

Flexibility of work relations: The intermittent employment contract



<https://doi.org/10.56238/uniknowindevolp-118>

Julia Oliveira Damasceno

Specialist in Public Law. Postgraduate in Labor Law at the Center for Studies in Law and Business - CEDIN.
E-mail: juliadamasceno@hotmail.com

Ana Maria Caldeira Oliveira

Master and PhD in Public Health from the School of Public Health of the University of São Paulo - FSP/USP. Sanitary Inspector of the Municipal Health Department of Belo Horizonte. Av. Afonso Pena, 2336 - Ground Floor - Employees. Zip Code 30.130-007. Belo Horizonte, MG. Brazil.
E-mail: amcoliveira@bol.com.br

ABSTRACT

Law 13,467/17, known as the Labor Reform, created a new form of employment contract, hitherto unheard of in the country: the Intermittent

Labor Contract. This new institute was conceived by the federal government as a solution to unemployment and informality in labor relations. This article aims to analyze the situation of the Intermittent Employment Contract two years after its institution by the Labor Reform of 2017, as well as the latest updates on the subject. The qualitative methodology was used with the adoption of the research technique of content analysis of documents related to the generation of jobs in this period, as well as the first decisions of the courts regarding the matter. As a result, the study shows that the creation of the Intermittent Labor Contract did not fulfill what it promised, because in addition to creating a new way of making labor relations precarious, it did not generate the expected increase in jobs, nor did it reduce the levels of informal work.

Keywords: Labor reform, Easing, Intermittent work.

1 INTRODUCTION

Law 13.147/171, known as the Labor Reform, was approved at a time when Brazil was going through a serious economic and political crisis. The government had to deal with high unemployment and a stagnant economy, which made it difficult to create new jobs. In this context, the objective of the labor reform was to modernize the legislation, enabling the flexibilization of labor relations.

As Adriana Campos and Leonardo Evangelista well explain, the Reform, aimed at the modernization of labor relations, "was responsible for the greater flexibilization of rights that the labor harvest has ever been targeted, managed with the declared purpose of stimulating the national economy, through the deregulation of labor relations (...)." ¹ With this, it was hoped that the reduction of workers' rights would encourage the generation of jobs.

¹ BRAZIL. Law No. 13,467, of July 13, 2017. Amends the Consolidation of Labor Laws (CLT), approved by Decree-Law No. 5,452, of May 1, 1943, and Laws No. 6,019, of January 3, 1974, 8,036, of May 11, 1990, and 8,212, of July 24, 1991, in order to adapt the legislation to the new labor relations. Available in http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2017/Lei/L13467.htm. Access in: 20 jan. 2020.

¹PIMENTA, Adriana Campos de Souza Freire; ZAMBONINI, Leonardo Evangelista de Souza. The labor reform and the disregard of legal personality. Journal of the Regional Labor Court of 3. Region. Belo Horizonte, p. 68, nov. 2017.



One of the ways to create new jobs promised by the government was through the implementation of the Intermittent Employment Contract. Originating in the reform, this institute consists of the provision of services without continuity, although it fulfils all the other requirements of employment relationships. Thus, the employer only pays the employee for the service rendered, and there is no guarantee of work or income.

Intermittent work was, and still is, the subject of much controversy. On the one hand, supporters of the reform, such as the Minister of Labor at the time, Ronaldo Nogueira, argued that 2 million jobs would be generated only by the regulation of labor contracts, allowing people to leave informality and start having formal jobs, facilitated by the intermittent labor contract.²

On the other hand, critics such as Vólia Bomfim Cassar believe that intermittent work is a form of precariousness of labor relations, because it subjects the worker to the unpredictability of the provision of service and the remuneration to be received at the end of the month.³

This article aims to analyze the situation of the Intermittent Employment Contract two years after its institution by the Labor Reform of 2017, as well as the latest updates on the subject. First, an explanation will be made about the legal provision and conceptualization about the employment contracts and the employment requirements, and then analyze the intermittent employment contract. Finally, an overview of the intermittent contract will be made, two years after the entry into force of the Labor Reform, as well as the latest updates on the subject, in order to ascertain the practical results. To this end, data from the General Register of Employed and Unemployed – CAGED, released at the end of 2019, the first court decisions and updates on the matter are considered.

For the development of the study, the qualitative methodology was used with the adoption of the research technique of content analysis of documents. According to Bardin, content analysis can be conceptualized as "a set of communications analysis techniques that uses systematic and objective procedures to describe the content of messages."⁴

2 THE EMPLOYMENT CONTRACT AND THE EMPLOYMENT RELATIONSHIP

Provided for in article 443 of the Consolidation of Labor Laws – CLT, the individual employment contract may be agreed tacitly or expressly, verbally or in writing, for a determined, indeterminate period, or for intermittent work.

