

Possible impacts of the labor law reform on workers' health

Os possíveis impactos da reforma da legislação trabalhista na saúde do trabalhador

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ABSTRACT | Background: The Labor Reform, approved by Congress on 11 July 2017, brought significant changes into labor and employment relations. **Objectives:** To analyze the impacts that Labor Reform might have on the health of workers. **Methods:** Predictive comparative study involving Consolidation of Labor Laws and Labor Reform, and the latter's impact on workers' health. **Results:** The changes introduced in the legislation do not modify the National Policy of Workers' Health, even though outsourced workers already were the group with the highest rate of work accidents. Longer working hours and shorter meal breaks are harmful to the physical and mental health of workers, in addition to having negative impact on their quality of life and being associated with increased rates of accidents due to fatigue. In the case of telecommuters, lack of control on working hours increases the risk of illness due to stress and disruption of their personal lives. The health of pregnant and breastfeeding women working in medium or minimally insalubrious environments and of their offspring might be affected. **Conclusion:** Work is a fundamental factor for social integration; depending on its type and conditions it might be a source of pleasure and personal fulfillment, but might also cause illness. Measures for worker health control must be implemented to avoid any increase of work accidents, diseases and disability, and consequently of the negative impact of such events on the quality of life of workers and their families.

Keywords | working conditions; legislation, labor; occupational health.

RESUMO | Introdução: A Reforma Trabalhista, aprovada pelo Congresso, em 11 de julho de 2017, provoca alterações significativas nas relações de trabalho e emprego. **Objetivos:** Analisar os impactos que a Reforma Trabalhista poderá trazer para a saúde do trabalhador. **Método:** Estudo comparativo preditivo entre a Consolidação das Leis do Trabalho (CLT) e a Reforma Trabalhista, bem como sobre seus impactos na saúde do trabalhador. **Resultados:** As alterações não modificam a Política Nacional de Saúde do Trabalhador e da Trabalhadora, que os protege; apesar de, antes da reforma, os terceirizados já serem o maior grupo de acidentados. A carga horária de trabalho aumentada e a redução do intervalo para refeição provocam danos à saúde física e mental, além de gerar impacto na qualidade do trabalho e acúmulo de acidentes em virtude do cansaço. A falta de controle da jornada, para os empregados do trabalho remoto, aumenta riscos de adoecimento, devido ao estresse e à desorganização da vida particular. Grávidas e lactantes expostas a locais de grau médio ou mínimo de insalubridade poderão comprometer a própria saúde e a de sua prole. **Conclusão:** O trabalho é fator fundamental de integração social e, dependendo da atividade e das condições de realização, pode ser considerado fator de prazer ou de realização pessoal, mas também pode ser fonte de adoecimento. Medidas de controle da saúde do trabalhador devem ser tomadas a fim de evitar o aumento de acidentes do trabalho, doenças e incapacidades, dado o impacto negativo que podem trazer à qualidade de vida (QV) do trabalhador e seus familiares.

Palavras-chave | condições de trabalho; legislação trabalhista; saúde do trabalhador.

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INTRODUCTION

The rights to health, work, safety and social security are established in article 6 of the Brazilian Federal Constitution (FC)¹.

In turn, articles 196 to 200 state that health is a right for all citizens and a duty for the State. Indeed, the State is charged of ensuring and promoting health by means of public policies, actions and services organized within one single system, which might be additionally complemented by private health care¹. Such actions and services are of public interest, and the role of the government is to decide “in the terms of the law, on their regulation, supervision and control, while actual execution might be direct or outsourced, by natural or private legal persons”².

Also the International Labor Organization (ILO) Convention C187 addresses this subject³. It provides a promotional framework for occupational safety and health through conventions and recommendations to develop uniform global standards for labor legislation, including a global minimum level of labor protection. In addition, it emphasizes the priority of the principle of prevention for securing a safe and healthy working environment.

