v. 3, n. 24, 2023

Scientific Journal of Applied Social and Clinical Science

WORK ENVIRONMENTAL LAW AND WORKER'S HEALTH: EMPLOYERS' RESPONSIBILITY IN PANDEMIC TIMES

Luana Loren Muradas Alves

Abstract: This article aims to verify the main changes inserted in labor relations as a result of the scenario of the COVID-19 pandemic, and how they affected the lives of Brazilian workers. The present work is a bibliographic review, the following virtual library databases were used for the research. This work will address the new general employment contract format, for the Home office, remote and/ or distance format. This study focuses on the relationships and facts resulting from the impact of the global pandemic on the employment contract. Identifying which legal aspects these new modalities were based on changes in labor laws. It will be seen by chance which applications of public measures prevent the movement of people, so that, following all the specific rules, they avoided contagion in front of Covid-19.
Keywords: Pandemic. Labor Relations. Brazilian legislation

INTRODUCTION

On March 11, 2020, the World Health Organization - WHO - declared a state of public calamity, due to the pandemic caused by the coronavirus (Sars-Cov-2). Primarily detected in December 2019, in the city of Wuhan, China, this virus causes a disease called COVID-19, whose clinical picture varies from asymptomatic infections to severe respiratory conditions. In Brazil, the first case was reported on February 21, 2020.

Such a pandemic, which reached a large part of the world, gave rise to numerous reflections in the various areas of knowledge, including in the area of Labor Law, since the world of work began to be affected by concerns, now high, due to the possibility concrete illness, and possible death, of workers in their work environments.

This research has as its object the health of the worker and reflects especially the impacts of the pandemic on the work environment and on the responsibility of the company and the entrepreneur to comply with all safety measures, avoiding the contamination of the virus, and also, giving continuity to the productive activities.

The Brazilian Federal Constitution provides rights and guarantees in its Article 7, whose item XXII ensures the "reduction of risks inherent to work, through health, hygiene and safety standards."

Regarding the work environment, the constitutional legislator stated in article 196 that " health is everyone's right and the State's duty, guaranteed through social and economic policies aimed at reducing the risk of disease and other harms, and access to universal and egalitarian actions and services for their promotion, protection and recovery".

The issue of the pandemic, and how it affected the work environment, has become controversial, not only because of the divergence in the interpretation of the legal system (which will be exposed during the course of the work), but also because of the difficulty in configuring the employer's responsibility for the misfortune occurred.

On July 6, 2020, Law Number: 14.020/2020 came into force, which provides for complementary measures to face the state of public calamity. In particular, there were measures to minimize the financial and economic impacts on labor relations, authorizing companies to reduce the working hours of their employees with the corresponding reduction in wages. Or, promote the suspension of employment contracts with the main objective of maintaining employment and income as set out in Article 3 of said law.

In addition, the applicable legal measures to mitigate the impacts caused by Covid-19 must observe the protection of workers, therefore, it was necessary for the company to observe all health measures in order to avoid

contamination in face-to-face work.

To reach the conclusion of the work, it will be divided into three parts, where, first, the concept, characteristics and fundamental principles of the work environment and environmental law will be exposed, taking into consideration, the constitutionalization of the environmental work law and its basis fundamental legislation.

Subsequently, it will be discussed on the prevention of risks in the work environment in times of a pandemic. And, finally, before the conclusion, it will be exposed about the responsibility of the company and the employer, in relation to the health of the worker, in a pandemic episode.

Finally, it will be a scientific article that aims to explain Environmental Law together with Labor Law, specifically in the work environment and worker's health, with a focus on the employer's responsibility in the work environment in episode of pandemic.

THE WORK ENVIRONMENT AND ENVIRONMENTAL LAW: CHARACTERISTICS AND PRINCIPLES

For the autonomy of a branch of law to be achieved, it is necessary that it has three aspects, namely, the legislative, didactic and scientific aspects.

In this regard, Maurício Godinho (2003) teaches that autonomy, in Law, translates the quality attained by a given legal branch of having approaches, principles, rules, theories and methodological conducts that are characteristic of dynamic structuring.

Environmental Labor Law has a set of laws that support it, differentiating it from Labor Law, as well as from Environmental Law, although it has a great connection of concepts and institutes, which will be demonstrated below.

