

Review Article

Open Access

Implications on Fundamental Labor Reform During the COVID 19 Pandemic

Tricia Bogossian

Specialist, Santa Úrsula University in Rio de Janeiro-RJ, Brazil

SUMMARY

The objective was to analyze, through a bibliographical review, the implications of labor reform on fundamental law during the Covid 19 pandemic. The legal circle did not remain silent, and technical arguments were formed in several articles by renowned Brazilian jurists. Therefore, this article generally tries to bring the legal impact of the tragic and unfortunate scenarios brought about by COVID-19 and their impact on society to contemporary reality from a legal perspective. The type of study is a systematic review, research of the type has the primary objective of exposing the attributes of a given phenomenon or statement among its variables. Thus, it is recommended that it presents characteristics such as: analyzing the atmosphere as a direct source of data and the researcher as a switch instrument; not to broker the use of statistical artifices and methods, having as a greater apprehension the interpretation of phenomena and the imputation of results, the method should be the main focus for the approach and not the result or the fruit, the appreciation of the data should be achieved from intuitively and inductively through the searcher.

*Corresponding author

Tricia Bogossian, Specialist, Santa Úrsula University in Rio de Janeiro-RJ, Brazil. E-mail: tricia.bogossian@hotmail.com

Received: December 03, 2021; **Accepted:** December 11, 2021; **Published:** December 15, 2021

Keywords: Fundamental law; Labor reform; Covid-19.

Introduction

The COVID-19 pandemic (viral infection caused by the new SARS-CoV-2 coronavirus) affects the most diverse areas of society, especially in the areas of health and economics, and has generated legal issues in unimaginable global proportions. to discuss. For example, in Brazil, the legal debate on how the epidemic is directly reflected in contracts and labor relations has become heated[1].

The legal circle did not remain silent, and technical arguments were formed in several articles by renowned Brazilian jurists. Therefore, this article generally tries to bring the legal impact of the tragic and unfortunate scenarios brought by COVID-19 and its impact on society to the contemporary reality from a legal perspective. due to the new crown virus, even if unilateral, it totally loses the practicality of the document, and it has always been one of the most discussed issues in the field of civil law[2].

In order to respect the social function of the contract (see Articles 421 and 2035 of the Civil Code of 2002, sole paragraphs) and the balance of interests of all parties, the case-by-case analysis seems more decisive and rational (Law 13.874 / 2019, Economic Freedom Law, art. 2) Because contractual alterations may prove to be economically more interesting than the extinction of litigation. Therefore, if possible, for example, rescheduling airline tickets and rescheduling hotel accommodation reservations seem like good choices[3].

After that, Oliveira (2020) reported that there are many contracts that are completely useless for at least one of the parties. In addition,

some activities were canceled, making travel unavailable, leading to a slowdown in the economy. Therefore, the aforementioned made the following question:

“Can a party that loses interest in the object of the contract due to the stormy environment caused by the coronavirus or does not need agreement or modification of the contract” And he immediately replied that yes, there may be a resolution or amendment of the contract “unless there are terms very specific contracts to the contrary, or if it is a random contract that contains the misfortune of the pandemic covered by alea”.

In general, it is succinctly emphasized that the lawyer must be guided by the interpretation of the terms of the contract and by the gaps that may arise with the pandemic, not forgetting to consider the rationality and preference of applicability. Protect business laws so that neither party will bear unfair losses[4]. The objective was to analyze, through a literature review, the implications of labor reform during the Covid 19 pandemic on fundamental law.

Methodology

The type of study is a systematic review, research of this type has the primary objective of exposing the attributes of a given phenomenon or statement among its variables[5]. Thus, it is recommended that it presents characteristics such as: analyzing the atmosphere as a direct source of data and the researcher as a switch instrument; not to broker the use of statistical artifices and methods, having as a greater apprehension the interpretation of phenomena and the imputation of results, the method should be the main focus for the approach and not the result or the fruit, the appreciation of the data should be achieved from intuitively and inductively through the researcher[5].