² EXAMINATION. Minister expects 2 million jobs with labor reform. Economy. 2017. Available in: <https://exame.abril.com.br/economia/ministro-espera-2-milhoes-de-empregos-com-reforma-trabalhista/>. Accessed Jan. 28. 2020.

³ CASSAR, Vólia Bomfim. Labor Law. 14. Ed. Rio de Janeiro: Forense, p. 509, 2017.

⁴ BARDIN, Laurence. Content Analysis. Lisbon: Edições 70, 1997. p. 42.



A contract is, in other words, an agreement. In the scope of labor law, it is the legal business "by which a natural person makes his services available to others, to be provided with personhood, not eventuality, onerosity and subordination to the borrower." ⁵

Thus, the employment contract, according to art. 442, CLT, corresponds to the employment relationship. To this end, the relationship between worker and company object of the contract must meet the requirements of the employment relationship, set forth in article 3 of the CLT: be provided by an individual, with personhood, onerosity, legal subordination and habituality or non-eventuality.

Labor Law protects juridical goods fundamental to the natural person, such as life, health and moral integrity.⁶ For this reason, in order to be characterized as an employment relationship, the employee must be a natural person. Nothing, however, prevents the employer from being a legal person – the restriction applies only to the figure of the employee.

In relation to personhood, the employment contract is considered *intuitu personae*, since the employee is hired because of his personal characteristics. Thus, as a rule, the service should be provided personally by him. This implies that the contract between an employee and his employer is non-transferable. ⁷

The onerosity concerns the employee's right to receive consideration for the service rendered, which must be paid directly by the employer through a fixed salary, commissions or legal gratuities.

Another requirement of the employment relationship is non-eventuality or habituality. Thus, it is "necessary that the work performed has a permanent character (even for a short determined period), not qualifying as sporadic work." ⁸

Finally, legal subordination concerns the employee's duty to obey the employer's determinations; This, in turn, has powers to control and supervise the provision of services, and may punish the employee in the case of illegalities.⁹

Until the labor reform, the employment contract could be for a definite or indefinite term, the latter being the rule. Thus, the fixed-term employment contract can only be used when the nature or transience of the service justifies it, in the case of activities of a transitional nature or in the case of the experience contract.

However, from November 2017, with the entry into force of Law 13,147/17, the CLT began to provide for another type of employment contract: the intermittent employment contract. This institute did not exist in Brazil and was created by the labor reform, generating some controversies that will be analyzed in the next chapter.

⁵ DELGADO, Maurício Godinho. Labor law course. 16. Ed. St. Paul: LTr, p. 574, 2017.

⁶ DELGADO, Maurício Godinho. Op. cit., p. 314, 2017.

⁷ CASSAR, Vólia Bomfim. Op. cit., p. 250, 2017.

⁸ DELGADO, Maurício Godinho. Op. cit., p. 317, 2017.

⁹ CASSAR, Vólia Bomfim. Op. cit., p. 253, 2017.



3 THE INTERMITTENT EMPLOYMENT CONTRACT

The scenario of world crises, the development of the media and the global division of trade are some of the factors that have contributed to a new Labor Law, with more flexible and less rigid rules.

¹⁰Following this trend of "flexibilization" of labor laws, Law 13.147/17 – better known as the Labor Reform – created the institute of the Intermittent Labor Contract, by amending article 443, caput, and inserting paragraph 3 of this same article, as well as art. 452-A, in CLT.

The intermittent employment contract consists of a written employment contract, which must, mandatorily, specify the value of the hour of work – which may not be less than the value that other employees of the company receive, intermittent or not, as well as may not be less than the value of the minimum hourly wage.

The great differential of the Intermittent Employment Contract is that, although there is subordination between the employer and the employee, the employment relationship is not continuous. This means that, regardless of the activity that the employee performs, in order to be characterized as intermittent work, it is necessary that there is an alternation between periods of service and inactivity.

Thus, the employer must summon the employee for the provision of services at least three calendar days in advance; The employee, in turn, must answer whether or not to accept the service within one business day. It should be noted that the possibility of the employee refusing the service does not disqualify the subordination, by express legal provision.

The call for the provision of services can be made by any means of effective communication, such as a phone call, email or even a message on *whatsapp*. ¹¹ At the end of the provision of the service, the employer shall immediately pay, in accordance with article 452-A, § 6, CLT, the remuneration, proportional vacation plus one third, thirteenth proportional, paid weekly rest and other legal additions.

But perhaps the most striking prediction of this new institute created by the labor reform is that the time in which the employee is not providing service to the employer will not be considered time at his disposal. In other words, this means that the employee, until summoned by the employer to perform a task, is not entitled to compensation or any other benefit arising from an employment relationship.