According to the World Health Organization (WHO)⁴ “the occupational health and the well-being of working people are crucial prerequisites for productivity and are of utmost importance for overall socioeconomic and sustainable development.” In this regard, the most important current and future challenges are

occupational health problems linked with new information technologies and automation, new chemical substances and physical energies, health hazards associated with the new biotechnologies, transfer of hazardous technologies, aging of working populations, special problems of vulnerable and underserved groups (e.g. chronically ill and handicapped), including migrants and the unemployed, problems related to growing mobility of worker populations and occurrence of new occupational diseases of various origins⁴.

The Brazilian legislation addresses this subject not only in FC¹ and Consolidation of Labor Laws (Consolidação

das Leis do Trabalho — CLT)⁵ but also through specific regulations and publications by the Ministry of Health, Regulatory Norms (Normas Regulamentadoras — NR) by the Ministry of Labor and Employment (MLE) and bulky social security legislation.

The Ministry of Health launched the National Policy of Workers' Health (Política Nacional de Saúde do Trabalhador e da Trabalhadora — PNSTT) through Ruling No. 1,823 from 23 August 2016⁶. The aim of this policy is to reduce the occurrence of work-related accidents and diseases through health promotion, rehabilitation and surveillance actions. PNSTT was integrated into the set of health policies established by the Unified Health System (Sistema Único de Saúde — SUS) as a function of the relevance of actions targeting the health of workers and work as some among the determinants of the health-disease process. PNSTT is meant to cover all workers, but gives priority to

people and groups in situations of greater vulnerability, such as the ones involved in informal and precarious work activities and relations, activities that pose greater risk to health, the ones subjected to harmful forms of discrimination, or to child labor, aiming at overcoming social and health inequities and achieve equity in health care⁶⁻⁸.

MLE passed legislation specifically targeting labor relations. It published NRs on work safety and health, which are to be “mandatorily observed by private and public companies and direct and indirect public administration agencies, as well as by Legislative and Judiciary agencies with employees under the Consolidation of Labor Laws (CLT) regimen”⁹. Up to the present time, 36 NRs specifically target occupational safety and health⁹.

NR7 makes mandatory the formulation and implementation of the Medical Control of Occupational Health Program (Programa de Controle Médico de Saúde Ocupacional – PCMSO) seeking “promotion and preservation of the health of the full set of workers”. It includes compulsory pre-employment, period, return to work, change of function and dismissal medical examinations focused on clinical assessment and that comprise occupational interview, physical and medical examination and additional tests⁹.

NR 9 makes formulation and implementation of the Environmental Hazards Prevention Program (Programa de Prevenção de Riscos Ambientais — PPRA) mandatory. The aim of this program is “to preserve the health and physical integrity of workers, by anticipating, recognizing, assessing and consequently controlling ongoing or future environmental hazards at the workplace, with consideration to the protection of environmental and natural resources.” Workplace hazards include “physical, chemical and biological agents present in the workplace which as a function of their nature, concentration, intensity and length of exposure might harm the health of workers”⁹.

NR 4 addresses “specialized safety engineering and occupational medicine services”. It makes mandatory for “private and public companies, direct and indirect public administration agencies and Legislative and Judiciary agencies with employees under the Consolidation of Labor Laws (CLT) regimen” to set “Specialized Safety Engineering and Occupational Medicine Services to promote the health and protect the physical integrity of workers at the workplace.” Such services might be outsourced under specific circumstances also described in NR 4 (4.5 et seq.).

NR 6 deals with personal protective equipment (PPE). Item 6.3 states that “companies must mandatorily provide their employees PPE adequate to hazards, in perfect state of maintenance and operation, and gratis” for use at the workplace⁹.

Also the social security legislation considers issues inherent to workers' health, such as work accidents, occupational and work-related diseases, disability retirement, sick pay, accident pay (Law No. 8,123/1991¹⁰, Decree No. 3,048/1999¹¹ and appendices) and unemployment insurance (Law No. 7,998/1990¹², modified by Law No. 13¹³, 124/2015).

The legislation addresses insalubrity and the possibility of special retirement, for which insalubrity must have been duly recorded, for which purpose employers must issue a specific document named Social Security Occupational Profile (Perfil Profissiográfico Previdenciário — PPP). PPP is a historical-occupational document that contains administrative and environmental information and the results of biological monitoring, among other data collected along the period an employee worked for a

given employer. In addition, for workers to claim benefits they must be registered with the Social Security administration, the conditions for which are established in article 12 of Law No. 8,212/1991¹⁴ and article 11 of Law No. 8,213/1991¹⁰. The social security legislation further includes rules for retirement by age and length of service, among others.

