



Chapter 5

Teleworking And The Negative Impacts Of Hyperconnection

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ABSTRACT

The evolution of communication technologies has advanced the adoption of teleworking by employers in Brazil in recent years. The article analyzes the vulnerability of teleworkers to strenuous journeys without compensation and hyperconnection. The objective is to verify the impacts suffered by teleworkers due to the non-coverage of the remote worker in the control of the working day, since the work hours often also come within the worker's rest period, causing physical and psychic impacts. It seeks to clarify aspects relating to the right to disconnect from work. The methodology for the research will be dialectical and descriptive of a bibliographic source using contributions from the doctrine, scientific articles, and articulations with legal provisions.

Keywords: Teleworking, Control of working hours, Hyperconnection, Right to disconnect.

1 INTRODUCTION

It is clear that in recent years teleworking has become popular, in addition to the evolution of technology in everyday life and the consequent use of it for work, also the ease of working from anywhere in the world, saving time with displacements and supposed flexibility of schedules have meant that the home office gained fame.

In the year 2020, with the coronavirus pandemic and the recommendations for distancing between people, the home office became an obligation for many employees.

However, in addition to the supposed advantages of telecommuting, it also deserves attention in terms of its imbalances.

It is important to highlight the intensive use of telematic means of communication that allow the worker to stay connected at all times, thus facilitating instant contact, impairs the distinction between moments dedicated to professional demands and those reserved for private life and leisure.

Also, with telecommuting, the work activity is no longer limited to the walls of the company and the continuity of the journey, in addition to the contractual hours, ends up being more frequent, especially for workers who must meet goals.

Thus, disconnecting from work becomes increasingly difficult and it is in this scenario that occupational diseases arise.

Reflection on working hours control and improving the telework regime to harmoniously reconcile workers' productivity and mental health is necessary. The right to disconnect in the work environment arises, a topic that will be addressed in the text.

In the end, final considerations will emerge and a challenge to solve the problem faced, that is, the use of technology and the dignity of the worker.

2 TELEWORK IN BRAZILIAN LAW

In the history of industrial and post-industrial society, the concept of work was linked to the fulfillment of tasks at the employer's physical headquarters, under his control (RODRIGUES, 2011).

With the advent of technologies and telecommunications, the concept of work changed, adding telework, becoming a specific category in the labor world.

Thus, digital technologies bring with them the advent of teleworking and the legal implications, with the elaboration of rules and criteria for regulating this new phenomenon.

Conceptualizing telework is not an easy task. The term “Telework” comes from the union of the Greek word “Telou”, which means “far away” and, from the Latin word “Tripliare” which means "work"¹, that is, it is a job far from the company's physical headquarters.

Telework can take place at home, in alternative centers and it can be mobile.

The International Labor Organization (ILO) in its convention number 177 (not ratified by Brazil) defines it as the form of work carried out in a place far from the central office and/or the production center, which allows physical separation and which implies the use of a new communication facilitating technology (MELO, 2011).

It is denoted, therefore, that there are two essential requirements for telework to be configured: that the work takes place elsewhere than at the headquarters of the business establishment and that communication technologies are used for this (TOLEDO FILHO, p. 178 to 192, 2017).

In the Brazilian legal system, the first time that telework was mentioned was in the enactment of Law nº 12.551/2012, which amended article 6 of the CLT (Consolidation of Labor Laws) to equate

telematic and computerized means of command, control, and supervision, regarding the teleworker's subordination to that exercised by personal and direct means.

However, this legislative change in 2011 was not enough to put an end to the growing demand for workers in this envisaged model, being a subject submitted to labor reform, from which a specific chapter on teleworking was added to the CLT through Law 13.647/2017, which defined the teleworking in its art. 75-B²:

Art. 75-B. Telework is considered to be the provision of services predominantly outside the employer's premises, with the use of information and communication technologies that, by their nature, do not constitute external work.

The labor reform received numerous criticisms regarding its chapter II-A, since in addition to the exclusion of teleworkers from the CLT chapter that regulates the duration of work, antagonizing with art. 6, of the CLT, formerly ratifying the isonomy of treatment about subordination and control between labor workers submitted to telematic forms and those who carried out work in an ordinary way - which will be better discussed in the chapter below-, also draws attention to the interest of the legislator in not detailing and regulating basic issues, such as responsibilities related to technological equipment and infrastructure necessary for the performance of the professional activity, among other sore and controversial points in the doctrinal field and the field of praxis (PRAUN and ANTUNES, p. 183 ss, 2020).