THE ENVIRONMENT AND ENVIRONMENTAL LAW

Environmental protection emerged in the 1970s with the Stockholm Declaration approved by the United Nations Conference on the Environment, which had as its principle the premise that:

> [...] man has the right to freedom, equality and the enjoyment of adequate living conditions, in an environment that is able to allow a dignified life and well-being; he has a grave responsibility to protect and improve the environment for present and future generations.

This principle, which was indispensable for the writing of article 225 of the Constitution of the Federative Republic of Brazil, namely:

> Article 225. Everyone has the right to an ecologically balanced environment, an asset for common use by the people and essential to a healthy quality of life, imposing on the Public Power and the community the duty to defend and preserve it for the present and future generations [...]

The Stockholm Declaration primarily addressed the need to protect nature. On the other hand, in Brazil, the concept of the Environment emerged with Law 6938 of August 31, 1981, which provides, among other things, for the National Environmental Policy:

> Article 3 - For the purposes provided for in this Law, it is understood by:
>
> I - environment, the set of conditions, laws, influences and interactions of a physical, chemical and biological nature, which allows, shelters and governs life in all its forms;

In 1988, for the first time, the Federal Constitution of Brazil expressly brought the environment in text (with its own chapter, Article 225 cited above). In addition, it established the protection of the environment as a fundamental principle for the country's

economic and financial order [1], and inserted several devices originating from this same theme [2].

From the breadth conceptualized by the legislation, referring to Environmental Law, the homeland doctrine created a classification (variant among Brazilian jurists) that is divided into: physical or natural environment and artificial environment, cultural environment, and finally, the environment work environment [3].

THE WORK ENVIRONMENT

Being, therefore, considered a kind of Labor Law, the Work Environment is provided in article 200, VIII, that is:

> Article 200. The unified health system is responsible, in addition to other attributions, under the terms of the law:
>
> [...]
>
> VIII - to collaborate in the protection of the environment, including that of work.

The Regional Labor Attorney Raimundo Simão de Melo conceptualizes the work environment as

> [...] the place where people carry out their work activities, whether paid or not, whose balance is based on the salubrity of the environment and the absence of agents that compromise the physical and psychological safety of workers.

Therefore, the concept of work environment does not correspond exclusively to natural environmental elements (such as water, fauna, flora, among others), since it also incorporates human environmental elements, originating from human action.

That said, as stated by Júlio Cesar de Sá Rocha, in his work Environmental Labor Law, considering that the work environment is strictly linked to the environment, it is "impossible quality of life *without having quality of work, nor can you achieve half balanced and sustainable environment, ignoring the work environment*".

In addition, it is currently difficult to associate the work environment with the strict place where the employer performs his duties (building or commercial room) since many employers carry out their work activities in places other than the company's buildings, such as buses, subways or even planes.

Arion Sayão Romita observes:

> What is important is the conceptualization of the work environment capable of collecting the result of the transformations that have occurred in recent times in the methods of work organization and in the productive processes, which lead to the deconcentration of the contingent of workers, no longer limited to the internal space of the factory or company. Due to technological innovations, new modalities of service provision are being developed, such as work at home and telecommuting, so that the concept of the work environment expands, also encompassing housing and urban space.

1. Article 170. The economic order, founded on the appreciation of human work and free initiative, aims to ensure a dignified existence for all, in accordance with the dictates of social justice, observing the following principles: VI - defense of the environment, including through treatment differentiated according to the environmental impact of products and services and their preparation and delivery processes. (Wording provided by Constitutional Amendment No. 42, of 12.19.2003)

2. Article 5, item LXXIII; article 23, item VI; article 24, items VI and VIII; article 129, item III; article 174, § 3; article 186, item II; article 200, VIII; and, article 220, § 3, item II.

3. José Afonso da Silva, starts from the premise that the environment shows the existence of its three aspects, from the origin of its classification: artificial environment (built urban space In the set of public buildings and equipment); cultural environment (integrated by the historical heritage and differs from the previous one due to the sense of value it acquired); natural or physical environment, constituted by soil, water, atmospheric air, flora, in general by the interaction of living beings and their environment, where the reciprocal correlation between species and their relationships with the physical environment that occurs occupy. (SILVA, José Afonso da. Constitutional environmental law. 4. ed. São Paulo: Malheiros, 2003. p. 21),

Therefore, considering all of the above, the work environment, constituted by the resources that make up the working conditions, is protected in the Federal Constitution. So there is no need to talk about quality of life, if there is no quality of work, since the right to a balanced environment (in an aspect of the environment *generalis*, as well as an essential element of life) is a fundamental right of the worker.

