

Teletravel in Labor Reform

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ABSTRACT

The present study aims to discuss the requirements that characterize teleworking with the advent of Labor Reform. Thus, it seeks to understand general aspects inherent to this new form of work organization, such as concept, characteristics and modalities. To carry out this research, as a methodology, we opted for a literature review on doctrines, legislation and jurisprudence that deal with the topic under analysis. It was seen that teleworking has advantages and disadvantages for the worker, for companies and for society. Everything indicates that, if the sense of teleworking is not distorted and, if implemented with due care and minimum observance of the recommended standards, this type of work tends to prove beneficial for the members of the employment relationship and to positively impact employment. society. However, the theme demands a more in-depth study, in view of the existence of a large field to raise judicial questions, especially with regard to the teleworking workday. The real effects, benefits and damages to the rights and health of the worker, only time can reveal.

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Introduction

Teleworking was conceived mainly as a response to the need for flexibility and decentralization of the production process to meet the demands of the new market and the information economy, as well as due to the technological facilities characteristic of the information society paradigm. When it comes to work done at a distance, through the use of information and communication technologies, this form of work organization allows for flexible working hours and places to exercise work activities.

The indicated flexibility can represent an advantage for the worker, guaranteeing him total autonomy to self-determine the exercise of work-related tasks, being able to adapt the workday to his biorhythm and to his own convenience. Paradoxically, however, it may imply the impossibility of gauging the time actually worked and of establishing a separation between working time and rest time, which can cause the worker to be subjected to exhaustive hours, extirpating his free time. to compose himself and to perform activities not related to work.

The changes resulting from the Information Technology Revolution gave rise to a new social paradigm: the information society paradigm. Among the main impacts caused by such changes, it is noted the transformation of the economy and the market, which, consequently, impacted the form of organization and the production processes related to companies and work. Teleworking was conceived in the middle of this period of history, aiming to meet the demands of the new market. The present study aims to discuss the requirements that characterize teleworking with the advent of Labor Reform. Thus, it seeks to understand general

aspects inherent to this new form of work organization, such as concept, characteristics and modalities.

The Informational Economy: The New Market and the Company's Reorganization

The diffusion of information processing and storage technology allowed connection between computers without spatial limitation. In addition to modifying the conceptions of space and time, they generated effects on the economy [1].

As for the effects of computerization, automation and globalization on the economy, Alexandre Belmonte emphasizes the increase in productive capacity and the respective reduction in the cost of this production; the decrease in prices for services and products, an increase in the circulation of capital; the minimization, or elimination of space boundaries; the weakening of the National State in the face of multinational and transnational companies, as well as the difficulty in implementing social rights [2].

Benkler attributes the origin of the system he calls the Networked Information Economy to two movements [3]. First, the emergence of an economy centered on information (financial services, accounting, software and science), cultural production (films and music) emanulation of symbols. And, second, the move to a communication environment developed on low cost and high computational capacity processors, interconnected to a network (internet).

This low-cost communication and the development of technologies and information processing enabled individuals to create and exchange information, knowledge and culture in a cooperative, reciprocal and shared way. In this way, non-proprietary production models become more attractive and effective. The possibility

of developing sustainable collaborations and commons-based resource sharing, unlike traditional property-based arrangements. This led to the decentralization of production and the development of new creations, as well as commons based peer production [4].

The networked informational economy emerged from the rupture of the high-cost barrier characteristic of the organization of the production of the industrial model. The production of information and its transmission required high financial investment with equipment, such as a mechanical printer or a transmission station, for example. The development of new technologies, as well as their consequent lower prices, made this production accessible to all [5].

Therefore, an informational, global and networked economy emerged. The term informational refers to the fact that competitiveness, in this new scenario, results directly from the ability to generate, process and apply information based on knowledge. Global designates a globalized economy, that is, whose organization of the productive, consumption and distribution sectors takes place through a network of economic actors on a global scale. In a network, because it refers to the global network of interaction between business networks, which generates productivity and competition [6].

