WORKABILITY VIA PLATFORM: A LEGISLATIVE PROPOSAL AND A COLLECTIVE MOVEMENT FOR SOCIO-LABOR CIVIL INTEGRATION

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ABSTRACT

Introduction: The legal integration of work via technological platforms (applications) in the Brazilian legal system.

Contextualization/concept: Under the terms of articles 7 and 114 of the Constitution of the Federative Republic of Brazil of 1988, it is work and work relations that gain grammaticality and literality in the constitutional text, which inaugurate the concept of workability, when the tone of employment (industrial sector) would be giving way to work (services sector).

Objective: The historical and normative broth induces a perspective of reflexivity in the midst of resisted change, which will impose on workers via the platform (as mostly urban workers) and labor institutions renewed forms of collective union political, legislative and organizational action, whether at a national or international level, to overcome obstacles that impede the effectiveness of constitutional labor standards.

Methodology: The methodology follows comprehensive (Weberian) and extensive interpretative and constitutional historical analysis connected to excerpts from current reality, centered on the theoretical-normative method.

Theoretical framework: For Weber (2000), legal norms have the function of disciplining and ordering actions and social relations, constituting maxims and, therefore, creating the conditions of administration and obedience of society's participants to the law.

Conclusion: The duty to be constitutionally regulated inaugurated new labor precepts, which are still in resistance in the world of being, which imposes on actors and labor institutions the creation of a middle path suitable for the civil socio-labor integration of a new professional category of urban workers.

Keywords: Workers, ICTs, Employability, Workability, Collective Organization.

A TRABALHABILIDADE VIA PLATAFORMA: UMA PROPOSTA LEGISLATIVA E UM MOVIMENTO COLETIVO DE INTEGRAÇÃO CIVIL SÓCIO-LABORAL

RESUMO

Introdução: A integração jurídica do trabalho via plataformas tecnológicas (aplicativos) no ordenamento jurídico brasileiro.

Contextualização/conceito: Nos termos do artigo 7º e 114º da Constituição da República Federativa do Brasil de 1988, é o trabalho e as relações de trabalho que ganham gramaticidade e literalidade no texto constitucional, os

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quais inauguram o conceito da trabalhabilidade, quando a tônica do emprego (setor industrial) estaria dando lugar à do trabalho (setor de serviços).

**Objetivo:** O caldo histórico e normativo induz a uma perspectiva de reflexividade em meio a mudança resistida, as quais impõem aos trabalhadores via plataforma (enquanto trabalhadores em sua maioria urbanos) e as instituições laborais formas renovadas de atuação política, legislativa e organizacional coletiva sindical, seja em nível nacional ou internacional, de superação dos obstáculos que obstam a eficácia das normas laborais constitucionais.

**Metodologia:** A metodologia segue a análise compreensiva (weberiana) e interpretativa extensiva e histórica constitucional conectada a excertos da realidade atual, centradas no método teórico-normativo.

**Referencial teórico:** Para Weber (2000) as normas jurídicas possuem a função de disciplinar e ordenar ações e relações sociais, constituindo máximas e, então, criam as condições de administração e obediência dos participantes da sociedade ao direito.

**Conclusão:** O dever ser normado constitucionalmente inaugurou novos preceitos laborais, os quais, ainda se encontram em resistência no mundo do ser, o que impõe aos atores e as instituições laborais a criação de uma via mediata apta a integração civil sócio-laboral de uma nova categoria profissional de trabalhadores urbanos.

**Palavras-chave:** Trabalhadores, TICs, Empregabilidade, Trabalhabilidade, Organização Coletiva.

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### 1 INTRODUCTION

From a historical-normative interpretation it is possible to understand that the Federal Constitution of 1934, the CF of 1937 and the Consolidation of the Labor Laws 1943 are the modern genesis of a list of rights applied, initially, to workers with employment, that from the Constitution of the Federative Republic of Brazil of 1988 this list of rights normed in Article 7 is expanded to all urban and rural workers, placing the decree or the legal and/or judicial recognition of the employment bond as a restrictive element of access to the said list.

The access extended by Article 7 to all urban and rural workers has been resisted by theorists, implementers and interpreters of labor law. They followed, even after the entry into force of the CRFB, a narrow interpretation, centered on laws prior to the aforementioned constitutional charter, relying mainly on the (in) existence of legal subordination.

At the same time, the legal rules which have, in recent decades, taken away the wage nature of part of the remuneration of employees are abundant. This confirms, in part, a rearrangement in the national tax system in the light of the costs related to the generating payroll of what is called the desalarization of wage earnings.

