homes in which they work and suffer many other forms of violence, yet they face legislation that treats them as “second-class” workers. They do not have the same rights as other workers in our country because they work in the homes of families, of families that are not theirs, but our families… I feel that being a domestic worker in this country still has remnants of slavery. There’s this idea that we’ve done a lot for them: we give them housing, food – for what rights?
These politicians illuminate the problem of the domestic workers around the world. Eight out of ten of them are women, and some 90% of all domestic workers are excluded from any kind of social security social protection. The International Labor Organization (ILO) adopted the “Convention on Descent Work for Domestic Workers” (C189) to regulate domestic work as a “way to illuminate human rights, migrant rights, child labor, and trafficking conditions.” It is only belatedly that the issue of equal rights has come to the fore in Brazilian politics. The approval of the PEC das Domésticas was a direct follow-up to the ILO’s Convention 189, and the PEC’s proponents leveraged the ILO’s institutional influence and powerful political symbolism. The PEC’s passage was fortified by the country’s left-leaning presidential administrations under Lula da Silva (2003-’10) and Dilma Rousseff (2011-’16) and the tailwind of a decade of economic growth.

This paper traces the historical roots of the legal exclusion of domestic workers. Domestic work has particular historical resonance in Brazil, the nation that was the first to establish and the last to abolish slavery, and to which 40% of the 10 million slaves brought to the Americas were sent. Some 61.9 percent of domestic workers today are Afro-Brazilian. In stark contrast, just three percent of politicians elected in 2014 self-declared as black. The chapter further examines the political context in which the PEC das Domésticas of 2013 was introduced, approved, and enacted, and its powerful political symbolism therein.

I. Labor, Law, and Rights: A History of the Legal Exclusion of Domestic Workers

When the PEC das Domésticas was passed – unanimously – by the Brazilian Senate in March of 2013, the Senate President Renan Calheiros declared, “today, 125 years after the end of slavery, only today are we closing the last slave’s house and throwing away the key.” His was a bold statement, to be sure, but the historical resonance of slavery and domestic service cannot be denied. Benedita called the PEC “an historical reparation to the category that for more than 500 years has contributed to the Brazilian economy and has fought for more than 80 years for the equalization of
Maids today continue to refer to themselves using images and metaphors of slavery, referring to their tasks as slave work (trabalho do escravo). Sociologist Roberto DaMatta wrote that throughout Brazil’s history, not only has the house served a physical space, but a social and moral one. It has been over a century since Brazil’s abolition of slavery in 1888, but for much of that time, “domestic work and prostitution [were] more often than not the options for survival in the urban setting as racial discrimination and sexism combine to exclude [the Afro-Brazilian woman] from the kinds of socio-economic activities that would ensure her well-being”. Beyond the Brazilian cultural mores surrounding the patrão/empregado dyad and the importance of the domestic sphere, domestic workers have been overlooked or explicitly excluded from various rights and protections in the eyes of the law.

One of Brazil’s most acclaimed sociologists, Florestan Fernandes, contended that the country has experienced three phases of capitalist development. The first of these phases, lasting from 1808 to the 1860s, involved the emergence of a modern capitalist market; export-import businesses began to be organized. Florestan characterized the second phase, from the 1860s to the 1950s, as one of social and economic differentiation, including the first wave of industrialization. The third, from the 1950s onwards, was defined by monopolistic capitalism and the rise of national and multi-national corporations. Despite two centuries of economic evolution in Brazil, two elements have remained constant. The country’s political order never ceased to be oligarchic and autocratic. And secondly, the individuals at the bottom of the socioeconomic hierarchy – poor, black, and female – have continually been marginalized – de facto and de jure - by this political order.

Brazil was under the rule of the Portuguese Crown from 1500 to 1822, when Pedro I declared the country’s independence as a Brazilian Empire. The country had the largest slave trade in the Western Hemisphere. The captainey model, lucrative exports such as sugar and precious metals, and royal land grants via the enfiteuse system created an echelon of favored elites. There were specific
laws passed from 1830 onward regarding labor contract regulation, as Brazilian lawmakers sought to produce a legal environment better suited for free immigrant workers. The Free Womb Law of 1871 designated any child born to slave after 1871 as a free citizen, but it also punished recently freed slaves who did not negotiate contracts for their labor. Princess Isabella signed the Golden Law into effect on May 13, 1888, which established Brazil as the last nation in the Western Hemisphere to abolish slavery. In her memoir, Helena Morley’s account of experiencing manumission is telling. The daughter of a wealthy plantation owner in Minas Gerais, she was just eight years old when the Golden Law was decreed. When their slaves learned of the Golden Law, they grouped together to confront Helena’s grandmother, informing her that they were free. Morley recalls her grandmother yelling at them from the front porch, undaunted – “leave then!” After a couple of hours consulting amongst themselves, the slaves asked her if they could remain working on the plantation. The boundaries between freedom and servitude in the country's labor relations remained blurred for decades.

As Morley’s diary entry suggests, there was virtually no institutional support to assist freed slaves transition into the economy. Contracts for free labor disappeared and labor legislation was not given priority for decades. And even with the end of slavery, the new labor opportunities went to immigrants. It was during the 20th century that large groups of immigrants, of namely Portuguese, German, Italian, Spanish, Polish, Ukrainian, Japanese, Syrian, and Lebanese origins were motivated to emigrate to Brazil, fulfilling labor needs in the agrarian Southeast. Such an influx crowded out free blacks – especially men – from gaining a foothold in the legitimate economy. Moreover, such immigrants were lured by an immigration policy that promised each family a tract of farmland. Freed blacks, on the other hand, were prohibited from owning land after abolition. But within months after the Golden Law was enacted, the larger municipalities in Minas Gerais, Rio de Janeiro, and Sao Paulo directly addressed Parliament to demand that no only they be granted indemnities for
the loss of former slaves, but also for a constituent assembly to discuss Brazil's future government. On November 15, 1889, just 18 months after the Golden Law was declared, Brazil's Emperor Dom Pedro II was deposed by a coup of junior military officers, and the royal family was forced to move back to Portugal. A republican government was then declared, bringing Brazil’s longstanding colonial era to a close.

