



Implications on the fundamental right of labor reform during the COVID-19 pandemic

Implicaciones en el derecho fundamental de la reforma laboral durante la pandemia del COVID-19

Implicações no direito fundamental da reforma trabalhista durante a pandemia da COVID-19

Tricia Bogossian^{1*}

ORCID: 0000-0002-3580-3618

¹Universidade Santa Úrsula. Rio de Janeiro, Brazil.

*Corresponding author: E-mail: tricia.bogossian@hotmail.com

Abstract

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

Descriptors: Right to Health; Working Conditions; COVID-19; Working Environment; Nursing.

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Resumén

El objetivo fue analizar, a través de una revisión bibliográfica, las implicaciones para el derecho fundamental de la reforma laboral durante la pandemia del COVID-19. El círculo jurídico no se quedó callado, y los argumentos técnicos fueron formados en varios artículos de renombrados juristas brasileños. Por lo tanto, en general, este artículo intenta traer el impacto legal de los escenarios trágicos y lamentables provocados por el COVID-19 y su impacto en la sociedad a la realidad contemporánea desde una perspectiva legal. El tipo de estudio es una revisión sistemática, la investigación de este tipo tiene el objetivo primordial de exponer los atributos de un determinado fenómeno o afirmación entre sus variables. Así, se recomienda que presente características tales como: analizar la atmósfera como fuente directa de datos y el investigador como instrumento de conmutación; no utilizar dispositivos y métodos estadísticos, teniendo como mayor aprehensión la interpretación de los fenómenos y la imputación de resultados, el método debe ser el eje principal para el abordaje y no el resultado o el fruto, la apreciación de los datos debe lograrse en de forma intuitiva e inductiva a través del investigador.

Descriptor: Derecho a la Salud; Condiciones de Trabajo; COVID-19; Ambiente de Trabajo; Enfermería.

Resumo

O objetivo foi analisar, através de revisão bibliográfica, as implicações no direito fundamental da reforma trabalhista durante a pandemia da COVID-19. O círculo jurídico não se calou, e argumentos técnicos foram formados em diversos artigos de renomados juristas brasileiros. Portanto, este artigo geralmente tenta trazer o impacto jurídico dos cenários trágicos e infelizes trazidos pela COVID-19 e seu impacto na sociedade para a realidade contemporânea de uma perspectiva jurídica. O tipo do estudo é uma revisão sistemática, pesquisas do tipo tem o objetivo primordial à exposição dos atributos de determinado fenômeno ou afirmação entre suas variáveis. Assim, recomenda-se que apresente características do tipo: analisar a atmosfera como fonte direta dos dados e o pesquisador como um instrumento interruptor; não agenciar o uso de artifícios e métodos estatísticos, tendo como apreensão maior a interpretação de fenômenos e a imputação de resultados, o método deve ser o foco principal para a abordagem e não o resultado ou o fruto, a apreciação dos dados deve ser atingida de forma intuitiva e indutivamente através do pesquisador.

Descritores: Direito à Saúde; Condições de Trabalho; COVID-19; Ambiente de Trabalho; Enfermagem.

Introduction

The COVID-19 pandemic (viral infection caused by the new coronavirus SARS-CoV-2) affects the most diverse areas of society, especially in the areas of health and economy, and has generated legal issues in unimaginable global proportions to discuss. For example, in Brazil, the legal debate about how the epidemic is directly reflected in contracts and labor relations has become heated¹.

The legal circle was not silent, and technical arguments were formed in several articles by renowned Brazilian jurists. Therefore, this article generally attempts to bring the legal impact of the tragic and unfortunate scenarios brought about by COVID-19 and its impact on society to contemporary reality from a legal perspective. In the field of negotiation between individuals, the breach of contract caused by the serious damages caused by the new corona virus, even if unilateral, completely loses the practicality of the document, and has always been one of the most discussed subjects in the field of civil law².

