Chapter 83

Health and safety at work: relevant aspects about the intrajornada interval in the context of the Brazilian legal system after the labor reform

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ABSTRACT
The study under projection is dedicated to analyzing the norms of health and safety at work, focusing on the intra-day interval from Law No. 13,467 of July 13, 2017. Through the bibliographic analysis, through the study of legislation and doctrine on the theme, the objective is to bring reflections on the norms of health and safety at work with regard to the intraday interval in the light of labor reform. It was verified in this study that despite all constitutional protection of the right to health, public policies are still presented that violate the rights to health, hygiene and safety at work standards.

Keywords: Health, Intraday interval, Labor Reform.

1 INTRODUCTION

Constitutionally recognized as a "right of all and duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other injuries and universal and equal access (...)" (BRAZIL, 1988) health is a fundamental right, and therefore necessary is the presence of effective public policies aimed at its promotion and protection as a whole.

Thus, the study in projection, without the intention of closing the discussion aims to make a reflection on the norms of health and safety at work with regard to the intraday interval in the approach of Labor Reform in Brazil - Law No. 13,467, published on July 13, 2017, and beginning on November 11, 2017.

For the development of this work, we used the analysis of bibliographic and documentary research relevant to the theme, with the analysis of doctrines and laws no. 13,467, of 13/07/2017; Law No. 8.080, of 19/09/1990; Decree-Law No. 5,452, of 05/1943, and the Constitution of the Federative Republic of Brazil of 1988 - CRFB/88, in the articles that touch this theme, because according to Gil (2002, p. 44): "Bibliographic research is developed based on material already prepared consisting mainly of books and scientific articles", and is also used for analysis and systematization of research, the use of the comparative method, to verify the changes that followed in labor legislation with regard to the intraday interval after the 2017 reform, having as initial points the text of the CLT of 1943 (before the changes by Law No. 13,467/2017) on the intraday interval, and the Federal Constitution of 1988 to which it comes to the theme.

> The comparative method can be used either to make comparisons in the present and in the past, or both concomitantly. In Human and Social Sciences, this method has a wide practical utility because it allows the study of large and varied amounts of research objects (MEZZAROBA; MONTEIRO,2009, p.91).

For all this, it is verified that the elaboration of the study under projection takes place because the theme has an increasing importance throughout Brazil in recent years, with reflections throughout the social structure, hence why the need for in-depth studies on the theme is indispensable.

Thus, without seeking to end the discussion, this study is divided in the following moments: Introduction; Health in the Constitution of the Federative Republic of Brazil of 1988; The intraday interval; The intrajourney intervalo after Law No. 13. 467/2017, and the last moment, Final considerations.

2 HEALTH IN THE CONSTITUTION OF THE FEDERATIVE REPUBLIC OF BRAZIL 1988

To talk about health in the context of the Constitution of the Federative Republic of Brazil of 1988 is to understand that from the Magna Carta of 1988 health was elevated to fundamental law, and after this recognition, the BrazilianJurídic milking began to safeguard this fundamental right throughout its structure.

Regarding fundamental rights Silva (2007, p. 178), he teaches that:

> (...) they are the most appropriate expression for this study, because in addition to referring to principles that summarize the conception of the world and inform the political ideology of each legal order, it is reserved to designate, at the level of positive law, those prerogatives and institutions that it embodies in guarantees of a dignified coexistence, free and equal to all people.

Health is a fundamental social right of the second dimension, being protected by the Constitutional Charter of 1988 in article 6, together with the rights that are aimed at the protection of food, work, housing, transportation, leisure, security, social security, protection of motherhood and childhood, and assistance to the homeless. And in this sense, Bonavides (2011, p. 564) understands that second-dimensional rights

> It is the social, cultural and economic rights as well as the collective or collective rights, introduced into the constitutionalism of the different forms of the social state, after they germinated by the work of ideology and anti-liberal reflection of the twentieth century.

The Federal Constitution of 1988 already in its preamble praises the importance of social rights, when it informs that these, together as other rights, supreme values of a society, being the objective of the State to guarantee fundamental rights in order to ensure the exercise of social rights (BRASIL, 1988).