The Labor Reform — Law No. 13,467/2017¹⁵, passed by the Brazilian Congress on 11 July 2017 — introduced significant changes into the labor and employment relations. The aim of the present study is to discuss the possible impacts of Labor Reform on workers' health.

METHODS

The present was a predictive comparative study involving CLT and Labor Reform and the latter's impacts on workers' health.

The sources used were: CLT⁵; Law No. 13,467/2017¹⁵; ILO Convention C187³; Análise das Comunicações de Acidente de Trabalho (CAT) (Analysis of Work Accident Reports — WAR) in Boletim Quadrimestral sobre Benefícios por Incapacidade published by the Ministry of Social Security¹⁶; a dossier on the impact of outsourcing on workers and suggestions to ensure equal rights, published by the National Secretariat of Labor Relations and the Inter-union Department of Statistics and Socioeconomic Studies (Secretaria Nacional de Relações de Trabalho and Departamento Intersindical de Estatística e Estudos Socioeconômicos — SENART/DIEESE)¹⁷; and “Labor Reform ignores studies on workers' health, says an expert,” article published by the National Association of Occupational Medicine (Associação Nacional de Medicina do Trabalho — ANAMT)¹⁸.

RESULTS

Among the changes made to CLT⁵, the Labor Reform, Law No. 13,467/2017¹⁵, introduced outsourcing, understood as “the act by which a company contracts out a task to another company to be usually performed by the latter's employees”¹⁹. The term for outsourcing used in Brazil is “terceirização” (literally, attribution to a third party), which

denotes the explicit intention of Brazilian entrepreneurs to transfer the role of employer to a “third party” (i.e., to “others”) and with it all the obligations inherent to the employment relationship²⁰.

Article 4-A was added to the new law, with the following wording:

Outsourcing involves the transfer by the outsourcer of any of its activities, including the main one, to a private legal person with economic capacity compatible with the performance of such¹⁵.

The following articles are meant to avoid employees being laid off only to be immediately hired as outsourced:

Article 5-C. Legal persons whose directors or partners worked for the outsourcer with or without formal employment relationship in the past *eighteen months* cannot be hired as contractors in the terms of article 4 of this Law, except when such directors or partners are retired¹⁵.

Article 5-D. Laid off employees will not be able to provide services to the same company as employees of a contractor for *eighteen months* since the date of layoff (our emphasis)¹⁵.

Still regarding outsourced employees, article 4-C grants:

when and as long as work is performed at the outsourcer’s premises, equal conditions for meals as the ones granted to direct employees when served at the company’s cafeteria; the right to use transport services; medical or outpatient care at the outsourcer’s premises or other facilities designated by them; adequate treatment supplied by the contractor when activities thus require¹⁵.

The legislation also ensures equal “sanitary conditions, health protection and work safety measures, and facilities adequate for work”¹⁰. Furthermore, it allows for the possibility “to establish, if thus they understand, that the contractor’s employees will receive a salary equivalent to the one received by the outsourcer’s employees, in addition to other rights not considered in this article”¹⁰ (our emphasis). The Labor Reform also addresses

telecommuting, i.e., a work arrangement that allows an employee to perform work during the regular, paid hours at an alternative worksite, involving use of telecommunications technology¹⁵. Article 62 of the new law states that the CLT⁵ chapter on working hours does not apply to telecommuters¹⁵. Before the new law was passed, CLT⁵ restricted telecommuting to occupations and tasks incompatible with regular working hours. Chapter II-A of the new law is fully devoted to this subject. Article 75-E establishes “the employer will explicitly and ostensibly instruct employees about the precautions needed to avoid work-related diseases and accidents.” The single paragraph of this article further asserts “the employee will sign a responsibility form acknowledging his/her commitment to comply with the instructions provided by the employer”¹⁵.