WORKER'S HEALTH: CONCEPT AND CHARACTERISTICS

In the Imperial Constitution of 1824, inspired by economic liberalism, that is, the State could not intervene in private relations. Thus, it does not develop rules and standards to protect workers' health, as it would be intervening in work relationships. However, such constitution makes a pertinent reference to the work, in the title dedicated to the civil and political rights of Brazilian citizens. Among the precepts that guarantee individual rights, it emphasizes freedom of work, industry and commerce, with the abolition of craft guilds.

The rights of the worker, as well as of the citizen, started to be assured by the Republican Constitution of 1934, which integrated a chapter called On the Economic and Social Order, integrating the political character, an economic and social democracy.

In 1937, the Magna Carta brought social rights, realizing, therefore, a certain concern with physical integrity, intending to inhibit activities harmful to the health of the worker. During the validity of this same law, there was the enactment of the Constitution of Labor Laws, which brought a specific chapter on Occupational Safety and Medicine.

Renné Mendes and Elisabeth Costa Dias (1991, p. 341) as well as José Antônio Ribeiro Silva (2008, p.120) divide worker protection into stages, the work environment, and worker health.

In this sense, according to the Ministry of Health, Worker's health:

> [...] is the set of activities in the field of public health that is intended, through epidemiological surveillance and sanitary surveillance actions, to promote and protect the health of workers, as well as to recover and rehabilitate the health of workers subjected to risks and harm arising from working conditions (https://bvsms.saude.gov.br/bvs/saudelegis/gm/2012/prt1823_23_08_2012.html)

The Federal Constitution of 1988 brought great importance to the social rights of the worker, where, among these, the right to work and the right to health.

As already briefly mentioned, Article 7, item XXII of the Magna Carta brings the protective principle, which expresses concern for the worker by establishing "*the reduction of risks inherent to work, through health, hygiene and safety standards*" (MORAES, 2002, p. 49).

All norms imposed by law must be respected by the employer within the work environment, aiming at guaranteeing fundamental rights, through norms that promote employee safety. It is emphasized that the right to health includes physical and mental health.

The legislation requires the employer to implement safe, stable and balanced work methods for its employee, not exceeding its directive power by carrying out practices that may eventually harm the mental and physical health of the worker.

The reduction of risks inherent to work is everyone's right and any worker can use legal instruments when threatened or attacked in labor relations or in the work environment (MORAES, 2002, p. 49). In this sense, it is clear that activities that involve risks, by themselves, already expose the individual's health, however, they can be prevented by numerous means and rules to be stipulated by employers.

PREVENTING RISKS IN THE WORK ENVIRONMENT IN TIMES OF PANDEMIC

Although labor legislation took many years to be enacted, care for the individual safety of human beings began many years ago, with ancestors using animal skin to protect themselves from the cold, or rain, for example, which today is referred to as PPE – Personal Protective Equipment.

Speaking of the work environment, employees fought for a long time for a safe environment, with quality of life, which brought about the National Day for the Prevention of Accidents at Work, always remembered on July 27th. 6 of the Ministry of Labor as "*every device or product, for individual use used by the worker, intended to protect against risks likely to threaten safety and health at work* " (https://www.gov.br/trabalho-e-previdencia/pt-br/composicao/orgaos-especificos/secretaria-de-trabalho/inspecao/seguranca-e-saude-no-trabalho/ctpp-nrs/ regulatory-norm-no-6-nr-6).

This regulation established an obligation for the company to provide employers with adequate equipment free of charge, whenever general measures do not offer complete protection against the risks of accidents at work or occupational and work-related illnesses; while collective protection measures are being implemented; and, to respond to emergency situations.

In addition, the CLT in its article 166 provides that:

> [...] the company is obliged to provide employees, free of charge, with personal protective equipment appropriate to the risk and in perfect condition and functioning, whenever general measures do not offer complete protection against the risks of accidents and damages to employee health (https://www.planalto.gov.br/ccivil_03/leis/l6514.htm).