Corroborating this understanding, Law No. 8.080/1990 in article 2 says that: "Health is a fundamental right of the human being, and the State must provide the conditions necessary for its full exercise". (BRASIL, 1990).

> Health can be understood as a natural or social condition. In ancient Greece, philosophers and physicians understood health as a natural reality resulting from a balance between the elements of nature present in the human body and cosmos. In public health, the naturalistic understanding of health was surpassed by the conceptions of two other currents of thought. One is due to the influence of utilitarian philosophers and economists of the 19th century and takes health as comparable to individual and collective well-being. The other aspect is that of the social epidemiology of the twentieth century, which is dedicated to the study of the social determinants of the health-disease process and which received a strong influence from Marxism (BRASIL, 2009, p. 99).

In Article 7, XXII, crfb/88 states that it is workers' right: "(...) XXII - reduction of the risks inherent to work, through health, hygiene and safety standards". (BRASIL, 1988), and continues to highlight in article 196 that:

> Health is the right of all and the duty of the State, guaranteed through social and economic policies aimed at reducing the risk of disease and other injuries and universal and equal access to actions and services for its promotion, protection and recovery. (BRAZIL, 1988).

In addition, CRFB/88 qualifies health as of public relevance when it says that: "(...) Health actions and services are of public relevance, and it is up to the government to dispose, under the law, on its regulation, supervision and control (...)". (BRAZIL, 1988). And in order to ratify the importance of health in the Brazilian Legal System, the Magna Carta of 1988 provides in its artigo 200 that:

> The single health system is responsible, in addition to other attributions, under the law: (...) II - to carry out health and epidemiological surveillance actions, as well as workers' health; III - order the training of human resources in the health area; (...) VIII - to collaborate in the protection of the environment, understood in work (BRASIL, 1988).

Thus, it is verified that activities formulated and implemented by a government in favor of the promotion of social rights and through public policies should represent an approximation between the State and society in the search to solve the social problems that arise, since public policies are for BALBINO (2013, p. 53): "A which, through comprehensive laws and standards, establish a set of rules, programs, actions, benefits and resources aimed at promoting social welfare and citizens' rights."

With regard to public policy focused on health, it is important to recognize that such policies should not be focused so only on the physical and mental well-being of the citizen, because the issue of health is not attached to only these factors, going beyond, in order to also cover social, cultural, environmental and work issues, that when added become indispensable for a better analysis and choices of public policies to be adopted, because

> public health policies are part of the social action field of the State oriented towards the improvement of the population's health conditions and natural, social and work environments. Its specific task in relation to other public policies in the social area is to organize public government functions for the promotion, protection and recovery of the health of individuals and the collectivity. LUCHESE, (2004, p. 3).

It is thus perceived that, although, even after the promulgation of crfb/88 public policies aimed at health have started to obey a cycle of effective public policies with a better understanding among the politicians, researchers and other actors involved (SECCHI, 2013), the fact is that the labor reform of 2017, was in the contracon of this conceptual, considering that the changes occurred in the body of the CLT were based on a fallacious discourse, in which there was no participation of the social actors involved, and did not respect the CRFB/88, so that a major labor setback was achieved, including the cut out that we started

to deal with, the setback in relation to the norms of health and safety at work with regard to the intraday interval.

3 THE INTRADAY BREAK

To conceptualize intraday interval, it is important to present what comes to be the duration of the work, which according to Delgado (2019, p. 1,120) comprises:

> the time in which the employee is available to the employer, as a result of the contract (or, from another perspective, the time in which the employer can dispose of the employee's workforce, in a limited period), necessarily refers to the examination *of rest periods*. In fact, the daily duration (journey) appears, in general, interspersed by periods of rest more or less short in its interior (*intraday intervals*), separate from the border days by different and longer periods of rest (*interday intervals*). Author griffins.

