

Studia i opracowania

Dr Marta Zbucka-Gargas

Uniwersytet Gdański/University of Gdańsk

ORCID: 0000-0003-4013-0531

e-mail: marta.zbucka@prawo.ug.edu.pl

Prof. dr Cláudio Jannotti da Rocha

Federal University of Espírito Santo in Brasil

ORCID: 0000-0003-2379-2488

e-mail: claudiojannotti@hotmail.com

Guilherme Alves Jevaux

Federal University of Espírito Santo in Brasil

ORCID 0000-0003-4788-6913

e-mail: guilhermeajevaux@hotmail.com

Telework and its fundamentalism in contemporary society: incipient ideas about the green labor contract as the epicentral matrix of climate justice

Praca zdalna i jej znaczenie we współczesnym społeczeństwie:
idea tzw. zielonej umowy o pracę w budowaniu
sprawiedliwości klimatycznej

Abstract

This publication aims to point out the importance of remote work and the role it plays in modern society. In discussing its growing importance in the world of work, the authors draw on the experience of Brazil and the changes introduced in the labor law in 2017. The regulation recognized this new model of work, connecting millions of workers and confirmed that we now live in a digital and cyber age. The conclusions of this article point to the need to think about the implementation of the green labor contract as a support for the realization of climate justice and how telecommuting can contribute to this new path of work. Remote work is an expression of progress; it is a new legal, normative, economic, and social pathway. The new regulations are already a new type of employment relationship for employees and employers that

Streszczenie

Celem artykułu jest wskazanie znaczenia pracy zdalnej i roli, jaką odgrywa we współczesnym społeczeństwie i w świecie pracy. Autorzy opisują doświadczenia Brazylii i wprowadzone w tym kraju w 2017 roku zmiany w prawie pracy (ujednolicony kodeks pracy — CLT). Praca zdalna to wyraz postępu, to nowa ścieżka prawna, ekonomiczna i społeczna. Akt prawny uregulował nowy model pracy łączący miliony pracowników oraz potwierdził, że żyjemy w erze cyfrowej i cybernetycznej. Wprowadzone regulacje normują nowy rodzaj stosunku pracy, który demokratyzuje świadczenie pracy, co powinno się przyczyniać do rozwiązania kwestii społeczno-środowiskowych i poprawy sytuacji pracowników. Wnioski płynące z wprowadzonych zmian wskazują na potrzebę zastanowienia się nad

democratizes the work scenario, which should contribute to solving socio-environmental issues. This contribution will take place in the legal field, in the doctrinal, jurisprudential and legal perspective, as well as in the social field, bringing many benefits to workers.

Keywords

labor, society, teleworking, digital world, normative advance

JEL: K39

wdrożeniem tzw. zielonej umowy o pracę, której celem byłoby wsparcie realizacji sprawiedliwości klimatycznej.

Słowa kluczowe

praca, społeczeństwo, praca zdalna, świat cyfrowy, rozwój prawa

Introduction

The world of work is the space of discoveries, innovations, and constant changes; after all, each second, minute and hour of every day brings new happenings and ideas. Therefore, science and technology do not stop researching, planning, and inventing new products, increasing humanity's life expectancy, allowing us to live longer, healthier and with a better quality of life.

The working universe does not stop, nor rest, we know that at the same time, while in some countries it is day, in others it is night, and so, at the moment when in these is night, the vast majority of people sleep; whereas in those, where there is still daylight, they work to make new discoveries thought, plan and tested. Moreover, currently, dusk does not mean to rest; after all, new technologies and work modalities can enable and correspond to work with efficiency and productivity. Optimizing, rationalizing, and controlling time is synonymous with being one step ahead of other competitors, whose closest logical corollary can be a great innovation.

Just as planet Earth continues to rotate, making rotational and translational movements, humankind does not stop evolving, thinking, producing riches and new inventions. History makes us recall how the relationship between man and work has changed, based on the quadrilateral relationship between society, culture, work, and economy.