To respect the social function of the contract, in accordance with Art. 421 and 2035 of the Civil Code of 2002, single paragraphs, the balance of interests of all parties, the case-by-case analysis seems more decisive and rational (Law No. 13.874/2019, Law of Economic Freedom, Art. 2). Because contractual amendments may prove to be economically more interesting than the extinction of litigation. So if possible, for example, rescheduling airline

tickets and rescheduling hotel accommodations seem like good choices³. After that, studies report that there are many contracts that are completely useless for at least one of the parties. In addition, some activities were cancelled, making travel unavailable, leading to a slowdown in the economy. In view of this, the aforementioned asked 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 immediately replied that yes, there can be a termination or amendment of the contract “unless there are contractual terms very specific otherwise, or if it is a random contract that contains the pandemic misfortune covered by *alea*”⁴.

In general, it is emphasized that the lawyer must be guided by the interpretation of the terms of the contract and 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 bears unfair losses. The objective was to analyze, through a bibliographic review, the implications for the fundamental right of labor reform during the COVID-19 pandemic⁴.

Methodology

The study type 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. Thus, it is recommended that it present characteristics such as: analyzing the atmosphere as a direct source of data and the researcher as a switching instrument; not to use statistical devices and methods, having as a greater apprehension the interpretation of phenomena and the imputation of results, the method must be the main focus for the approach and not the result or the fruit, the

appreciation of the data must be achieved in a intuitively and inductively through the researcher⁵.

As for the study approach, taking into account the defined objectives, the adoption of a qualitative methodology was considered more appropriate. 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”⁵.

Results

Chart 1. Demonstration of objectives, methodology and results of the studies raised by this literature review. Rio de Janeiro, RJ, Brazil, 2021

Objectives	Methodology	Results
In this matter, it refers not only to contracts made with consumers (such as travel contracts), but also to contracts not governed by the Consumer Protection Code.	Literature review	The answer, to our warning, is positive, 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 allegation.
Contributing to the widespread awareness of the seriousness of the circumstances were the World Health Organization's announcements regarding the Public Health Emergency.	Literature review	Particularly in contractual matters, it should also be investigated whether the undoubtedly alarming circumstances of the spread of COVID-19 effectively compromised the original balance of interests of each contract specifically considered.
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 the pretension of exhausting the subject, but with the objective of shedding light to elucidate possible questions regarding private relations, the next lines seek, in a didactic way, to contextualize the reader with some of the challenges encountered by the operationalization of the law against COVID-19.
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 emerges as a flexible work modality, with an increase in the quality of life for its users and with greater productivity results for companies, making that, in the face of globalized markets, can be a very prosperous alternative for both parties to the employment relationship.
The objective is to enable the maintenance of economic activity and jobs, without further damage to workers' income.	Literature review	The Federal Government published, on April 1, Provisional Measure No. 936/20, with new rules and conditions for the proportional reduction of 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.
Contextualize the application of Law with two major areas of Private Law, contractual and labor relations, directly affected by the pandemic.	Literature review	Without the pretension of exhausting the subject, but with the objective of shedding light to elucidate possible questions regarding private relations, the next lines seek, in a didactic way, to contextualize the reader with some of the challenges encountered by the operationalization of the law against COVID-19.

Discussion

Provisional Measures (MPV) No. 927/2020 were issued on March 22, 2020, and stipulate labor measures to face the state of public calamity confirmed by Legislative Decree No. 6, of March 20, 2020, and are of international importance for the following reasons: public health emergency coronavirus (COVID-19) and other measures¹.

It is worth noting that the MPV in question recognized the hypothesis of force majeure, as stipulated in Art. CLT 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 face-to-face 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 No. 927/2020 through legal bases and case-by-case explanations, which have raised practical doubts².

Additionally, on April 1, 2020, MPV No. 936/2020 issued by the federal government launched the "Employment and Income Maintenance Emergency Plan" and provided complementary labor measures to respond to international public disasters and health emergencies. public. Because of the importance of the coronavirus. It is necessary to pay attention to some aspects that will be presented below³.

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 edited MPV No. 927/2020, allowing employers to grant workers personal or group vacations in advance⁴.

By 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 dismissals; 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 reduced, financially unbalanced. For those who want to take a vacation⁶.

