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REFLECTIONS ON THE AUTONOMY OF THE EMPLOYEE'S WILL FROM THE NEW REGULATION OF EMPLOYMENT RELATIONS IN BRAZIL

REFLEXÕES SOBRE A AUTONOMIA DA VONTADE DO EMPREGADO A PARTIR DA NOVA REGULAÇÃO DAS RELAÇÕES DE EMPREGO NO BRASIL

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ABSTRACT

This article analyzed the exaltation of the autonomy of the employee's will in the employment relationship, based on a new regulation of labor law in Brazil, experienced in recent years and introduced by the changes promoted by the Labor Reform in the country in 2017, as well as by the decision given by the Supreme Court, in the direct action of unconstitutionality n. 6363. In addition to listing several examples, there was an analysis of two very significant situations: the contractual freedom of the hypersufficient employee and the possibility of salary reduction by individual adjustment between employee and employer. The research was justified because of the evident paradox in exalting the autonomy of the employee's will in an asymmetric legal relationship, in which it is assumed that the worker is hyposufficient. Based on the dialectics and the technique of indirect documentary research in the documentary and bibliographical research modalities, this study concluded, in the condition of the results found, that the valorization of the autonomy of the employee's will, in a markedly asymmetric legal relationship, directs labor law in the country to a new paradigm, with risks equivalent to those verified when constructing this legal branch.

Keywords: Hypersufficient; Labor Reform; Direct action of unconstitutionality n. 6363; Autonomy of the will.

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RESUMO

Este artigo analisou a exaltação da autonomia da vontade do empregado na relação empregatícia, a partir de uma nova regulação do direito do trabalho no Brasil, vivenciada nos últimos anos e constada pelas alterações promovidas pela Reforma Trabalhista, no país, em 2017, bem como pela decisão proferida, pelo Supremo Tribunal Federal, na ação direta de inconstitucionalidade n. 6363. Além da listagem de diversos exemplos, houve análise de duas situações bastante significativas: a liberdade contratual do empregado hipersuficiente e a possibilidade de redução salarial por ajuste individual entre empregado e empregador. A pesquisa se justificou por conta do evidente paradoxo em se exaltar a autonomia da vontade do empregado em uma relação jurídica assimétrica, cuja presunção é a de que o trabalhador seja hipossuficiente. A partir da dialética e da técnica de pesquisa documental indireta nas modalidades pesquisas documental e bibliográfica, este estudo concluiu, na condição de resultados encontrados, que a valorização da autonomia da vontade do empregado, em uma relação jurídica marcadamente assimétrica, direciona o direito do trabalho no país para um novo paradigma, com riscos equivalentes aos verificados quando da construção deste ramo jurídico.

Palavras-chave*:* *hipersuficiente ; reforma trabalhista; ação direita de inconstitucionalidade n. 6363; autonomia da vontade.*

1. INTRODUCTION

The regulation of labor law in Brazil, in recent years, has undergone, apparently, structural transformations, mainly due to the promulgation of the Labor Reform by Law no. 13,467 / 2017 (BRASIL, 2017),[3] responsible for numerous changes in the Consolidation of Labor Laws - CLT (BRASIL, 2020a), and for judicial decisions, especially the direct action of unconstitutionality (ADI) n. 6363 pending before the Federal Supreme Court (STF). (BRASIL, ADI 6363, 2020).

One of the sensitive points of these changes puts in shock, in an employment relationship, the autonomy of the will and the employee's under-sufficiency. This supposed contradiction, in theory, is capable of demanding reflection on the very purpose of building labor law, based on very particular characteristics of this legal branch.

The legal creation, by the Labor Reform, of the hypersufficient employee (CLT, art. 444, single paragraph), as well as the possibility of individual adjustment, between employee and employer, with the scope of reducing salary, are representative points of this scenario, although deal with examples in a considerable universe of evident exaltation of an alleged autonomy of the will the employee, to regulate the working conditions, in the employment relations.

This research analyzes the exaltation of the autonomy of the worker's will, inserted in an employment relationship, based on a new regulation of labor law in Brazil built in recent years. The problem allows to extract reflections about this supposed paradox in a legal branch marked by particularities when compared with civil law.

This study is justified due to this new regulation, based on legislative changes and judicial decisions with binding effects, the contents of which, supposedly, signal a structural change in labor law, based on the celebration of an alleged autonomy of the employee's will, the which, perhaps, generates paradoxical consequences in the formation of employment relationships in the country.

3 From this point on, citations to this Law will not be referenced. This rule will be adopted for all normative acts and judicial decisions (only for them), with reference only in the first citation, without prejudice to its listing at the end. The objective is to make the text more fluid.

The research development method is dialectical, whose content, genuinely, in general lines, was seen as an art of dialogue, of discussion. In modernity, however, dialectic has incorporated the meaning of understanding reality, in motion, with contradictions and antagonisms and in permanent transformation. (MARTINS; THEÓPHILO, 2009, p. 49).

Dialectics, as a reciprocal action, in an unfinished and jointly analyzed process (MARCONI, LAKATOS, 2007, p. 83-84), allows us to analyze this valorization of the employee's will autonomy in an asymmetric legal relationship marked by the employee's under-sufficiency (employment relationship).

This research adopts the technique of indirect documentary research in the modalities of documentary and bibliographic research, that is, for the preparation of this study, it analyzes public documents, statistics, normative sources and bibliography made public.[4]

This study aims to: a) list some recent changes in the regulation of labor law in Brazil, capable of situating the problem of this study; b) examine, by way of example, two significant changes that represent this new scenario in which there is an appreciation of the autonomy of the worker's will: the greater contractual freedom granted to the hypersufficient employee and the possibility of salary reduction by individual adjustment, authorized by ADI n. 6363, pending before the STF; c) from these examples, respond to the problem of this research by analyzing this supposed paradox embodied in the exaltation of workers' autonomy in employment relationships. This will even be the order of the sections.

2. LABOR REFORM, HYPERSUFFICIENT EMPLOYEE AND WAGE REDUCTION BY INDIVIDUAL AGREEMENT: THE EXALTATION OF THE PRETENDED AUTONOMY OF THE EMPLOYEE'S WILL5

The Labor Reform, which took place in 2017, brought about a profound change in the regulation of labor law in Brazil. It seems possible to extract several meanings from these modifications. One is the exaltation of the autonomy of the will[6] of the employee.