More about this source text Source text required for additional translation information the economy becomes even more virtualized or deterritorialized due to the use of online databases and other computer tools. There is talk of becoming “even more”, because, as we know, the finance sector is “one of the most characteristic activities of the virtualization scale”. This is because the currency itself, which is the base of the financial sector, is a virtual object in itself, facilitating exchange at the expense of more concrete goods, as was the case with land or services that were used as “exchange currency” [7].

The insertion of technologies enabled instant communication, without geographical limitations, of markets, finances and production chains, resulting in this trend in the globalization of the economy. François Chesnais points out two movements that, together, caused the so-called globalization [8]. The first would be “the longest period of uninterrupted accumulation of capital that capitalism has known since 1914”; and the second, setrataria of the “policies of liberalization, privatization, deregulation and dismantling of social and democratic conquests”.

This globalization or globalization results from the absence of geographical limits. In this sense, Manuel Castells highlights that this expansion of the scope of the economy did not happen exclusively due to the new technologies, but, rather, of a set of these with a new way of organization. One of these organizational factors stems from the specialization of the territories, which caused the reduction of the production arena and the increase of the respective area. In other words, there is a decrease in the space allocated to the right production process and the respective increase in the space allocated to other instances of production, circulation, distribution and consumption [9].

The specialization of the territories caused the separation, by geographical area, of production, implying concentration of the productive process of a certain item in a place where its production is more advantageous. This advantage is measured not only by the availability of natural resources, on the contrary, it occurs more due to technical and social criteria, than environmental ones. Therefore, there was a need for exchange, or “expansion of the area”, with the aim of circulating the objects of the production process [10].

The decentralization of the production process means that its stages can take place in a different location, in a dissociated and autonomous way. The need to “expand the area”, therefore, is nothing more than the need for complementation or cooperation between the different places, causing productive circuits and exchange flows [11].

The new economy is marked by a high degree of internationalization, with a globalization of products, money, credit, debt, consumption and information. There is, therefore, a homogenization, the search for a unique pattern. In this sense, Milton Santos highlights the idea of “added value” at a global level [12]. This “added value” would be made possible by unified production and by the action of large organizations that, due to competitiveness, seek to improve their own capacity to innovate and produce, as a means of obtaining greater profit. In this way, “At every moment, the greatest asset is always seeking to surpass itself”.

A notable impact of new technologies and the globalized economy was the unification of the productive technique. Technical systems were local or regional, diversified around the globe. Although they could be similar, they were usually not similar at the same time (contemporaries), still less interdependent on each other. In the new paradigm, however, it appears that the technical systems are, in general, the same around the globe. This uniqueness is due to the globalization of the impulses that receive technical processes [13].

The technical uniqueness, therefore, stems from the fact that “current techniques form a system on a globe scale, each place housing fragments or interdependent pieces” [14]. Thus, although the different places may present different degrees of presence and complexity, they participate in the same global technique.

Cyberspace has given rise to an online market, which is not limited to geographical borders and whose roles of the consumer, the producer and the intermediary have substantially changed. The ease of access and the diversity of offers presented to consumers endow the new market with greater transparency vis-à-vis the classic market. This differentiation results in a differentiated and personalized market, which allows producers to adapt, in real time, to the evolutions and varieties of demanded consumers [15].

Thus, there is a gradual advance of a global financial market that, operated through computer networks, has different rules for capital investment and for the valuation of stocks and bonds in general. Pierre Lévy shows that, in this cyberspace, the movements of our attention guide everything, since the passages and returns to electronic sites and the movements of clicking on the mouse are factors that define marketing, which, in turn, determines the paths that must be followed by production [16].

Therefore, there is no need for consumers to effectively buy to determine the specifics of demand and guide production and the economy, since More about this source text Source text required for additional translation information the simple directing of consumers’ attention to a certain good or service is sufficient for this purpose.

The systems that we access on the internet have algorithms with the ability to capture and systematize data. Thus, they are able to capture information about personal preferences, relationships, careers, habits etc., systematizing them in profiles and, consequently, getting to know people and their predictions [17]. As a consequence, I followed that having a larger database has the possibility to obtain accurate predictions and, potentially,

it will monopolize the market.