Telecommuting was already a common practice in certain companies and, with the new coronavirus, it became urgent to adopt toil through remote development, given the mobility restrictions, covering a significant number of employment relationships, especially concerning the home office, reaching many workers around the world.

Telework is an innovation that tends to expand where technological means and the use of the internet predominate as a method of connecting people and things.

After the conceptualization of telework, the objective of the article is to express the failure of Law n° 13.467/17 to abolish the basic rights of teleworkers concerning the working day and the consequences on the occupational health of this type of work.

3 THE CONTROL OF WORKING HOURS

Since the labor reform in 2017, article 62, III of the CLT³ provides that: “the following are not covered by the regime provided for in this chapter: III - employees in a telework regime”

The justification for adding item III to art. 62 of the CLT⁴ for the labor, reform was the difficulty of controlling teleworker hours.

³ BRASIL. **Lei n. 13.467, de 13 de julho de 2017**. Disponível em: <http://bit.ly/2V9bvtz>. Acesso em: 22 sets. 2021

⁴ Idem.

However, the position of part of the jurisprudence in labor lawsuits is that it is not enough that there is no shift control for workers to be classified in article 62, III of the CLT⁵, but that it is impossible to inspect the work.

It cites, for example, the decision given by the Regional Labor Court of the 9th Region, in case n° 0000183-77.2017.5.09.0008 (ROT) which said “it is not enough just the absence of working hours control, but the true impossibility of this procedure. It should be noted that demonstration of the effective impossibility of controlling the workday performed externally is required.”⁶

Thus, if in the contractual reality, it was possible to measure the workload and, based on this information, offer the worker a dignified workday, this is what must be done.

In this way, the teleworking regime does not prevent the exercise of the directive and supervisory power of the employer with the employee, since there is a full possibility of prophylaxis on the worker using computer technology such as webcam and software, not forgetting that even the number of times at which the keyboard is played, the time at which the day begins and ends, and even the median base of goals to be achieved in the telematic ways of carrying out the task allow the completeness of the inspection of the toil by its taker (FINCATO, p. 119ff, 2019).

In addition, the ease of communication gives greater vigilance to the employee. The mobility with which the Internet can be accessed today makes the network of possible control variables even more complex. Thus, in addition to working in offices, there is still the possibility of sending work tasks into the home and the private life of employees (RESEDÁ, p. 157 ss, 2007).

Telecommuting allows for the intensification of double working hours, both productive and reproductive (especially in the case of women) (ANTUNES, 2018).

Professor Manuel Estrada (2014) exposes that the vision of free teleworkers is a mirage since they are often subjected to a dependency as intense as, or even greater, than the one they would have if they were working at the company's premises, considering the possibility of constant supervision and the proposition of goals that the employer has, most of the time I join the unemployment society as described by Byung-Chul Han (2017).

In the format based on achieving goals, the worker is compelled to reassure the manager, literally taking control over his time in his home. Despite the competition that domestic tasks or family life can bring to the time of work effort, the individual remains online and responsive, registering the fulfillment of goals and deadlines and avoiding any impression of idleness about their hours (LOSEKANN, p. 1 ss, 2021).

In these cases, the maximum exploitation of the employee occurs with the proper legal basis so that it is not necessary to pay any additional amount related to overtime work (SEVERO, 2021).

⁵ Idem.

⁶ BRASIL. **Tribunal Regional do Trabalho da 9ª Região**. Acórdão n° 0000183-77.2017.5.09.0008. ROGER BASSO DAMIAN. EUROFARMA LABORATORIOS S.A.. Relator: ROSÍRIS RODRIGUES DE ALMEIDA AMADO RIBEIRO. Curitiba, PR, 13 de julho de 2021. Diário Oficial da União. Curitiba, PR.

Valdete Severo (2021) finds that it is not difficult to maintain telework under adequate conditions. “There is no difficulty in imposing a time limit. If we have enough technology for the work to be carried out by virtual means, it is enough to create a device that limits the possibility of access to this virtual environment in which the work is carried out”.

Thus, it is clear that the dismissal of the teleworker from working hours control entails health problems due to long hours and hyperconnection, denying the labor worker family and social life, in addition to the loss of constitutional rights such as overtime, night shift premium, rest paid weekly and breaks for rest and food, without prejudice to achieving their most precious asset and which constitutes the forefront of dignity, translating into physical and mental integrity, with which the conception of decency in the environment is also contaminated. work environment so dear to Convention n. 155, of the OIT⁷.