Perhaps, one of the effects of increasing the autonomy of the employee's will is the weakening of the presumption of worker under-sufficiency and the partial removal of the so-called contractual management.

CLT presents several examples of valuing the autonomy of the employee's will, based on changes resulting from the Labor Reform. In a merely illustrative list, it is possible to list the following precepts that seem to signal this direction:

4 From classification exposed by Marconi and Lakatos. (2010, p. 48-57).

5 Some excerpts from this chapter, with adaptations, were extracted from Eça and Fonseca. (2020).

6 This study, due to its limits, will not deal with the supposed difference between autonomy of the will and private autonomy. There are theoretical currents that differentiate them. Others approach them as synonyms. One of the effects of this autonomy is freedom of contract and the possibility for the employer to create self-regulations. It is in this sense that it will be used in this research.

a) authorization of monthly and semiannual compensation of working hours by individual agreement between employee and employer (CLT, art. 59, §5 and 6).

As for the hour bank forecast, the collective bargaining requirement continues (CLT, art. 59, §2º). In it the compensation can be annual. In fact, the Superior Labor Court (TST) has a Summary (85, V), published before the Labor Reform, whose content is that this type of compensation (bank of hours), because it is burdensome to the employee, must be built collective work instrument. (BRAZIL, Súmula 85, 2017). In the hour bank, the compensated hour (usually intended for compensatory time off) is paid simply, without the additional. Therefore, the employee fulfills overtime and receives it for time off, without the respective additional constitutionally guaranteed as a fundamental right of workers,[7] under the terms of art. 7, XVI, of the Federal Constitution of 1988 (CF / 1988). (BRAZIL, 2019);

b) establishment of a working hour of twelve hours followed by thirty-six uninterrupted hours of rest by individual agreement between employee and employer (CLT, art. 59-A). Again, the autonomy of the will prevails.

The TST (Precedent No. 444), before the Labor Reform, required collective bargaining to adopt the twelve-hour day, in addition to considering it as an exceptional measure. (BRAZIL, Súmula 444, 2017). The new CLT provision, as seen, requires only individual agreement.

Art. 59-A of the CLT, in addition to this context, was the object of ADI before the STF (BRASIL, ADI 5994, 2020), by allowing an agreement between employee and employer to establish a twelve-hour day, with the reminder that standard, constitutionally provided for, is eight hours (CF / 1988, art. 7, XIII);

c) adoption, by virtue of the provision in the individual labor contract, of the teleworking regime (CLT, art. 75-C), that is, again, the parts of the employment relationship have autonomy to define the way in which the work is carried out: in person or telecommuting.

Generally, the teleworking regime is desired by the employee, however, one cannot forget his difficulties and risks. (FONSECA, 2017). Therefore, it is possible to question whether it would be up to the autonomy of the parties' will to define it or if there would be any normative parameter to be observed in order to preserve the health and safety of the employee;

On the other hand, the adoption of the teleworking regime may materialize gains in the employee's quality of life. At this point, the autonomy of the will may be an ally of a more emancipatory work.

d) adoption, by individual agreement between employee and employer, of the intermittent employment contract (CLT, art. 452-A).

Under the intermittent employment contract, in short, there is only the payment of the hour actually worked. This type of contract decreases the employee's remuneration scale and institutionalizes a precarious contract, by modifying, exceptionally, the standard of paying for the time available, adopted by art. 4th of the CLT. With this, it tends to decrease the value of the wage bill and, depending on the situation, leave the employee without the perception of wages for long periods.

7 The STF expressly considered social rights to be types of fundamental rights: (BRASIL, ADI 5938, 2019).

Art. 552-A of CLT, whose text introduced the intermittent employment contract, was also the object of ADI before the STF. (BRASIL, ADI 6154, 2020);

e) unnecessary collective bargaining for the employer to promote unmotivated collective layoffs (CLT, art. 477-A).

This legal preceptive also contradicted the position of the TST, whose jurisprudence, at least before the Labor Reform, was in the sense that collective layoffs, to be carried out, depended on prior collective bargaining, as it is a group, massive, community layoff. , inherent to the collective bargaining powers, and for causing greater socioeconomic impacts when compared with the individual contract termination. (BRAZIL, ordinary appeal 173-02.2011.5.15.0000, 2012).

The legal authorization for mass dismissal, without prior collective bargaining, was also the object of an ADI before the STF. (BRASIL, ADI 6142, 2020);

f) possibility of termination of the employment contract in the cancellation modality (individual adjustment between employee and employer), with a decrease in the amount paid as severance payments (CLT, Art. 484-A).

In this case, the autonomy of the will will legitimize the decrease in the amount due as severance payments;

g) pact, by individual agreement between employee and employer, of arbitration clause in employment contracts whose remuneration is more than twice the maximum limit established for the benefits of the General Social Security Regime (CLT, art. 507-A.

The list seems sufficient to show that, especially after the Labor Reform, there was an exaltation of the autonomy of the employee's will in the employment relationship, with authorization to, individually and jointly with the employer, regulate working conditions.

Basically, the questioning, including those contained in the mentioned ADIs, concerns the limits of the employee's will autonomy in the employment relationship, or, in other words, what would be the limits of the contractual freedom of the employee and the employer, as well as the beautiful ones the power of self-regulation in an employment relationship.

It is possible, therefore, to extract a category of analysis from these changes promoted by the reformist legislator, based on valuing the autonomy of the employee's will to define, in consensus with his employer, rights (even of a fundamental nature) arising from the employment relationship.

The following two examples, analyzed with greater verticality, perhaps, show even more this direction of valuing the autonomy of the will of the parties inserted in an employment relationship. First, the creation, by the Labor Reform, of the figure called hypersufficient employee will be analyzed. Then, what was decided by the STF, in ADI n. 6363, on maintaining the effectiveness of the provisions of Provisional Measure no. 936/2020.

The regulation of the hypersufficient employee was inserted in the sole paragraph in art. 444 of the CLT::

> Art. 444. [...]
> Single paragraph. The free stipulation referred to in the caput of this article applies to the cases provided for in art. 611-A of this Consolidation, with the same legal effectiveness and preponderance over collective instruments, in the

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> case of an employee holding a higher education diploma and who perceives a monthly salary equal to or greater than twice the maximum limit of the benefits of the General Social Security System .