As for the approach of the study, taking into account the defined objectives, the adoption of a qualitative methodology was considered more appropriate. According to Gil it shows that several studies which thus employ a qualitative methodology “[...] can describe the complexity of a given problem, analyze the interaction of certain variables, understand and classify dynamic processes experienced by social groups.”

Results

REFERENCES	OBJECTIVES	METHODOLOGY	RESULTS
OLIVEIRA, Carlos Eduardo Elias de. CORONAVÍRUS, EARLY BREAKDOWN OF CONTRACTS AND CONTRACT REVIEW: THE TEST OF PRESUMED WILL. 2020.	In this issue, it refers not only to contracts made with consumers (such as travel contracts), but also to contracts not governed by the Consumer Protection Code (CDC).	Literature review	The response to our notice is yes, unless there is a very specific contractual clause to the contrary or if it is a random contract that has the mishaps of a pandemic as covered by the alea.
SOUZA, Eduardo Nunes de; SILVA, Rodrigo da Guia. Contractual resolution in the times of the new coronavirus. 2020.	The announcements by the World Health Organization (WHO) regarding the Public Health Emergency contributed to the wide awareness of the seriousness of the circumstances.	Literature review	Particularly in contractual matters, it must also inquire whether the circumstances surrounding the dissemination of COVID-19, undoubtedly alarming, effectively compromised the original balance of interests of each contract specifically considered. Strictly speaking, this will be, still and always, the guiding criterion, whether of the authorizing institutes of the contractual resolution, or of any revisional requests
MARCHI, Caroline; BIANCALANA, Fernanda Jimenez. IMPLICATIONS OF THE ANTICIPATION OF HOLIDAYS PROVIDED FOR IN MP 927/20. 2020.	This article aims to contextualize the application of Law with two major areas of Private Law, contractual and labor relations, directly affected by the pandemic.	Literature review	Without intending to exhaust the subject, but with the objective of shed light to elucidate possible questions regarding private relations, the next lines try, in a didactic way, to contextualize the reader with some of the challenges encountered by the operationalization of the law against COVID- 19.
WAHLE, José Carlos. Labor Issues: Recurring issues in the labor area include: prevention and containment, provisional measure 927/2020, travel, limits on directive power, reaction and privacy. 2020.	The general objective of the work is to analyze the impacts on the Brazilian labor scenario in relation to the COVID 19 pandemic.	Literature review	It can be seen through the results obtained by this research, that telework appears as a flexible work modality, with an increase in the quality of life for its users and with greater productivity results for companies, making it possible, in light of the scenarios of globalized markets, can be a very prosperous alternative for both parties in the employment relationship.
MASSEI, Andrea Giamondo; MARCHI, Caroline; TAKANO, Rodrigo Seizo. MP 936: NEW LABOR MEASURES TO FACE THE CRISIS CAUSED BY COVID-19. 2020.	The objective is to enable the maintenance of economic activity and jobs, without further harming workers' income.	Literature review	On April 1st, the federal government published Provisional Measure No. 936/20, with new rules and conditions for the proportional reduction of the working hours and wages of employees and for the temporary suspension of employment contracts, as alternatives to face the crisis caused by the covid-19 pandemic.
MENDES, Luis; GUIDI, Mauritius; ROOSTER, Thais; BIRTH, Rennan Gil Alvez. COVID-19 and its legal impacts in Brazil. 2020	This article aims to contextualize the application of Law with two major areas of Private Law, contractual and labor relations, directly affected by the pandemic.	Literature review	Without intending to exhaust the subject, but with the objective of shed light to elucidate possible questions regarding private relations, the next lines try, in a didactic way, to contextualize the reader with some of the challenges encountered by the operationalization of the law against COVID- 19.

Source: Elaborated by the author (2021).

Discussion

Provisional Measures (MPV) 927/2020 were issued on March 22, 2020, and stipulate labor measures to address the state of public calamity confirmed by Legislative Decree No. 6 of March 20, 2020 and have international importance for the following reasons: public health emergency coronavirus (COVID-19) and other measures[1].