The methodology follows comprehensive (Weberian) aiming at interpretive apprehension, seeking to reach evidence, motives, senses and the nexuses of the orientation of social action and thus explain it causally in its course and in its effects. For Weber (2000) legal norms have the function of disciplining and ordering actions and social relations, constituting maxims and then creating the conditions of administration and obedience of the participants of society to the right. The method of approach is the deductive one, since it starts from a pre-existing concept to test applicability in a set of facts and actions, seeking to confirm or refute its application. For Galliano (1979), finally, the objectives of the research are framed as exploratory, since it sought greater knowledge and clarification on the theme, as defined in RAUPP and BEUREN (2004).
The historical and normative broth induces a perspective of reflectivity in the midst of resilient change, which will impose on workers via platform (as workers in their majority urban) and labor institutions renewed forms of political, legislative and organizational collective union action, whether at national or international level, overcoming obstacles that hinder the effectiveness of constitutional labor standards.

2 CELETIST EMPLOYABILITY RESISTS CONSTITUTIONAL LABOR

The Declaration of Human and Citizen Rights⁴ states in Article 1 that "men are born and are free and equal in rights. Social distinctions can only be based on common utility'. The aforementioned rule dating from 1789 defines equality as the rule, while legitimizing and making social distinction possible as a conditional exception.

The International Labor Organization (ILO)⁵ prescribes equality among workers in several of its acts and regulations, with special attention to Conventions 100 and 111, ratified by Brazil. In the same vein, the Brazilian constitutional charter states in its Article 5 that "all are equal before the law without distinction of any nature”.

In Article 7 and Article 114 I of the CRFB⁶ the original and derived constituent have chosen the legal fact "work" and the "labor relations" as an event in the world of being, and, as a logical consequence, the list of normalized rights in the world must be and the competence of the labor justice must follow such statements.

The Consolidation of Labor Laws in its Article 3 §ú states that "there will be no distinctions regarding the type of employment and the condition of worker, nor between intellectual, technical and manual work". The legal text expressly stipulates that it is impossible to create or maintain distinctions in order for equality (the minimum list of rights described in Article 7 of the CFRB) in employment to become effective.

It is well known that the scope of Article 7 seeks to extend the list of rights for rural workers, since it creates urban-rural isonomy. Adopting an ampliative/extensive interpretation, only the workers located in the rural areas lacked access to the said list, so, from 1988, all Brazilian workers would be entitled to the funds normalized in the incisos of Article 7. However, the rules then in force at the time of the entry into force of the CRFB 1988 and subsequent ones have continued to fall short (as in LC 150/2015), to the minimum of urban and rural workers.

Millions of jobs have been created at national and urban level via ICTs in the last two decades. Workers via platform technologies/digital (LAU; BONILLA; GARATE, 2019) are mostly urban, and right away, there is constitutionally regulated labor and social security law for urban workers in Brazil, regardless of the decree or recognition of the employment relationship, because the constitutional text extends to all workers a qualified list of social rights, which will be restricted, through the interpretation centered on subordination, or by the editing of laws still under processing, which will seek to create a new professional category in the manner of celetists.

The extension to all urban and rural workers could not be impeded by the old distinctions and or differentiations of spatial (urban and rural space), or any other form of professional

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differentiation such as the logic and the foundations of the construction of CLT and the extravagant professional legislations in force.

Article 7 of the CFRB is a summary of the various pre-existing infraconstitutional labor standards, and at the same time is a new minimum starting point for the (re-) structuring of national labor standards. Celebrity labor relations, labor relations norms by extravagant laws (like LC 150/05 Domestic Employees) or statutory labor relations, would be legally and systematically prevented from norming below the list of rights defined by the constitutional text, because it keeps alive the "distinctions" between workers. Thus, the provisions of the final part of Article 1 of the UDHR of 1789 are still current, and resist the normative force of the "without distinction of any kind" embodied in Article 5 of the CRFB of 1988.

The consolidation of labor laws comes in the midst of a national agrarian economy, which aimed to recentralize the national development project to the urbanization-industrialization pair. Thus, the range of rights won by workers in the 40s was one of the inducing mechanisms of industrial/urban growth, while such a mechanism may currently be generating counterproductions, in view of the decline of industrial, urban and national dynamics, for a ubiquitous, national and international service dynamic (BRAVERMAN, 1987).

It is well known that the employment relationship and the range of rights attached to it had, as one of the objectives, to fix the workers coming from the rural in the urban space, thus creating the conditions for the maintenance, development and progress of the cities. Currently, this range of rights cannot be restricted to workers with employment relationships in urban or rural areas, which requires abandoning the restrictive interpretative perspective centered on subordination.