The hypersufficient employee is characterized as such based on two criteria: salary level and training. The situation described in art. 444, single paragraph, of the CLT is an attempt to differentiate a type of employee based on their particular conditions from the notion of presumed hyposufficiency, whose recognition is something innate to the construction of labor law.

In the case of perceiving a salary equal to or higher than twice the maximum limit of benefits paid by the General Social Security System and having a higher education degree, the employee is considered to be over-sufficient (a counterpoint to the idea of under-sufficient). Consequently, art. 444, single paragraph, of the CLT, gives greater contractual freedom to dispose of their labor rights. For the device, the presence of this scenario allows the conclusion that hyposufficiency would cease. Consequently, there would be greater contractual freedom based on their autonomy of the will.

Once hypersufficiency was recognized, there would be greater contractual freedom (a greater degree of autonomy of the will). It would partially cease the governing over the contract. In this case, the parties (employee and employer) may freely stipulate based on the hypotheses provided for in art. 611-A of the CLT, with predominant effects on the law and collective labor instruments.

Art. 611-A of the CLT, also inserted by the Labor Reform, sets out an extensive list of possibilities. All the hypotheses listed in the provision are subject to individual negotiation between the employee (provided that he / she is hypersufficient) and the employer, whose effectiveness, as warned, will be supralegal and equally superior to the norms arising from collective bargaining.

The proposal to insert the figure of the hypersufficient employee may be to overcome the under-sufficiency through income and educational background. For an optimistic view, it may even mean an incentive for the qualification of Brazilian workers. In practice, however, perhaps, it signals the legitimation of the civilizing demotion of the employee who fulfills these conditions and presents himself as hypersufficient, since the condition of subordination remains and there will continue to be no plan of symmetry between him and his employer to effectively negotiate conditions of work.

There is, for a certain theoretical sector, an evident incompatibility between the wording of the caput and the sole paragraph of art. 444 of the CLT. (SEVERO; BIGGER 2017, p. 99). The caput limits the autonomy of the parties' will by imposing a certain contractual direction. The free stipulation of the parties may not contradict the labor protection provisions, norms resulting from a collective labor agreement (ACT) or collective labor agreement (CCT). The sole paragraph bets on the employee's autonomy of will in order to have, in his individual employment contract, forecasts with effectiveness of a prevailing rule to those arising from ACT, ACT and the laws.

The situation described in art. 444, sole paragraph, of the CLT (hypersufficient employee), therefore, signals the preponderance of the autonomy of the will in the formation of the employment contract to the detriment of the contractual directionism on the employment relations, marked by the presumed hyposufficiency of the employee.

Another situation experienced in legal practice, which is very illustrative for the purposes of this research, was that verified in a judgment rendered by the STF. This Court issued an injunc-

tion in ADI no. 6363, with binding effects, to confer interpretation according to the Constitution to the provisions of art. 11, §4, of the then Provisional Measure no. 936/2020.

Before analyzing the decision issued by the STF in ADI n. 6363, the wording of art. 11, §4, of Provisional Measure no. 936/2020, currently converted into Law No. 14,020 / 2020. (BRAZIL, 2020c).

> Art. 11. [...] §4º. Individual agreements to reduce working hours and wages or temporarily suspend the employment contract, agreed under the terms of this Provisional Measure, must be communicated by employers to the respective labor union, within up to ten calendar days, counted from the date of employment. your celebration. (BRASIL, 2020b).

Art. 11, §4, of Provisional Measure no. 936/2020 (repeated in art. 12, §4 of Law no. 14.020 / 2020), under the justifications of the state of public calamity and the public health emergency of international importance resulting from covid-19, authorized that individual agreements, entered into between employer and employee, reduce wages, working hours and implement contractual suspension (hypothesis in which there would be no remuneration consideration).

The provision of the aforementioned Provisional Measure is unconstitutional. Above all, it defies the precept of art. 7, VI of the CF / 1988: "[...] Workers' rights are ... irreducible from wages, except as provided for in a collective agreement or agreement;" (BRASIL, 1988).

CF / 1988 is crystal clear in the sense that, strictly speaking, the principle of wage intangibility applies. The reduction in wages should be seen as an exceptional measure and would only be authorized through a collective labor agreement or collective labor agreement.

The need for collective bargaining to reduce wages, in addition to the crystal-clear prediction on the dogmatic-constitutional plane, is endorsed on the theoretical plane. In this sense, in an exemplary listing, the lessons of Arnaldo Süssekind (SÜSSEKIND; MARANHÃO; VIANNA; TEIXEIRA, 1999, p. 155), Evaristo de Moraes Filho (MORAES FILHO; MORAES, 2014, p. 276), Orlando can be invoked Gomes and Elson Gottschalk (GOMES; GOTTSCHALK, 1998, p. 201), Maurício Godinho Delgado (DELGADO, 2015, p. 209-210), Vólia Bomfim Cassar (CASSAR, 2018, p. 861-862), Carlos Henrique Bezerra Leite (LEITE, 2019, p. 100 and 479), Alice Monteiro de Barros (BARROS, 2005, p. 706-707) and Pedro Paulo Teixeira Manus. (MANUS, 2003, p. 271).

The states of public calamity and public health emergency, for their part, are unable to suspend the normative force of the Constitution. (HESSE, 1991). Even in this extraordinary situation, art. 7, VI, of the CF / 1988 remains in force.

From this scenario, the STF had two paths: to apply the Constitution or to deny it, in this case, under the guise of a weighted hermeneutics.

The STF, by a majority of votes, dismissed the injunction. According to the decision, the individual adjustment would represent a convergence of interests and a speedy conflict resolution mechanism. Finally, he noted the need for exceptional and temporary flexibility in the requirement for collective bargaining, due to the covid-19 pandemic. In summary, in particular, the provision of Provisional Measure no. 936/2020.

The STF's decision to maintain the contested provision of Provisional Measure no. 936/2020, from another point of view, carries as a background the exaltation of the idea of autonomy of the will of the employee inserted in an employment relationship. In theory, the employee would be able to define, together with his employer, the salary reduction.

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On the other hand, the Supreme Court decision relativizes the notion of hyposufficiency, so present in labor law, by admitting that an employee authorizes, without assistance from the professional union, the reduction of his salary.

