


# Chapter 67

## Teleworking and the challenges for worker protection: reflections on the extension of fundamental labor rights

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### ABSTRACT

The competitiveness of the market, the advance of capitalism, and the new digital technologies have made business organizations change the productive mode, as well as the inter-company relationship and

work relations, reviewing concepts and paradigms that were petrified before. This article aims to confront the new perspective of teleworking and the guarantee of fundamental labor rights, through the contemporary understanding of the fundamental right to decent work, aiming at preserving workers' health in a socio-environmental dimension. The proposed investigation is legal-descriptive, aiming at decomposing a legal problem into its various aspects, relationships, and levels. In case, the object is the current analysis and understanding of the challenges of protecting teleworkers in a socio-environmental dimension of decent work. It is intended to demonstrate the extension of fundamental labor rights to the teleworker, to promote the improvement of the worker's living conditions, curbing social marginality.

**Keywords:** Telework, Decent Work, Socio-environmental Dimension.

## 1 INTRODUCTION

This article aims to confront the new perspective of telework, aggravated by the Covid-19 pandemic, and the guarantee of fundamental labor rights to teleworkers, through the contemporary understanding of the fundamental right to decent work, aiming at preserving the health of the worker. in a socio-environmental dimension.

Thus, an approach to the teleworking institute will be made from the understanding of the fundamental right to decent work. It is not intended, for this article, to exhaust the proposed theme, but the intention is to instigate critical thinking, based on the dignity of the worker.

## 2 REFLECTIONS ON THE EXTENSION OF FUNDAMENTAL LABOR RIGHTS TO TELEWORKERS

Social rights are listed in Chapter II, Title II, more precisely laid out in Articles 6 to 11 of the 1988 Constitution. Although such rights are classified by constitutionalists as 2nd generation rights

(BONAVIDES, 1999), the Constitution of the Republic of 1988 raises them to the level of fundamental rights and, as such, they are, given that they are closely linked to the constitutional principle of the dignity of the human person.

Decent work is not restricted to the mode, means, and conditions of work provision, but mainly to the guarantee and effectiveness of constitutionally protected social rights.

On the other hand, the competitiveness of the market and the advance of capitalism reaching global dimensions allied to new digital technologies have made business organizations change not only the productive mode but also the intercompany relationship and the work relations themselves, reviewing concepts and paradigms previously petrified.

As a reflection of this market competitiveness and the technological-informational capitalist advance, it is noticeable the increase in the number of unemployed, and informality, in addition to the emergence of precarious forms of the pact of the workforce that put the health of the worker at risk. The informational age allowed for the geographical displacement of the development of work to the worker's home, generating the expansion of telecommuting in the home office modality, a situation aggravated by the Covid-19 pandemic.

In this context, from the beginning of 2020, the arrival of the pandemic wave of Covid-19 in Brazil forced the government to adopt restrictive measures such as social isolation. Aiming at the continuity of business activities, several employers determined the transfer of the workplace of their employees who, from then on, began to work in telework in the home office modality.

Indeed, in the context of the Covid-19 pandemic, the discussion on the need to make labor rights more flexible has become urgent, due to the emergency nature and exceptional nature of the economic crisis generated by the unprecedented proliferation of the virus.

However, labor flexibility, seen by many as a need to adapt to the new world socioeconomic order (SILVA, 2002), cannot lead to the deregulation of Labor Law itself, since the worker, as a citizen, has the fundamental right to work worthy that is related to the observance and effectiveness of fundamental labor rights.

The modernization of labor relations, in the current world economic context intensified by the digital age, requires the guarantee of fundamental labor rights to workers who were forced to migrate to telework, in the form of a home office, due to the pandemic period, to of securing employment.

Thus, under the pretext of the need to adopt isolation measures, during the pandemic period that devastated Brazil from March 2020 to the beginning of 2022, there was an unrestrained use of telework and no guarantee of fundamental labor rights, notably about the fundamental right to limit working hours and the right to breaks.

It is important to state that the work carried out at a distance through technological means, as with the telework regime, makes the worker invisible since it keeps him away from the company and separated from his peers.

Thus, to the teleworker, as a human being who uses his workforce as a means of subsistence and, consequently, to be inclusive of society, fundamental labor rights must be ensured, in particular the right to limit working hours and breaks. This is because the teleworker must be legally recognized in his absolute meaning as a human person.

It should be noted that the fundamental labor rights listed, notably, in art. 7, of CR/88, are immediately applicable to all human beings who use their workforce as a means of subsistence, considering, therefore, work in the broadest sense.

The CLT standardization on telework cannot be interpreted and applied without observing fundamental labor rights. The absence of day control for the teleworker who provides the service by production or task advocated in inc. III, of art. 62, of the CLT, does not remove the guarantee to limit the constitutional day and the right to breaks.

On the other hand, a healthy and balanced environment is also part of the guarantees and fundamental rights of the human being, which, within the working relationship, translates into the protection and preservation of the physical and mental health of the worker as the foundation of the fundamental right to decent work.

It is clarified that the worker's home will not always be the best place for the development of his work, since, many times, it may be devoid of ideal conditions for that.

It cannot be denied that many times, it is difficult to separate personal and professional lives, since, considering that workers start to work within their families, it is very common for them to experience difficulties in reconciling work and household activities.