It is worth mentioning that Brazil is a signatory of Convention n. 155, of the OIT, since 1994, and, therefore, committed itself to its agenda prescribed by article 4.2 of Convention 155, bringing as macroscopic objectives the institution of an Occupational Health and Safety policy, seeking to “prevent accidents and damage to health that are a consequence of the work, are related to the work activity, or that appear during the work, reducing to a minimum, as far as is reasonable and possible, the causes of risks inherent in the work environment”.⁸

4 IMPACTS OF HYPERCONNECTED WORKERS AND THE RIGHT TO DISCONNECTION

Even assuming huge commitments with a policy program of safety and health at work (PNSST made by Decree No. 7602 of 2005, after the ratification of ILO Convention No. 155, the CLT reformulated in 2007, loosened the guidelines and endorsed the lack of obligation to control the working hours of teleworkers and the absence of limitation of time devoted to telework, intensifying the injury to the right to disconnection of teleworkers.

Still art. 611-B of the CLT provides: “Rules on working hours and breaks are not considered as norms of health, hygiene and safety at work for the provisions of this article.”

That is art. 611-B of the CLT subtracted the working day from the environmental theme, something quite paradoxical in the face of a voluminous doctrinal current radically positioning itself against the legislated text. It is enough to consider that classic labor scholars like Amauri Mascaro do Nascimento, when conceptualizing the work environment, pointed out:

“The work environment is, exactly, the machine-work complex: the establishment’s buildings, individual protection equipment, lighting, thermal comfort, electrical installations, salubrity or unhealthy conditions, dangerous or not, means of preventing fatigue, other worker

⁷ ORGANIZAÇÃO INTERNACIONAL DO TRABALHO (OIT). **C155 - C155 - Segurança e Saúde dos Trabalhadores**. Genebra. Disponível em: https://www.ilo.org/brasil/convencoes/WCMS_236163/lang--pt/index.htm Acesso em 04. out. 2021.

⁸ Idem.

protection measures, working hours and overtime, breaks, rest, vacations, movement, storage and handling of materials that form the set of working conditions, etc.” (BIRTH, p. 835, 2010)

Thus, among the negative points of telecommuting, to the worker, factors such as the risk of social isolation, the lack of control over the time to be spent on the service - making them workaholics -, the fragility of union activity - due to the lack of interaction between colleagues -, and physical illnesses resulting from excessive computer use, in addition to the possibility that these characteristics encourage gluttony, alcoholism and drug use (RODRIGUES, 2011).

A survey by the International Labor Organization (ILO) found that workers spend a lot of time online waiting for work, also revealing that 40% of respondents reported that they regularly worked seven days a week and 50% indicated that they had worked for more than ten hours for at least one day in the previous month. The low salary, combined with the need to work, resulted in workers spending long hours online, compromising the worker's physical and mental health, of course (STEFAONO, 2020).

The pandemic has increased the productivity rates of workers in home offices, showing that they are working harder and for longer hours, violating the employee's right to leisure. The Innovation Center (FGVin) of the São Paulo School of Business Administration (FGV EAESP) surveyed the home office during social isolation to contain COVID-19. Among the results, 56% of the interviewees stated that they found a lot of difficulties or moderate difficulty in balancing professional and personal activities.⁹

Home office work came to be accompanied by all the intensification of precariousness resulting from this reality (paying for energy, water, food, lack of free time in the domestic space, private life mixed with public life, etc.)

In this way, the possibility of the worker being willing to develop burnout syndrome is also intensified. The performance society is a society of self-exploitation. The performing subject explores himself until he is completely consumed (burnout). Burnout is the pathological consequence of self-exploitation (HAN, 2017).

Ricardo Antunes (2020) points out that the expansion of digital work, online, has been demolishing the separation between the time of life at work and the time of life outside of it, since it presents, as a perverse result, the advent of what he calls digital slavery.

Therefore, it is essential that employers set real goals, possible to be met in a regular working day, so that the worker can disconnect, making the normative force of art. 7, XXII, and XXVII, of the CF and the proximity to the deleterious effects in the work environment due to the injunction of automation¹⁰.

⁹ FUNDAÇÃO Getúlio Vargas. **56% dos brasileiros têm dificuldade de equilibrar atividades profissionais e pessoais no isolamento social.** Disponível em: <https://portal.fgv.br/noticias/56-brasileiros-tem-dificuldade-equilibrar-atividades-profissionais-e-pessoais-isolamento> . Acesso em: 28 set. 2021

¹⁰ Incidentally, it is convenient to reproduce Hesse's ideas about the normative force of the Constitution, not admitting it, purely and simply, as a catalog of guidelines and directives, but as an imperative and transforming commitment of reality, postulating enormous purposes, such as human dignity and the social value of work. In the words of Konrad Hesse, "the normative force of the Constitution does not lie solely in intelligent adaptation to a given reality. The legal Constitution manages to convert itself

The right to disconnect from work is not an individual right of the worker, but of society and the family itself (SOUTO MAIOR, p. 296 ss, 2003).