From the presentation of these two cases, there seems to be evidence of a recent inclination to value the autonomy of the will of the parties involved in the employment relationship. The task of the next section will be to promote a more vertical analysis with the aim of responding to the problem and analyzing this supposed paradox of labor law in Brazil to value the autonomy of the employee's will.

3. PARADOXAL EXALTING AUTONOMY IN EMPLOYMENT RELATIONS IN BRAZIL[8]

The real discovery of the 18th century was not the need for work, but the freedom of work, with the destruction of forced labor, whose violence was direct, or at least potential, something dominant in the Middle Ages. In addition to this, new meanings for work are beginning. (CASTEL, 2015, p. 232 and 234).

The freedom to work against work in corporations (and other types of forced labor), as a right to work, was a proposal in tune with the ideas of economic liberalism present in the 18th century. (CARACUEL, 1979, p. 16-17). In the period of the Industrial Revolution, there is concomitantly, the rise of economic liberalism, based mainly on the ideas of Adam Smith (SMITH, 2013) and David Ricardo. (RICARDO, 1975).

Liberal ideas, thriving at the time of the Industrial Revolution and in shaping the capitalist mode of production, were insufficient to safeguard work and the social condition of work. Although Adam Smith (SMITH, 2013, p. 1, 7-9, 19-23, 36-42, 60 and 413-415) recognized the work value, there was no protective web, as, for example, in general, in the proposal of labor law, whose protections to the worker and to the social condition of work work as one of the purposes of its construction.

In this scenario, there was a kind of overexploitation[9] of the workforce, unprotected by the lack of a labor law. Because of the lower resistance to discipline and because they accepted lower wages, children and women were preferred to men. They were more docile and represented cheaper labor force. The machine tools made the muscular strength generally present in men superfluous, which also made it possible for women and children to work, with increased exploitation. Intensity and productivity reach levels never imagined.[10]

Friedrich Engels, when answering about the difference between slave workers, serfs and proletarians then emerging, provides the necessary analysis to demonstrate the situation of workers before the institutionalization of labor law.

8 Some excerpts from this section were built from previously developed research: (FONSECA, 2017).

9 This category (overexploitation of the workforce) is studied, in another context, by: (MARIN, 2000, p. 123 and 125-126).

10 Some analyzes of this paragraph were inspired by reading: (MARX, 2012, p. 451, 467-470 e 484).

According to his lesson, the slave was sold in a single act, while the worker (in fact, his labor force), sells himself every hour, every day. The slave was his master's thing and property. For this reason, he had, in a way, a guaranteed existence, no matter how miserable it was. The proletarian, although free, has no guarantee, from an individual perspective, about his existence because he is at the mercy of competition and of all market fluctuations. (ENGELS, 1987. p. 17-19).

Émile Zola, in Germinal, in the year 1885, the name of the first month of spring in the calendar of the French Revolution, also recounts the degrading situation of coal mine workers in northern France. (ZOLA, 2011).

The situation of workers in England is also narrated by Engels, in another book, published in 1845 (ENGELS, 2010, p. 37-39 and 41), which also highlights the precariousness of the work environment since the beginning of the called free work.

The right to work, guaranteed in the French Constitution of 1791 (art. 3), established that society was compelled to provide for the livelihood of unfortunate citizens both by the creation of jobs and by the maintenance of means of subsistence for those unable to work. (BRASIL, 1791). The French Constitution brought a new element to the right to work: a social trait, with the constitutional obligation of the State to promote that right. (IBARRECHE, 1996, p. 88). This new data joins the purely liberal conception of considering it only as a synonym for freedom to work. (FONSECA, 2017, p. 116).

The workers, therefore, lived in conditions, either at work or outside it, deplorable. There was, as there still is, a brutal incompatibility between human emancipation and the capitalist mode of production. Consequently, a movement of social unrest began. The guarantee of the right to work, as provided for in the French Constitution (on condition of freedom to work and a fragile welfare system), was insufficient to prevent the impoverishment of workers. (HUBERMAN, 2014, p. 151; FONSECA, 2019, p. 125).

Since the emergence of the manufacturing system, especially with the Industrial Revolution, on the other hand, the working class is being formed and begins to organize itself with the scope of fighting for its interests. Thus, a movement for the formation of workers' organizations is initiated and, in return, the State (bourgeois) acts to prevent these associations. The presence of proletarians in factories and around cities caused a greater concentration of workers. The improvement in transport and communication facilitated the strengthening of the unit. Capitalism, therefore, produced the working class and provided opportunities for union strengthening. (HUBERMAN, 2014, p. 151; FONSECA, 2019, p. 125).

There were certainly many revolts and social struggles, including violent ones. It can be recalled, by way of illustration, of ludismo (initiated, in England, in 1811), of cartismo (between the years 1830 to 1850, also in England), the Lyon Revolt (in France, in 1831) and Revolution of 1848. There were also the formation of social movements refractory to liberalism, such as those of socialists (including utopians), anarchists and social democrats.

The capitalist mode of production holds out a promise that the worker will be free. "[...] In view of the evident deficit of workers' freedom, this conception is seductive. With the dismantling of the feudal system and the emergence of capitalism, a new way of working begins: wage labor. " (FONSECA, 2019, p. 115).

Evaristo de Moraes warns that economists, against the evidence of the facts, maintained their belief in the virtues of freedom of work. In labor relations, the supposed freedom has been

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generating oppression, misery, exploitation of the workforce and progressive demotion of the worker (MORAES, 1998, p. 9).

In Brazil, there are particularities, despite the existence of contact points. With regard to the idea of social formation, it seems inappropriate to import, without a filter, what happened in Western Europe.

Slave labor in Brazil ceased in 1888. At that time, the country did not adopt a mode of slave production, but a pre-capitalist productive form. Capitalism did not install itself completely, nor did labor law appear in the face of a lack of free work or freedom of work.

As if that were not enough, there was an effective attempt to steal the speech of the working class (PARANHOS, 2007. p. 23-44 and 83-90). Labor law in Brazil, for many, presents itself as a kindness of the State towards workers, with the forgetfulness that before the so-called Revolution of 1930 there was an incipient labor law filled with labor norms and a considerable social movement in favor of the workers.

> Thus, the CLT and labor rights, at the official and ideological levels, are seen as gifts and concessions from the State; of capitalism in Brazil, without forgetting the role of the State, which also contributes to the regulation of labor relations in the country, guided, above all, by the interest in the growth of industrial capitalism. (FONSECA, 2019, p. 250).