In other words, “every moment of personal awareness contributes to driving the world market”. This is due to the fact that virtuality reacts faster than reality to the displacement of people’s attention, which starts to command the organization in the physical world, making the informational economy an “economy of attention” or “economy of consciousness” [18].

Production needed to be remodeled to meet an extremely diverse, dynamic and globalized demand. The mass production model, characterized by automation and standardized production on assembly lines, was abandoned, giving way to the flexible production model, which was developed to overcome the rigidity of the previous model and meet the demands of the new market, through adaptation to its continuous transformation [19].

The internet and other technologies have transformed business practice, “in its relationship with suppliers and buyers, in its management, in its production process and in its cooperation with other firms, in its financing and in the valuation of shares in financial markets”. In this context, the electronic company originated, understood as a company whose place of carrying out the key operations related to administration, financing, production, distribution, sales, among others, is predominantly the Internet [20].

This type of virtual business provides the company, due to its five characteristics, “an ability to develop organically with innovation, production systems and market demand, while maintaining attention focused on the ultimate goal of any business: making money” [21]. First, therefore, there is the scalability, which refers to the possibility of including as many components as desired on a global or local scale, which can be reduced or expanded without additional cost, because the production system can be easily redefined.

Second, there is interactivity, which enables contact, in real time, between the company and its suppliers, employees or consumers. The third characteristic refers to the administration of flexibility, that is, the possibility of maintaining control of activities while expanding its scope and diversifying its composition, as needed [22].

The use of a brand is another possibility, which is notoriously important, since it is “a symbol of recognized capacity to create value” in a universe where business projects are the result of a multilateral effort. Finally, customization, which is intended to meet an individualized and diversified market demand, adapting production to the consumer’s will [23].

The electronic or virtual company, as opposed to the traditional company, tends to replace the physical presence of employees, at specific times, to insert them in a network of electronic communication networks and instruments and programs that make this relationship possible. In this way, the productive center ceases to be a physical space to be an organization process, and its geographical location cannot be specified, whose importance remains in the context, with its nomadic and dispersed elements [24].

This new configuration of the company, therefore, aims to meet an extremely diverse and unpredictable market demand, seeking to guarantee innovation and the achievement of the optimum production resulting from an accelerated, flexible, inexpensive

and planned production, thus emerging the need for intellectual work. able to forecast market demand and coordinate production in that direction [25].

The organization of companies has also become more flexible and specialized, taking the form of a network company, or a network company. This reformulation of the company can be understood as “a new way of organizing and managing these hierarchies, as well as maximizing the possibilities of ‘internalizing’ the ‘externalities’ (that is, the external advantages, in the sense of Alfred Marshall), provided by the functioning of the company. network” [26].

In order to adapt to the unpredictability of the market in the face of new technologies, networks become the fundamental component of organizations. The ability to expand geographically and the power to allow the circulation of information made possible by new technologies are characteristics of networks that represent a key factor for the functioning of a flexible and adaptable model [27].

Companies organized based on the principle of vertical integration and the social and technical division of labor, characteristics of Fordism, which sought to increase productivity through a mechanized process of standardized mass production, became obsolete in the face of the characteristics of the new economy [28].

The vertical company, whose work was organized hierarchically, could be represented by a pyramid - the highest positions representing the top, occupied by few people; and the lowest positions representing the base, occupied by a larger contingent of people. In the informational economy, however, the company does not present itself in this way, it could be represented as a brain, encompassing its synapses and neurons, or a three-dimensional network, disconnected from time and space [29].

Thus, the Information Society paradigm has given rise to a global, networked and informational economy, transforming the market into a more dynamic, diversified and transparent version. Consequently, an organizational restructuring of the companies was necessary in order to guarantee a faster and more flexible production.

Labor Reform: General Aspects

The year 2017 will certainly be a historic milestone in labor relations and worker protection. The Brazilian socio-economic and political reality drew a scenario in which the discussions about the flexibilization of labor rights and the transfer of State tutelage to the parties involved in these relations, as well as to the unions, took place quickly and outside democratic principles.