In this way, the intermittent contract is nothing more than a way to formalize the "beak", ¹² hurting the principle of legal certainty and the principle of worker protection. ¹³

¹⁰ CASSAR, Vólia Bomfim. Trends in Labor Law and Flexibilization of its rules. Available in: <http://genjuridico.com.br/2016/10/03/tendencias-do-direito-do-trabalho-e-flexibilizacao-de-suas-regras/>. Accessed 5 Feb. 2020.

¹¹ SERAU JUNIOR, Marcus Aurelius. Intermittent Contract: Effective Means for Summoning the Worker. Available at: <http://genjuridico.com.br/2018/12/20/contrato-intermittente-meios-eficazes-para-convocacao-do-trabalhador/>. Accessed 20 Jan. 2020.

¹² SILVA, Homer Baptist Matthew da. Comments on Labor Reform. São Paulo: Revista dos Tribunais, 1st ed. E-book, p. 8, 2017.

¹³ CASSAR, Vólia Bomfim. Op. cit., p. 509, 2017.



In this sense, Maurício Godinho Delgado states that the intermittent contract, in the form proposed by the Labor Reform, goes against two fundamental guarantees of Labor Law: the notion of length of the working day and the notion of salary.¹⁴

This is because the intermittent contract takes away any predictability about the remuneration and the working day, since the employee has no way of knowing if he will be called to work or not, or how long he will work, in the event of being summoned. There is no express guarantee of minimum remuneration in the case of non-summons, which leaves the employee completely helpless.

In addition, in other employment contracts, the time in which the employee is waiting for orders is considered time at the employer's disposal, under the terms of article 4, CLT.¹⁵ Thus, intermittent work tries to circumvent labor protection by creating a concept that takes into account "the reality of the time available to the employer, but without the legal effects of the time available."¹⁶

For these reasons, the intermittent labor contract demonstrates the "extreme radicalization of the subsumption of labor to capital,"¹⁷ for there is no point in creating a form of employment in which the employee is totally vulnerable to relying on uncertain summons to work and earn some income.

4 THE PANORAMA OF THE INTERMITTENT CONTRACT, TWO YEARS AFTER THE LABOR REFORM

The Labor Reform of 2017 was proposed at a time when Brazil was experiencing a period of recession and an increase in the level of unemployment. Based on the argument that the labor legislation in vogue overprotected employees and hindered hiring by generating a very high cost to companies, Law 13,467/2017 was approved in a very short time and without promoting due debate with society.¹⁸

According to the advocates of the reform, "the flexibilization of the labor market would not only be an alternative to the problem of unemployment, but also an important element for overcoming the macroeconomic crisis and the resumption of productive investments."¹⁹

Thus, most of the changes promoted by Law 13,467/2017 aimed to solve the problem of unemployment in Brazil and foster the economy, changing the legislation in order to make it less bureaucratic and less costly for the employer.

¹⁴ DELGADO, Mauricio Godinho; DELGADO, Gabriela Neves. Op. cit., p. 154, 2017.

¹⁵ DELGADO, Mauricio Godinho; DELGADO, Gabriela Neves. Op. cit., p. 154, 2017.

¹⁶ DELGADO, Mauricio Godinho; DELGADO, Gabriela Neves. Op. cit., p. 154, 2017.

¹⁷ FILGUEIRAS, Vitor; BISHOP, Bruna; COUTINHO, Pablo. The labor reform as a reinforcement to recent trends in the labor market. In: KREIN, Joseph Dari; GIMENEZ, Denis Maracci; SANTOS, Marcelo Luis dos (Org.). Critical dimensions of labor reform in Brazil. Campinas: Curt Nimuendajú, p. 130, 2018.

¹⁸ SOUZA JUNIOR, Ulisses Lopes. Reflection on the Brazilian labor reform. Available in: <https://jus.com.br/artigos/65938/reflexao-sobre-a-reforma-trabalhista-brasileira>. Accessed Jan. 22. 2020.

¹⁹ TEIXEIRA, Marilane Oliveira. The economic effects of labor reform. In: KREIN, Joseph Dari; OLIVEIRA, Roberto Verás de; FILGUEIRAS, Vitor Araújo de (Org.). Labor reform in Brazil: promises and reality. Campinas: Curt Nimuendajú, p. 56, 2019.



This context was perfect for the implementation of the Intermittent Employment Contract, since this is nothing more than, in simpler terms, the "elaboration of a register with the employee's data so that, if there is work, it can be triggered, but without the commitment to be called and without the commitment to answer the call".²⁰ Therefore, companies can dispose of labor when needed, without the obligation to pay an employee in full, as in a traditional employment contract.

Thus, "the institution of intermittent work was carried out with the argument that it would bring an increase in formal employment, with a greater number of registered workers and a decrease in the informal economy."²¹

The problem, however, lies in the fact that this type of employment contract does not guarantee even the minimum existential for the worker, who is in a position of vulnerability because there is no guarantee of salary or working day.