In other words, Protective Equipment, in addition to being provided free of charge, must be suitable for the activity performed.

During the pandemic caused by the coronavirus, measures to prevent and encourage health and safety at work received even more visibility, especially after the article published by the International Labor Organization: "Guaranteeing safety and health at work during the pandemic".

This article states that it is

> Continuous monitoring of OSH conditions and adequate risk assessment is necessary to ensure that control measures related to the risk of contagion are adapted to the processes, working conditions and specific characteristics of the workforce during the period contagion critic and later
>
> (https://www.tst.jus.br/saude-e-seguranca-do-trabalho).

The ILO likewise recommends that a comprehensive emergency response preparedness plan be drawn up in the workplace, so that sites are prepared to develop a rapid, effective response to adapt measures to the specific emergency situations that arise. the company will eventually face.

That said, so that the company does not run into trouble, it must always provide the appropriate PPE, requiring its use within the work environment, having plans for possible emergencies, and regularly monitoring all health and safety conditions at work.

COMPANY AND EMPLOYER RESPONSIBILITIES IN PANDEMIC TIMES

CIVIL LIABILITY

According to Carlos Roberto Gonçalves, civil liability is considered an aspect of social reality, which arises from the occurrence of damage that entails restoring the moral or patrimonial balance caused (caused by

the author of the damage), that is, the civil liability of the idea of restoring the balance of consideration, of repairing the damage. (GONÇALVES, 2010.p. 19).

In addition, articles 186 and 187 of the Civil Code indicate that anyone who, by act or omission, violates a right and causes damage to others commits an unlawful act (CC, 186) and anyone who commits an unlawful act causing damage to others is obliged to repair it (CC, 186) CC, 927). That said, when the act voluntarily committed has violated a right (always of a patrimonial nature), the duty to indemnify the damage caused arises.

Caio Mario defines civil liability as:

> The realization of the abstract reparability of the damage in relation to a taxable person of the legal relationship that is formed. Reparation and liability make up the binomial of civil liability, which is then stated as its incidence on the person causing the damage. PEREIRA, 2002, p. 11

The study of the nature and history of Civil Liability is very useful and necessary, because, as stated by José de Aguiar Dias, in his work On Civil Responsibility (12th Edition, Editora Lumen Juris, Rio de Janeiro, 2011, page 19), *"it has not been possible until today, despite the efforts of the best jurists, to establish a unitary and permanent theory of civil responsibility"*. Its evolution is very fast, adapting itself to technological and industrial advances and to the entire development process of society, ensuring, in the words of José de Aguiar Dias, "the purpose of reestablishing the balance that was broken due to the damage, considered, in *each time, depending on the social conditions in force at the time* " (DIAS, p. 25).

Far from it, when men lived in small groups, collective revenge was rampant, when, if one person did harm to another, he was punished by all members of that ancient society, usually by stigma or death. There were no rules or limits, and the normal result was, generally, the death of the individual in the most brutal way possible.

OBJECTIVE AND SUBJECTIVE CIVIL LIABILITY

Aware, therefore, of the concept of civil liability, we need to know that civil liability is classified by the doctrine both in terms of fault (objective and subjective liability) and in terms of nature (contractual and extra-contractual liability)., therefore, only responsibility classified in relation to the agent's fault will be dealt with.

Subjective civil liability relates to damage, whether culpable or intentional, since the author acts negligently, recklessly or incompetently, committing an unlawful act.

In summary, as we have seen, the responsibility for the commitment is reflected in the evidence of guilt, too, there are two forms: in a strong and objective sense, which the purpose of this article is to deal with. First, however, the word case must be considered.

Venosa (2012, p. 25) defines it as "not keeping a job that the agent must know and see". That is, "it is a violation of an existing obligation, which contains the duty not to harm anyone" (RIZZARDO, 2015, p. 02).

The indoctrinator Diniz (2006, p. 46) explains that:

> Guilt in the broad sense, as a violation of a legal duty, attributable to someone, as a result of an intentional act or omission of diligence or caution, comprises: intent, which is the intentional violation of a legal duty, and guilt in the strict sense, characterized by malpractice, recklessness and negligence, without any deliberation to violate a duty.