The labor reform in the form of Bill 38, of 2017, under the argument of creating jobs and making the country more competitive, had been approved “at a glance” thanks to “agreements” signed between the Chief Executive and representatives of the Power Legislative. Unfortunately, the dialogue with society and the working class was passed over under the pretext of “the urgent need to modernize labor legislation and create jobs” [30].

Thus, Law 13,467 / 2017, published in the Official Gazette of July 14, 2017, came into force on November 11, 2017, promoting changes in more than 100 articles of the CLT. Marked by a controversial legislative process, it has generated diverse and controversial understandings, regarding the injury to labor rights, precarious working relationships, weakening of unions and, why not say, deterioration of workers’ living and health conditions.

In turn, the period of *vacatio legis* remained insufficient for magistrates, indoctrinates, legal practitioners, associative entities, unions and even companies, to establish an understanding about its applicability and the constitutionality of the law [31].

Labor reform has an impact on labor relations and on the life of the worker as a whole. In general, Law 13.467 / 2017, brought about profound changes in labor relations, with impacts on workers' health, the consequences of which can be identified in a not too long time span. The lack of characterization of the workday as a norm for hygiene and safety at work can be considered one of the critical points and, why not say it, a great mistake in the reform [32].

Reflections of the Reform on Labor Rights

Despite all the changes brought about by the labor reform, it is possible to safely say that these collective bargaining principles were not affected by the amending law. The Reformation makes a decisive option in favor of private autonomy available in the caput of art. 611-A, introduced in the CLT, that the collectively negotiated will prevail over the law when dealing with the various themes that it has in its 15 items, in addition to pointing out that the list would be purely exemplary.

Although one can question the legislative technique of setting a purely exemplary role, consigning in the caput a much more open wording when referring to "among others", what is verified is that this device marks a decisive moment of passing through the predominance of the imperative from the rules of material labor law to a much more device bias, at least under the prism of collective bargaining [33].

After the labor reform, and especially combining both the provisions of art. 611-A, when also changing the criterion of the relationship between collective agreements and collective agreements, it is no longer possible to understand that this "dynamic" construction remains, in which the an interpreter would always be applying the norm that he deems most favorable to the specific case because the derogating character of the conventional norm is expressed in the CLT. And if that were not already extracted from the literalness of the caput, § 2 included in the same article makes this conclusion even more evident: not characterize an addiction to the legal business".

In this way, a form of flexibilization of labor rules is privileged, which can be both creators of rights far beyond legal provisions, but which can also be seen as harmful to the worker, depending on their content and the interpreter's evaluation, without this, however, it implies any illicit or invalidity of the negotiation. If, on the one hand, this change effectively breaks with a doctrinal and jurisprudential understanding that, although the majority, had been showing an increasing tendency to moderation and flexibility, on the other hand, it cannot be said that it is systematically anachronistic or valid in view of the consolidated normative structure [33].

What changes with the introduction of arts. 611-A and 611-B is the break-even point in this relationship. While, according to the prevailing interpretation until then, the balance leaned in favor of the heteronomous source, which conditioned the validity of the autonomous sources to the necessary implementation of superior "sectorial standards", and required that even in such cases the transaction focused only on portions of relative unavailability, the Reformation categorically expands which portions should be considered available, limiting in its art. 611-B which devices are

considered absolutely unavailable, thus establishing the device regime, in addition to removing the need for a necessarily more beneficial sectorization, not least because the interpretation and apprehension of what is precisely more beneficial cannot always be easily seen in any situation of scarcity of resources.

In this case, it is not a case of making a defense to an alleged "right to reduce rights", not least because this would be a narrow view of the very role that collective bargaining has played in Brazilian law. There are many labor rights that are routinely granted throughout the Brazilian territory, not due to legal imposition, but free negotiation between the parties: meal vouchers, basic food baskets, profit sharing, training and professional development courses, allowances, school and daycare costs, life insurance, health insurance, dental insurance, in addition to the various additions to legally constituted rights, such as additional charges higher than those provided for by law or recognition of rest days and holidays that are not considered *ex lege*.