This allows the existence of situations in which a person, despite having concluded the intermittent employment contract, is not called to work and, therefore, will receive nothing from the company that hired him. This is the case, for example, of an employee hired for the role of store manager, who was never called to work.²²

Homer Batista adds that it is certain that those who have not worked, should not receive anything for this, however, points out that "the amazing thing in this norm, it is repeated, is to authorize the existence of a zeroed employment contract, when this, in fact, is not an employment contract."²³

After two years of the creation of this institute, the first judgments on the subject began to appear. The first decision in the second instance about intermittent work in the country occurred in 2018, when the Regional Labor Court of the 3rd Region – TRT annulled the contract of an employee of the company Magazine Luiza. At the time, the rapporteur understood that intermittent work, although the law does not make this requirement, should only be used in an exceptional way, and not to meet the demand for permanent and regular activities of the company. Thus, Magazine Luiza was ordered to pay the plaintiff as if he had signed a traditional employment contract.²⁴

However, the Superior Labor Court – TST, in 2019, reformed the decision of the TRT and decided that the intermittent contract can be agreed for any activity, except for aeronauts by express legal provision. Thus, since the contract was in accordance with the rules of the law, there was no

²⁰ SILVA, Homer Baptist Matthew da. Op. cit., 2017.

²¹ CORREIA, Henry; MIESSA, Élisson. Manual of Labor Reform. 1st. Ed. Salvador: JusPODIVM, 2018, p. 330.

²² More information about the trial is available at: <https://portal.trt3.jus.br/internet/conheca-o-trt/comunicacao/noticias-juridicas/nj-justica-do-trabalho-de-minas-valida-contrato-de-trabalho-intermittente-sem-contraprestacao>. Accessed Jan. 23. 2020.

²³ SILVA, Homer Baptist Matthew da. Op. cit., 2017.

²⁴ More information about the trial is available at: <https://www.conjur.com.br/2018-dez-13/trt-mg-anula-contrato-intermittente-magazine-luiza>. Accessed Jan. 23. 2020.



illegality in the hiring of the employee by Magazine Luiza, validating the application of the intermittent contract.²⁵

Although the TST's decision was favorable to intermittent work, there is a Direct Action of Unconstitutionality – ADI – underway in the Federal Supreme Court – STF, questioning the constitutionality of the articles that deal with the subject in the CLT. The entity that filed the lawsuit claims that the intermittent regime is an affront to the principles of the social value of work and human dignity.

In the same sense, according to an opinion published by the Public Ministry of Labor – MPT, the intermittent employment contract is unconstitutional for transferring to the employee the risks of the business, since there is no guarantee of receiving the monthly minimum wage.²⁶

In addition, the National Association of Labor Magistrates – ANAMATRA, in its statement number 73 of the 2nd Day of Material and Procedural Labor Law, also defends the unconstitutionality of the intermittent employment contract:

INTERMITTENT EMPLOYMENT CONTRACT: UNCONSTITUTIONALITY.

The intermittent work regime provided for in article 443, § 3, and article 452-A of the CLT is unconstitutional, for violation of articles 7, I and VII of the Constitution of the Republic and for affronting the fundamental right of the worker to the limits of working hours, the thirteenth salary and paid vacations.²⁷

Given the relevance of the matter, the process follows in abbreviated rite, but is still pending judgment in the Supreme Court.²⁸

In the practical aspect, data from the General Register of Employed and Unemployed – CAGED –, of the Ministry of Economy, indicate that from November 2017 (the date on which the Labor Reform came into force) until November 2019, only 11.3% of the vacancies created were intermittent.²⁹

Although these numbers are still very low, it is remarkable the growth of the intermittent labor contract from little to little. As an example, in November 2019, the creation of vacancies in the category

²⁵ More information about the trial is available at: <https://www1.folha.uol.com.br/mercado/2019/08/tst-derruba-decisao-de-minas-gerais-e-libera-magazine-luiza-para-contratar-intermitente.shtml>. Accessed Jan. 23. 2020.

²⁶ BRAZIL. PUBLIC MINISTRY OF LABOR. Technical Note n. 08, of June 26, 2017, of the Secretariat of Institutional Relations of the Public Ministry of Labor (MPT), signed by Dr. Ronaldo Curado Fleury, Attorney General of Labor. Available in: https://mpt.mp.br/pgt/publicacoes/notas-tecnicas/nota-tecnica-ndeg8/@@display-file/arquivo_pdf. Accessed Jan. 30. 2020.

²⁷ FELICIANO, William Guimaraes; MIZIARA, Raphael. Statements of the 2nd day of substantive and procedural labor law organized by subject. Available in: https://drive.google.com/file/d/1oZL9_JohYjNInVvehEzYDp-bl0fcF6i6/view. Accessed 03 Feb. 2020.

²⁸ ADI that questions intermittent work proceeds in abbreviated rite. <http://www.stf.jus.br/portal/cms/verNoticiaDetalhe.asp?idConteudo=416045>. Accessed Jan. 23. 2020.