That said, the rest periods during the work performed by a given worker are recognized in several ways, however, however, the present study will be limited to the analysis of the intrajornadinterval to, and it should be said that:

> Art. 71 - In any continuous work, whose duration exceeds 6 (six) hours, it is mandatory to grant an interval for rest or feeding, which will be at least one (1) hour and, unless written agreement or collective agreement to the contrary, may not exceed 2 (two) hours. § 1 - Not exceeding 6 (six) hours of work, a range of 15 (fifteen) minutes will be mandatory when the duration exceeds 4 (four) hours. § 2 - Rest periods will not be computed in the duration of the work. § 3 - The minimum limit of one hour for rest or meal may be reduced by act of the Minister of Labor, Industry and Commerce, when the Social Security Food Service is heard, if it is found that the establishment fully meets the requirements concerning the organization of the cafeterias, and when their employees are not under an extended working arrangement sat on additional hours. § 4º The non-granting or partial granting of the minimum intra-day interval, for rest and food, to urban and rural employees, implies the payment, of an indemnity nature, only for the deleted period, with an increase of 50% (fifty percent) on the amount of the remuneration of normal working hours. (Wording given by Law No. 13,467 of 2017) (Term) § 5º The interval expressed in the caput may be reduced and/or fractionated, and that established in § 1 may be split, when between the end of the first hour worked and the beginning of the last hour worked, provided that provided for in a collective bargaining agreement or agreement, given the nature of the service and due to the special working conditions to which drivers, collectors, field surveillance and the like are strictly subjected in the services of operation of road vehicles, employed in the sector of public passenger transport, maintained the remuneration and granted shorter rest intervals at the end of each trip. (Writing by Law No. 13,103, 2015) (Term). Author griffins. (BRAZIL, 1943).

Thus, it is perceived that the intraday intervals granted to the worker during his work day, are rest periods of fundamental importance, considering that it is from this rest that the individual can recover his strength and energy to better develop his work, so that the granting of these intervals also allows the family life of these workers, and to a large extent they can prevent the occurrence of diseases and even work accidents, because, according to Delgado (2019, p. 1129) the intraday intervals

> They aim (...) to recover the employee's energies, in the context of the temporal concentration of work that characterizes the journey fulfilled each day by the worker. *Its objectives, therefore, focus essentially on occupational health and safety considerations, as a relevant instrument for preserving the physical and mental hygiene of workers throughout the daily provision of services*. Author griffins.

The constitutional legislature was extremely concerned with the health and safety conditions at work in order to qualify health actions and services as publicly relevant, and also provided for the competence of the unified health system to carry out health and epidemiological surveillance actions, as well as workers' health. And so, [12]

> (...) the **expanded conception of health** adopted in the Constitution and the understanding that the guarantee of this right requires the State to require economic and social policies aimed at reducing risks of diseases and other injuries, not only expand the spectrum of public policies related to health, but also require health policy drivers to interlocution with other sectors (LUCHESE, 2004, page 11). Author's griffin.

The Ministry of Labor and Employment (MTE) (as recognized by the current Ministry of Labor and Social Security), in 2007, through Ordinance 42/2007, already discussed the issue of the intraday interval and its possibility of reduction through collective labor negotiations, provided that all terms of this Ordinance (42/2007), and over the years and discussions on workers' health the understanding was modified in such a way that in 2010 Ordinance 42/2007 was repealed by Ordinance 1.095/2010, which began to inform that in addition to collective negotiations and their respective meetings, the intraday interval could only be reduced by authorization of the MTE, understanding that was also brought by Summary 437, II, of the Superior Labor Court - TST

> **TST Summary 437 - INTRAJORNADA INTERVAL FOR REST AND FEEDING. APPLICATION OF ART. 71 DA CLT (conversion of Jurisprudential Guidelines[No. s] 307, 342, 354, 380 and 381 of SBDI-1) - Res. 185/2012, DEJT disclosed on 25, 26 and 27.09.2012** (...) II - There is an invalid clause of agreement or collective agreement of work contemplating the suppression or reduction of the intraday interval because it constitutes a measure of hygiene, health and safety of work, guaranteed by public order norm (art. 71 of clt and art. 7º, XXII, of the CF/1988), infenso to collective bargaining. (...) IV - Usually exceeded the work day of six hours, it is due to the enjoyment of the minimum intra-day interval of one hour, forcing the employer to pay the period for rest and food not enjoyed as extra, plus the respective additional, in the form provided for in art. 71, caput and § 4 of the CLT. (BRAZIL. TST, 2021).