In this way, the purpose of distance work, which aims to increase productivity, may be the target of disorganization, digression, and other harmful effects on life and health due to the worker's inability to adapt.

This situation became even more serious during the Covid-19 pandemic during which isolation measures were imposed on everyone. This home office worker had to balance and juggle work time with time outside of it, as children, partners, and household chores run over each other in this geographic space of the home.

Regarding a possible violation of the right to disconnect caused by telework, Jorge Luiz Souto Maior (2003, p. 11) clarifies:

This type of work (telecommuting), however, significantly violates the right to non-work, since the worker's private life is lost in the fact that his residence is transformed into a workplace, with prejudice to the family life itself.

Even before the pandemic period, it was already a reality that, generally, the telework regime brought together workers excluded from protected jobs and, aiming at reintegration into the labor market, they submitted to precarious modalities characterized by a commitment to health and safety standards. security (ANTUNES, 2009).

But, it cannot be denied that the pandemic crisis, combined with the already present structural unemployment, aggravated the precariousness of working conditions, which has had an impact on the worker's life.

It should be noted that, in mid-2018, before the Covid-19 pandemic, the IBGE recorded 3.8 million people working remotely. In the pandemic context, an exponential increase in workers who migrated to telecommuting was recorded, configuring 8.6 million workers in this type of work. (FEDERAL SENATE, 2020)

According to IPEA Technical Note, surveys carried out in the 1st quarter of 2021 found that:

The results indicate that, in Brazil, 20.4 million people are in jobs with the potential to be carried out remotely, which represents 24.1% of the total number of people employed in the period. As for the profile of this worker, there is a predominance of women, white people, with complete higher education and aged between 20 and 49 years. Additionally, it is perceived that the income of individuals in occupations with the potential to be carried out remotely is responsible for about 40% of the total income mass. As for the second objective, the estimates indicated the predominance, as expected, of telecommuting in urban areas. (Business Letter No. 55 | Note 20 | 2nd quarter of 2022, p.1)

We live, therefore, in an era based on the work society in which the full-time commitment of the worker is required. Disconnection, leisure, family, and social life are banished, generating the loss of the worker's identity as a citizen.

In the meantime, the Constitution of the Republic of 1988 must be interpreted in the light of its time, which requires the immediate application of fundamental labor rights to all workers, since they are civilizing references to any employment relationship.

In addition, the marginalization caused by the restrictive action of Labor Law contributes to social chaos (SANTOS, 2000), in addition to compromising its instrumentality.

Thus, denying the teleworker the fundamental labor rights enshrined in art. 7, of CR/88, is to make the performance of Labor Law minimalist, in addition to making it exclusive. These are the minimum fundamental rights to be guaranteed to any employment relationship.

However, the jurisprudential understanding of the subject has diverged. For example, the Regional Labor Court of the 3rd Region, regarding the guarantee of fundamental rights to teleworkers, especially regarding the observance of the constitutional day, is not unanimous. See if:

OVERTIME. TELEWORK. As a corollary of the development of information and communication technologies, there has been an evolution in the ways of providing work and, in a mix of advantages and disadvantages from the perspective of labor law, telecommuting has emerged. Thus, with the slightest possibility of measuring the hours worked by this employee, even if in a mixed way (in an institutional environment and home office), the hours worked in overtime must be duly remunerated, according to art. 7, XVI, of the Constitution of the Republic. (TRT da 3rd Região; PJe: 0010132-05.2016.5.03.0178 (RO); Availability: 03/13/2017, DEJT/TRT3/Cad.Jud, Page 80; Judging Body: Second Panel; Rapporteur: Rodrigo Ribeiro Good).

FULL CONTENT: intends to amend the judgment, so that the defendant is sentenced to pay 720 overtime hours in 40 months, reiterating the initial claim ... /04/2018, 09/23/2019, 11/18/2019, and 12/07/2019, that is, on dates well before 04/07/2020, when I was already telecommuting. [...] The claimant is not satisfied with the denial of the break during the workday, because it usually exceeded 6 hours a day [...] it remained uncontroversial in the records that the claimant's workday was 6 hours a day with the concession of two 10-minute breaks [...] there is no way to invoke item IV of Precedent 437/TST in kind since there was no usual extrapolation of the six-hour workday. (TRT of the 3rd Region; PJe: 0010305-03.2020.5.03.0109 (ROPS); Availability: 11/30/2020; Judging Body: Fifth Panel; Rapporteur: Jaqueline Monteiro de Lima).

The jurisprudential divergence pointed out reiterates the need to guarantee fundamental labor rights to the teleworker as a means of ensuring decent work, in addition to revealing that the application of fundamental rights is independent of the geographic framework in which the development of human work is inserted.

### **3 FINAL CONSIDERATIONS**

The 1988 Constitution, recognized for recommending the improvement of the worker's social condition, is the result of a close look at the historical demands of national and international social movements and should be evoked when one perceives the threat to fundamental labor rights in the context of telework.

Thus, the extension of fundamental labor rights to telecommuters must be carried out comprehensively and effectively, based on the understanding of contemporary dignified work.

Thus, by guaranteeing fundamental labor rights, it is possible to curb social marginality accentuated by precarious forms of teleworking protection and promote the improvement of workers' living conditions.

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