²⁹ ANTUNES, Leda. No working hours and no fixed wages. UOL Economics, 2019. Available in: <https://economia.uol.com.br/reportagens-especiais/trabalho-intermitente-reforma-trabalhista-/#sem-jornada-e-salario-fixos>. Accessed Jan. 24. 2020.



was 45% higher compared to November 2018.³⁰ This demonstrates that, since the first decisions on the subject were favorable, the institute has been used with less fear by companies.

However, even if one takes into account the small growth of vacancies created for intermittent work, the labor reform was approved with the government's estimate that it would create 2 million formal jobs in 2 years, only due to the relaxation of labor standards.³¹ In practice, not even 10% of this estimate was reached: 173,340 jobs were created in two years (until November 2019), of which 129,229 were intermittent and 44,111 partial.³²

It should be noted that, although hiring for formal jobs has grown in this period, the vacancies for intermittent can give the false impression of reducing unemployment. Homer Batista explains that "several scholars have seen terrible scenarios, in which the unemployment rate can fall drastically, but in an artificial way, with several people having several contracts zeroed."³³

Another important aspect that should be taken into consideration is the fact that informal work, that is, self-employment, without the protection of labor law, has hit a historical record in the last survey released by the Brazilian Institute of Geography and Statistics – IBGE, totaling almost 39 million Brazilians in informality.³⁴

The continuous growth of informal work calls into question the effectiveness of the Intermittent Work Contract and the formalization of jobs that this type of hiring promises.³⁵

It should be noted that the advance of informal work reflects the lack of dynamism of the economy, with self-employment being one of the few alternatives for survival in the absence of formal jobs.³⁶

In this sense, the President of the TST, João Batista Brito Pereira, said: "It was a mistake for someone one day to say that this law was going to create jobs. It was a mistake. Knowingly it can't create jobs."³⁷

Thus, contrary to what was disclosed as the main reason to justify the changes in the legislation, Vitor Filgueiras adds that:

³⁰ ANTUNES, Leda. Op. cit., 2019.

³¹ AZEVEDO, Alessandra. Government predicts creation of 2 million jobs with new labor law. State of Minas, 2017. Available in: https://www.em.com.br/app/noticia/economia/2017/11/12/internas_economia,916076/governo-preve-criacao-de-2-milhoes-de-empregos-com-lei-trabalhista.shtml. Accessed Jan. 24. 2020.

³² ANTUNES, Leda. Op. cit., 2019.

³³ SILVA, Homer Baptist Matthew da. Op. cit., 2017

³⁴ More information about the survey data is available at: <https://economia.estadao.com.br/noticias/geral,com-informalidade-em-alta-taxa-de-desemprego-desacelera-para-11-2-em-novembro,70003137442>. Accessed Jan. 24. 2020.

³⁵ ANTUNES, Leda. Op. cit., 2019.

³⁶ KREIN, Joseph Dari; OLIVEIRA, Roberto Verás de. Beyond the discourse: effective impacts of the Reform on the forms of hiring. In: KREIN, Joseph Dari; OLIVEIRA, Roberto Verás de; FILGUEIRAS, Vitor Araújo de (Org.). Labor reform in Brazil: promises and reality. Campinas: Curt Nimuendajú, p. 124, 2019.

³⁷ PEREIRA, João Batista Brito. Labor reform: 'It was a mistake for someone one day to say that the law was going to create jobs,' says TST president. Interview with Laís Alegretti. BBC News, 3 July 2019. Available at: <https://www.bbc.com/portuguese/brasil-48839718>. Accessed Jan. 24. 2020.



Hypothetically, labor costs can encourage, hinder or have an irrelevant impact on job creation, depending on numerous variables. In the case of Brazil, however, empirical evidence does not suggest that rights have harmed employment in the last 30 years. On the contrary.³⁸

Therefore, "the reform did not deliver what it promised, nor could it, because it does not seem to contribute as a variable that encourages production and, therefore, employment."³⁹

It should be noted that, although over the years intermittent work will occupy a significant portion of the number of vacancies created, "it will certainly result in a formalization modality under downgraded conditions."⁴⁰

In the opposite direction of the logic used by the reform, the World Bank itself began to recognize that the norms of worker protection are fundamental for the relationship between capital and labor to be balanced, in addition to ensuring the efficiency of hiring.⁴¹

Thus, in these two years of legal existence, the intermittent employment contract, by itself, has shown not to be able to solve the problems of unemployment and informality in the country.