To Porto:

At the time of the emergence of labor law, from the second half of the 19th century, the prevailing economic model - centered on big industry - engendered somewhat homogeneous, standardized labor relations. The laborer worked inside the factory, under the direction of the employer (or his agent), who gave him orders and supervised his compliance, and could punish him. This working relationship, of hegemonic presence at the time, was the target of the protection conferred by the nascent labor law. Thus, it was on the basis of it that the concept of contract (and relationship) of work was constructed and, therefore, that of its main assumption: subordination. [...] Thus, the on-screen concept was identified with the constant presence of intrinsic and specific orders, with the predetermination of a rigid and fixed hours of work, with the exercise of the work in the company’s own locations, under the constant surveillance and control of the employer and its prepostes. This is the classical or traditional meaning of subordination, which we can summarize as its full identification with the idea of a strong and constant heterogeneous employer’s management of labor supply in its various aspects (PORTO, 2008, p. 120).

The subordination went beyond the merely directive framework of the work processes previously defined in the premises of the company, becoming an element, even not contained in the text in the CLT (until 2011), able to centralize the decree of (in) the existence of the employment contract, without which the normalized by the constitutional text does not achieve effectiveness.

For Alleva the subordination was linked to the criterion of "heterodirection", and follows:

[...] the latter states, according to the Court of Cassation’s settled case-law, that the worker is subordinate (and therefore the addressee of the guarantee rules) when he is subject to precise, binding, ‘capillary’ guidelines on how to exercise the service, to continuous controls to ensure compliance with them, and also to disciplinary sanctions in the event of non-compliance. This translates - or should translate - into rigid
working hours, paramilitary labor discipline, hierarchical organization and minimizing the possibility for the worker to make choices, even purely technical ones (ALLEVA, 2008, p. 284).

The current labor dispute is centered on recognizing that the list of rights set out in Article 7 is intended for all urban and rural workers, without distinction of any kind, which is important in overcoming the limits created both by the extravagant legal texts prior to the CRFB and by the interpretation created from Articles 2\(^7\) and 3\(^8\) of the CLT. Thus, the interpretation centered on subordination would be overcome and, consequently, the need for declaration of employment would be overcome for workers, from 1988, to be entitled to the norm constitutionally, for the fact that it is the work the central legal fact.

In the same vein, Labor Justice resists the provisions of Article 114, paragraph I, of the CRFB when it states that "it is for the justice of "labor" to process and judge actions arising from the "employment relationship", when in the present reality it continues to act as the justice of employment.

In short, the constitutional text has not yet been able to break the persistent and resistant legal and interpretative distinctions created from the celetist text. The national judiciary resists maintaining an employee justice while the constitutional charter redefined it as labor justice as of the Constitutional Amendment of 45/2004. Thus, the justice of employment would be extinguished, giving way to the justice of work.

Such resistance, distinction, differentiation gives rise to conflict at the social and judicial level, like the various labor complaints attempted, many of them agreed, partly unfounded that came to make up, at the national level, the cadres of Labor Justice\(^9\).

Does the legal claim of workers by application focus on the existence or otherwise of the requirements set out in Articles 2 and 3 of the CLT, thus seeking the declaration and recognition that the work developed in the urban space is of the kind of employment, and therefore deserving of a list of rights that is still being voted on by the Bill, or are they worthy of the list of Article 7 already constitutionalized since 1988, or even worthy of the list defined by the CLT? Among other possibilities.

The national legislative power, hastily, starts proposing the creation of new laws, like PL 3754/2020\(^10\) and PL 971/2021\(^11\) among others, that try - in the same line of the various labor laws that follow the model of resistance and distinction inaugurated by the CLT and the various extravagant professional laws of the time - to create to urban workers on platforms or digital applications the rights already regulated constitutionally. These facts, at the very least, rekindle the idea that the CRFB of 1988 is a political charter with limited effectiveness of legal norm, since if necessary the editing of new infraconstitutional norms reaffirming or limiting the rights of workers already defined, instead of infraconstitutional norms of operability of their rights as workers.

Articles 7 and 114 of the CRFB inaugurate in the country, when centralize the legal fact work on the constitutional text, the workability.

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\(^7\) Art. 2 - An employer is considered to be a company, individual or collective, which, assuming the risks of economic activity, admits, hires and directs the personal provision of services. § 1 - For the exclusive purposes of the employment relationship, independent professionals, charitable institutions, recreational associations or other non-profit institutions that admit workers as employees are equivalent to the employer (BRASIL, 1943).

\(^8\) Art. 3 - Any natural person who provides services of a non-occasional nature to an employer, under the latter's dependence and for a salary, is considered an employee (BRASIL, 1943).


For Fincato (2020), workability (or its English equivalent, workability) presupposes broader goals and goals than employability: having it, even without having or wanting a job, the individual may have sufficient skills to produce his income, manage his life and develop himself.

As employability Branchieri (2020) and Campos (2008) comprise a set of specific skills linked to a good professional and its potentialities, which are essential to search for work, which comes in line with the teachings of Krausz (1999), following a path of self-knowledge and self-production for the labor market.