From a legal point of view and when force majeure conditions are established, there is no foreseeable damage to the parties, as the basic rights of annual leave are still maintained, and the statutory rights of the employer in the private sector, including the reduction of bureaucratic payment, procedures and time savings. Finally, it should be noted that employers can unilaterally approve the individual license (Art. CLT c 134/ Art. C 6, MPV No. 927/2020), and the collective license must be communicated at least forty-eight in advance hours, specifying the employee in writing or electronically¹.

The vacation period (Art. 6 of MPV No. 927/2020) and collective vacations, during the MPV period, are exempt from prior notification by the employer to the local bodies of the Ministry of Economy (Art. 12 of MPV No. 927/2020)⁷.

Last but not least, it should be noted that workers belonging to the Coronavirus Risk Group (COVID-19) will have priority to enjoy individual or group vacations (Art. 6 and 3, MPV n.º 927/ 2020). The name "home office" is used for work done remotely, occasionally, remotely and usually at the employee's own home, but appointments are required. As a study shows, working from home (home office) is not teleworking; is an alternative, and the former will not change the plan, but MPV 927 (Art. 4, paragraph 1) is in a state of emergency. Both were treated equally during this period^{2,7}.

According to the World Health Organization (WHO) and the Ministry of Health of Brazil, with the spread of COVID-19 and the need for social isolation, this type of work has become 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 instructions⁷.

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 Art. 11. CLT, for example, to align the interests of the employer with the functions performed remotely by employees, it is recommended to align the tasks to be performed, the time and 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 change in the work regime, as stipulated in Art. 1, MPV No. 927/2020 Section 3 and 4⁶.

Finally, the parties know that the content of the art is healthy 4th, § 4th, I of MPV No. 927/2020, it must be known that if the worker does not provide the necessary and sufficient technical equipment and infrastructure for remote work the employer can provide the loan equipment and pay

the basic facility service costs. This will not be a feature of salary budgets⁶.

In other words, it is possible to see MPV No. 927/2020 trying to give workers and employers flexibility to protect the employment relationship and, most 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, the continuity of work and business activity and the reduction of the social impact caused by the consequences of the catastrophe⁷.

Public health disaster emergencies (Article 1, in Items I, II and III of MPV No. 936/2020). The administration adopted three interventionist and protectionist measures: payment of emergency benefits to preserve employment and income (Art. 3 and 1) and proportional reduction of working hours and wages (Art. 3 and 2) and Temporary suspension of the employment contract work (Art. 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, corporations and mixed capital companies, including their subsidiaries, and international organizations at the federal, state, federal district and municipal levels⁶.

It is important to note that the Ministry of Economy is responsible for the coordination, implementation, monitoring and evaluation of the plan, as well as possible versions of supplementary specifications that may be required during the implementation process (Art. 4). Initially, the answer was yes. Both employers and employees must understand how this happens⁶.

With the 25% reduction in salary and working hours, the employer will receive an emergency subsidy equivalent to 25% of the unemployment insurance amount, which can be independently negotiated by both parties, 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 greater than BRL 12,202.12. The same conditions mentioned above for the possibility of a personal agreement apply to 70% of the salary and working hours reduction, and the benefits are equivalent to 70% of the unemployment insurance amount⁷.

If the amount received by the employee is between R\$3,135.01 and R\$12,202.11, the reduction of more than 25% can only be made after prior negotiation with the union. In addition, as long as there is collective bargaining, employers are entitled to adjust the percentage of deductions beyond those specified and to comply with the emergency benefit payment percentage specified in the relevant rules. This is the wisdom of Art. 7, 8 and 9 c / c of Art. 11 and 12 of MPV No. 936/2020. To avoid doubts about the content of the suspension, studies show that this suspension includes the employer's individual or collective adjustments to the suspension of the employment contract, up to 30% of the employee's salary. Wages and emergency employment and income security benefits provided by the Federal Government^{2,6}.



Conclusion

The year 2020 already has a place in the history books. Along with the Black Death (14th century) and Spanish flu (20th century), COVID-19 (21st century) now joins the list of tragic events that claimed 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. It must be protected the most precious wealth: life.

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