What the Reformation notes at this point is that all of these rights and advantages do not exist in isolation or outside the real world and the economic limitations to which all subjects of law are subjected, and that not only the legal plaster, but as myopia of examining each right in a compartmentalized and isolated way from the whole in which it is inserted invariably translates into prejudice to economic activity, an obstacle to the development of the enterprise and its ability to respond and adapt to an economic and commercial environment, and, above all, that all these losses and limitations in no way turn into effective benefits for the workers involved. On the contrary, they fuel unemployment and the turnover of workers within the economic activity, since they encourage and practically impose the periodic need to extinguish old contractual relations and start new ones.

Employment relationships that are not burdened by contractual or conventional conditions that are supposed to be unalterable. Although in theory everything that is not expressly prohibited is allowed, in private relations, the reform legislator manifested, as seen in other provisions, a clear distrust in relation to the application of the changes promoted by the Judiciary Power, reason for which it has at times become redundant and sometimes with the clear intention of avoiding different interpretation.

Before the reform, the collective labor agreements and conventions, in addition to respecting the minimum level legally guaranteed, aimed at favoring the worker in the sense of granting benefits not provided for by law. Thus, the negotiated was subordinated to the legislature. Law 13.467 / 2017 reversed this understanding by establishing in its art. 611-A the prevalence of negotiation over legislation in matters related to working hours, hour bank, intra-day break, adherence to unemployment insurance, job and salary plan, company regulations, workers' representation, telework, on-call regime, intermittent work, remuneration for productivity, registration of working hours, exchange of holidays, classification of the degree of unhealthy work and extension of working hours in unhealthy environments, incentives and profit sharing. It is noted that the negotiations involve a range of factors that directly and indirectly interfere with the safety and health of the worker.

Although the new law has brought obstacles to the negotiation of some rights as provided for in art. 611-B, when the subject is negotiation, it is necessary to consider the socioeconomic and cultural conditions of Brazilian workers, aggravated in a scenario of political and economic crisis, which weakens the worker and generates insecurity of different orders [34]. In these conditions,

and taken by the fear of unemployment, the worker will be able to give up his dignity, becoming more individualistic and prone to “accept” to develop activities in conditions that are harmful to his health in order to remain employed. In other words, the worker’s greatest concern will tend to focus on maintaining employment and meeting basic conditions of subsistence, at the expense of structural political-economic issues that affect his life as a whole, compromising his negotiating conditions.

Teletraw

Telecommuting is just a different name for an old thing known as homework or, more appropriately, work at a distance. The term was already used in the 70s, because of the telegraph [35]. Teleworking began in the 1970s, when satellite offices were connected to central mainframes, using telephone lines. Little by little the costs were reduced, the performance and usability of personal computers increased and it was observed that many people moved their offices to their homes. In the early 1980s, it was possible for branches and domestic workers to connect to mainframes of organizations using individual computers and terminal emulators. Currently, teleworking has many other facilities, since there is a diversity of tools such as voice over IP (VOIP) technology, the possibility of holding videoconferences, private networks and virtual call centers and, especially, due to the better quality and substantial reduction in the cost of portable computers. This added efficiency to companies, as it made it possible for workers to communicate over long distances, generating time and cost savings, as it made it possible for the number of trips to be reduced. As Internet connections have become more popular and have improved quality, employees can use these tools and link their homes to the corporate intranet or internal telephone networks.

Toyotism, based on the idea of minimal waste and the figure of the multitasking worker, in contrast to the mass and concentrated production of Fordism, raised the inspiration of this model. The socioeconomic reality cannot be ignored. Telework should be understood as work carried out at home, at home office or anywhere office, outside the premises and the control of schedules by the employer, using the information and communication technologies as the method of execution.