In addition to the above, it is opportune to understand that the workability is related to some previous events of macrosocial and economic bias, rather than micro, individual, subjective or intersubjective. Thus, the changes that have taken place in the national economy over the last 30 years precede the workability, such as the intensification of the internationalization of the markets, national de-industrialization, industry 4.0, the growth of the importance of the services sector in the national and world GDP, the growth of the private sector in the level of health and welfare, added to the expansion of the work platforms and of consumption at the world level, which imports and imposes on the national legal order adjustments in its normative bases and tax returns. In the same vein, it requires renewed workers to act in the face of this new labor market.

Then it operates, changing the focus (FOUCAULT, 2008) from the economic model based on national industry to the economic model based on the domestic and international services sector, in part, the work will be being rendered outside the dependencies or at the expense of the employer, then centered on a civil work perspective and by demand (discontinuous, unusual or seasonal), when the risks and costs of labor provision run on the worker's behalf. Whereas the income produced by a single and constant employment contract is not sufficient, as it was between the 1940s and 1980s, to maintain the costs currently borne by workers and their families.

Such factual and legal events gave rise to an ontological fear in labor societies - like the Brazilian one - at the moment when they are perceived in the transfer of a capitalist market society, centered on industry, the urban employment bond and the national labor force, to a capitalist market society, centered on services, finance and technology, with labor links and ubiquitous labor.

12 The aim is to expand the idea of “employability”, perceived and coined in the field of subordinate labor relations, which were designed, organized and standardized based on the urban-industrial model of the 19th century in most countries, including Brazil. It is understood that work in the 20th and 21st centuries began to demand new skills from workers and, perhaps, new state benefits and business responsibilities. (FINCATO, 2020, p. 3).

13 If before, with the Industrial Revolution, human strength was transferred to machines, with the aim of improving and facilitating the increase in production, currently, the transfer of human experiences and capabilities is carried out to software, through programs developed, which end up replacing human activity. It is for this reason that today we are experiencing a new revolution, the informational one (LASTRES; FERRAZ, 1999).

14 The advancement of technology has radically changed society in its most diverse segments; social, cultural, political, among others. In the sphere of work, a different way does not occur, as companies, from the smallest to the largest, incorporate the use of technology in order to facilitate the mass production of their products and thus increase their financial capital. (DACHERIL; GOLDSCHMIDT, 2017).
3 IT'S BETTER TO DRIP THAN DRY!

The phrase "it is better to drip than to dry" was the starting point for the construction of this article. That was the answer given by an app worker when he was asked to stay or quit acting as an app worker?

The current reflexivity of labor law triggered by the aforementioned answer is not only centered on the almost 14 million unemployed in Brazil, but is aware of the real impossibility of creating as many job vacancies as would be necessary to meet or to supply such employment demands in the way that we know them in the industrial phase of the 40s to 70s in Brazil, or better still, in the face-to-face phase of human life and work.

Romita

Work on the assembly line will give way to automation. Industry is entering a new phase, which is defined by the disappearance of the work of execution, that is, by the automatism of manufacturing. Automation progressively follows the mechanization of the previous phase, which does not mean that the automated workshop is a workshop without workers, but there is almost no workforce directly engaged in manufacturing. There is a progressive shift of the workforce from manufacturing workers to maintenance and surveillance and control workers. The world is going to witness the third industrial revolution, which with greater semantic precision should be called the technological revolution. Advances in the technological revolution will not allow institutions to remain unchanged. Capitalism will undergo considerable changes in the face of competition that will develop at international levels, as capital, technology and ideas will easily flow across borders. (ROMITA, 2005, P. 43-44).

The current economic phase is centered on the services sector, having suffered from the national deindustrialization of the previous phase. Today, labor is, in part, distance, and in part outside the walls of the company and beyond national borders. In this way, it is more prudent to look at the production and maintenance of jobs, with potential conversion to jobs from the civil and collective organizational capacity of the workers per application, than to put existing jobs at risk.

For the various sectors of the current economy, work will continue, even partially, non-face-to-face or hybrid. The post-industrial society is at the same time post-presential, or non-