With the dawn of the First Republic, Brazil’s provinces became states and won political autonomy. The army governed the country until 1894, and between the 1895 and 1930, the states of Sao Paulo and Minas Gerais took turns governing Brazil. Both regions were major economic powerhouses and agricultural exporters, of coffee and dairy products, respectively. It was during the three decades of these “Coffee and Milk” politics (Política do café com leite) that the 1916 Civil Code was introduced, and stayed in force in Brazil until 2003. It replaced the Philippine Code, which had been in place since Portugal had promulgated it in 1603. The Civil Code codified labor contract and economic regulation. Law No. 3,071 of the Civil Code disciplined the relationship of labor contracts related to the rental of employees’ services, including those of domestic employees. In 1919, Brazil became a member of the International Labor Organization. Four years later, Decree 16.107/1923 regulated the renting of domestic services, establishing certain rights for domestic workers. The decree mandated the submission of domestic workers’ professional identifications to the police.

The First Republic came to an end with the rise of Getúlio Vargas, the former governor of the state of Rio Grande do Sul. After losing in the 1930 presidential election, he led a revolt that placed him in power. Vargas established the Ministry of Work in the 1930s, which was developed as a branch of the federal government to organize union policy. In the spring of 1932, Vargas introduced working papers (carteira de trabalho) for workers over the age of 16. The carteira de trabalho remains an important institution for Brazilian workers; the document, which is signed by employers,
guarantees access to main labor rights, such as unemployment insurance, pension benefits, Social Security, and FGTS. Additional legislation was passed that same year regulating women’s work in industry and commerce. In 1934, a new constitution enhanced the central government’s and executive branch’s authority and also established universal suffrage.

In 1936, an Afro-Brazilian domestic worker named Laudelina de Campos Melo founded the very first domestic workers’ union, the Association of Domestic Workers, in the city of Santos, Sao Paulo. However, in 1937, Vargas responded to an attempted uprising by seizing absolute power and establishing yet another constitution. The new administration was called the *Estado Novo* (New State). The first phase of the *Estado Novo* (up to 1942) was repressive and prohibited union activity. Laudelina was thus forced to disband the association in 1937, but reopened the association in 1946.

The major landmark labor legislation of the Vargas era was the Consolidation of Labor Laws (CLT) of 1943, following 13 years of legal and political negotiations. The primary intention of the CLT was to ensure employees’ rights, such as vacation, maternity leave, a minimum wage, and leisure time. The legislation was – and still is – ambitious in coverage, but “it quickly [became] clear that the CLT, despite its expansive and inclusive scope, was very unevenly applied in practice.”

The CLT still forms the basis of labor law in Brazil today, consisting of over 900 articles providing legal standards in the areas of workplace safety, working hours, minimum wage requirements, vacation time, employment contracts, protection for women and children, workers’ health regulations, and union organization. In its original form, however, Article 7A of the CLT defined domestic workers with the gender-neutral term “*empregado domésticos*”, and described them as "those that provide services of a non-economic nature to a person or a family, in their residential environment." This conceptualization of domestic workers as non-contributing to profit accrual is crucial to their definition as sub-standard and “merely” reproductive workers in the eyes of the law.
further stated that the provisions contained in the Consolidation did not fully apply to five groups: domestic workers, rural workers, industrial or commercial employees, public servants of the state, the servants of administrative autarchies, and the employees of companies owned by the Federal Government. The development of the CLT took place around the same time as the United States was drafting its landmark New Deal policies. The U.S. Social Security Act of 1935 similarly excluded two labor sectors - domestic workers and agricultural workers – from its coverage. The provision thus excluded more than half of the African Americans in the labor force and over three-fifths of black southern workers.49 It took 16 years until they were extended coverage, but only if they were "regularly employed."23 Domestic workers were also excluded from the Fair Labor Standards Act of 1938; it wasn’t until an amendment in 1974 that they gained benefits of minimum wage, overtime, and the 40-hour workweek.

Brazil also became involved in World War II at the time of the CLT’s introduction; Vargas had entered the conflict on the side of the United Nations in 1942. Workers and industry leaders played an increasingly important role during the war, and throughout Brazil’s post-war transition. This led Vargas to establish the Partido Trabalhista Brasileiro (PTB) in 1945.50 On October 29th of that year, several military officers staged a coup that forced Vargas to resign. Elections were held that December, and General Eurico Gaspar Dutra won the presidency. The following year, Brazil promulgated a new constitution, which enacted safeguards against a future dictatorship.51 With the support of the PTB and the popular vote, Vargas returned to power “in the arms of the people” in the 1950 general elections. The vice president of the PTB and Vargas’s protégé, Joao Goulart, was dismissed as labor minister in 1954, after he radically doubled the minimum wage, which aggravated the country’s inflationary spiral.52 That year, a group of army officers demanded Vargas’s resignation, but before complying with their demands, Vargas committed suicide on August 24th, 1954.
General elections were held in 1955, and Juscelino Kubitschek, the former governor of Minas Gerais and Vargas’s political heir, won the election. During this time, there were a number of massive public works projects, most notably the creation of Brasilia as the federal capital, but Brazil took on a high level of foreign debt and living standards remained unchanged. One year into the Kubitschek administration, Law No. 2,757 of 1956 expanded on the CLT's Article 7, and it specified that a subset of domestic workers should be excluded from the restrictions of Article 7A. The workers identified were “concierges, caretakers, janitors, and servants of apartment buildings, provided the service of the building’s administration and of each particular condominium.”