Home work was provided for in the CLT, art. 6th, already for many decades. In a recent legislative change (Law 12.551 / 2011) the figure of distance work (not necessarily at home) was included, and an express provision was established that the telematic means of command, control and supervision do not detract from the typical subordination relationship of the contract of employment work for others (art. 6, single paragraph). It should be emphasized that legal subordination is not the same as control over the day or frequency of work.

Teleworking can be a great option for both subjects of the employment contract, comprising, on both sides, advantages with costs, economy, practicality and greater excellence in the results obtained, although notoriously losing the interoperability of the work team that usually learn and develop together, and in many cases, it is possible that the chances that the worker has of ascending professionally are reduced. However, for certain activities of more isolated, exclusive or mechanical work, the regime should be used more.

The most common form of teleworking is carried out at the employee’s home, but it can also be characterized by being located in remote telecenters of other business structures other than the employer. The worker can work connected (online) or

disconnected (off line), but the work will be associated with the use of information and communication technologies, used in the control and accountability of work, without any compromise of the concept of subordination (CLT, art. 6, single paragraph) [38].

The new Chapter created by the legislator (from article 75-A) may represent some more ostentatious incentive for the entrepreneur, but it is full of peculiarities that can cause many problems. The legal text is very bad, starting with art. 75-A when stating that the teleworking regime will observe the provisions of this Chapter, pointing out that there are other provisions equally applicable outside that same Chapter. The prediction that teleworking will be shaped by work “predominantly” outside the company’s facilities will torment the agenda of the Courts to define how the adjective will be decoded, generating many years with some legal uncertainty.

The legislator could have given a definite formula right away, say 60% of working time at a distance. Not only was it not clear about this, but he still preferred to make a confusion by implementing the idea that telecommuting would not be external work. This is a mistake, because as already mentioned in a note to art. 62, III, external work is what takes place outside of the employer’s assisted control, and not exactly outside the employer’s physical premises.

Although the legislator alluded to the “individual employment contract” (in the caput) and “mutual agreement” (in § 1), as an expression of agreed wills, he was unable to overcome the natural reality that the employment contract materializes a strong injunction of the will of those who hire, and recognized, already in § 2 of art. 75-C, that the employer can “determine” the transfer of distance work to face-to-face work. The wording of art. 75-C, § 2, expresses a clear legal impropriety, when affirming the employer’s unilateral will in transmuting the remote regime to the face-to-face, which would materialize as a “contractual addendum”.

For the prevalence of the will of only one of the parties, there is no mention of a contractual amendment, but a mere express order notification, with unilateral imposition. What was a contract and an agreement of wills of both parties collapses due to the employer’s unilateral will. The truth is that whoever hires is in demand for labor and, naturally, directs the conditions to the reality that will suit you. Despite this, it was clear that this hiring does not admit a collective labor contract, but an individual adjustment resolving, on a case-by-case basis, the singularities.

The formalities imposed on labor relations are, as a rule, lowered as a criterion for protecting workers, and thus need to be considered. Failure to comply with the legal formality requires that a solution be adopted for the benefit of whom the formality was instituted, not to their detriment. In the case of teleworking, the absence of a written contract instituting the system, prevents it from being recognized as such for all consequences that may harm the worker.

The requirements that characterize teleworking with the advent of Labor Reform

The fact that a certain worker provides services eventually at home or through information technology mechanisms alone is not enough to characterize a teleworker (for example, an employee who was on an occasional trip to work for the company).

The logic to the contrary is the same with respect to the worker who, although hired for telecommuting, eventually comes to the company to perform some specific activity that requires his personal presence in the company to perform some specific activity

that requires his personal presence.

The justification for the requirement to formalize the contract is that the conditions of this type of employment contract are effectively *sui generis* due to the rarer nature of subordination and the direction of the worker's activities by the employer.

There is no doubt that, from the point of view of characterizing the employment relationship, the fact that the work is carried out outside the employer's establishment does not constitute an impediment. In fact, this is the main characteristic of all external employees, and this has never been an impediment to characterizing the employment relationship in such cases.

Paragraph 1 of art. 75-C, in turn, establishing the possibility of changing the work regime through mutual agreement between the parties does not pose any major challenges. In this case, the modification of the regime can serve the interests of both parties, and there is no element that would allow considering that an agreement could imply a harmful change to the worker.