Thus, tratar, therefore, on intraday interval, is to deal with the standard of protection in health and safety at work and recognize that when these intervals are correctly granted to the worker protects himself and is protected to the dignity of the human person, because a worker who has an adequate working day and who has respectedthe their work day and respectively their rest interval, has full conditions to better develop their work activities, since their mental, physical and biological health are being respected.

[1] Art. 197. Health actions and services are of public relevance, and it is up to the Government to have, in accordance with the law, on its regulation, supervision and control, and its execution must be done directly or through third parties and also by a natural or legal person under private law. (BRAZIL, 1988).
[2] Art. 200. The single health system is responsible, in addition to other attributions, under the law: (...) I - to carry out health and epidemiological surveillance actions, as well as those of workers' health. (BRAZIL, 1988).

3 THE INTRADAY BREAK AFTER LAW No. 13.467/2017

Law No. 13,467 of July 13, 2017, popularly recognized as Labor Reform, established several changes in Decree-Law No. 5,452, of May 1, 1943 - Consolidation of Labor Laws - CLT, and among these changes, the changes on the intraday interval stand out. From the labor form, article 611a was included in the text of the CLT, which brought the possibility of the intraday interval being reduced, through a collective labor agreement or agreement, as set out: [34]

> Art. 611-A. Collective agreement and collective bargaining agreement have a prevalence of the law when, among others, they have on: (...) III - intraday interval, respecting the minimum limit of thirty minutes for journeys longer than six hours.

Thus, the text brought by the labor reform is contradictory, considering that in Article 71 of the CLT itself the legislator had already regulated that the intraday interval for working hours exceeding 6 (six) hours per day, would be at least 01 (one) hour, except for exceptions that Article 71 of the celetista text itself already had.[5]

With the addition brought by the labor reform in Article 611 – A, the interval of such great importance for the rest and recovery of energy and mental, physical and biological health of the worker was suppressed, and from the reformist text it can be only 30 (thirty) minutes.

And as if it were not enough to have the possibility of collective bargaining to reduce the interval intrthejourney, it is still verified, from the text of the labor reform, it is possible to negotiate to establish that the intraday interval can take place through individual agreements.[6]

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[3] Art. 611 § 1 - Trade unions representing professional categories are allowed to enter into Collective Agreements with one or moreeof the corresponding economic category, which sticrut working conditions, applicable within the scope of theeor the respective working relationships. (Wording given by Decree-Law No. 229, of 28.2.1967) (BRAZIL, 1943).

[4] Art. 611 - Collective Labor Agreement is the normative agreement, whereby two or more Trade unions representing economic and professional categories stipulate working conditions applicable, within the respective representations, to individual labor relations. (BRAZIL, 1943).

[5] Art. 71: (...) § 3 - The minimum limit of one hour for rest or meal may be reduced by act of the Minister of Labor, Industry and Commerce, when the Social Security Food Service is heard, if it is found that the establishment fully complies with the requirements concerning the organization of the cafeterias, and when the respective employees are not under work regime extended to additional hours; (...) § 5º The range expressed in the caput may be reduced and/or split, and that established in § 1º may be split, when between the end of the first hour worked and the beginning of the last hour worked, provided that provided for in a collective agreement or work agreement, in view of the nature of the service and by virtue of the special working conditions to which drivers, collectors, field surveillance and the like are strictly subjected in the road vehicle operating services, employed in the public passenger transport sector, maintained remuneration and shorter rest intervals are granted at the end of each trip. (Wording given by Law No. 13,103, 2015) (Term). (BRAZIL, 1943). Author griffins.