The Catholic church was involved in the early stages of domestic workers’ unionization. In 1958, the Juventude Operaria Catolica (JOC) organized their first national conference, in which they introduced the notion that domestic work should be regulated. When the Association of Domestic Workers was closed in Santos, its founder, Laudelina Campos de Mello established a new union organization in 1959 based in the city of Campinas, Sao Paulo. She further established an affiliation between the union and the Experimental Negro Theater (TEN) in the early sixties, thus linking the domestic workers’ movement with the Black Consciousness movement. Laudelina remains an icon among today’s union leaders. She played an integral role in expanding the unionization of domestic workers, and in 1960, a group of domestic workers joined forces with Acao Catolica, a group affiliated with Juventude Operaria Catolica (Young Catholic Workers). Work groups were started in the major municipalities of Rio de Janeiro and Sao Paulo to form domestic workers' associations. In December 1961, 60 domestic workers met to form the Domestic Workers' Professional Association in Rio de Janeiro, beginning to strategize their collective attainment of rights.

Both the Brazilian government and the national economy were in the midst of transition, however. By 1963, Joao Goulart, the former labor minister under the Vargas administration, had been granted full presidential powers. His were leftist leanings, and Goulart tried to impose
sweeping socialist reforms called the *Reformas de Base*. Such a policy would result in banking, fiscal, urban, administrative, agrarian, and university restructuring, among others. The moment of hope came to an end in March of 1964, however, when he was deposed by a military takeover that was supported by the United States’s Operation Brother Sam. Magalhães Pinto proclaimed a rebellion against the government by civil leaders and military forces in Minas Gerais on March 31st, 1964. On April 9th, the military regime created the First Institutional Act, which greatly amended the 1946 constitution in support of enhanced central authority. Congress then awarded the presidency to Humberto Castello Branco. He was the first of five generals (followed by Artur Costa e Silva, Emílio Médici, Ernesto Geisel, and João Figueiredo) to lead Brazil over the course of two decades. In 1966, the regime established an artificial two-party system, which abolished the PTB, but left the CLT in place. Domestic workers secured the right to partake in Social Security (*Previdencia Social*) in 1966, but this required them to pay 16% of their base salary. One year later, the Castello Branco administration introduced a new constitution. It remained similar to anterior versions, although it did introduce the *Fundo de Garantia por Tempo de Servico* (FGTS) system, which serves as a government severance fund into which an employer must pay 8% of their employee’s salary each month. The money in the FGTS is generally spent on public infrastructure works. If an employee is fired without just cause, however, the employer is required to pay a lump sum of 40% of the accumulated savings, plus an additional 10% to the government.

In the first several years of the authoritarian regime, labor unions protested wage cuts with protests and strikes. The military government quickly enacted policies against strike demonstrations and labor unions in general. Despite the prohibition, domestic workers began to organize throughout Brazil. In 1968, the First National Congress of Domestic Workers took place in Sao Paulo, with participation by the Catholic Church. In 1971, the National Day of the Domestic Worker was mentioned in the Chamber of Deputies for the first time. Deputy Celio Marques
Fernandes spoke on the occasion, criticizing the legislature’s inability to enact meaningful reform: “but so far the legislators have run into a seemingly insurmountable difficulty: the conceptualization of the domestic worker profession. What is a domestic servant? What’s your job? Can you require someone to work all day?”

It is quite striking that in the middle of Brazil’s repressive military dictatorship, the legislature passed Law 5,859 of 1972, which officially recognized domestic work (Trabalho Doméstico) as a professional labor category. It thus brought regulation to domestic work, and made it obligatory for a domestic worker (empregado domestico) to have working papers (carteiras assinadas), and it further mandated cooperation with the CLT. This included the benefits and services of social security, and annual leave that included an additional one-third of salary. The payment of Social Security (Previdencia Social) became obligatory, consisting of a contribution of 8% by the employee and 8% from the employer. Article 1 of this legislation, however, explicitly defined the "domestic employee [as] considered as providing services of a continuous and non-profit nature to the person or family in the residential area." Lenira Maria de Carvalho was one of the first domestic workers to register with a carteira assinada, and became a leader of the domestic workers’ movement to organize. This was the first symbolic legal step, recognizing at least on paper that rights should be accorded to domestic workers.

The 20 years of the military dictatorship may have experienced high rates of economic growth and urbanization, but they forcefully quelled popular political action. Unions were outlawed, gender roles in labor sectors were strictly prescribed, and dissidents – such as Dilma Rousseff - were persecuted, and in many cases, tortured. The military dictatorship further prohibited Afro-Brazilian cultural events and any discussions about race. At the same time, women’s movements gained strength, particularly in poorer communities; women were forced to take over many political roles since the men in the favelas were persecuted. The military presidents helmed the country as it
underwent the “economic miracle” of the 1970s. Economists Lance Taylor and Edmar Bacha coined the term “Belinda” – Belgium within India – to describe the uneven economic growth in the aftermath of the 1960s. One-fifth of Brazil’s population enjoyed a relatively high per capita income, while the rest – 85 million people – lived at or below the subsistence level.