Work is, simultaneously, a daily act of vocation and donation, evolution, and resilience. Progress and prosperity are inherent in the human being; our one-track mind makes us think forward, with our gaze on the horizon, interconnecting the past, the present and the future towards innovation.

There is no society without organized labor, since from it we create human interdependence, groups where we come to depend on each other, building different bonds, both interior and exterior, in body and soul. Man is a social being and therefore, for his survival, he needs affective and professional relationships. Life, in essence, that is, *intérieurement et sous la peau*, is to live with your fellow men.

Work involves skill, knowledge, and time in unison. That is why work is the conscious and voluntary

transformation of nature, aiming for a certain end, and it can be tangible when physical exertion prevails, while it is a preponderant intangible when intellectual activity is dominant.

Without the industrial revolutions there would be no human evolution, since history shows that we would never get to where we are today without their achievements and setbacks, both in technological advances as in labor organizing and legal framework.

In the beginning, we were nomads, hunter-gatherers, living in caves and with our main concerns being wildlife, cold, and hunger. We depended on each other for the sharing of work utensils, in a communal and sharing lifestyle, and in this context arises one of the greatest discoveries, indispensable to this day: fire.

Later, in the 18th and 19th centuries, we created the steam engine and, over time, mills and industries of cotton, linen, wool treatment, preparation of the silk, the production of iron, the construction of railways and roads and the construction of the steamboat (which allowed the discoveries of new territories — continents) emerged first in England and then the rest of the world, factors that allowed the emergence of the First Industrial Revolution (1760–1860).

At this historic moment, we began to share the workplace with machines, a fact that would change the fate of man, work, and society. Humanity, from then on, would never be the same. An unprecedented change in History began — the spaces in the factories began to be rationalized and adapted.

From the mid-nineteenth century, the Second Industrial Revolution emerged, aiming to optimize the productive scale with the machine powered by electricity and oil, introducing in the labor world industries with the Taylorist and Fordist systems, that further enhanced the production, considerably optimizing the speed and quantity of the production process, which in turn gained even more propulsion through the expansion of railways and steel production. The evolution of the vessels caused us to reach lands once unknown and even more distant, with optimized speed, remaining even longer at sea.

It is in the context of the Second Industrial Revolution (1860–1945) that the technical support for the configuration of what is currently known as an employment relationship arises, characterized by the

concomitant presence of five factual-legal elements: work performed by individuals with personality, non-eventuality, subordination, and salary. It would be a matter of time before each country, sooner or later, regulated this social relationship that was happening within industries, but had repercussions on society.

Another factor of great impact that emerged in this period was through navigations and railways. With them, they optimized (or even started, after all it is impossible to assert one or the other) the trade relations between countries and companies from different countries. Thus, nations and industries reached extraterritorial dimensions that they did not yet possess. Therefore, one can imagine that, in that historical moment, the seed of globalization emerges.

Of the digital revolution

Approximately in the 1970s, the Third Industrial Revolution, technical-scientific-informational, emerged, which brings out the Toyota Production System, or toyotism, characterized by computerization, though, notably, the computer was invented previously.

In this important historical moment, innovations and technological advances emerge, especially in the fields of miniaturization, robotics, electronics, and telecommunications, in addition to the opening of markets, with economic and cultural globalization, as well as productive and business restructuring, guided by toyotism. In the vein of these novelties, comes a new methodization, optimizing and further rationalizing spaces, making industries smaller, better subdivided and thought more objectively; fractional production and with immediacy bias, without inventory, also becoming known as just in time.

Previously the factories had large plants, performing, internally, the entire production process, from the gathering of the raw material to the making of the final product. With the Toyota Production System, none of this occurs. Through computers, the order of the day became knowledge, specialization, ideas, innovations, production at scale and cost reduction.