This Brazilian context for the formation of labor law has effects. One of them, perhaps, is a relative apathy of the working class to fight for their rights. This deficit, perhaps, is carried over to the exercise of a pretense of autonomy of the employee's will.

From the capitalist mode of production and the promise of freedom of work (something resulting from the expansion of the idea of freedom that came from the French Revolution, with late effects in Brazil), labor relations began to be regulated by the so-called common law (civil law) . The result was problematic. The exploitation of the workforce has reached barbaric levels.

This whole scenario, obviously, implied reflexes in the creation of law, since law is a cultural product. (FLORES, 2009). It made possible the construction of labor law, with labor laws and codes, the constitutionalization of social law, from the framework of the Constitution of Mexico, in 1917, and of Weimar, in 1919, and the internationalization of labor law, with normativity radiated by the International Labor Organization (ILO) in 1919.

This new direction of the law towards the recognition of social rights translates into new historical commitments (although not realizable) such as the adoption of material equality. Labor law, certainly, was the one that developed the most from this conception. (DELGADO; DELGADO, 2017, p. 42).

In this scenario, consequently, there was a need for the appearance of the so-called special law (labor law) unrelated to civil law (common law), built from its own rules, principles and methodologies. This path, didactically, is reported by Héctor-Hugo Bargagelata (BARBAGELATA, 2012. p. 112-119), based on the thesis of the particularism of labor law.

From a procedural perspective, (here it is necessary to add that CLT, in the same body, deals with the material and procedural rights of work, which seems to signal an easing of a partial separation between material and process law), Américo Plá Rodrigues wife the particularity of the labor procedure based on three principles: compensatory inequality, real truth and unavailability of rights. When analyzing it, he found it difficult to verify these principles in other

procedural branches, especially in civil proceedings. Other, typically labor-based principles, such as speed, gratuity and conciliation, shifted to civil proceedings, which, meanwhile, did not apply to those. (RODRIGUES, 1992, p. 243-244).

Labor law, since then, has been presenting itself as an autonomous branch in relation to other legal branches, including civil law. At the theoretical level, strictly speaking, their autonomy is defended because they find, in their core, their own rules, principles and methodology. (CESARINO JR., 1963, p. 112-115; NASCIMENTO, 1995, p. 122-124; PINTO, 2007, p. 64-67).

This conclusion, however, refrains from preventing a dialogue with other legal branches. Labor law, in advance, is assumed to be insufficient and incomplete to address all the problems arising from labor relations. By corollary, in Brazil (CLT, art. 8º and §1º) and also in other countries, normative predictions with the admission of importation of common law precepts are quite common, that is, any other branch of law other than the special work (it is called the subsidiarity technique). In addition, Messias Donato rightly maintains that labor law is, in essence, multidisciplinary. (DONATO, 2008, p. 86).

Furthermore, it seems inappropriate to consider that the approximation of labor law as a civil law will always bring harm to workers. There are civilian devices with potential quite in tune with the purposes of labor law, such as the social ends of the contract and the respect, including contractual, of personality rights.

The proposal of the Labor Reform to repeat the past and promote a certain path of return from labor law to civil law with the exaltation of the autonomy of the employee's will in the employment relationship is, therefore, quite paradoxical. The detachment of labor law from civil law, with the above mentioned reservations, meant the inefficiency of the theoretical premises of this legal branch to face the singularities of the employment link.

The Labor Reform attracted the logic of civil law to labor law, to the point of concluding that it is not a typical labor law (SEVERO; BIGGER 2017, p. 17 and 27), which generates a series of problems in this area. legal branch.

The warning from Márcio Tulio Viana is opportune: "[...] the contract [in labor law] is valued so much that its form is enough to make it presumed - practically absolutely [...] opening unprecedented spaces for the escape from law. " (VIANA, 2018, p. 416).

It should be remembered that the employment contract is a typical adhesion contract (DELGADO; DELGADO, 2017, p. 158), with virtually no margin for discussions by the employee. Therefore, after the Labor Reform and ADI n. 6363, the individual adjustment between employee and employer has a different connotation, along with greater contractual freedom.

In the capitalist mode of production, labor behaves like a commodity and, as such, is sold on the market (exchanged for money). It is a way of material survival for the worker and should be embodied in a means of emancipation. Labor law, by presenting special principles and rules, in relation to civil law, in addition to legitimizing this practice, almost contradictorily, seeks to alleviate the exploitation of the labor force. The approximation of the two branches based on the idea of autonomy of the employee's will to define, alongside the employer, the rules of the employment contract, removes from the labor law its character of partially protective shield.

Capitalism, however, is not limited to the sphere of production. There is a violent cultural industry whose objective is to impose the consumption of the goods produced. Even in the

hours of rest, the worker is obliged to consume it and his break from work seems more like a new job. (ADORNO; HORKHEIMER, 2006, p. 105). In an apparently similar sense, there is the notion that contractual freedom will lead to gains in the rights of employees, as if there was a relationship of full equivalence between them and their employers.

Again, the classic lesson from Evaristo de Morais is precise: “When dealing with this supposed freedom that presides over the employment contract, observe that it is little in practice [...]”. (MORAES, 1998, p. 11). In an employment relationship there is an evident asymmetry between employee and employer. The subordination element,[11] including structural (DELGADO, 2006. p. 667), objective (VILHENA, 2005, p. 514 and 521-526) and algorithmic (MIZIARA, 2019, p. 175), or economic dependence (OLIVEIRA, 2014) , as one of the elements necessary for the characterization of the employment relationship (CLT, art. 3), in addition to the dissociation between means of production and workforce, are safe directions for that conclusion.

The definition of subordination has been adapting over time. It does not fall on the person of the employee, but on working conditions. Still, it remains an element of asymmetry between the parties. If it is understood by the notion of dependence (in fact, this is the word foreseen in article 2 of the CLT), subordination is understood only as one of the consequences of wages, however insufficient to understand the whole phenomenon. In effect, economic dependency, as the most appropriate category, would characterize the employee as the dispossessed, coerced and expropriated subject of the employment relationship. (OLIVEIRA, 2014. p. 256-258).

Subordination refrains from being overcome by raising the salary and / or by training the employee in higher education. Its founding element remains in the employment relationship: the asymmetry of the link based on the separation between the means of production and the labor force. Consequently, the space for the autonomy of the will, in a legal relationship of this type, ends up being shortened, especially when one observes, as in Brazil, an army of unemployed workers, structural unemployment and very weak union associations.