In 1979, Congress enacted an amnesty program restoring political rights to all those who had lost them since 1961. In 1982, direct elections for state governors were held for the first time since 1965, and opposition parties won most of the larger states. By the mid-eighties, Brazil was fully in transition out of 20 years of military rule. The country now had the world’s 10th largest gross national product. During the democratization process (abertura), the two-party system became inefficient; new political parties were allowed to form – six emerged. The left-wing Workers' Party (PT) was launched in 1980, and was officially recognized in 1982. The PT was very closely tied to the country's largest labor unions. Luiz "Lula" Inacio da Silva made a national name for himself when he led several successful strikes by the Steel Workers' Union. Benedita da Silva was also an early member of the party, and they put her on the ticket for a successful 1982 campaign for Rio's City Council. She reflected on the PT's early days, saying, “in the beginning, our theme was…workers who punch a timecard don’t vote for the boss.”

This period of democratization also opened new channels for feminist movements. By 1980, the number of women enrolled in Brazilian universities surpassed males in absolute numbers. Their labor force participation increased from 13.5% in 1950 to 35.6% in 1983. Domestic workers’ organizations grew increasingly involved with the feminist movement, and adherence with this movement was viewed as the Unified Black Movement. The feminist movement helped some women far more than others, however. Susan K. Besse wrote, “while domestic servants freed middle-class women to pursue careers, they themselves remained trapped in the domestic sphere under the tutelage of their wealthier female employers.”
In 1985, Brazil held presidential elections, albeit only the National Congress was able to vote. Their chosen president died before assuming office, and Jose Sarney became president instead. Under Sarney’s administration, Laws 7,418/85 and 7,619/87 were passed, mandating the coverage of urban workers’ transportation costs. The right to a transportation voucher (vale transporte) was then extended to domestic workers through Decree 95,247/87.

In 1988, the military dictatorship had come to an end, and the Brazilian government introduced the Citizen's Constitution. The constitution (the nation’s seventh) was drafted by a contingency of 559 senators and deputies that partook in the National Constituent Assembly (NCA) in Brasilia. The entire drafting process took 19 months; the Constitution required an absolute majority of the NCA for ratification. The National Assembly analyzed more than 40,000 amendments and proposals during the drafting process; the text was introduced with 245 articles. The Constitution coincided with the 100th anniversary of Brazil’s Golden Law, and the constitution’s idealism can be evidenced by its preamble.

We, representatives of the Brazilian people, gathered in a National Constituent Assembly to establish a Democratic State, aimed at ensuring the exercise of social and individual rights, freedom, security, well-being, development, equality, and justice as supreme values of a fraternal, pluralist, and unprejudiced society founded on social harmony and committed, in the domestic and international order, with the peaceful solution of controversies.

One might imagine that the Citizen’s Constitution would end the second-class status of domestic workers, a topic that the oppressive military regime had at least made some progress on in ’72. The Citizen’s Constitution is the first of Brazil’s seven constitutions to explicitly mention domestic workers, albeit to highlight their labor sector as an exception to the constitutional labor provisions. The reference is in Article 7, which is entitled “the rights of rural and urban workers, as well as others aiming to improve their social status”. Article 7 falls within Chapter 2, “Social Rights”, and it outlines 34 progressive provisions for Brazilian workers (see Figure 3.3). At the very end of the Article, one short paragraph qualifies the list of 34 labor rights:
Single paragraph. The category of domestic workers are guaranteed the rights provided in items IV, VI, VIII, XV, XVII, XVIII, XIX, XXI, and XXIV, as well as their integration into Social Security.

This one line limited domestic workers to only nine of Article 7’s 34 provisions.

**Figure 3.1:** Rights granted to Domestic Workers in Article 7 of the 1988 Constitution

| Article 4: | Minimum wage, fixed by law, nationally unified, able to meet basic necessities of life and those of his family with housing, food, education, health, leisure, clothing, hygiene, transport and social security, with periodic adjustments that preserve the purchasing power, and its linkage is forbidden for any purpose |
| Article 6: | Irreducibility of salary, except as provided in a collective agreement or agreement |
| Article 8: | Thirteenth salary based on full compensation or retirement value |
| Article 15: | Weekly paid rest, preferably on Sundays |
| Article 17: | Paid annual leave of at least one third more than the normal salary |
| Article 18: | Maternity leave, without prejudice to employment and salary, for a duration of one hundred and twenty days |
| Article 19: | Paternity leave, under the terms fixed by law |
| Article 21: | Prior notice proportional to the length of service, being at least thirty days, in accordance with the law |
| Article 24: | Retirement |

The constitution was not without its merits, however, particularly its enablement of union organizations. By 1988, there were 32 domestic workers’ associations in 22 cities throughout Brazil. And the Article 7 does build on the reforms from 1972, but not with the generosity one would expect amidst such a drastic transition to democracy.

Throughout the 1990s and early 2000s, the democratic political process generated popular pressures that increasingly came to impact the legal system. This dynamic facilitated piecemeal reforms throughout the 2000s to help bridge the disparity between domestic work and other labor sectors. In 2001, Law 10,208 expanded upon Law 5,859/1972, and made FGTS required for the domestic employer and required payment of unemployment insurance for dismissal without just cause. Law 11,324/2006 extended paid rest on weekends, 30 days of holidays, maternity leave, and prohibitions of discounts in salary for supplying food, clothing hygiene, or housing. Decree 6,481/2008 implemented ILO Convention No. 182, the “Worst Forms of Child Labor Convention” and prohibited domestic work for individuals under the age of 18. A series of municipal laws were
passed over the course of a decade to ban discrimination in “social” versus “service” elevators: São Paulo (’96), Espírito Santo (’96), Belém (’97), Campinas (’97), Brasilia (’98), Recife (2001), and Rio de Janeiro (’03).  