It is noteworthy that the MPV in question recognized the hypothesis of force majeure, as stipulated in art. CLT's 501. Among the most suspicious measures of the working class and employers, in a

non-exhaustive list, are the granting of vacations (individual and collective) and the transformation of the presential work regime into other forms, such as remote, telework or “home office “ are expected. In short, this article will discuss the changes in the labor sector caused by MPV 927/2020 through legal bases and case-by-case explanations, which have raised practical doubts[2].

In addition, on April 1, 2020, MPV 936/2020 issued by the federal government launched the “Emergency Employment and Income Maintenance Plan” and provided complementary labor measures to respond to international public disasters and public health

emergencies. Because of the importance of the coronavirus. It is necessary to pay attention to some aspects that will be presented below[3].

In order to maintain the employment relationship and minimize the economic impact for the country in the event of a public disaster, the federal government issued MPV 927/2020, allowing employers to grant workers personal or group vacations in advance[4].

When analyzing the pros and cons in the economic, labor and health areas, the fact that population accumulation has been significantly reduced and the number of infected people can be avoided as a positive point, and legal rights can be included as a measure to avoid unfair dismissal; on the other hand, under negative bias, the workforce is significantly reduced, which can even cause a certain department to stop working, and due to the expectation of demand for money, it will also cause the employer's cash flow to be financially unbalanced. For those who want to take a vacation[6].

From a legal point of view and when the conditions of force majeure are established, there are no foreseeable damages to the parties, as the basic rights of annual leave still remain, and the statutory rights of the employer in the private sector, including the reduction of bureaucratic payment procedures and time savings[1]. Finally, it should be noted that employers can unilaterally approve individual leave (article 134, CLT c / c article 6 MPV 927/2020), and collective leave must be communicated at least forty-eight hours in advance, specifying the employee in writing or electronically.

The vacation period (Article 6 of MPV 927/2020) and collective vacations, during the period of the MPV, are exempt from prior notification by the employer to the local bodies of the Ministry of Economy (Article 12 of MPV 927/2020)[7].

Last but not least, it is important to mention that workers belonging to the Coronavirus Risk Group (COVID-19) will have priority to take individual or group vacations (article 6, no. 3, MPV 927/2020). The name "home office" is used for work performed remotely, occasionally remotely and usually at the employee's own home, but appointments are required. As Wahle (2020) explained, working from home ("home office") is not telecommuting; is an alternative, and the former will not change the plan, but MPV 927 (Article 4, paragraph 1) is in a state of emergency. Both were treated equally during this period[2].

According to the World Health Organization (WHO) and the Ministry of Health in Brazil, with the dissemination of COVID-19 and the need for social isolation, this type of work became the protection of the work relationship and the health of workers, employers and the entire work environment. However, as it is not a common way of working in the daily lives of Brazilians, many questions have arisen. To clarify this issue, it is necessary to understand some instructions[7].

In advance, it is important that the worker agrees with the "home office" policy suggested by the employer and signs an annex to the employment contract that contains the rules for this type of work in accordance with the provisions of article 11. 75-A etc. . CLT. For example, to align the employer's interests with the functions performed remotely by the employees, it is recommended to align the tasks to be performed, the schedule and the delivery guidelines. In addition, any reimbursement of expenses incurred

by employees will be stipulated in a written contract, signed in advance or within 30 days, calculated from the date of the change in the work regime, as stipulated in article 1. MPV 927/2020 Section 4 Section 3[6].

Finally, both parties know that the art content is healthy. 4, § 4, I of MPV 927/2020, it should be known that if the worker does not provide the technical equipment and the necessary and sufficient infrastructure for remote work, remote work or remote work, the employer may provide the loan equipment system and pay the service costs of base facilities, this will not be a feature of salary budgets[6].

In other words, you can see MPV 927/2020 trying to give flexibility to workers and employers to protect the employment relationship and, more importantly, fight the pandemic and protect lives. The regulations of the President of the Republic are applicable in the event of a public catastrophe, with the clear objective of maintaining employment and income, continuing work and business and reducing the social impact caused by the consequences of the catastrophe[7].