And according to Gagliano and Pamplona Filho (2006, p. 123-124), guilt:

> [...] (in a broad sense) derives from the non-observance of a duty of conduct, previously imposed by the legal order, in attention to social peace. If this violation is deliberate, the agent acted with malice; if it resulted from negligence, imprudence or malpractice, its

action is only culpable, without strict sense.

Thus, it is clear that the case leads to the violation of the duty of care, that is, "the violation of the obligation to foresee certain unlawful facts and to take energetic measures to avoid them" (GONÇALVES, 2010, p. 567). To assess the diligent work required by an agent, his behavior is compared to that of a normal person, who carefully detects evil and prevents damage in advance (GONÇALVES, 2010, p. 567).

In addition, guilt is divided into two meanings, the first of which is called the strict sense, which covers cases of negligence, imprudence and malpractice, and the second is intent.

An independent social responsibility is the result of culpable conduct *lato sensu, which involves stricto sensu* guilt and intent. A case (*stricto sensu*) is identified when the offending agent acted recklessly or recklessly. Intent, on the other hand, is a willingness to produce an unlawful result.

Up to a certain point in history, a private public debt was enough to settle all cases. However, over time, both theorists and legalists realized that this model of compromise, depending on the case, was not sufficient to resolve all existing cases. This drop in *private equity* is largely due to the emergence of an industrial society and the consequent increase in the risk of accidents at work. On the subject Rui Stoco confirms:

> The need for greater protection for the victim gave birth to presumed guilt, in order to reverse the burden of proof and solve the great difficulty of those who suffered harm to demonstrate the guilt of the person responsible for the action or omission.
>
> The next step was to disregard guilt as an indispensable element, in cases expressed in law, with objective responsibility arising, when one does not ask whether the act is culpable. (STOCO, 2007, p. 157).

In this case, the so-called public interest arises, from which the case arises. The concept of risk is the basis for this type of commitment, summarized by Sergio Cavalieri in the following words:

> Any damage must be attributed to its author and repaired by whoever caused it, regardless of whether or not they acted with fault. The problem is resolved in the causal link, making any value judgment about guilt unnecessary. (CAVALIERI FILHO, 2008, p. 137)

The Brazilian Civil Code of 1916 was actually subjectivist. The 2002 Code reversed the debt restructuring process and, although it did not completely abandon its confidentiality obligation, it established by establishing a strong responsibility in its article 927: "There shall be an obligation to repair the damage, regardless of fault, in the cases specified in law, or when the activity normally carried out by the perpetrator of the damage implies, by its nature, a risk to the rights of others".

RISK THEORY

Strict liability, unlike subjective liability, does not require proof of the agent's guilt, in order for the damage to be repaired, since it is naturally presumed. This is what Gonçalves (2009, p. 30) understands, for which "In cases of strict liability, proof of guilt from the agent is not required for him to be obliged to repair the damage. In some cases, it is presumed by law. In others, it is completely unnecessary".

Regarding the presumption, the author cites as an example article 936 of the Civil Code, which assumes that the owner of the animal is to blame for the damage caused to others, in which case there is a reversal of the burden of proof. That is, "The plaintiff only needs to prove the action or omission and the damage resulting from the defendant's conduct, because his guilt is already presumed" (GONÇALVES, 2009, p 30).

The burden of proof arose "to facilitate the position of the victim" (SAMPAIO, 2003, p. 28), since, in view of the presumption of guilt, "the victim is exempt from proving it in court, it being up to the time, the burden of proving that he did not act with guilt (this is a relative presumption)" (SAMPAIO, 2003, p. 28).

The position in which strict liability is supported is that every unlawful act, which causes damage, must be repaired, regardless of whether or not there is fault, since "it will always be irrelevant for the configuration of the duty to indemnify" (GONÇALVES, 2010, p. 55). However, what is relevant is "the causal relationship, since, even in the case of strict liability, anyone who did not cause the event cannot be held responsible" (GONÇALVES, 2010, p. 55).