Regardless of the position adopted (subordination or dependence), there is an impropriety in imagining that an employee will have equal conditions in negotiating, individually, working conditions with his employer. The refusal to accept the conditions imposed, possibly, will prevent admission or will result in the termination of the employment contract.

The policyholder, moreover, “[...] is the holder of a scarce factor (the capital) [...]”, that is, of the means of production. Thus, it has a predominance in the way in which the employment contract must be structured. It should also be emphasized that the labor force, a commodity of which the worker is a carrier, is inseparable from the worker. Consequently, the agreement will involve the worker’s body. Therefore, it is inept, from a pragmatic point of view, any autonomy of will of the employee to establish, with his employer, working conditions. (GOLDIN, 2017, p. 14).

The labor law would be, concomitantly, materialized by a contract-freedom and a contract-submission. Strictly speaking, there is a space around the recognition of the voluntary nature of the bond. However, in stark contradiction, with the contractual fulfillment, the initial freedom is added by submission (sometimiento). (GOLDIN, 2017, p. 14).

The current phase of regulation of labor law in Brazil, therefore, is moving towards a new paradigm. (KUHN, 2007, p. 220). In law, paradigms constitute legal theory and practice. (OLIVEIRA,

11 On the subject of subordination in the employment contract: (PORTO, 2015).

2016, p. 96). This new archetype would be anchored in a regulation, the content of which sees the autonomy of the employee's will, in individually adjusting working conditions with his employer, including with effects on the main obligation incumbent on the employer: salary reduction.

To be more exact, this new form of regulation of labor law in Brazil, would be oxygenated by a neoliberal paradigm. Neoliberalism is a political-economic theory whose human well-being is enhanced when individual entrepreneurial freedoms and capacities are managed within the framework of an institutional structure characterized by solid rights to private property and free markets and trade. It is up to the State to create and maintain an institutional structure conducive to these practices. In effect, it is necessary to ensure the integrity of the currency, to provide a structure for the defense of property, with military, police and the law, and to encourage the free market. (HARVEY, 2014. p. 12). With the exception of the essential functions for the reproduction of capital, it must behave as a minimal State, whose epilogue, in general, is the compromise of public policies, social well-being and human dignity. The labor law, therefore, in the way in which it was constituted, contradicts the principles of neoliberalism.

Pierre Dardot and Christian Laval, for their part, point to neoliberalism as the new reason for the world. Neoliberalism, the authors conclude, affects the individuality of people and compels them to act in a certain way, as a kind of individual company. (DARDOT; LAVAL, 2016. p. 377-378).

The impact of the Labor Reform and the decision, with binding effects, of the Supreme Court in ADI n. 6363, whose partial syntheses can be signaled to exalt the autonomy of the employee's will in the employment relationship, seem capable of directing labor law, in the country, towards a new (neoliberal) paradigm; almost a return to the origins, with more sophistication, however and perhaps, with risks equivalent (or greater) to those verified in the origin of the construction of this legal branch

4. CONCLUSION

This article analyzed the exaltation of autonomy by the new regulation of labor law in Brazil, especially with the enactment of the Labor Reform (Law No. 13,467 / 2017), responsible for changes in the CLT, and judicial decisions, especially the one handed down, in precautionary assessment, in ADI no. 6363, pending before the STF, whose effects are binding.

The first section listed recent changes in the regulation of labor law in Brazil, promoted by the Labor Reform, capable of showing the appreciation of the autonomy of the employee's will in the employment contract, as well as analyzing, by way of example, two representative situations: the largest contractual freedom of the hypersufficient employee and the possibility of salary reduction by individual adjustment, authorized by ADI no. 6363, pending before the STF.

The second section analyzed the problem of this article, based on contradictions, paradoxes and inconsistencies generated by the exaltation of the autonomy of the employee's will in employment relationships.

The research concluded that the valorization of the autonomy of the employee's will, in a legal relationship, markedly asymmetrical and in which the idea of economic dependence and / or subordination prevails, directs the labor law, in Brazil, towards a new (neoliberal)

paradigm , perhaps, with risks equivalent (or greater) to those verified when the construction of this legal branch.

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REFERENCES

ADORNO, Theodor W.; HORKHEIMER, Max. *Dialética do esclarecimento*. Fragmentos filosóficos. Tradução Guido Antonio de Almeida. Rio de Janeiro: Zahar, 2006.

BARBAGELATA, Héctor-Hugo. *A evolução do pensamento do direito do trabalho*. Tradução Sidnei Machado. São Paulo: Editora LTr, 2012.

BARROS, Alice Monteiro. *Curso de direito do trabalho*. São Paulo: Editora LTr, 2005.

BRASIL. [Constituição (1988)]. *Constituição da República Federativa do Brasil de 1988*. Brasília, DF: Presidência da República, [2019b]. Disponível em: http://www.planalto.gov.br/ccivil_03/Constituicao/Constituicao.htm. Acesso em: 21 abr. 2020.

BRASIL. *Constituição da França de 1791*. Disponível em: http://www.fafich.ufmg.br/~luarnaut/const91.pdf. Acesso em: 26 jan. 2017.

BRASIL. *Decreto-Lei n. 5.452, de 1º de maio de 1943*. Aprova a Consolidação das Leis do Trabalho. Brasília, DF: Presidência da República, [2020a]. Disponível em: http://www.planalto.gov.br/ccivil_03/decreto-lei/del5452.htm. Acesso em: 21 abr. 2020.

BRASIL. *Lei n. 13.467, de 13 de julho de 2017*. Reforma Trabalhista. Brasília, DF: Presidência da República, [2017]. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/L13467.htm. Acesso em: 19 nov. 2017.

BRASIL. *Lei n. 14.020, de 6 de julho de 2020*. Institui o Programa Emergencial de Manutenção do Emprego e da Renda; dispõe sobre medidas complementares para enfrentamento do estado de calamidade pública reconhecido pelo Decreto Legislativo nº 6, de 20 de março de 2020, e da emergência de saúde pública de importância internacional decorrente do coronavírus, de que trata a Lei nº 13.979, de 6 de fevereiro de 2020; altera as Leis nos 8.213, de 24 de julho de 1991, 10.101, de 19 de dezembro de 2000, 12.546, de 14 de dezembro de 2011, 10.865, de 30 de abril de 2004, e 8.177, de 1º de março de 1991; e dá outras providências. Brasília, DF: Presidência da República, [2020c]. Disponível em: http://www.planalto.gov.br/ccivil_03/_ato2015-2018/2017/lei/L13467.htm. Acesso em: 19 nov. 2017.