What progress there was in the 2000s took place in the context of a thriving economy and a left-leaning president. Lula, a founding member of the Workers’ Party (PT), was elected in 2002 with 63% of the national vote. The PT was able to bring together “a wide gamut of social movements, including Catholic practitioners of liberation theology and much of the left”. Lula's wife, Maria Leticia, had worked as a live-in nanny (*babá*) as a young girl, and was heavily involved with the creation of the PT. Between 2002 and 2013, the number of undernourished people in Brazil was reduced by 82%. There was a real increase in the minimum wage of 76.5% between 2003 and 2015. Between 2004 and 2014, 20 million new formal jobs were created, raising Brazil’s formal employment rate from 46.7% to 59.3%. Policies such as affirmative action in universities and conditional cash transfer programs gave unprecedented opportunities to the lower classes. By 2010, the year the *PEC das Domésticas* was proposed, Lula was concluding two presidential terms with record-breaking approval ratings. His political protege, Dilma Rousseff, assumed the presidency in January 2011, aided by the momentum of a year of 7.5% economic growth.

**II. An Amendment and its Agents**

In 2008, the International Labor Organization put the topic of “Descent Work for Domestic Workers’ on its agenda. The ILO is an agency of the United Nations, but unlike any other UN agency, it has a tripartite governing structure; it represents governments, workers, and employers. Out of 187 member states, Brazil has been a leading member since it was a founding member of the ILO in 1919, and it holds one of the ten titular government seats in the Governing Body held by States of chief industrial importance. The 2011 International Labor Conference,
marking the ILO’s 100th anniversary, centered on the theme of domestic workers globally. On June 16, 2011, delegates of the ILO Conference voted unanimously to adopt Convention 189 and Recommendation 201, which defined and set forth policy recommendations for the sector. The Brazilian and Australian government delegations distinguished themselves in Geneva for playing a leading role in supporting C189. Brazilian government representative, Maria Luisa Escorel de Moraes, said, “there is no room in today’s world to object to human rights.” An organization called the International Domestic Workers Network (IDWN) strategized the approval of the convention, partnering with NGOs to increase domestic workers’ representation in an organization in which employer and labor representatives are “one step removed” from the industry’s complexities. They IDWN representatives urged delegates to “think of [their] domestic worker when casting [their] vote.”

Article 1 of Convention 189 stated:

(a) The term domestic work means work performed in or for a household or households;
(b) The term domestic worker means any person engaged in domestic work within an employment relationship;
(c) A person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

Article 17 of C189 stipulated, “each member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.” When Convention 189 was approved – unanimously – a banner was hung outside of the UN Palais des Nations that read “C189 Congratulations. Now the Domestic Work For Governments. Ratify. Implement.”

On May 16, 2012, some 40 women – dressed in aprons - came to the Chamber of Deputies to pressure the government to become a signatory of the ILO’s Domestic Workers Convention (see Image 3.3). Most of the women in attendance were the leaders of unions or NGOs, and their aprons that read “For the ratification of the ILO’s Convention 189”, “so that in 2012, 12 countries will
ratify the convention”, and lastly, “decent work for domestic workers, now!”. At that point in time, no countries had yet ratified Convention 189, but over the course of 2012, only three countries did so: Uruguay, the Philippines, and Mauritius.

The women occupied the 12th plenary of the Chamber, where they distributed a card to the deputies that covered the importance of the convention. One of the main points on the publication was the dearth of domestic workers with working papers (carteira assinada), who were thus denied any labor rights. The document expressed “only 26.8% of [domestic] workers have a carteira assinada, that is, the majority do not have a formal employment relationship, and among Blacks, who are the majority, the number is even lower – only 25.2%. Among young women between the ages of 14 and 29, there are only 3.2% with a carteira.” The document further included key statistics about the pervasiveness of domestic work, and was signed by five organizations: Fenatrad, Contracs, CUT, Forca Sindical, and UGT. Fenatrad is the National Federation of Domestic Workers, and it represents domestic workers’ unions in 13 states. Creuza Maria de Oliveira became its president in 2001, and she is credited with tying to the domesticas movement to the feminist movement. Contracs is the National Confederation of Workers in Commerce and Services. And the last three organizations – CUT, Forca Sindical, and UGT – are the three predominant labor unions in Brazil. The timing of their demonstration strategically corresponded with the Chamber's discussions about ratifying a constitutional amendment prohibiting slave labor, based on ILO Conventions 29 and 105. As such, there were multiple discussions in the Chamber that day mentioned the ILO’s conventions on domestic work and slave labor in the same speech.

Many of those same women returned to occupy Congress on November 20th, 2012. CUT and Contracs collaborated to exert pressure Congress on Brazil’s Black Awareness Day (O Dia Nacional da Consciência Negra). The day has particular resonance with the unionization movement. Benedita spoke of the plan: “the strategy is to continue with the mobilization and yesterday we
protested at the Chamber’s Committee on Human Rights, who demonstrated support of the PEC.

We have the movements of women and blacks on our side, but we need the support of all central and other segments of social movements.” On November 21st, a year and a half after the constitutional amendment was introduced, the Chamber of Deputies held its first round of voting on the PEC das Domesticas. Fenatrad's president, Creuza Maria de Oliveira, was there in Brasilia to witness the PEC's approval, reflecting:

>This approval is the result of a fight that is more than 70 years old. We are not asking for a favor – it is our right – we build this country and we deserve to have equal rights. When the federal government talks about a decent work agenda, that means that it cannot be a category for society, without the same rights as other workers, the victim of discrimination.