[6] Art. 444 - Contractual employment relationships may be subject to free stipulation of interested parties in all matters which do not contrabe the provisions of protection of work, collective agreements applicable to them and the decisions of the competent authorities. Single paragraph. The free stipulation referred to in the **Caput** article shall apply to the hypotheses provided for in Art. 611-A of this Consolidation, with the same legal effectiveness and preponderance over collective instruments, in the case of employees with a higher education degree and who perceives a monthly salary equal to or greater than twice the maximum limit of the benefits of the General Social Security System. (Included in Law No. 13,467, 2017) (BRAZIL, 1943). Author griffins.

> This *means that the legal norms concerning intraday intervals also have the character of public health norms, and cannot, in principle, be supplanted by the private action of individuals and social groups*. It is that, apart from the general labor principles of the impertinence of the norms of this specialized legal branch and the sealing of harmful transactions, such public health rules are of special obligation, by express determination arising from the Constitution of the Republic. Author griffins. DELGADO (2019, p. 1,122 - 1,123).

For Lourenço (2018), this possibility of making individual agreements between workers and employers for the definition of a series of labor rights established in Law 13.467/2017, aims, first of all, "[...] putting the worker/a naked before his employer, because devoid of the union option, will submit much more easily to the employer's efforts [...]" (LOURENÇO, 2018, p. 264) .

Recognized, therefore, as a public health standard, there is no need to talk about reducing or suppressing intraday intervals according to law no. 13,467/2017. Hygiene, health and safety at work are minimum conditions that must be respected, and in no way should be transacted.

Still in relation to the size of the setback to labor rights evidenced by Law No. 13.467/2017, behold, article 611- B, a single paragraph that says: "(...) Rules on work duration and breaks are not considered as occupational health, hygiene and safety standards for the purposes of this article." (BRASIL, 2017), to try to justify the very writing of this article, when it says the following:

> Art. 611-B. The unlawful object of a collective agreement or collective bargaining agreement, exclusively, constitutes the deletion or reduction of the following rights: (...) XVII - occupational health, hygiene and safety standards provided for by law or regulatory standards of the Ministry of Labor (...).

It is verified that the labor reform legislator imposed in the legislation the sole paragraph of Article 611-B of the CLT to justify the possibility of the withdrawal of another right of the worker, and to thus be able to disseminate the fallacious discourse on the flexibilization of labor rights, including in this list of rights the possibility of reducing the intraday interval.

> This *means that the legal norms concerning intraday intervals also have the character of public health norms, and cannot, in principle, be supplanted by the private action of individuals and social groups*. It is that, apart from the general labor principles of the impertinence of the norms of this specialized legal branch and the sealing of harmful transactions, such public health rules are of special obligation, by express determination arising from the Constitution of the Republic. In fact, all the constitutional precepts mentioned above place as insurmountable value the constant improvement of occupational health and safety conditions, ensuring even a subjective right to *reduce the risks inherent to work, through health, hygiene and safety standards*. For this reason, legal rules that, instead of reducing this risk, extend or deepen it, are frankly invalid, even if subscribed by the collective will of economic agents and professionals involved in the employment relationship (DELGADO, 2019, p. 1122-1123). Author griffins.

In addition to so many social setbacks, the reformist text also brought the amendment to the text of Article 71 in paragraph 4, since before the legislative changes, the intraday interval that was suppressed from the worker was paid to him, regardless of the time deleted, for its entirety as overtime. After the labor reform, the wording came to say that

> The non-granting or partial granting of the minimum intra-day interval for rest and food to urban and rural employees implies the payment of an **indemnity nature, only for the deleted period, with an increase of 50% (fifty percent) on the amount of remuneration for normal working hours**. (BRAZIL, 2017). I'm a brand.

Thus, it is verified that the new wording of paragraph 4 of Article 71 of the CLT encourages that the reductions of intervals occur in a growing, since if such a situation occurs the employer will make payment only for the period that has been deleted, and moreover, in the form of indemnification, which certainly harms the worker, since before the reform if this situation occurred, this ungranted interval was paid in full and paid as overtime, included, therefore, in the worker's salary with positive repercussions to the worker.