If, in previous production models, the machines were, as a rule, large and "grounded" to certain physical spaces, linking the worker to a fixed location within the industries, this panorama gradually changed with the personal computer, which became a work instrument that was small, mobile, efficient and linked to intellectual labor, allowing the work to be done both in companies and outside, including in their own homes, the so called home-office.

The emergence of computers has changed the world, people's lives, businesses, and human labor. It was a literal global paradigm shift: the planet was one before and became another after. Thus, intangible work gained importance, because creativity became the master spring in the labor universe.

Until then there was the physical and metaphysical world, and through the computer there was also the

virtual world, which act as a medium between them, guiding and interconnecting these two worlds. The data, information, calculations, texts and plans, that were elaborated and stored in physical papers, began to be created and stored on the computer. With this, a whole culture was changed in the relationship between people, at work and in the organizational form of business.

Irrevocably, everything changed with the emergence of the computer, from the way of thinking, working, producing, managing, relating and even the organization of physical spaces (houses, offices, and industries), were changed and adapted to accommodate this new instrument, it is worth saying, this multifunctional tool.

Through the computer, time has become (still) better utilized, planned, controlled, and rationalized, because people began to organize their personal and professional life more efficiently, while companies are structured more productively and appropriately for their needs.

The virtual world made it no longer necessary that, for something to be acknowledged to exist, it needs to be physically and in person between us, but only within computers. Archiving a document means that it exists. The system changed in large strides in a short span of time, through a small instrument, which invariably changed private and public initiative simultaneously.

In this new panorama, an admirable and surprising new world, a new modality of work arises, called telework, characterized mainly by the existence of two (2) peculiar elements, the use of computer and/or telematic instruments and the provision of services outside the company, obviously entailed legal consequences.

The cyber revolution

Using technological innovations engendered by the Third Industrial Revolution, the Fourth Industrial Revolution emerged at the beginning of the 21st century, guided by cyberization and globalization, modifying the ontology of work, companies, and society, leading to sharp and acute disruptions in the lives of us all. The pillars of the Industry 4.0 are composed of systemic and interdependent interactions between physical, digital, and biological technologies.

The founding dynamics of Industry 4.0 are characterized by systemic and interdependent interactions between physical, digital, and biological technologies, notably cloud computing systems, the Internet of Things (IoT), Artificial Intelligence (AI), Big Data, cryptocurrencies, blockchain, machine learning/deep learning, robotization, nanotechnology, implementation of chips in workers, the Gig Economy, the digital platforms, biotechnology, and genetic engineering.

The interconnectivity of the new technological devices is the result of the evolution of the digital revolution, leading to the sharing economy and gig economy, and from this genealogy emerge two new modalities of work: crowdwork and on-demand work. Contrary to what many

write and defend these two modalities are not synonymous, since while in the first there is intermittent work and telework; in the second lies uberization.

The sharing economy and the gig economy are based on the quadrilateral of use, sharing, demand and diversity, and the word that connects these four factors is freedom, since everyone is free to choose what to do, consume, rent, where to go and especially work.

In the Fourth Industrial Revolution, the products designed and created in the past Industrial Revolutions were optimized through the Internet, and its main support is the improvements that computers received, being able to handle more processing power, storage capacity, writing speeds and functions through the internet and applications. In this context, the new forms and technologies facilitated transportation and logistics, especially the notebook, smartphone (when the phone also became a computer on a pocket-sized device) and tablet.

With these new devices, that constitute a true technological jack of all trades, the user, via the internet, using applications can have the world in the palm of his hands, regardless of where he is, public or private, in the middle of the street, indoors, bus or subway, restaurant, company and even in the air or at sea, managing to access websites, obtain data, hire people and services, share goods, consume products and record information.

It calls on us to point out that the First, Second and Third Industrial Revolutions were characterized by the machine-attached worker, laboring close to the apparatus he operated; whereas, in the Fourth Industrial Revolution, there was a substantial change: worker and machine unattached themselves from the shop floor; both walk side by side, expanding the spaces and working hours.