The bill that became the PEC das Domesticas was initially put forth by Carlos Bezerra as No. 478/2010 on April 14, 2010. He appointed Benedita da Silva as the bill's spokesperson (relator) shortly thereafter. The first round of voting took place on November 21, 2012, the day after Brazil’s Black Awareness Day. The second round of voting took place on December 4, 2010, and received 347 affirmative votes, 2 votes against, and 2 abstentions. The most outspoken opponent of the bill was Jair Bolsonaro, a politician that has been dubbed by the American media as a “conservative star”\(^{93}\), a “neo-Nazi”\(^{94}\), “pro-torture, anti-gay”\(^{95}\), and “Brazil’s Donald Trump”\(^{96}\), among other epithets. Jair is in his seventh term in the Chamber of Deputies, where he represents Rio de Janeiro alongside, but in stark opposition to, Benedita da Silva. He expressed his opposition to the amendment in an address to the Chamber on December 11, 2012, one week after the Chamber approved the PEC; he stated:

> I would never vote against anyone in this House. My isolated and solitary vote was in favor of this class, but demagogy speaks much louder. All by the vote. Who is paying for the bill is not him. I want to know if those who have voted in favor are already paying these labor charges to their domestic employees at home. They do not come, especially those from the PT, who sponsored this cause. It is absurd to say the following: if my nanny, for example, has a child up to 6 years of age, I have to pay day care for my son’s nanny’s son. Irresponsibility is inexplicable.
The bill was then sent to the Senate, where Lidice da Mata (BA-PSB) was its relator. The senate unanimously approved it in both rounds of voting. Upon the ultimate senate vote on March 26, 2013, Benedita da Silva cried when the bill passed, and remarked:

*Brazil needs to create a new culture for a new sector. We are accustomed to, since the time of the *casa grande* and *senzala* that it is easy for us to have a person working in our house, who is part of the family, but that does not enjoy the liberties we have as the masters of the house. Not now. It is a working relationship, a respectful relationship, and an affectionate relationship.*

Renan Calheiros, the president of the Senate, announced the official promulgation of the bill on April 2nd, 2013 in a joint session of the House of Representatives. As soon as it was approved, the PEC guaranteed the immediate application of nine new rights to workers in residences. There were seven other rights that would need regulation to detail how they would be applied. The nine rights that went into immediate effect were the following:

**Figure 3.2: Rights immediately granted to Domestic Workers through the PEC das Domésticas**

| Article 7: Guarantee of salary, never lower than the minimum wage, for those who receive variable remuneration |
| Article 10: Protection of the salary in the form of the law, constituting its willful retention as a crime |
| Article 13: Normal working hours not exceeding eight hours per day and forty-four per week, with compensation for working hours and reduction of work hours, by agreement or collective bargaining agreement |
| Article 16: Protection of the salary in the form of the law, constituting a crime its willful retention |
| Article 22: Reduction of risks inherent to work, through health, hygiene and safety standards |
| Article 26: Recognition of collective bargaining agreements and agreements |
| Article 30: Prohibition of difference in salaries, performance of duties and admission criteria by reason of gender, age, color or marital status |
| Article 31: Prohibition of any discrimination in respect of wages and admission criteria for disabled workers |
| Article 33: Prohibition of night work, dangerous or unhealthy to minors under eighteen and any work under the age of sixteen, except as an apprentice, from the age of fourteen |

There were still seven articles that needed to be regulated through a “complementary law”. Senator Romero Juca introduced such a law on July 11, 2013, with Senator Ana Amelia acting as the bill’s spokesperson (*relatora*). It took almost two years to negotiate the legislation, but on May 6, 2015, it was approved in the senate, unanimously with 68 votes. Its counterpart was first proposed in the Chamber of Deputies on July 17, 2013. It was approved on March 17, 2015. President Dilma
Rousseff approved the complementary law on June 2nd, 2015, but vetoed two of its items.\textsuperscript{99} Firstly, she vetoed the proposal to extend domestic workers the regime of 12 hours worked for 36 hours of rest. She further vetoed one of the reasons for dismissal with just cause, the \textit{de facto} violation or intimate circumstance of the employer or family. Domestic workers were thus granted seven more rights by June 2015.

\textbf{Figure 3.3:} Rights granted to domestic workers via Complementary Law 150

\begin{tabular}{|l|}
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\textbf{Article 1:} Employment relationship protected against arbitrary dismissal or without just cause, under the terms of a supplementary law, which will provide compensatory compensation, among other rights  \\
\textbf{Article 2:} Unemployment insurance in case of involuntary unemployment  \\
\textbf{Article 3:} FGTS  \\
\textbf{Article 9:} Remuneration of night work higher than that of daytime work  \\
\textbf{Article 12:} Family wage paid on the basis of the dependent of the low-income worker under the law  \\
\textbf{Article 25:} Free care for children and dependents from birth to age five (5) in kindergartens and pre-schools  \\
\textbf{Article 28:} Insurance against accidents at work, at the expense of the employer, without excluding the indemnity to which he is obliged, when incurring in intent or guilt  \\
\hline
\end{tabular}

At the time of the amendment, a survey by the Senate’s research institute found 95.7\% of the Brazilian population was aware of the PEC’s promulgation, and that more than 80\% of them approved.\textsuperscript{100} The year the amendment passed, domestic workers had experienced income growth (9.1\%) three times as high as that of all Brazilian workers.\textsuperscript{101} Yet the amendment was passed at the conclusion of a decade-long era of economic growth that lifted 26 million Brazilians out of poverty and into the middle class.\textsuperscript{102} And even Benedita Da Silva commented in her Maid’s Day speech that it “is already part of the Brazilian culture and the life of the Brazilian middle class…to have their [domestic] worker.” It would be these new domestic employers that would bear most of the cost of the legislation. The popular \textit{Veja} magazine published an article following the PEC’s promulgation titled “PEC das domesticas: the maid leaves, the dishwasher enters.”\textsuperscript{103}

For a Brazilian middle class household, the cost increase at the time of the PEC was not negligible. The minimum wage in Brazil at the time was R$788.00, which would be the salary of a
live-in maid (mensalista). But with the new law, the employer of a mensalista would need to pay 12% in INSS (Brazilian Social Security) (R$94.56) and 8% FGTS ($63.04), plus overtime salary, and 1/3 additional wages for a month of paid vacation (férias) (R$1,050). The total costs, excluding overtime, for employers for months worked (excluding vacation) would amount to R$1,041, a 25% increase in cost. In contrast, the average daily cost of a housecleaner (diarista) at the time of the PEC was R$100.00 per day. If they were to come twice a week for one month, that amounts to R$800.00. If the diarista comes three times a week, the employer would be obligated to pay 12% INSS, which would become R$1,056 by the end of the month.