Public health disaster emergencies (Article 1, I, II and III of MPV 936/2020). The administration adopted three interventionist and protectionist measures: payment of emergency benefits to preserve employment and income (article 3, no. 1) and proportional reduction of working hours and wages (article 3, no. 2)) and Temporary suspension of the employment contract (Article 3, item III). However, the only passage of art. 3 Restrict such measures so that they do not apply to direct and indirect public administration bodies, joint stock companies and government-controlled companies, including their subsidiaries, and international organizations at the federal, state, federal district and municipal levels [6].

It is important to note that the Ministry of Economy is responsible for coordinating, implementing, monitoring and evaluating the plan, as well as possible versions of additional specifications that may be required during the implementation process (Article 4). Initially, the answer was yes. Both employers and employees must understand how this happens[6].

With a 25% reduction in wages and working hours, the employer starts to receive an emergency subsidy equivalent to 25% of the unemployment insurance amount, which can be negotiated by both parties independently, without considering the wages to be paid . If the salary and working hours are reduced by 50%, the benefit amount will be 50% of the unemployment insurance amount, but only employees with a salary equal to or less than R\$ 3,135.00 or who have a university degree with salary higher than 12,202.12 reais. The same conditions mentioned in item B for the possibility of personal agreement apply to 70% of the reduction in wages and working hours, and the benefits are equivalent to 70% of the unemployment insurance amount [7].

If the amount received by the employee is between BRL 3,135.01 and BRL 12,202.11, the reduction of more than 25% can only be made after prior negotiation by the union. Furthermore, as long as there is collective bargaining, employers have the right to adjust the percentage of deductions beyond those specified and to meet the emergency benefit payment percentage specified in the relevant rules. This is the wisdom of articles 7, 8 and 9 c / c of art. 11 and 12 of MPV 936/2020. To avoid doubts about the content of the suspension, Massei, Marchi and Takano (2020) explained

that this suspension includes individual or collective adjustments by the employer to the suspension of the employment contract, up to 30% of the employee's salary. Salaries and emergency employment benefits and income security provided by the federal government[6].

Conclusion

The year 2020 already has a place in the history books. Along with the Black Death (14th century) and the Spanish flu (20th century), COVID-19 (2nd century) now joins the list of tragic events that have cost hundreds of thousands of lives in modern human history. However, considering that the fight against the pandemic is global and the combination of medical advances and correct prevention information has saved many lives, the use of scientific knowledge and technology has never been as beneficial to humanity as it is now.

In this context, the law as a prominent social tool focuses on social problems caused by interference in interpersonal relationships due to the coronavirus pandemic. For example, contracts, consumers and labor relations undergo sudden changes in a few days or weeks, and society uses legal knowledge to protect its interests.

Frustrated consumer relations, interpretation of contractual amendments and implementation of alternative forms of work, and the possibility of reducing working hours and wages are some of the many cases of legal-scientific interpretation in order to provide legal protection without compromising human dignity. thing is to protect the most precious wealth: life.

References

1. MARCHI Caroline, BIANCALANA, Fernanda Jimenez(2020) IMPLICATIONS OF THE ANTICIPATION OF HOLIDAYS PROVIDED FOR IN MP 927/20.
2. MASSEI(2020) Andrea Giamondo; MARCHI, Caroline; TAKANO, Rodrigo Seizo. MP 936: NEW LABOR MEASURES TO FACE THE CRISIS CAUSED BY COVID-19.
3. MENDES Luis, GUIDI Mauritius, ROOSTER Thais, BIRTH, Rennan Gil Alvez(2020) COVID-19 and its legal impacts in Brazil.
4. OLIVEIRA Carlos Eduardo Elias de(2020) CORONAVÍRUS, EARLY BREAKDOWN OF CONTRACTS AND CONTRACT REVIEW: THE TEST OF PRESUMED WILL.
5. GIL AC(2018) How to design research projects. 5. ed. São Paulo: Atlas.
6. SOUZA Eduardo Nunes de, SILVA Rodrigo da Guia(2020) Contractual resolution in the times of the new coronavirus. 2020.
7. WAHLE, José Carlos(2020) Labor Issues: Recurring issues in the labor area include: prevention and containment, provisional measure 927/2020, travel, limits on directive power, reaction and privacy.

Copyright: ©2021 Tricia Bogossian. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.