BRASIL. *Medida Provisória n. 936, de 1º de abril de 2020*. Institui o Programa Emergencial de Manutenção do Emprego e da Renda e dispõe sobre medidas trabalhistas complementares para enfrentamento do estado de calamidade pública reconhecido pelo Decreto Legislativo nº 6, de 20 de março de 2020, e da emergência de saúde pública de importância internacional decorrente do coronavírus (covid-19), de que trata a Lei nº 13.979, de 6 de fevereiro de 2020, e dá outras providências. Brasília, DF: Presidência da República, [2020b]. Disponível em: http://www.planalto.gov.br/ccivil_03/_Ato2019-2022/2020/Mpv/mpv936.htm. Acesso em: 21 abr. 2020.

BRASIL. *Supremo Tribunal Federal*. Ação direta de inconstitucionalidade n. 5938/DF. Relator: Ministro Alexandre de Moraes. Julgamento: 29.5.2019. Tribunal Pleno. Publicação: DJe-205, 23.9.2019, divulgação em 20.9.2019, [2019]. Disponível em: http://www.stf.jus.br/portal/peticaoInicial/verPeticaoInicial.asp?base=ADIN&s1=5938&processo=5938. Acesso em: 25 maio 2020.

BRASIL. *Supremo Tribunal Federal*. Ação direta de inconstitucionalidade n. 5994. Relator: Ministro Marco Aurélio. Disponível em: http://portal.stf.jus.br/processos/detalhe.asp?incidente=5530775. Acesso em: 5 jun. 2020.

BRASIL. *Supremo Tribunal Federal*. Ação direta de inconstitucionalidade n. 6142. Relator: Ministro Edson Fachin. Disponível em: http://portal.stf.jus.br/processos/detalhe.asp?incidente=5701599. Acesso em: 5 jun. 2020.

BRASIL. *Supremo Tribunal Federal*. Ação direta de inconstitucionalidade n. 6154. Relator: Ministro Edson Fachin. Disponível em: http://www.stf.jus.br/portal/peticaoInicial/verPeticaoInicial.asp?base=ADIN&s1=6154&processo=6154. Acesso em: 5 jun. 2020.

BRASIL. *Supremo Tribunal Federal*. Ação direita de inconstitucionalidade n. 6363/DF. Relator: Ministro Ricardo Lewandowski, [2020]. Disponível em: http://portal.stf.jus.br/processos/detalhe.asp?incidente=5886604. Acesso em: 21 abr. 2020.

BRASI. *Tribunal Superior do Trabalho*. Recurso ordinário n. 173-02.2011.5.15.0000. Seção Especializada em Dissídios Coletivos. Relator: Ministro Mauricio Godinho Delgado. Publicação: DEJT 31.8.2012, [2012]. Disponível em: https://tst.jusbrasil.com.br/jurisprudencia/22278951/recurso-ordinario-trabalhista-ro-1730220115150000-173-0220115150000-tst. Acesso em: 2 jun. 2020.

BRASIL. *Tribunal Superior do Trabalho*. Súmula n. 85. Resolução n. 209/2016, DEJT: 1, 2 e 3.6.2016, [2017]. Disponível em: http://www.tst.jus.br/web/guest/sumulas. Acesso em: 2 jun. 2020.

BRASIL. *Tribunal Superior do Trabalho*. Súmula n. 444. Resolução n. 185/2012, DEJT: 25, 26 e 27.9.2012, republicada DEJT: 26.11.2012, [2017]. Disponível em: http://www.tst.jus.br/web/guest/sumulas. Acesso em: 2 jun. 2020.

CARACUEL, Manuel-Ramón Alarcón. Derecho al trabajo, libertad profesional y deber de trabajar. *Revista de Política Social (RPS)*, Madrid, n. 121, enero-marzo, 1979. p. 5-39.

CASSAR, Vólia Bomfim. *Direito do trabalho*. 15. ed. rev. atual. 2. reimp. Rio de Janeiro: Forense/São Paulo: Editora Método, 2018.

CASTEL, Robert. *As metamorfoses da questão social*. Uma crônica do salário. 12. ed. Tradução Iraci. D. Poleti. Petrópolis: Editora Vozes, 2015.

CESARINO JR., A. F. *Direito social brasileiro*. 5. ed. ampl. atual. com a colaboração de M. A. Cardone. Rio de Janeiro e São Paulo: Freitas Bastos, 1963. v. 1.

DARDOT, Pierre; LAVAL, Christian. *A nova razão do mundo*. Ensaio sobre a sociedade neoliberal. Tradução Mariana Echalar. São Paulo: Boitempo, 2016.

DELGADO, Mauricio Godinho. *Curso de direito do trabalho*. 14. ed. São Paulo: Editora LTr, 2015.

DELGADO, Mauricio Godinho. Direitos fundamentais na relação de trabalho. *Revista LTr*. Paulo: Editora LTr, v. 70, n. 6, jun. 2006.

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

DONATO, Messias Pereira. *Curso de direito individual do trabalho*. 6. ed. São Paulo: Editora LTr, 2008.

EÇA, Vitor Salino de Moura; FONSECA, Bruno Gomes Borges da. *Medida provisória n. 936/2020, ação direta de inconstitucionalidade n. 6363 e o risco de mudança paradigmática a partir (e para o) do direito do trabalho*. 2020. (no prelo).

ENGELS, Friedrich. *A situação da classe trabalhadora na Inglaterra*. Tradução B. A. Schumann. São Paulo: Editora Boitempo, 2010.

ENGELS, Friedrich. *Princípios do comunismo*. Rio de Janeiro: Livraria Editora Cátedra, 1987.

FLORES, Joaquím Herrera. *Teoria crítica dos direitos humanos*. Os direitos humanos como produtos culturais. Rio de Janeiro: Editora Lumen Juris, 2009.

FONSECA, Bruno Gomes Borges da. *Direito humano e fundamental ao trabalho*. Curitiba: Editora CRV, 2019.