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16 In this scenario, there is a reduction in jobs. Automation, robotics, technology and microelectronics are consolidated. Unemployment is now structural in nature. Work is subjected to an attack of loss of its centrality, as a result of which it would no longer be the axis of society. The externalization generated by the indiscriminate use of outsourcing, even in Public Administration, solidifies. The company's fragmentation shows its nuances, with the cost reduction policy. [...] The transfer of labor that previously occurred from the primary (agricultural) sector to the secondary (manufacturing, industrial) sector, then to the services (tertiary) sector, today occurs to the quaternary sector (knowledge, informational society ) (OLIVEIRA, 2010).
17 The phenomenon of economic globalization also has intense repercussions in the field of regulating labor relations. It is not possible to give an exact definition of economic globalization. It was, in fact, a set of factors that determine changes in production patterns, creating a new international division of labor. It could more properly be called the internationalization of production and work. This "globalization" will be understood more easily if, instead of attempting a descriptive definition, the characteristic features of the phenomenon are related. The traditional, typical factory, a result of the first industrial revolutions and which reached its highest degree of organization based on Taylorist and Fordist conceptions, is replaced by flexible organizations, based on Toyotist notions, without rigidity, based on flexible contractual relations between capitalists and workers. Many facilities have emerged for the exploration of economic activities in various parts of the world, due to the improvement of means of transport and communication, at the same time as the movement of capital and managers from one country to another has increased. The economy begins to develop on a global scale, as never before. There is talk of globalization of the economy. The input, consumption and financial markets are internationalizing, so that the notion of a classic geographic border becomes obsolete (ROMITA, 2005, p. 44).
presentional, or in EaD, but it is at the same time outside the employer's dependencies. And the fact that the workers are working "outside the employer's dependencies", sometimes bearing part of the expenses arising from the provision of services and having the ownership or ownership of some of the means of production, weakens and puts in crisis the classic concept of employment relationship embodied in Articles 2 and 3 of the CLT.

Life via digital platforms has created and reordered millions of jobs that previously did not exist under this dynamic. Such jobs can be transformed into jobs from the organizational capacity of workers at national and international collective level, added to the possible (or imagined) balance of gains and losses between working or being without work, because not working ceases to be an option for the majority of the country's citizens and, in the same vein, we all depend, directly or indirectly, on the work of others for the maintenance of life in society.

So if I don't work by application, where will I work? Is working by application the best or only of the options that are available at the moment, or the most profitable, or the one that allows you to combine with other work activities (part-time work and or formal employment)? Would it currently be the safest (sanitary) one? Among other questions that may remain unanswered conclusively at the present time.

However, there must be a contract and as a result a tax (collective cost) capable of appeasing and keeping alive the triad (Company, Worker and State), but that it occurs between the civil law and welfare law, and the latter can be both from the state's point of view via public social security, and via the private sector, like private health and welfare plans.

As a legislative proposal for civil social-labor integration in the "Enterprise 2% and the Worker 1%", without the need to impose/create/recognize the employment link to the millions of national jobs per application. Such a proposal would be created by means of a supplementary law (federal labor and social security tax), when the legislator state regulates companies, operating via ICTs, the obligation to pass on to the public coffers 2% of the gross gains from each human service supply, of these: 1% will go to the INSS and 1% to the public coffers (Union or State), and the worker transfers 1% of his gross gains to the INSS or other institution of public or private security, seeking to ensure, in whole or in part, the list of benefits regulated by Article 7 of the CRFB. Or, companies that act or take human services via applications can hire other private companies of welfare, care and health, so 1% of their employer/business quota would be destined to the private sector that in the future will cost the benefits described by Article 7 of the CRFB to workers per application.

In the same vein, it is illegal and quite unconstitutional for the public body to bear the future of these workers on welfare without any prior compensation. The creation and maintenance of a welfare system, like the Brazilian that was born private, goes public and now has resumed the expansion of the private system (direct or complementary), in several areas, created security for the worker, the companies, the market and society.

While customers/consumers who take advantage of the services/products via transport or delivery applications among others, they will have a rise in the price of the service/consumption by only 3%, which would not make consumption unfeasible.

It has to be accepted that for millions of workers via the app, it is better to keep the job (even informal or civil) while organizing collectively, than to lose the current and essential job, from the moment when companies\(^\text{18}\), operating via digital platforms, start threatening with the exit or insecurity of operations or services in the market.

The international pressure for the recognition of the employment relationship has gained strength in the last 02 years, so the tax burden/cost of labor and social security that will be imposed in an uncertain future, should already be accounted for in the current labor demands.

The Higher Labor Court (TST)\(^1\) has been reiterating (TST-RR-10555-54.2019.5.03.0179 / AIRR - 10575-88.2019.5.03.0003 / AIRR - 10575-49.2019.5.03.0113) the absence of employment bond in the case of drivers (2).

It should therefore be borne in mind that the cost of declaring the employment relationship to UBER employees (KOLOMOETS, et. All, 2023) from the United Kingdom\(^2\), Spain\(^3\) and Australia\(^4\) may be falling on the rest of the workers who have not yet recognized him in Brazil. Thus, the whole range of normative rights imposes an individual and collective cost for their implementation, when part of the burden will fall on the national and international collectivity (individuals and institutions).

As follows:

There are those who argue that companies will simply discontinue their activities, for the business model is not viable with the formalization of the employment relationship, either by the cost of the operation, or by the logistics of acting as an employer to that "multitude". [...]