The President of the Senate, Renan Calheiros, produced a video to announce the PEC’s promulgation (see Image 3.4). Speaking directly to the camera while seated in an immaculate and ornate living room, the conservative politician attempted to articulate the cost of the PEC to employer households in moral terms:

I know that these rights will bring new costs to employers, but just as freedom has a price, equality also has a price. Brazil is assuming that equality and the law must begin in the home. This is because the most just societies are also the richest and most advanced.

When the amendment was ultimately passed, Fenatrad president, Creuza Maria de Oliveira reflected on the negative reactions among employers:

We just didn’t account for the hatred of the bosses. They were used to the Casa Grande e Senzala (Big House and Slave Quarters) with the worker that lived in the workplace and was available at will for 24 hours…. this for them is absurd, although the value is very paltry. …So the bosses are complaining about the FGTS. It is not a matter of money, but one of hatred because we are gaining the right to have our daughters and grandchildren at university; the working women are advancing.

Benedita da Silva herself recognized the trepidations domestic employers had with the PEC. As a congresswoman, Benedita herself was an employer, and following her 2014 Maid’s Day speech, she posed for a symbolic photograph embracing her own domestic employee (see Image 3.6). In her address to the Chamber she remarked:
Mr. President, we employers – I am an employer today – we were very well represented in this House. When they way that we do not have dialogue with employers, we were more than 503 deputies and 81 senators. This dialogue that the domestic workers caught was not only with an employer, but with one who would be responsible for enforcing this law.…

Benedita highlighted the conflict of interest intrinsic to enacting legal reform for domestic workers; those that are “responsible for enforcing this law” are also employers themselves.

Throughout the Latin American region and beyond, political actors have been reluctant to enact meaningful legal reform for several reasons. Firstly, increasing the status of domestic workers necessitates a decline in the position of employers. The political participation of many legislators, especially females, is based on employing domestic workers at home. Further, women’s work within the household has not been viewed by elites as “real work”. Lastly, racist sentiments shared by some elites deter them from viewing darker skinned domestic workers as their social equals.

The Brazilian legislature remains composed almost exclusively of Brazil’s elites. In 2017, senators and deputies made R$33,763 in monthly salary, not including other benefits. This puts federal representatives in the top 99th percentile based on income. It is no wonder that the Federal District of Brasilia, which houses all government activity, has the highest level of wealth inequality in the country. Politicians are most certainly domestic employers themselves, as are many of their higher-status constituents. A few months after Jair Bolsonaro voiced his opposition to the PEC, his own domestic employee quit to earn a higher salary elsewhere. Just this year, Celso Jacob (PMDB-RJ) lamented in a text message group chat with fellow conservative congressmen that “for me to be able to talk to the ministers, I have to ask the Whale (Congressman Baleia Rossi) to intercede...Sometimes I feel like the poor but hot maid’s daughter. It’s for comer (having sex with) and then you do not talk anymore.” In another recent incident, the TV commentator, Danilo Gentili, crudely referred to a parda senator Regina Sousa (PT-PI) as a tia de cafezinho (coffee lady).
Aside from the barriers to enacting policy reform, and the culture of prejudice and hostility against domestic workers as seen in the legislature, there exist five primary impediments to domestic workers’ political engagement at any level. Firstly, housework is underappreciated. Maids are further recruited among poor and uneducated women. Domestic workers work alone or with one or two others. The work setting is informal and unmonitored. Lastly, domestic workers have reason to be deeply distrustful of their “natural allies”, in the feminist movement, NGOs, unions, or public agencies. Compared to other countries, however, Brazil's situation is unique for two reasons: (i) the vote is obligatory for all Brazilian citizens, and (ii) a minimal portion of the country's domestic workers is comprised of immigrants. There were some 54.5 million votes cast in the general election of 2014; a political body of more than seven million domestic workers has considerable clout.

That the PEC’s proponents were able to engage millions of domestic workers and overcome the numerous impediments to legal reform makes the unanimous passage of the PEC das Domésticas all the more remarkable. There were several dynamics at play that helped bring this 70-year-long fight to the finish line. Firstly, the unions and NGOs involved with domestic workers had grown in membership and they had strategized to leverage symbolic politics, such as the occupation of the Chamber of Deputies wearing aprons on the Day of Black Consciousness. Secondly, these organizations partnered with other movements to make the initiative intersectional and to gather institutional support. Thirdly, they had leaders that had risen up from working as domestic workers themselves, becoming powerful proponents of the legislation. A former director of the Domestic Worker’s Union reflected, “[Benedita] came for humble origins and rose up, so any of us could do the same. This was a real mark in the history of the domestic worker.” Furthermore, the legislation was introduced and passed at a critical time; the economy was still growing, the Worker’s Party still had political capital to draw on, 2014 was an important election year, and the reform optimized the International Labor Organization’s convention on domestic work. Lastly, the constitutinoal
amendment was too far-reaching. It simply revised a provision in the Citizen’s Constitution to revoke domestic workers’ second-class status. At the time of the PEC, the vast majority of domestic workers were either paid by the day (diaristas) to clean various households, or lacked a carteira assinada. And two years passed between the approval of the PEC and its complementary law. Taken together, these elements helped propel the amendment to success that transcended partisan lines.