FONSECA, Bruno Gomes Borges da. Reforma trabalhista e teletrabalho: o velho dilema entre aparência e essência. *In*: CORREIA, Henrique; MIESSA, Élisson (org.). A reforma trabalhista e seus impactos. Salvador: Editora Juspodivm. p. 227-238.

GOLDIN, Adrián O. *Configuración teórica del derecho del trabajo*. Buenos Aires: Editora Heliasta, 2017.

GOMES, Orlando; GOTTSCHALK, Elson. *Curso de direito do trabalho*. 13 ed. rev. atual. Rio de Janeiro: Editora Forense, 1998.

HARVEY, David. *O neoliberalismo*. História e implicações. 5. ed. Tradução Adail Sobral e Maria Stela Gonçalves. São Paulo: Edições Loyola, 2014.

HESSE, Konrad. *A força normativa da constituição*. Tradução Gilmar Ferreira Mendes. Porto Alegre: Sergio Antonio Fabris Editor, 1991.

HUBERMAN, Leo. *História da riqueza do homem*. Do feudalismo ao século XXI. 22. ed. rev. ampl. Tradução Waltensir Dutra. Rio de Janeiro: LTC, 2014.

IBARRECHE, Rafael Sastre. *El derecho al trabajo*. Estructuras y procesos. Derecho. Madrid: Trotta, 1996.

KUHN, Thomas S. *A estrutura das revoluções científicas*. 9. ed. Tradução Beatriz Vianna Boeira e Nelson Boeira. São Paulo: Perspectiva, 2007.

LEITE, Carlos Henrique Bezerra Leite. *Curso de direito do trabalho*. 11. ed. São Paulo: Editora Saraiva, 2019.

MANUS, Pedro Paulo Teixeira. *Direito do trabalho*. 8. ed. São Paulo: Editora Atlas, 2003.

MARCONI, Marina de Andrade; LAKATOS, Eva Maria. *Metodologia científica*. 5. ed. rev. ampl. São Paulo: Editora Atlas, 2007.

MARCONI, Marina de Andrade; LAKATOS, Eva Maria. *Técnica de pesquisa*. 7. ed. rev. ampl. São Paulo: Editora Atlas, 2010.

MARIN, Ruy Mauro. *Dialética da dependência*. Petrópolis: Vozes; Buenos Aires: Clacso, 2000.

MARTINS, Gilberto de Andrade; THEÓPHILO, Carlos Renato. *Metodologia da investigação científica para ciências sociais aplicadas*. 2. ed. São Paulo: Atlas, 2009.

MARX, Karl. *Capítulo VI inédito de o capital*. Resultados do processo de produção imediata. 2. ed. Tradução Klaus Von Puchen. São Paulo: Centauro, 2004.

MARX, Karl. *O capital*. Crítica da economia política. O processo de produção do capital. 30. ed. Tradução Reginaldo Sant'Anna. Rio de Janeiro: Civilização Brasileira, 2012. v. 1, livro 1.

MIZIARA, Raphael. *Moderno dicionário de direito do trabalho*. São Paulo: Editora LTr, 2019.

MORAES, Evaristo de. *Apontamentos de direito operário*. 4. ed. São Paulo: Editora LTr, 1998.

MORAES FILHO, Evaristo de; MORAES, Antonio Carlos Flores. *Introdução ao direito do trabalho*. 11. ed. São Paulo: Editora LTr, 2014.

NASCIMENTO, Amauri Mascaro. *Curso de direito do trabalho*. 11. ed. rev. aum. São Paulo: Editora Saraiva, 1995.

OLIVEIRA, Marcelo Andrade Cattoni de. *Devido processo legislativo*. Uma justificação democrática do controle jurisdicional de constitucionalidade das leis e do processo legislativo. 3. ed. rev. ampl. e atual. Belo Horizonte: Editora Fórum, 2016.

OLIVEIRA, Murilo Carvalho Sampaio. *Relação de emprego, dependência econômica & subordinação jurídica*. Revisando conceitos. Critérios de identificação do vínculo empregatício. Curitiba: Editora Juruá, 2014.

PARANHOS, Adalberto. *O roubo da fala*. São Paulo: Boitempo, 2007.

PINTO, José Augusto Rodrigues Pinto. *Tratado de direito material do trabalho*. São Paulo: Editora LTr, 2007.

PORTO, Lorena Vasconcelos. *A subordinação no contrato de trabalho*. Uma releitura necessária. São Paulo: Editora LTr, 2015.

RICARDO, David. *Princípios de economia política e tributação*. Tradução Maria Adelaide Ferreira. Lisboa: Fundação Calouste Gulbenkian, 1975.

SEVERO, Valdete Souto; MAIOR, Jorge Luiz Souto. *Manual da reforma trabalhista*. Pontos e contrapontos. Porto Alegre/São Paulo: Associação dos Advogados Trabalhistas de São Paulo, 2017.

RODRIGUES, Américo Plá. Visión crítica del derecho procesual del trabajo. *In*: GIGLIO, Wagner D. (coord.). *Processo do trabalho na América Latina*. Estudos em homenagem a Alcione Niederauer Corrêa. São Paulo: Editora LTr, 1992. p. 235-254.

SMITH, Adam. *A riqueza das nações*. 2. ed. Tradução Alexandre Amaral Rodrigues e Eunice Ostrensky. São Paulo: Martins Fontes, 2013. v. I.

SÜSSEKIN, Arnaldo; MARANHÃO, Délio; VIANNA, Segadas; TEIXEIRA, Lima. *Instituições de direito do trabalho*. 18 ed. atualizada por Arnaldo Süssekind e João de Lima Teixeira Filho. São Paulo: LTr, 1999. v. I.

VIANA, Márcio Tulio. Autonomia coletiva privada X legislação mínima protetora. *In: PIRES, Rosemary de Oliveira; LORENTZ, Lutiana Nacur; BARBOSA, Arnaldo Afonso. A reforma trabalhista (Lei nº 13.467/2017) na visão dos magistrados do trabalho, procuradores do trabalho e advogados trabalhistas.* Belo Horizonte: RTM, 2018. p. 411-441.

VILHENA, Paulo Emílio Ribeiro de. *Relação de emprego*: estrutura legal e supostos. 3. ed. São Paulo: LTr, 2005.

ZOLA, Émile. *Germinal*. Tradução e adaptação de Silvana Salerno. São Paulo: Companhia das Letras, 2011.

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