Antunes alludes to a life full of meaning, asking that the individual find the first moment of fulfillment in the sphere of work. If work is self-determined, autonomous, and free, it will also be endowed with meaning by allowing the autonomous use of the free time that social beings need to humanize and emancipate themselves in their deepest sense. The search for a life endowed with meaning from work allows for exploring the decisive connections between work and freedom (ANTUNES, 2018).

For no other reason, Maurício Godinho Delgado (P.224, 2017) enunciates the good of work as part of the principle of human dignity, as it constitutes the minimum civilizing level of an individual. Now, as the loosening of the rules, latently unconstitutional, by the way, allow the connection of the labor worker with the productive sector of the company in an intolerant regime, it pervades a chasm of personal indignity and indecency in the work environment.

The right to rest, in addition to being a constitutional guarantee, is also covered by the principle of protection, a principle present in labor law, which aims to protect the employee and his rights in the labor relationship. The employee's rest goes beyond a simple moment of neglect, and for Sussekind "the imposition of the maximum limit of the working day and the obligatory rest of the worker is based on reasons of a biological, social and economic order, whose compliance is independent of the will of the employees". parts" (SUSSEKIN, p. 12 ss, 2020).

Ricardo Antunes (2018) asserts that in this 21st century, the biggest challenge is to give self-constituting meaning to human work to make our life outside of work also endowed with meaning. Build, therefore, a new way of life from a new world of work, beyond the constraints imposed by the system of social metabolism of capital.

5 CONCLUSION

The problems of working at home should be discussed, especially in the form of telework, which is new in Brazil and intensified with a "boom" during the pandemic. The text concludes that teleworking should have greater protections even than physical work.

Telecommuting brings its benefits, but it can make workers' rights precarious. And the social right to work, intertwined with the maxim of the minimum civilizing level, is satisfied with the concept that the dignity of the person of the vulnerable and hyposufficient requires interventional measures of protection, a

into an active force, which is based on the singular nature of the present (...) Although the Constitution cannot, by itself, accomplish anything, it can impose tasks. The Constitution becomes an active force if these tasks are effectively carried out, if there is a willingness to guide one's conduct according to the order established therein, and if, despite all the questions and reservations arising from the judgments of convenience, one can identify the will to carry out this order (...). HESSE. Konrad. **A força normativa da Constituição**. Tradução de Gilmar Ferreira Mendes. Porto Alegre: Sergio Antonio Fabris Editor, 1991, p. 19.

fortiori to make the hermeneutic principle of maximum effectiveness and normative force prevail. of the constitutional text.

It remained evident that the national legislation does not follow the reality of the control of the working hours of the teleworkers, since online work has the full possibility of being inspected by the employers, and must, therefore, be inserted in the guidelines of control of the workday with payment of the respective remuneration for extra hours.

The employer class must pass on the amount of work and goals compatible with a regular working day to teleworkers, since it is impracticable and, in practice, indiscernible for workers to mark a gap between social life and professional life, especially when in a home office, since the exercise functional towing a computer crosses the period that would be reserved for rest and leisure, increasing the collection of work energy in proportion to the productive demands claimed by the employer.

This model of work with an intense workload leads to mental illness for the worker who does not disconnect from work, often leading to professional exhaustion syndrome, known as burnout syndrome.

Burnout syndrome is characterized by emotional exhaustion, depersonalization, and low professional achievement and becomes a threat to the constitutional imperative of reducing the harmful effects of automation and eliminating the risks inherent to work (MASLACH, p. 15 ss, 2018).

In 2018 there was an increase in the number of sick pay benefits granted to people diagnosed with burnout. In the list of preventive measures for Burnout Syndrome, disconnection is a priority.

Long working hours (more than 40 hours a week), imposing excessive goals, and encouraging competition among employees generate burnout (MASLACH, p. 15 ss, 2018).

Workers subject to the performance society must be careful with self-exploitation and the national legislation would have to protect this hyposufficient class, and in not doing so, it reinforces the creative activity of the Judiciary in the constitutional hermeneutics and social rights.

Society must be alert so that telework is implemented as a positive advance, guaranteeing all labor rights to employees.

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