In turn, article 59-A enables “the parties, by means of individual written agreements, collective conventions or collective labor agreements, to define a working time of 12 hours followed by 36-hour uninterrupted rest period, with *observance and compensation* for rest and meal breaks” (our emphasis)¹⁵. Article 611-A states

Collective conventions and collective labor agreements have precedence over the law when, among others, make stipulations on: [...]

III – breaks during working hours, in compliance with the maximum of thirty minutes for working times longer than six hours¹⁷.

Previously, article 71 of CLT⁵ established:

In any continuous job with duration of more than 6 (six) hours, rest or meal breaks are mandatory, will last at least 1 (one) hour and cannot last more than 2 (hours) except if established otherwise in written or collective agreements⁵.

In regard to pregnant women, article 394-A of the new law states they must be spared from “I – activities with the highest degree of insalubrity for the duration of pregnancy.” In turn, pregnant or breastfeeding women can only be removed from areas with medium or minimal degree of insalubrity when they produce a medical certificate recommending such action¹⁵. Article 396 of CLT, which heading was not changed in the new law, establishes

that “for the purpose of breastfeeding her own child until age 6 (six) months old, the woman is entitled to two special rest breaks of half hour each during the working hours”⁵. The new law added a second paragraph to this article, according to which “the times for the rest breaks described in the heading of this article must be established through individual agreement between woman and employer”¹⁵.

However, even before the Labor Reform came to be passed, official statistical data pointed to “insufficiencies in its preventive aspects relative to workers’ health.” Indeed, 3,317,932 WAR were issued in the period from 2010 to 2014¹⁶. In general terms, “work accidents are the ones suffered by employees under the responsibility of employers, or by a special insured worker, during the performance of work-related activities and which cause permanent or temporary loss of their working capacity, being thus equivalent to the situations described in article 21 of Law No. 8,213, from 1991”¹⁶.

Differently, several authors with sound juridical knowledge define the typical work accident as an “usually sudden, violent and fortuitous incident related to work performed by the victim for someone else and that causes a bodily injury”²¹. Alternatively, it is defined as a “single, sudden, unpredictable, well-defined in time and space incident with usually immediate consequences,” of which essence violence is not part, and that might result in “severe, even fatal harm months or years after occurrence”²². According to one further definition, a work accident is one that “occurs instantaneously, suddenly affecting a worker, causing harm resulting in partial or total (temporary or permanent) disability for work, damage to the physical or mental health, or eventually the worker’s death”²³.

The number of WAR issued increased by 68.9% in the period from 2010 to 2011, decreased by 9% from 2011 to 2012 to stabilize at about 700,000 in 2013. Yet, in “2014, 70% increase was noticed by comparison to 2010”¹⁶. On analysis per type, typical accidents corresponded to 57.48% of WAR issued in the period from 2010 to 2014, accidents on the way to work to 14.2% and diseases to just 1.94%. Men were more frequently involved, 70.29%, and the most affected age range was 20-40 years old for both men and women¹⁶. Still according to the Ministry of Social Security “employers were

responsible for the largest number of notifications, corresponding to 71.16% of the total for the analyzed period, while the lowest proportion corresponded to the Public Authority, which was responsible for 2,653 accident reports”¹⁶.

On analysis per type of activity, the Ministry of Social Security found that eight categories were the most frequently involved, together corresponding to 83.0% of the total number of WAR issued, distributed as follows: manufacturing, 31.0%; motor vehicle and motorcycle sales and repair, 14.0%; human health and social services, 9.0%; construction, 8.6%; transport, storage and mail, 7.6%; administrative activities and complementary services, 5.6%; agriculture, livestock, forest-product industry, fishing and aquaculture, 3.5%; public administration, defense and social security, 3.0%¹⁶.

According to SENART and DIEESE¹⁷, outsourced employees are the group with the largest number of accidents:

Out of 300 fatal accidents at Petrobras from 1995 to 2013, 249 victims were outsourced employees, i.e., 80%. A similar situation is seen in the electricity sector, in which the frequency of work accidents is 5.5 times higher among outsourced employees and result in 3.4 times more deaths compared to direct employees¹⁷.