4.1 UPDATES ON THE TOPIC

The ADI that questions the constitutionality of the articles dealing with the intermittent contract has not yet been judged by the Supreme Court. The last move occurred on 12/11/2022, when the process was withdrawn from the Virtual Plenary of judgment of the Supreme Court with the prominent request made by Minister André Mendonça. This means that the trial of ADI 5826 will continue in a physical environment, however, there is still no new date for the trial.⁴²

Luiz Marinho, the new Minister of Labor and Employment (MTE), despite stating that the Labor Reform of 2017 stimulated the deregulation of the labor market, when asked if the new government had plans to end the intermittent labor contract, replied "not necessarily."^{43 44}

Finally, according to CAGED data, in 2020, despite the COVID pandemic, there were 182,767 admissions and 109,603 terminations related to the intermittent employment contract, which totals a balance of 73,164 jobs.⁴⁵ In 2021, there were 270,204 intermittent contract admissions and 178,864

³⁸ FILGUEIRAS, Vitor Araújo. The promises of labor reform: combating unemployment and reducing informality. In: KREIN, Joseph Dari; OLIVEIRA, Roberto Verás de; FILGUEIRAS, Vitor Araújo de (Org.). Labor reform in Brazil: promises and reality. Campinas: Curt Nimuendajú, p. 48, 2019.

³⁹ FILGUEIRAS, Vitor Araújo. Op. cit., p. 49, 2019.

⁴⁰ KREIN, Joseph Dari; OLIVEIRA, Roberto You will see of. Op. cit., 2019.

⁴¹ TEIXEIRA, Marilane Oliveira. Op. cit., p. 55-56, 2019.

⁴² SUPREME FEDERAL COURT. Direct Action of Unconstitutionality. ADI 5826. Available in: <https://portal.stf.jus.br/processos/detalhe.asp?incidente=5317595>. Accessed 24 Aug. 2023.

⁴³ More information available at: <https://valor.globo.com/brasil/noticia/2023/01/31/contratos-de-trabalho-intermitente-sao-precarios-mas-nao-necessariamente-serao-extintos-diz-marinho.ghtml>. Accessed 24 Aug. 2023.

⁴⁴ FERRARI, H. Luiz Marinho does not undertake to review the intermittent work. Power360. 2023. Available at: <https://www.poder360.com.br/economia/marinho-nao-se-compromete-em-rever-o-trabalho-intermitente/>. Accessed 24 Aug. 2023.

⁴⁵ BRAZIL. MINISTRY OF ECONOMY. New CAGED. Monthly Statistics of Formal Employment. Executive Summary. Available in: http://pdet.mte.gov.br/images/Novo_CAGED/Dez2020/1-sumarioexecutivo.pdf. Accessed 24 Aug. 2023.



terminations, totaling a balance of 91,340 jobs. ⁴⁶ In 2022, according to CAGED data, there were 301,464 intermittent contract formalizations and 217,235 dismissals, resulting in the balance of 84,229 jobs. ⁴⁷

5 FINAL CONSIDERATIONS

In the first two years of the Labor Reform, after analyzing the CAGED data, what was promised by the reform was not achieved. This is because the number of intermittent contractors is very small close to expected – government representatives, at the time, even stated that, in 2 years, 2 million jobs would be generated only by the regulation of labor contracts. ⁴⁸

Also according to the most recent data from CAGED, from the years 2020 to 2022, what is observed is that, although the rates of the intermittent contract increase from year to year, the growth is negligible, far below what was promised by the federal government when this institute was created – which demonstrates that the great expectations placed on the Labor Reform were not met, even five years after its entry into force.

In addition, levels of informal work are increasingly high, ⁴⁹demonstrating the fallacy that the Labor Reform would generate formal jobs and reduce informality in the labor market. Quite the contrary, what we see is an increasing number of informal workers, such as bicycle and motorcycle drivers at the doors of restaurants, waiting to be called via apps for a single delivery, without there being any guarantee of work or income. ⁵⁰

Thus, as Vitor Filgueiras well explains, " the reduction of rights and income from work, at least in Brazil, have not contributed, are not contributing and tend not to contribute to the expansion of employment." ⁵¹ In fact, the Intermittent Labor Contract, as it was idealized by the reformist legislator, contributes to the precariousness of labor rights, by subjecting the employee to the unpredictability of both remuneration and the working day.

In this sense, Homero Batista reinforces that "reforms of this kind do not have the capacity to produce income, much less to generate jobs and even less to generate decent work – sufficient, dignified work involved in social dialogue (...)." ⁵²

⁴⁶ BRAZIL. MINISTRY OF ECONOMY. New CAGED. Monthly Statistics of Formal Employment. Executive Summary. Available in: http://pdet.mte.gov.br/images/Novo_CAGED/Dez2021/1-sumarioexecutivo.pdf. Accessed 24 Aug. 2023.

⁴⁷ BRAZIL. MINISTRY OF ECONOMY. New CAGED. Monthly Statistics of Formal Employment. Executive Summary. Available in: http://pdet.mte.gov.br/images/Novo_CAGED/Dez2022/1-sumarioexecutivo.pdf. Accessed 24 Aug. 2023.