The modification brought by § 2° generates more controversy when it provides for a hypothesis for the exercise of the *ius postulandi* that directly affects the agreed labor contract. Notwithstanding, it is understood that the idea that this occurs due to the reflection of the employer's right to conduct his business and the fact that market circumstances may give rise to the need for employees to work in person and not remotely, even thus, there is a clear rupture of what was initially agreed with the worker, which is why the unilateral imposition of this modification, even if subject to a 15-day prior notice, should at least give the employee the opportunity to consider the employment contract terminated. work, without just cause, in view of the violation of the term agreed upon in the hiring.

Working hours control

It is also necessary to address the working day and the right to disconnect. Rest is essential for the worker's health, as it is during this period that the employee restores his psychophysical health. The increase in working hours, as well as the existence of constant contacts between workers and employers, during rest periods impair the worker's psychophysical restoration and, consequently, affect his health.

Thus, the right to disconnect is related to these fundamental rights, insofar as the limitation of working hours and the enjoyment of rest demonstrate, according to Oliveira, the greatest concern with the worker, or, better saying, with his physical and psychological safety. and with the restoration of your energies.

Excessive work, certainly, causes damage to the health and life of the worker, compromising the time that he would dedicate to rest, as well as carrying out activities of a nature not linked to work, such as social and family, for example. Christian Mañas points out, moreover, that work during specific periods of rest "contributes to the dissolution of society and the stability of the individual; it also has an impact on production, the economy, crime, etc. "

This concern with the effectiveness of the right to rest, which has always been latent, as has already been demonstrated, remained amplified due to the insertion of technologies in labor relations. The technologies enabled an extension of the work environment to the worker's home, making them permanently linked to interference, requests or contacts coming from the employer, be it an individual or even a business enterprise.

Therefore, the simple fact of having a mobile phone device can mean a permanent link with the work, since the teleworker is available, wherever he is, for the employer, either through calls, chat applications, or even from conventional email. Due to this extension of the working environment, the even more relevant discussion regarding the right to non-work, that is, the disconnection of the worker from the activities inherent to the work exercise, in moments of rest.

The issue regarding the right to disconnect, although it is directly related to technological advances, is not limited to these. Therefore, the right to disconnect must be considered, not only through the connection established between worker and work by means of technological instruments, but by any other means that prevents him from fully enjoying his right to rest.

A worker who stays at home, in the time allotted for his rest, preparing financial reports, projects or performing activities inherent to the exercise of labor, for example, has denied his right to disconnect even without being connected through technological devices.

Almeida and Colnago point out that the right to disconnect is intrinsically related to fundamental rights regarding health, hygiene and safety standards at work, combined with the right to have a limited working day, the right to rest, holidays, protection against illness and accidents employment and the right to privacy and privacy.

The worker who works exhaustive working hours is more susceptible to incur work-related accidents. Although occupational accidents have multiple causes, the worker's submission to long working hours seems to be one of the most relevant causes.

This happens, according to Dellagrave Neto, due to fatigue and occupational stress resulting from excessive work. There is even talk of burnout syndrome, a disease that results from the absence of obstacles to the connection established between employees and the company, a hypothesis in which they remain completely exhausted, without the energy to carry out any activities properly.

The right to adequate rest, therefore, has a direct impact on ensuring the health of the worker, as well as on the safety of the work environment, minimizing the risks inherent to it and ensuring an environment conducive to the regulation of the development of activities, without any commitment from the psychophysical health of the worker.

That said, the right to disconnect is also based on the right to mitigate risks related to work, through the adoption of health, hygiene and safety rules, since only with effective disconnection, the worker can obtain rest periods and, consequently, to recover from the fatigue resulting from work activities. In this way, both your health will be safeguarded and your safety will be guaranteed by reducing the possibility of work-related accidents resulting from tiredness.