The computer, smartphone or tablet have become indispensable tools for postmodern life, leading to a social platformization, to the point of recognizing the digital invisible hand, generating the emergence of new legal institutes, such as virtual dignity and capital. With these devices, via the Internet, companies remain connected daily, communicating almost instantly with their employees and collaborators, worldwide.

Science and technology can offer rationality to the labor realities in the face of digital, cyber and telematic innovations that foster and increasingly facilitate dynamism in communication, exchange and sharing of information, documents, and data.

In today's world, being and being virtual can mean being more present than in person. Thus, the human being began to have his intelligence, his skills, including hands and arms (IT's, doctors, and so many other professionals) where physically he is not present. Connectivity quickly links people who are in different places (cities, states, countries, and continents).

If, in the Third Industrial Revolution, the virtual world came to light, in the Fourth Revolution emerged the cyberized world, which in turn has as structuring the dynamism in communication, the sharing of data and

information, the decrease (or even the disappearance) of distances and geographical boundaries, expanding our physical spaces in storage clouds.

From this social virtualization, we witness the emergence of a multitude of tech startups that can quickly morph into true digital oligopolies, becoming transnational companies, that lead to dematerialization and productive decentralization, aligned with the new forms of work emerging from the collaborative relationship, as is the case of Silicon Valley companies. In this context, companies such as Apple, Facebook, Google, Amazon, eBay, Netflix, Twitter and Microsoft together form BigTech, which, every day, gain more political, social and economic importance, to the point of permeating all our daily interactions with the world, entering our home, work, school, relationships and basic needs.

The importance of the cyber world is such that, in Brazil, the comprehensive law no. 13.709/2018, known as the Lei Geral de Proteção de Dados Pessoais or General Law for the Protection of Personal Data (LGPD), was promulgated on August 14, 2018, and is in force since 03/5/2021 and since 01/08/2021 (for Articles 52, 53 and 54).

Today, the importance of using the internet is such that the United Nations (UN), in 2011, approved the report of its Human Rights Council concluding that the "internet has become an indispensable tool for exercising various human rights, fighting inequality and accelerating human development and progress", hence because "the goal of universal Internet access should be a priority for all States".

In the digital world, algorithms are capable of predict what the user in each platform wants and what their interests are almost instantaneously, through machine learning and big data analytics. Consequently, digital, and cybernetic revolutions intertwine with each other, and some scholars even confuse them or consider them synonymous. Fact is that even though these are different factors, they are very much alike, because cybernetics is the fruit and evolution of digital.

In contemporary society, it is unthinkable that a company should not be structured and operationalized from computers and new technologies, because we currently live in the era of connectivity, which leads us to the virtual world.

The numbers are impressive and reveal that we are experiencing a new social composition. The OECD (Organization for Economic Co-operation and Development) reported that in Europe, 40% of people under 40 have an interest in flexible work (OECD/IDB, 2016). In the United States, approximately 57.3 million people work as freelancers, and nearly half belong to generation Y (MOTOR Tech Content, 2020).

Generation Y, popularly known as millennials, covers people born between the years 1980 and 2005, meaning they were born in the technological world. Thus, it has eminently urban ties and characteristics, developing in a period marked by great cyber advances and with

economic bias, possessing skills in the handling of technologies and accustomed to the digital world, in the social, media and labor perspectives. Even today it can be affirmed that in many cases, being present virtually means more than being physically.

Automation, cyberization and computerization make up the so-called intelligent factory, corresponding to true supports in the world of work in contemporary society, characterized by telework, supports of the Third and Fourth Industrial Revolutions.