In the sole paragraph of article 927 of the Civil Code, strict liability is present in two hypotheses: in the law and in the risk of the activity. In law, an example is the Consumer Defense Code, already discussed. And, in terms of the Constitution, that of the Federative Republic of Brazil of 1988 also brings in its text a notion of objective responsibility, which is that of the State, in its article 37, paragraph 6:

> Article 37. The direct and indirect public administration of any of the Powers of the Union, the States, the Federal District and the Municipalities will obey the principles of legality, impersonality, morality, publicity and efficiency, and also the following:
>
> [...]
>
> § 6 Legal entities governed by public law and those provided by private law that provide public services will be liable for damages that their agents, in that capacity, cause to third parties, ensuring the right of recourse against the person responsible in cases of intent or negligence (BRAZIL, 1988).

The moment that the responsibility of the State was mentioned in the Carta Maior is that legal entities began to answer for the acts of their agents, a situation in which the objective state responsibility is characterized.

With regard to the risk of the activity, the doctrine understands that strict liability is justified by the theory of risk, so that "Risk is danger, it is the probability of damage" (CAVALIERI FILHO, 2012, p. 152).

Gonçalves (2010, p. 55) understands that "For this theory, every person who carries out some activity creates a risk of harm to third parties. And she must be obliged to make amends, even if her conduct is blameless." Following the understanding, Cavalieri Filho (2012, p. 152) says that "all damage must be attributed to its author and repaired by whoever caused it, regardless of whether or not he acted with guilt".

Stoco (2013, p. 216), when mentioning Facchini Neto, understands that the application of risk theory does not necessarily presuppose only a business activity, industry or commerce, on the contrary, it is linked "to any act of man that is potentially harmful to the legal sphere of their peers. If such potential were realized, the obligation to compensate would arise."

According to Sampaio (2003, p. 29) the theory of risk is an innovation brought by the Civil Code of 2002 and "results from the assessment of the concrete case to be made by the magistrate". He explains his understanding by saying that:

> That is, regardless of whether there is a legal provision, if the activity normally carried out by the author of the damage, given its nature and importance, exposes people to the risk of damage, generating a situation of danger, is the magistrate authorized to adopt, in this case, civil liability regardless of fault. Such novelty represents an important instrument conferred by the legislator to obtain fair solutions, in respect of the new paradigms on which Modern Civil Law is based (SAMPAIO, 2003, p. 29).

As an example of risk theory in general,

Venosa (2012, p. 10) cites "popular, artistic, sports, etc. shows. with a large influx of spectators. Because, for the author, "it is curious that any accident that may occur in a crowd will be of a serious nature, no matter how much modern safety measures are adopted" (VENOSA, 2012, p. 10). And he ends his example by saying that "The organizer of this activity, regardless of any other criteria, inevitably exposes the people present to danger" (VENOSA, 2012, p. 10).

This way, it appears that strict liability is based on the theory of risk, according to which anyone who carries out an activity that generates risk of harm to others will be obliged to repair it, even if the fault is absent in their conduct.

CIVIL LIABILITY FOR WORK ACCIDENTS

The victim's exclusive fault occurs when all prevention and safety duties have been observed by the employer, the precepts in relation to laws and regulatory standards have been observed and complied with, and that the duties of training, guiding and supervising have been carried out by the employer and, even given all the preventive measures adopted, the employee chooses to circumvent the prevention systems or not comply with the rules regarding health and safety established by the company and, due to his exclusive behavior, there is the occurrence of an accident at work that causes bodily injury or functional disturbance.

With regard to the exclusion of civil liability due to the victim's sole fault, the following doctrine and jurisprudence provide guidelines to be observed and considered:

According to the doctrine and jurisprudence presented, it is worth noting that for the responsibility to be exclusive to the employee-victim, the employer or third parties cannot have acted with intent, negligence, imprudence or malpractice, otherwise, the fault becomes concurrent and responsibility is divided between the agents who caused the work accident or occupational illness (CASTRO, 2013).

Another important factor for the exclusion of responsibility for the sole fault of the victim is that the burden of proof is always on the employer, therefore, it is up to him to prove that all preventive measures were adopted to avoid the accident at work or the occupational disease. In this case, the measures adopted must be to eliminate or neutralize the risk, if the risk has only been mitigated, there is no need to speak of exclusion of responsibility due to the victim's sole fault.

The exclusive action of third parties is related to the action or conduct of a third person, in addition to those contained in the employee-employer employment relationship, where the conduct of the third party caused harm to the employee. The third party's action cannot be related to economic activity or the rendering of services: it is related to conduct.