Outsourcers transfer to smaller companies the responsibility for hazards inherent to their work process, this is to say, hazards associated with the work activity are transferred to a third, or even a fourth party, namely companies which do not always have technological and economic conditions to manage them²⁴.

Outsourced companies are always smaller, invest less in safety and expose their employees to higher risk of accidents²⁵.

MLE provides two explanations for the largest number of work accidents at outsourced companies compared to the non-outsourced ones: “less rigorous management of the risk of work accidents at the outsourced companies,” and the fact that “higher-risk tasks are usually performed by outsourced workers”¹⁷.

In addition, “relative to the working hours, the weekly working time is 3 hours longer for these workers, without

considering overtime work or compensatory time off,” for which reason they are more susceptible to accidents¹⁷.

SENART and DIEESE¹⁷ further emphasize that outsourcing is associated with a different set of accidents and deaths. The main reason is “the precarious work conditions to which outsourced workers are daily subjected,” because “companies do not invest in preventive measures, even when activities put workers in a more vulnerable situation.” In this regard, “the construction sector is the champion,” followed by the electric industry. In addition, outsourced workers are segregated from the others, “especially due to the ban to eat at the same cafeteria as direct employees, distribution of differentiated uniforms and different transport arrangements”¹⁷. To this, one should add that “outsourced workers are invisible to society: they do not receive the same training, are not demanded to use Personal Protective Equipment (PPE) and their salaries are lower than the ones of the direct employees who perform the same function”¹⁷.

According to the article entitled “Labor Reform ignores studies on workers’ health, says an expert” published in ANAMT’s website, the labor reform has negative effects on workers’ health¹⁸.

DISCUSSION

The changes made by the Labor Reform do not alter the PNSIT, which protects workers considered as a vulnerable group or not, outsourced or direct employees, pregnant and breastfeeding, in addition to workers who perform high-risk activities from the health perspective. However, since the number of work accidents involving outsourced workers increased in recent years, the burden of SUS is expected to increase the moment Law No. 13,467¹⁵ enters in vigor, and also the number of issued WAR will increase.

Although the Ministry of Labor NR 4 establishes that outsourcers must extend the coverage of Specialized Safety Engineering and Occupational Medicine Services to contractors, as is known the latter’s employees are not compelled to report to the outsourcer as concerns occupational safety and health, except when explicitly established in the legislation. For this reason, the new law ensures outsourced employees equal “working conditions, occupational safety and health measures and adequate working facilities,” which does not

interfere with the application of NR 6, 7 and 9⁹. The new law also establishes:

when and as long as work is performed at the outsourcer’s premises, equal conditions for meals as the ones granted to the company employees when served at the company’s cafeteria; the right to use transport services; medical or outpatient care at the outsourcer’s premises or other facilities designated by it; adequate treatment supplied by the contractor when activities thus require¹⁵.

Therefore, there is no segregation between direct and outsourced employees relative to the aspects listed in the law. However, “outsourced companies are smaller, invest less in safety and expose their employees to higher risk of accidents”²⁰. In addition, “the weekly working time is 3 hours longer for these workers,” for which reason they are more susceptible to accidents¹⁷.

To avoid massive layoffs only to rehire the workers under the new regimen, giving rise to situations likely to cause physical and mental exhaustion, Law No. 13,647 set a minimum interval of 18 months between layoff and rehiring as outsourced employee¹⁵.

Merely establishing the possibility of equal salaries for outsourced and direct employees does not ensure such equality will happen in practice, but the former are usually paid less even when functions and working hours are the same^{17,20}. This situation causes physical and emotional stress and directly influences the quality of life (QOL) of outsourced workers and their families^{26,27}. In addition, “outsourced workers are invisible to society: they do not receive the same training, are not demanded to use Personal Protective Equipment (PPE) and their salaries are lower than the ones of the direct company’s employees who perform the same function,” which also infers with their QOL^{26,27}.

To overcome multidimensionality among individuals, WHO defines QOL as an individual’s perception of their position in life in the context of the culture and value systems in which they live and in relation to their goals, expectations, standards and concerns²⁸. According to Limongi-França²⁶, quality of life at work (QLW) is the set of actions performed by a company for improvement and innovation in the management, technological and

structural conditions at the workplace. As such it involves the following fields of scientific knowledge: health, ecology, ergonomics, psychology, sociology, economics, administration and engineering²⁶.