One can only imagine the difficulty that a domestic worker would face when asking their employer for these newfound rights. The vast majority of domestic workers continue to work without the carteiro de trabalho, impeding them from benefitting from virtually all labor rights. A cartoon published in the newspaper Estado de Minas following the PEC depicts a white employer (patroa) confronting her empregada in the kitchen; in one hand she holds a whip, and in the other, a copy of Veja magazine. Her empregada, who is black, dressed in traditional slave attire, has several scars on her back and chains around her ankles. The patroa menacingly asks, “so now you want workers’ rights, do you?” (see Image 3.5).

Given the informal nature of domestic work, and the alterity of power within the household, the enforcement of the PEC das Domésticas will pose a formidable challenge. Implementation notwithstanding, the political symbolism surrounding the PEC is powerful. The process of getting approved cast the question of equal labor status in the light of fundamental human rights. A Reuters article aptly characterized the amendment as “a symbolic victory in Brazil, where the architecture itself assumes an underclass. Many Brazilian apartments have separate entrances, elevators and closet-sized bedrooms designed for servants.”115 Shortly after its promulgation, the Commission on the Constitution and Justice approved PLS 22/2014, an initiative to establish minimum rules for regulating maids’ rooms. The law was originally proposed in 2014 to ensure that the dependencias (bedrooms) used by domestic workers in houses and apartments have “minimum requirements for design, ventilation, lighting, ergonomics, privacy, and the quality of materials used.”116
discourse surrounding domestic work has increased in recent years. A case in point is a 2007 legal case involving a maid who was beaten and robbed at a bus stop by five young upper-class men in the affluent Barra de Tijuca neighborhood; they defended themselves in court with “we thought she was a prostitute”.117 The internationally acclaimed 2015 film *Que Horas Ela Volta?* along with the highly popular Facebook page “Eu Empregada Doméstica” demonstrate the novel political saliency of domestic workers’ rights. The popular media and policy reforms have steered the discourse surrounding domestic workers towards one of dignity and human rights.

**Figure 3.4:** Rights for Domestic Workers in Article 7 of the 1988 Constitution

<table>
<thead>
<tr>
<th>Article 7 of the 1988 Constitution</th>
<th>1988 Constitution</th>
<th>PEC das Domésticas</th>
<th>Complementary Law (PLS 150)</th>
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<tbody>
<tr>
<td>1 Employment relationship protected against arbitrary dismissal or without just cause, under the terms of a supplementary law, which will provide compensatory compensation, among other rights</td>
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<td>2 Unemployment insurance in case of involuntary unemployment</td>
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<td>4 Minimum wage, fixed by law, nationally unified, capable of meeting their basic needs and those of their families with housing, food, education, health, leisure, clothing, hygiene, transportation and social security, with periodic adjustments that preserve the Purchasing power, and its linkage is forbidden for any purpose</td>
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<td>5 Salary proportional to the extent and complexity of work</td>
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<td>6 Irreducibility of salary, except as provided in a collective agreement or agreement</td>
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<td>7 Guarantee of salary, never lower than the minimum, for those who perceive variable remuneration</td>
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<td>8 Thirteenth month pay based on full compensation or retirement value</td>
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<td>9 Remuneration of night work higher than that of daytime work</td>
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<td>Profit sharing, or results, unrelated to remuneration, and, exceptionally, participation in the management of the company, as defined by law</td>
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<td>Family wage paid on the basis of the dependent of the low-income worker under the law</td>
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<td>Normal working hours not exceeding eight hours per day and forty-four per week, with compensation for working hours and reduction of work hours, by agreement or collective bargaining agreement</td>
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<td>Six-hour work day for work performed in uninterrupted shifts, except collective bargaining</td>
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<td>Weekly paid rest, preferably on Sundays</td>
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<td>Remuneration for overtime service, at least, fifty percent of the normal one</td>
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<td>Paid annual leave of at least one third more than the normal salary</td>
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<td>Leave to the pregnant woman, without prejudice to employment and salary, for a duration of one hundred and twenty days</td>
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<td>Paternity leave, under the terms fixed by law</td>
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<td>Protection of the labor market of women, through specific incentives, according to the law</td>
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<td>Prior notice of dismissal proportional to the length of service, being at least thirty days, in accordance with the law</td>
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<td>Reduction of risks inherent to work, through health, hygiene and safety standards</td>
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<td>Additional remuneration for painful, unhealthy or dangerous activities, according to the law</td>
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<td>As regards credits resulting from employment relationships, with a five-year limitation period for urban and rural workers, up to a limit of two years after termination of employment contract</td>
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<td>Prohibition of any discrimination in respect of wages and admission criteria for disabled workers</td>
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<td>Prohibition of the distinction between manual, technical and intellectual work or between the respective professionals</td>
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<td>Prohibition of night work, dangerous or unhealthy to minors under eighteen and any work under the age of sixteen, except as an apprentice, from the age of fourteen</td>
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<td>Equality of rights between the worker with the permanent employment relationship and the single worker</td>
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</table>

PEC das Domésticas: Single paragraph. The rights provided in items IV, VI, VII, VIII, X, XIII, XV, XVI, XVII, XVIII, XIX, XXI, XXII, XXIV, XXVI, XXX, XXXI e XXXIII shall be guaranteed to the category of domestic workers, and, complying with the conditions established by the law and observing the simplification of compliance with the main and accessory tax obligations, arising from the employment relationship and its peculiarities, those provided for in items I, II, III, IX, XII, XXV, and XXVIII, as well as integration into social security.
Endnotes


5 Editorial do Estado de Minas do dia 01/05/2013, https://eusr.wordpress.com/2013/05/01/empregada-domestica-o-trabalho-da-trabalho/.