Final Considerations

The internet remodeled the communicative process, practically eliminating geographical and temporal limitations, making globalized and instantaneous communication feasible. Essentially, it started to figure in the structural center of the economy, of social, political and cultural processes. In this context, a cyberculture emerged, marked by universality and digital technologies inserted

in people's daily lives and experiences.

Among the transformations inherent to this historical context, it can be highlighted, in addition, the general trend of virtualization - of the economy, of the organizations and of the work itself, which started to be carried out at a distance, through the technological instruments. This trend causes the detachment of ordinary geographical space and clock temporality, fundamentally modifying the conceptions of space and time.

The industrial economy gave way to the informational, global and networked economy. Productive activity needed to be restructured to meet market demand extremely diverse and dynamic, adopting more flexible forms and aiming at increasing production efficiency and decreasing the respective costs. As a result of the needs linked to the new market and the insertion of technologies in the production process, business practice was modified. The organization of companies, in this context, has turned to flexibilization and specialization of functions, as well as to the decentralization of the production process. The objective was to adapt production to the conditions of the information economy and make competitiveness feasible.

As a consequence, the work was also remodeled, observing the preponderance of the service sector and intellectual work, as well as a tendency to make work processes, hiring and remuneration more flexible. There was a reinterpretation of the place and time of work, with more flexible and adaptable working hours, and through the use of ICTs, it was possible to carry out work activities without the necessary physical presence of the worker in the work environment.

It was seen in this study that teleworking has advantages and disadvantages for the worker, for companies and for society. In general, it is observed that, if the sense of telework is not distorted and, if implemented with due care and minimum observance of the recommended standards, this type of work tends to be beneficial for the members of the working relationship and to have an impact positively to society.

As for the legal nature, it was observed that teleworking can be provided with daring subordination, on behalf of others or on their own. That is, it can be autonomous or subordinate. In order to qualify teleworkers as employees, it is necessary to assess, according to the specific case, the presence of the requirements that characterize the employment relationship mentioned above. Thus, if the existence of subordination, habituality, burden and personality is verified, the relationship between teleworker and employer must be recognized as a subordination relationship and, as a consequence, the teleworker will be entitled to the rights resulting from the employment relationship.

Until recently, the only legislative mention of telework in force in the Brazilian legal system until recently arises from Law No. 12,551, of December 15, 2011, which amended Article 6, of the Consolidation of Labor Laws. This device, which is deemed to be applicable to teleworking, equates, for the purposes of legal subordination, the thematic and computerized means of command, control and supervision, with the personal and direct means of command, control and supervision of work.

The recently approved labor reform brought some innovations in teleworking, excluding this category from the labor deduction regime provided for in the CLT, requiring the written modality of labor contract for the implementation of teleworking, expressing

guarantees regarding compliance with health and safety standards at work, among others.

From the above, it is concluded that for the framing of teleworkers as employees, it is necessary to assess, according to the specific case, the presence of the requirements that characterize the employment relationship mentioned above. The requirements for teleworking, of which teleworking is a kind, are the same as those required for work performed on the employer's premises, as extracted from the wording of the caput of article 6 of the CLT.

In addition to the requirements expressed in the law, other factors that characterize the employment relationship in the teleworking relationship, even though they are not essential for qualifying as an employment relationship. The first is the integration of teleworkers into the economic activity of the service provider, by performing tasks linked to the core activities of the company that play a vital role in achieving economic ends.

Another would be the ownership of the equipment that makes teleworking feasible - when belonging to the employer, they show the teleworker's character of economic dependence on the company; when belonging to the worker, they do not, by themselves, show a relationship of autonomy. In addition, liability for risks and costs of teleworking, such as purchase of equipment, maintenance, telephone bill, electricity, etc. can also be analyzed. In the same way as the ownership of the equipment, if they are the responsibility of the company, they show the subordination; however, if they are the worker's responsibility, they do not necessarily imply autonomy.

Finally, in view of the above, it is clear that the theme demands a more in-depth study, in view of the existence of a large field to raise judicial questions, especially with regard to working hours under the teleworking regime. The real effects, benefits and damages to the rights and health of the worker, only time can reveal.

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