The doctrine brings as an example discussions and fights related to the soccer team, where a third party attacks the employee, and the aggression causes damage to the latter. Although the aggression occurred in the workplace, the damage was not caused by the risk of economic activity, nor by the execution of the activity, but by a third party's conduct.

In this case, the employer is not liable for civil liability and the duty to compensate. The doctrine equates this type of exclusion to the fortuitous case and force majeure, with the unpredictability of the events that cause damage to the employee. Finally, it is worth mentioning that for these cases, although this hypothesis excludes the employer's civil liability, it does not exclude the employee's right to Social Security benefits.

Although there is no legislation in force that addresses the exclusionary theme of civil

liability due to the sole fault of a third party and case law has not yet been pacified, when analyzing case law, it is possible to extract some guiding understandings on the subject:

With the foregoing, it can be concluded that in order to exclude civil liability and the employer's duty to indemnify for an accident at work or occupational disease resulting from the exclusive fault of third parties, it is necessary that this third party has no relation with the work of the employee-victim, that the risk that caused the accident has nothing to do with the activity and that the event is foreign to the apparent, unpredictable and unavoidable behavior of the agent.

Just as in the exclusion of liability due to the victim's sole fault, in the sole fault of a third party, the burden of proof also rests with the employer.

Finally, it is worth mentioning that, just as in the exclusive responsibility of the victim exclusion, in the exclusive cult of third parties, the duty to indemnify is excluded, but not the employee's social security rights.

THE CORONAVIRUS PANDEMIC

Rosana Corrêa, in her work "CORPORATE SOCIAL RESPONSIBILITY: an analysis of a group in the sugar and alcohol sector in the State of São Paulo", published in 2008, understands that a company's corporate social responsibility is any action that intends to improve the quality of life of employees. It starts from the premise that the greater the company's profit, the more it must invest in benefits for its workers.

The entrepreneur, from the foundation of the company, assumes the risks of the quality of its services or products, provided or delivered, even in the face of competitors, needing to be especially concerned with whether the work environment is safe, healthy and, of course, legal; considering that the company's performance reflects on its image in society.

In the "PANDEMIC" context, companies, in addition to having to maintain employment contracts and other labor guarantees, needed to demonstrate a commitment to internal and external workers, guaranteeing health in the workplace, and ensuring conditions so that activities could be developed with security. And of course, above all, maintaining the company's economic stability.

Provisional Measure No. 927 of March 22, 2020 (https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/mpv/mpv927.htm), provided that cases of contamination by the Coronavirus would not would be considered occupational diseases (with the exception of proving a causal link), therefore, it is the responsibility of the employer to implement and control measures to prevent contamination of the virus in the company, monitoring compliance with the rules imposed in order to minimize the risks of proliferation among employees.

It must be noted that the employee also has the obligation to comply with all measures provided by both the company and the legislation, under penalty of being punished.

That said, by Law 13.979/2020 (https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/l13979.htm), companies are required to comply with measures such as isolation, quarantine, mandatory in some cases, and the mandatory use of specific PPE for each case.

It is understood that the employer needed (and needs, in cases of a pandemic) to give preference (when possible) to remote work, especially for workers who fall into risk groups, and in addition, organize the work process.

Thus, whenever possible, the employer must give preference to remote work, especially for employees who make up the risk group; organize the work process to increase the distance between people and reduce the

required workforce; warn managers of service provision contracts, when outsourced services are provided, regarding the responsibility of the contracted company to adopt all the necessary means to raise awareness and prevent its workers about the risks of contagion; and also notify the contracting company when there is a diagnosis of worker contamination.

The emergency situation increases the entrepreneur's responsibility to guarantee a healthy work environment, providing the necessary conditions for the continuity of activities, as well as supervising compliance with the measures. It also calls into question the company's social commitment to act with care and responsibility in relation to the various publics with which it relates.

The entrepreneur's action must be in the sense of inhibiting exposure to risks, rather than repairing the damage, although he is also subject to repair, if this occurs. Attention must be focused, first and foremost, on the health and lives of employees

CONCLUSION

As is known, the COVID-19 pandemic is a global public health problem, so that the whole of society is exposed, and anyone can be acting as a contamination vector, since they can remain asymptomatic for a certain period.