Even if this is not the fate of the workers, the loss of jobs, there is a risk that seems evident after the formalization of the dreamt employment relationship: the flattening of wages. Today, companies practice percentages of participation for workers that reach 70% of the value collected from users, allowing gains in reasonable value in terms of the Brazilian labor market. I do not know, in my research and in the cases to which I had access in more than two decades of magistracy, employees formalized in employment with such participation (CALVET, 2021, p. 03).

The work by application provided in Brazil will be forestalling part of the costs generated by the victory in the configuration of the employment link of the UBER workers in other countries. Thus, any effective rights at the local and national level, it is important in an international financial and labor burden (cost of the effective right) (increase in the number of hours worked). It is society, as a collective entity (national and international), that will bear the costs of effecting a certain share of minimum constitutional guarantees to workers per application.

The employment contract was the best form of hiring human labor in the industrial phase of the national economy. It was a technique adopted by the national legislature for the production of urban space, for the production and maintenance of national institutions, for the formation of heritage/social capital and for public savings. The employment bond had and has a differentiated potential of collectivizing the added value produced by work among the participants (individuals and institutions) of society, even in an unequal way.

Another fact, is to recognize that employability, has already fulfilled its essential objectives and the current social, economic and legal model demand the legitimation of other forms of productive integration of citizens in the labor market.

To Porto:

The study coordinated by Alain Supiot at the request of the European Commission on the future of work in Europe, which resulted in the famous Supiot report, proposes the creation of a common labor law. It must be able to govern all types of professional

\(^{19}\) Available at: https://jurisprudencia.tst.jus.br/#9db0e4310182ab26740b6b47336bfbb3. Accessed on: May 15, 2021.


activity, while leaving room for the diversity of contractual forms under which it is carried out. The future purpose of labor law is to become the common law of all employment relationships, subordinate or otherwise. (OPORTO, 2008, p. 124) (Our Griffin).

So it is better to pour some value every day into the workers' bank account via apps, allowing it to be ensured at the social security level (public or private) in view of the feasibility of a legislative proposal that recognizes constitutional workability, than to force (via recognition of the employment bond) the drying up of the source of income generated by work via TCIs.

4 THE DESALARIZATION OF WAGE RESOURCES

The payroll is ceasing to be the main focus of national taxation in view of the loss of the wage nature generated by the relief policies, aiming, among others, to increase the number of new jobs, the attempt to maintain existing jobs and the financial maintenance of the company/employer, among others.

Desalarization of wage money is not redundancy or tautology, but it is neologism. Approximate to the effect of desalination of seawater, and in this vein, desalarization is an effect, a technique and a legislative policy of tax stamp that generates effects on the payroll to the employer, the tax and the employee.

Below, some constitutional and legal provisions are compiled that removed or shielded the occurrence of the wage nature of wage funds, as follows:

Art. 7 Are rights of urban and rural workers, besides others aiming at the improvement of their social condition: [...] XI - participation in profits, or results, detached from remuneration, and, exceptionally, participation in the management of the company, as defined in law (BRAZIL, 1988);

Law No. 10.101/2005, rules the PLR, stating in its Article 3 that "the participation referred to in Article 2 does not replace or supplement the remuneration due to any employee, nor does it constitute a basis for any labor charge, and the principle of habitability does not apply to it".

Celebrity text (Dec. lei nº 5.452/1943) modified by Law nº 13.467/2017:

457, § 2. The sums, however usual, paid in the form of a daily allowance, food allowance, forbidden payment of cash, travel expenses, premiums and allowances do not form part of the employee's remuneration, are not incorporated into the employment contract and do not constitute the basis of any labor and social security charges. ...

Art. 458, § 5. The amount relating to medical or dental care, whether personal or not, including the reimbursement of expenses for medicines, glasses, orthopedic appliances, prostheses, orthoses, medical-hospital expenses and other similar expenses, even when granted in different forms of plans and covers, do not include

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23 Here is a counterpoint and an attempt to complement the article by Professor Arthur Maria Ferreira Neto - "Payroll taxation as a naturally unfair practice".
the employee’s salary for any purpose or the contribution salary, for the purposes of Article 28(9)(q) of Law No 8.212 of 24 July 1991.

According to the CLT it is still possible to identify Articles 143, 144, 496 and 497 with funds not reached by labor or social security charges.