⁴⁹ EXAMINATION. Op. cit., 2017.

⁴⁹ STATE. Brazil has a record 39.307 million informal workers in the quarter to August. 2022. Available at: <https://economia.uol.com.br/noticias/estadao-conteudo/2022/09/30/brasil-tem-recorde-de-39307-milhoes-de-informais-no-trimestre-ate-agosto.htm>. Accessed 24 Aug. 2023.

⁵⁰ FILGUEIRAS, Vitor Araújo. Op. cit., p. 46, 2019.

⁵¹ FILGUEIRAS, Vitor Araújo. Op. cit., p. 16, 2019.

⁵² SILVA, Homer Baptist Matthew da. Op. cit., 2017.



And it is precisely because it does not represent a form of decent work, since it does not even guarantee the basic rights of an employee, such as the minimum wage, that intermittent work should be considered unconstitutional.

However, considering the position adopted by the 4th Panel of the TST,⁵³ which validated the Intermittent Employment Contract in a specific case, it seems unlikely that the Supreme Court will form the quorum necessary to declare the unconstitutionality of the issue. However, although the ADI judgment remains unscheduled to be resumed, the rapporteur of the action, Justice Edson Fachin, was in favor of the unconstitutionality of the device, on the grounds that this type of labor relationship exposes the worker to situations of fragility and social vulnerability.⁵⁴

⁵³ Judgment available in: <https://www.migalhas.com.br/arquivos/2019/8/art20190812-03.pdf>. Accessed 24 Aug. 2023.

⁵⁴ BRAZIL. SUPREME FEDERAL COURT. Rapporteur votes for the unconstitutionality of intermittent employment contract. 2020. Available at: <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=456516&ori=1>. Accessed 24 Aug. 2023.



REFERENCES

ANTUNES, Leda. Sem jornada e sem salários fixos. UOL Economia, 2019. Disponível em: <https://economia.uol.com.br/reportagens-especiais/trabalho-intermittente-reforma-trabalhista-/#sem-jornada-e-salario-fixos>. Acesso em 24 jan. 2020.

AZEVEDO, Alessandra. Governo prevê criação de 2 milhões de empregos com nova lei trabalhista. Estado de Minas, 2017. Disponível em: https://www.em.com.br/app/noticia/economia/2017/11/12/internas_economia,916076/governo-preve-criacao-de-2-milhoes-de-empregos-com-lei-trabalhista.shtml. Acesso em 24 jan. 2020.

BARDIN, Laurence. Análise de Conteúdo. Lisboa: Edições 70, 1997.

BRASIL. Decreto-Lei nº 5.452, de 1º de Maio de 1943. Aprova a Consolidação das Leis do Trabalho. Disponível em http://www.planalto.gov.br/ccivil_03/decreto-lei/Del5452compilado.htm. Acesso em: 28 set. 2018.

Lei nº 13.467, de 13 de julho de 2017. Altera a Consolidação das Leis do Trabalho (CLT), aprovada pelo Decreto-Lei no 5.452, de 1º de maio de 1943, e as Leis nos 6.019, de 3 de janeiro de 1974, 8.036, de 11 de maio de 1990, e 8.212, de 24 de julho de 1991, a fim de adequar a legislação às novas relações de trabalho. Disponível em http://www.planalto.gov.br/ccivil_03/_Ato2015-2018/2017/Lei/L13467.htm. Acesso em: 20 jan. 2020.

MINISTÉRIO DA ECONOMIA. Novo CAGED. Estatísticas Mensais do Emprego Formal. Sumário Executivo. Disponível em: http://pdet.mte.gov.br/images/Novo_CAGED/Dez2020/1-sumarioexecutivo.pdf. Acesso em 24 ago. 2023.

MINISTÉRIO DA ECONOMIA. Novo CAGED. Estatísticas Mensais do Emprego Formal. Sumário Executivo. Disponível em: http://pdet.mte.gov.br/images/Novo_CAGED/Dez2021/1-sumarioexecutivo.pdf. Acesso em 24 ago. 2023.

MINISTÉRIO DA ECONOMIA. Novo CAGED. Estatísticas Mensais do Emprego Formal. Sumário Executivo. Disponível em: http://pdet.mte.gov.br/images/Novo_CAGED/Dez2022/1-sumarioexecutivo.pdf. Acesso em 24 ago. 2023.

MINISTÉRIO PÚBLICO DO TRABALHO. Nota Técnica n. 08, de 26 de junho de 2017, da Secretaria de Relações Institucionais do Ministério Público do Trabalho (MPT), subscrita pelo Dr. Ronaldo Curado Fleury, Procurador Geral do Trabalho. Disponível em: https://mpt.mp.br/pgt/publicacoes/notas-tecnicas/nota-tecnica-ndeg8/@@display-file/arquivo_pdf. Acesso em 30 jan. 2020.