It is important to note that Brazil is a member of the International Labor Organization (ILO), and that it should therefore be considered for health and safety at work, given that Convention No. 155 of the ILO argues that:

> (...) PART II PRINCIPLE OF A NATIONAL POLICY - Art. 4 — 1. Every Member should, in consultation with the most representative organisations of employers and workers, and taking into account national conditions and practices, formulate, **implement and re-examine periodically a coherent national policy on the safety and health of workers and the working environment**. 2. This policy shall aim to prevent accidents and damage to health that are a consequence of work being related to work, or if presented during work, reducing to a minimum, to the extent reasonable and possible, the causes of risks inherent to the workplace. which are followed, to the extent that they may affect the safety and health of workers and the working environment: a) design, testing, choice, substitution, installation, arrangement, use and maintenance of the material components of the work (workplaces, work environment, tools, machinery and equipment; chemical, biological and physical substances and agents; operations and processes); (b) relationships between the material components of the work and the persons who perform or supervise it, and adaptation of machinery, equipment, working time, work organisation and operations and processes to the physical and mental capacities of workers; c) training, including the necessary complementary training, qualifications and motivation of the people who intervene, in one way or another, to achieve adequate levels of safety and hygiene (...) (INTERNATIONAL LABOUR ORGANISATION) . Griffin ours.

The International Labour Organization, as a mission to provide everyone with access to decent, quality, productively, with safety and dignity, recently, on June 10, 2022, at the 110th International Labour Conference (ILO, 2022),included in the list of fundamental principles of work, a fifth principle, namely: healthy and safe working conditions, ratifying once again all the protection around the issues that are focused on work, and reaffirming the need for this to be developed in a dignified way, and always as a means of inclusion of the individual in society, and thus, working hours that possibili has to the correct granting ofthe intraday interval, without suppressing or reducing it, it enables the individual to enjoy minimal conditions for the exercise of decent work.

At this point, andcontrary to international norms and recommendations, Brazil from labor reform has also violated the objectives for sustainable development covered by the UN 2030 Agenda, and directly within the cut-out of this research, the goal that corresponds to decent work, since decent work, among its pillars and objectives, it is based on the promotion of quality employment, and on paid work in an

appropriate manner, exercised in conditions of freedom, equity and security, in order to guarantee the individual a dignified life.

Since the intraday interval is considered a norm of health and safety, and given that health is a fundamental right constitutionally protected, it is verified that the single paragraph added by the reformist legislator in Article 611-B, has once again negatively cooperated with the great precariousness of labor rights in Brazil, in order to denature any protection given to the intraday interval, thus enabling its reduction, which must certainly be understood as an issue that is affront ed to human dignity, which affronts the prevalence of health and safety standards at work, affronts decent work and produces negative repercussions on society and the international order.

4 FINAL CONSIDERATIONS

Seeking to make a brief reflection on the norms of health and safety at work, focusing on the intraday interval from Law No. 13,467, of July 13, 2017, it was observed that although there is all constitutional protection to the right to health, in order to recognize it as a fundamental social right, public policies are still presented that violate the rights to health norms, hygiene, safety and decent work.

In this sense, the violation that is presented is directed to Law No. 13.467/2017, since it does not recognize the intraday interval as a standard of health and safety at work; it does not recognize that the physical, mental and biological protection of a worker is also achieved when the enjoyment of this interval is correctly allowed, and unlike all protection of the worker's health, allows, through collective negotiations, whether through collective labor agreements and collective bargaining agreements, and even through individual agreements (between company and work), that the intraday interval is reduced so that the individual can enjoy it and only 30 (thirty) minutes, when as a rule, and following the working day of 08 (eight) hours daily and 44 (forty-four) hours per week, this interval is at least 01 (one hour), forecast expressed in the CLT in its article 71.

In this sense, it is important to affirm, however, without the intention of finalizing the discussions of the theme, that it is necessary that normative changes are a reflection of public policies that can safeguard the fundamental rights of man, enabling him the right to the existential minimum, considering that decent labor public policies are those that will enable the worker to protect his health, to rest, leisure, safety in the work environment, working hours and living wages, among many other rights that are affections for workers, and that were abruptly or removed or submitted to precarious labor reform that occurred in Brazil in 2017.

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