The modifications imposed by Law 10.410/2020 to Decree 3.048/99\textsuperscript{27} in its Article 214, §9:

They do not form part of the contribution salary, except: (j) any earnings expressly exempted from the salary by law; (k) compensated premium allowance; (l) other indemnities, provided that they are expressly provided for by law; (m) amounts, however usual, paid in the form of daily allowance, food allowance, forbidden its payment in cash, and daily allowances; (n) premiums and allowances; (VI) the amount received in the form of transport voucher, even if paid in cash, in the form of own legislation; (VII) the allowance, in a single installment, received exclusively as a result of change of the employee’s workplace, in the form of Article 470 of the Consolidation of Labor Laws; (IX) - the amount received as educational supplement grant trainee, when paid in accordance with the provisions of Law No. 11.788, of 2008; (XVI) - the amount related to the assistance provided by medical or dental service, own or not, including the reimbursement of expenses with medicines, glasses, orthopedic appliances, prostheses, orthoses, medical-hospital expenses and other similar, even when granted in different modalities of plans and covers; XIX - the amount related to educational plan or scholarship aiming at the basic education of employees and their dependents and, provided linked to the activities developed by the company, to the professional and technological education of employees, in accordance with the provisions of the Law n 9.394, of 20 December 1996, the following conditions were met: (a) the value is not used in lieu of a portion of the salary; (b) the monthly value of the educational plan or of the scholarship, taken individually, does not exceed five percent of the value of the remuneration of the insured person for whom it was intended or the corresponding amount if the monthly minimum threshold of the contribution salary, whichever is greater; and (XXVI) the value corresponding to the culture voucher. (Our Griffin).

In the current judgment, the Superior Court of Justice decides that the sums paid by way of compensation, which do not correspond to services provided or in time available to the employer, should not be subject to the effect of social security contributions. As follows:

CIVIL AND TAX PROCEDURES. EMPLOYER’S SOCIAL SECURITY CONTRIBUTION. RAT/SAT AND CONTRIBUTIONS TO THIRD PARTIES (S-SYSTEM) ON NOTICE AND 13TH PROPORTIONAL WAGE COMPENSATED. JUDGMENT UNDER APPEAL. SPECIAL RESOURCE REPRESENTING THE 1.230.957/RS CONTROVERSY. APPLICATION. NOT EXTENSIBLE TO THIRD PARTIES. CASE-LAW OF THE STJ. CONTRIBUTIONS TO THIRD PARTIES IN THE ‘S’ SYSTEM. NO EFFECT ON COMPENSATORY FUNDS. SPECIAL APPEAL PROVIDED.1- This is a failure to comply with the judgment that partially upheld the Official Remittance, in order to maintain the chargeability of the employer's social security contribution (RAT/SAT and contributions to third parties, SESI/SENAI/SEBRAE, ETC.) on the amounts paid in the notice compensated and 13 proportional to the notice compensated. 2- The STJ, in the judgment of REsp 1.230.957/RS under the rite of repetitive appeals, Rel. Min. Mauro Campbell Marques, decided that there is no social security contribution on the notice compensated. 3- Contributions to third parties (system "S" and others), due to the identity of the basis of calculation with the social security contributions (see Article 3, § 2, of Law 11.457/2007 - "remuneration paid, due or credited to insured persons

of the General Social Security Scheme”), must follow the same systemic of these, not focusing on the items that have already been considered by the Superior Court of Justice as compensatory in nature, it is worth saying: sickness aid, advance notice compensated, third holiday and transport voucher. Precedents: AgInt in REsp 1.602.619-SE, Rel. Min. Francisco Falcão, 2nd T, DJE 26/03/2019; AgInt no REsp 1.750.945-MG, Rel. Min. Mauro Campbell Marques, 2nd T, DJE 12/02/2019. 4- Special appeal upheld. REsp 1858489-DF, STJ, 2nd T, Rel. Min. Herman Benjamin, 10/03/2020, DJE 21/08/2020)28(Our Griffin).

In judgment the Supreme Court (STF) signed understanding for the non-incidence of social security contribution on maternity pay (RE nº 576.967, August 04, 2020). As follows:

Ruling: The Court, by a majority, assessing Theme 72 of the general repercussion, upheld the extraordinary appeal, to declare, incidentally, the unconstitutionality of the effect of social security contributions on maternity pay, provided for in Article 28, §2, of Law No. 8.212/91, and the final part of its §9, letter a, which reads "except maternity pay", according to the vote of the Rapporteur, overdue Ministers Alexandre de Moraes, Ricardo Lewandowski, Gilmar Mendes and Dias Toffoli proviso (President), who denied appeal. The following thesis was established: "The effect of the social security contribution payable by the employer on maternity pay is unconstitutional". Plenary, Virtual Session from 26.6.2020 to 4.8.2020.

Following the line of the last legal changes and the judgments exposed above, it is possible to identify a movement of expansion of the number of funds that have ceased to be part of the bases of labor and or social security collection, which is important in reducing the tax burden incident on the payroll. On the other hand, it is important to recognize the compensatory nature of those portions, which were sometimes regulated as salaries. Finally, the cost of employment formalization is being reduced, whether from business pressures when part of them are stemming from or timely thought out of the health crisis created by COVID 19.

In short, the loss of the tax collection effect of the cited labor and or social security items matters in the increase in the quantum implied to the employee, thus increasing his monthly income. On the other hand, there is the negative effect in the long term, since by raising less for the public coffers this social security taxpayer will have diminished the monthly quantum that will do justice when he retires. Thus, if the claims arising from the program of participation in profits (PLR / Law 10.101/05) do not suffer the taxation of labor and social security charges, more income it accesses, subject to taxation via income tax.