Management of QLW involves two aspects²⁶, one individual and the other organizational. The former involves more thorough understanding of work-related stress and diseases; the latter, an expansion of the notion of total quality, which encompasses behavioral aspects and satisfaction of individual expectations, in addition to processes and products, aiming at meeting the company's goals²⁶, for which reason visits of occupational health teams to workplaces are important²⁷. Segregation between outsourced and direct employees breaks the intended isonomy, giving raise to negative expectations, stress and longer working hours to achieve a higher salary, among other factors with negative impact on the health of a definite group of workers²⁵⁻²⁷.

The same considerations apply to telecommuting, as lack of control of the working hours increases the risk of disease due to stress and disruption of the personal lives of workers, especially because they are almost continuously reachable via computers and mobile phones without a preset schedule²⁵.

The older legislation allowed for a 12-hour working time followed by 36-hour rest only for some definite professional categories, such as health care and security. In the new law this regimen is allowed for any sector, but introduced significant changes relative to rest and meal breaks during the working hours, which were shortened from one hour to 30 minutes. One should remind that the shorter the rest breaks, "the higher the risk of work accidents and occupational diseases."²⁵

Longer working hours and shorter rest and meal breaks are harmful to the physical and mental health of workers and have impact on the quality of work, resulting in increasing frequency of accidents as a function of fatigue¹⁹⁻²⁰. Upon alluding to the possibility of observing or compensating for rest and meal breaks, article 59-A opened the door to a 12-hour working time regimen without any right to rest and meal breaks, which will cause countless health problems over time, in addition to reducing the performance and quality of work and resulting in higher odds of accidents due to lack of attention and fatigue^{26,27}. If indeed observed, a 30-minute meal break will compel workers to eat too fast — considering the time to go out and come

back to the workplace — resulting in ill digestion and poor choice of food, hurry and stress, among other aspects that contribute to impair QOL.

In regard to pregnant and breastfeeding employees working under insalubrious conditions, the law will have considerable impact on the health of mothers and infants, as it allows for the women to work in environments classified as with medium or minimal insalubrity, except if they produce a medical certificate banning such exposure. The older legislation indicated that pregnant and breastfeeding women should not be allocated to insalubrious areas independently from the degree of risk to health⁵. In turn, the new law permits work in medium- or low insalubrious environments provided a physician gave authorization¹⁵. While the older law established two half-hour breaks for breastfeeding, according to the new law such breaks should be agreed with the employer on an individual basis, being that an inadequate feeding schedule might have impact on the baby's growth and development. Work is a fundamental factor for social integration and very relevant in the lives of people. Depending on its type and conditions, it might be a source of pleasure and personal fulfillment, but might also cause illness. Although the Labor Reform provides conditions to increase the number of workers with formal employment relationship, it has negative effects for health, given the possible increase in work accidents, diseases and disability, in addition to negative impact on the QOL of workers and their families.

CONCLUSION

The Labor Reform passed in 2017 includes:

- outsourcing;
- telecommuting;
- 12-hour working hours for any professional category;
- reduction of meal breaks to 30 minutes;
- possibility for pregnant and breastfeeding women to work in medium or minimal insalubrious environments.

The analyzed data indicate that the new law will bring a dramatic increase of work accidents, diseases and disability, in addition to posing more difficulties to obtain social security benefits.

Outsourced companies are smaller, invest less in safety and expose their employees to higher risk of accidents. Longer working hours and reduced meal and rest breaks promote occupational stress, with reduction of the quality of life of workers (who become more susceptible to accidents) and their families.

Yet, the Labor Reform provides conditions to increase the number of workers with formal employment relationship,

thus reducing the social impact of the unemployed labor force. The changes introduced in the new law do not modify PNSTT, which protects workers independently whether they are outsourced or not.

Nevertheless, measures for worker health control must be implemented to avoid any increase of work accidents, diseases and disability, and consequently of the negative impact of such events on the quality of life of workers and their families.

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