SUPREMO TRIBUNAL FEDERAL. Relator vota pela inconstitucionalidade de contrato de trabalho intermitente. 2020. Disponível em: <https://portal.stf.jus.br/noticias/verNoticiaDetalhe.asp?idConteudo=456516&ori=1>. Acesso em 24 ago. 2023.

CASSAR, Vólia Bomfim. Direito do Trabalho. 14. Ed. Rio de Janeiro: Forense, 2017.

CASSAR, Vólia Bomfim. Tendências do Direito do Trabalho e Flexibilização de suas regras. Disponível em: <http://genjuridico.com.br/2016/10/03/tendencias-do-direito-do-trabalho-e-flexibilizacao-de-suas-regras/>. Acesso em 5 fev. 2020.



CORREIA, Henrique; MIESSA, Élisson. Manual da Reforma Trabalhista. 1ª. Ed. Salvador: JusPODIVM, 2018.

DELGADO, Maurício Godinho. Curso de direito do trabalho. 16. Ed. São Paulo: LTr, 2017.

DELGADO, Maurício Godinho; DELGADO, Gabriela Neves. A reforma trabalhista no Brasil: com os comentários à Lei nº 13.467/2017. São Paulo: LTr, 2017.

EXAME. Ministro espera 2 milhões de empregos com reforma trabalhista. Economia. Exame. 2017. Disponível em: <https://exame.abril.com.br/economia/ministro-espera-2-milhoes-de-empregos-com-reforma-trabalhista/>. Acesso em 28 jan. 2020.

FELICIANO, Guilherme Guimarães; MIZIARA, Raphael. Enunciados da 2ª jornada de direito material e processual do trabalho organizados por assunto. Disponível em: https://drive.google.com/file/d/1oZL9_JohYjNInVvehEzYDp-bl0fcF6i6/view. Acesso em 03 fev. 2020.

FILGUEIRAS, Vitor; BISPO, Bruna; COUTINHO, Pablo. A reforma trabalhista como reforço a tendências recentes no mercado de trabalho. In: KREIN, José Dari; GIMENEZ, Denis Maracci; SANTOS, Marcelo Luis dos (Org.). Dimensões críticas da reforma trabalhista no Brasil. Campinas: Curt Nimuendajú, 2018.

FILGUEIRAS, Vitor Araújo. As promessas da reforma trabalhista: combate ao desemprego e redução da informalidade. In: KREIN, José Dari; OLIVEIRA, Roberto Verás de; FILGUEIRAS, Vitor Araújo de (Org.). Reforma trabalhista no Brasil: promessas e realidade. Campinas: Curt Nimuendajú, 2019.

KREIN, José Dari; OLIVEIRA, Roberto Verás de. Para além do discurso: impactos efetivos da Reforma nas formas de contratação. In: KREIN, José Dari; OLIVEIRA, Roberto Verás de; FILGUEIRAS, Vitor Araújo de (Org.). Reforma trabalhista no Brasil: promessas e realidade. Campinas: Curt Nimuendajú, 2019.

PIMENTA, Adriana Campos de Souza Freire; ZAMBONINI, Leonardo Evangelista de Souza. A reforma trabalhista e a desconsideração da personalidade jurídica. Revista do Tribunal Regional do Trabalho da 3. Região. Belo Horizonte, p. 67-96, nov. 2017.

PEREIRA, João Batista Brito. Reforma trabalhista: 'Foi um equívoco alguém um dia dizer que lei ia criar empregos', diz presidente do TST. Entrevista concedida a Laís Alegretti. BBC News, 3 de julho de 2019. Disponível em: <https://www.bbc.com/portuguese/brasil-48839718>. Acesso em 24 jan. 2020.

SERAU JUNIOR, Marco Aurélio. Contrato Intermitente: Meios Eficazes Para Convocação do Trabalhador. Disponível em: <http://genjuridico.com.br/2018/12/20/contrato-intermitente-meios-eficazes-para-convocacao-do-trabalhador/>. Acesso em 20. Jan. 2020.

SILVA, Homero Batista Mateus da. Comentários a Reforma Trabalhista. São Paulo: Revista dos Tribunais. 1. ed. E-book, 2017.

SOUZA JUNIOR, Ulisses Lopes. Reflexão sobre a reforma trabalhista brasileira. Disponível em: <https://jus.com.br/artigos/65938/reflexao-sobre-a-reforma-trabalhista-brasileira>. Acesso em 22 jan. 2020.

TEIXEIRA, Marilane Oliveira. Os efeitos econômicos da reforma trabalhista. In: KREIN, José Dari; OLIVEIRA, Roberto Verás de; FILGUEIRAS, Vitor Araújo de (Org.). Reforma trabalhista no Brasil: promessas e realidade. Campinas: Curt Nimuendajú, 2019.