Despite this, it is understood that, considering what is already known about the disease and the need to act to prevent damage, even in relation to aspects that have not yet been proven, the pandemic has increased the responsibility of the employer to make available the equipment for protection and demand compliance, keeping employees and other collaborators informed about any changes that may pose a risk.

It represents an employer's duty and also a new challenge with regard to the company's socio-environmental responsibility, which must turn its attention to aspects far beyond the increase in production and profit, in the sense of guaranteeing the well-being of internal, external and external collaborators. society in general. At this time, ensuring the health of the work environment has a direct impact on the quality of life of everyone who has a relationship with the company, thus contributing to the preservation of human dignity.

A specification of this study was the civil liability of the employer for considering the coronavirus as an occupational disease and how the proof of the causal link occurs, leaving the employer to expose the burden of proof. Likewise, it was explained that in the event of contamination in the company by the exercise of work activity, we will have subjective or objective responsibility, and, from the confirmation by the worker that the transmission by COVID-19 occurred from of work, or even as a result of it, makes it possible for the employer to be liable for any damages to the employee. However, as a rule, it will be subjective responsibility, and, only in the case of risky activities, responsibility becomes objective.

The survey warns of the fact that cases of workers with psychiatric illnesses may occur and intensify due to the pandemic, as many people seek health services claiming to have some of the symptoms of COVID-19, such as shortness of breath and tiredness, but they are actually symptoms of an anxiety disorder, thus reflecting the symptoms of being anxious and sleepless, as well as being sick due to the excess of information that generates excessive and unjustified concern, raising anxiety levels and generating mental disorders. Currently, telecommuting and home offices are carried out by about 13.3% of the economically active population in the country, equivalent to 8.7 million workers, which can also configure the number of workers who may have illnesses or mental disorders caused by the effects of the COVID-19 pandemic.

REFERENCES

BRASIL. (Constituição, 1988). *Constituição da República Federativa do Brasil*, de 5 de outubro de 1988. Brasília, DF, 05 out. 1988.

CASTRO, Carlos Alberto Pereira de; LAZZARI, João Batista. Manual de direito previdenciário. 15. ed. Rio de Janeiro: Gen, 2013.

CAVALIERI FILHO, Sergio. *Programa de responsabilidade civil*. 10. ed. São Paulo. Atlas, 2012.

CORRÊA, Rosana P. *RESPONSABILIDADE SOCIAL CORPORATIVA*: uma análise em um grupo do setor sucroalcooleiro do Estado de São Paulo. Americana: Unisal, 2008.

DINIZ, Maria Helena. *Curso de direito civil brasileiro*: volume 7: responsabilidade civil. 26. ed. São Paulo: Saraiva, 2012.

DELGADO, Maurício Godinho. *Curso de Direito do Trabalho.* São Paulo: LTR, 2003, p. 67

DIAS, José de Aguiar. *Da Responsabilidade Civil.* 11. ed., ver., atual. e amp. apud Rui Berford Dias, Rio de Janeiro: Renovar, 2006.

GONÇALVES, Carlos Roberto. *Responsabilidade Civil*. 8. ed. São Paulo: Saraiva, 2003.

GAGLIANO, Pablo Stolze; PAMPLONA FILHO, Rodolfo. *Novo curso de direito civil:* responsabilidade civil. 10. ed. v. 3. São Paulo: Saraiva, 2012.

PEREIRA, Caio Mário da Silva. *Responsabilidade Civil.* 9ª ed. Rio de Janeiro: Forense, 2001

ROMITA, Arion Sayão. *Direitos fundamentais nas relações de trabalho*, p. 383, *apud* MINARDI, Fabio Freitas. *Meio ambiente do trabalho: proteção jurídica à saúde mental*, p. 39

ROCHA, Julio Cesar de Sá da. Direito ambiental do trabalho: reflexo da contemporaneidade. *Revista de Direito Sanitário*, v. 3, n. 1, p. 118-133, 19 mar. 2002.

STOCO, Rui. Tratado de responsabilidade civil. 6. ed. São Paulo: *Revista dos Tribunais*, 2004.

SAMPAIO, Rogério Marrone de Castro. *Direito civil:* responsabilidade civil. 3. ed. São Paulo: Atlas, 2003.

VENOSA, Sílvio de Salvo. *Direito civil, responsabilidade civil.* 14. ed. v. 4. São Paulo: Atlas, 2012.