The employer recognizes the de-salariation as the reduction of the tax burden linked to the payroll, while the tax authorities recognize it as a tax waiver and an attempt to encourage the increase and maintenance of formal jobs.

In the same vein, highlight Article 457 §2, among others, of the CLT with the amendment imposed by Law 13.467/2017 that sought to "shield" the effects of habitability, so the compensatory amount, whether paid, supplied or exercised in a usual manner will not have changed its nature.

On the other hand, there is a federal tax authority that has prioritized the taxation of such funds via income tax, for this reason, the post-reform CLT had article 16 modified as follows:

28 Available at: https://scon.stj.jus.br/SCON/jurisprudencia/toc.jsp?i=1&b=ACOR&livre=((%27RESP%27.clas.+e+@num=%271858489%27)+ou+ (%27REsp%27+adj+%271858489%27.suce.))&thesaurus=LEGAL&fr=see. Accessed on: 01 Jun. 2021.
"the CTPS will have as the employee's unique identification the number of registration in the Register of Physical Persons (CPF)". Another timely fact of the expansion of the tax network attached to the income tax, is centered on the expansion of computerization and digitalization (like the PIX) of the financial banking movements which made possible to the federal tax the increase in the degree of tax collection efficiency linked to the Income Tax of the workers.

Resuming the idea of constitutional workability and uniting it to desalarization it is prudent not to recognize the employment bond (maintaining the current understanding of the TST) between application workers and companies, however, a middle way should be created, a path in which both collect to public coffers, without the necessity or obligation of creating or imposing celetist employability. The latter threatens the viability and existence of the quantity and quality of the millions of jobs that have been created in recent years by information technology (CASTELLS, 2000) largely mediated by ICTs.

The creation of this middle way has as an example already practiced in the country the envoy among the tobacco workers and Souza Cruz; the workers of the pig and chicken with Sadia and Perdigão (BRF); the workers of the Amazon region and Avon/Natura; the dairy workers and dairy companies among others.

It is possible to consider that the legal fact "work" has been shifted in the world of being to the civil branch of legal relations, even though it is provided in Article 6 and 7 of the CRFB which are part of Title II - Fundamental Rights and Guarantees. And the social security system, both public and private, ceases to suffer effects only and only if it is linked to the fact of employment, like the individual taxpayers, optional taxpayers or even, it is possible to adopt the path of the private social security system (social security, assistance and health) that has grown significantly in the last decades and start to dispute in quality and quantity the range of workers with or without employment link.

5 CONCLUSION

The comprehensive genesis of such changes in the national economic and labor reality induced the constituent to (re) centralize the "work" in the legal order. With a view to the grammatical and literal reading of the constitutional text, which in its article 7 norm are rights of "workers" urban and rural, besides others aiming at the improvement of their social condition and the article 114 norm that it is the task of the labor justice to prosecute and judge the actions arising from the "employment relationship". This tendency is induced by the decline in the employability proper to the national industrial sector, which gives way to the workability of the service sector.

Desalarization of wage rules is an alternative created to keep a certain amount of employment contracts in the private sector active, in view of the fundraising importance of the payroll for national institutions.

Employability will remain indispensable for organizations following the celetist model, when service and service delivery follow traditional patterns, but there are other and new sectors of the economy that have adopted or been impacted by ICTs, to which new dynamics of work processes have been imposed.

In the midst of legal disputes over the existence of the employment relationship, which is currently hindered by the TST, it is up to the national legislator and the civil and collective workers' organizations via ICTs to start a movement seeking to retain a percentage of the gross income of each installment, so that both can, whether through public or private welfare, care

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and health, guarantee the future of these thousands of workers, aiming to safeguard the millions of jobs created in the midst of the crisis of national employability.

It is possible that Brazilian society is still not able to bear the costs generated by the probable extension of Article 7 of the CRFB to urban workers via applications, even if such costs of civil labor integration are shared with the other workers at the international level in which the ICT companies operate.

On the other hand, it is impubescent to believe that the costs generated by the recognition of employability would be centered on the company/employer area, since, from the civil integration of the labor partner they become the burden of the other platform workers, consumers, shareholders and finally the national and international community. The impact of these costs of integration and protective extension, at the present time, can lead to damage to society and precarization (SOUZA et.al, 2023) of existing labor relations.

Maintaining subordination (as a restrictive interpretative strategy) as the ticket to access the list of rights set out in Article 7 of the CRFB is a social step backwards.

REFERENCES


WORKABILITY VIA PLATFORM: A LEGISLATIVE PROPOSAL AND A COLLECTIVE MOVEMENT FOR SOCIO-LABOR CIVIL INTEGRATION