Telework

Telework is characterized when the person works predominantly outside the company and uses information and communication technology instruments, such as computers, smartphone and tablet. This labor modal reflects the evolution of science and technology, allowing the worker to be far beyond where he is physically, making the evolutionary character permeate and guide the labor context, conceiving an effective and constant improvement of the human condition. Through this new modality, the subordinate work is carried out, operating through the physical separation between the workplace and the company's headquarters.

In Italy, telework, called *telelavoro*, should be understood as a working modal regardless of the geographical location of the worker, and they may be in the office, in the company, in a telecenter, in a satellite center or in the residence, using computer or telematic instruments, and is characterized by flexibility in the organization, both in the form of performance. Teleworking should not be confused with agile *lavoro* (agile work), since it is defined by the execution of the work without a fixed location, whereas, in telework, tasks are performed in a fixed location, outside the business establishment.

Thus, one perceives the disappearance of the geographical distance between where the worker is and the company is physically established. Walls are torn down, meters and kilometers are approximated, countries are coalesced, continents are unified, and oceans are crossed. Communication between people and businesses is facilitated every day, no matter where they are.

Gustavo Filipe Barbosa Garcia stresses that: "Telework is a modality of distance work, typical of modern times, in which the advancement of technology allows the work outside the employer's establishment (usually in the employee's own residence), while maintaining contact with it through electronic and computer resources, mainly the computer and the internet" (Garcia, 2018, p. 208).

This new work modal goes beyond a culture that until then guide the work universe: that to work necessarily the person should go and be physically present in the company. Limits and limitations have been exceeded, now this system no longer prevails, because it is perfectly feasible and possible for a person to work in Rome, for

a Brazilian company and vice versa or a person in Tokyo working for an American company, geometrically multiplying the hypotheses. With the use of electronic instruments, it is perfectly possible for an employee to work for a company that is physically distant from it, the only requirement is just that both have the digital tools (software), electronic (computers) and communication (telephone, fax, even Skype).

It is noteworthy that telework is a genus encompassing species such as home office (work performed at home); mobile work (work performed in several public or private places, without a predetermined place); in tele centers (when employees unite in interconnected places with the company) and coworking (when the worker shares a space with workers from other companies and even with self-employed).

By means of telematic instruments the worker can work connected (online), staying in contact with the company through computer equipment and communication, or can work disconnected (offline), sending and communicating through emails, WhatsApp or fax.

Telework brings numerous advantages not only to the world of work, but also to society in various aspects, as can be seen in the issue of transportation and the environment, reducing traffic from cars, air travel, pollution and people on public transport; in saving time, allowing the worker to have more free time; rationality and adequacy of work material (such as paper, pens, tables, chairs) and physical space of the business; and the inclusion of people who find themselves having difficulty entering or maintaining the labor market (such as silver economy — increased life expectancy and more actively).

In the face of global warming, telework emerges as an excellent option for carbon emissions to be reduced, and should be welcomed and encouraged by the public and private sectors, which, directly, will contribute to the sustainable environment, going far beyond the reduction of cars, motorcycles, buses, and trucks in circulation. The telework, increased by COVID-19, allows the global community's attention to be focused on a new type of employment contract, ecological in nature, permeated by green clauses, in the face of an issue, to a certain extent, laterally related to the climate crisis, characterized by the emission of greenhouse gases, such as carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), sulfur hexafluoride (SF₆) and the gases hydrofluorocarbon (HFC) and perfluorocarbon (CFP), in addition to the destruction of forests and pollution of rivers, seas and oceans. It is certain that labor law can contribute, on a large scale, to a more effective and dynamic control, since humankind's work integrates all phases of the broad production process. In fact, the increase in greenhouse gases in the atmosphere causes the rise of temperature, a phenomenon called climate change, which so many successive disasters, in smaller and smaller cycles, have been caused by, as routinely reported by the media.

With the progressive disruption of the ozone layers, it is imperative that new forms of work be generated, even

making room for a new type of employment contract, it is worth saying, the green employment contract, thus coined by the authors of this article. The growing climate change has aroused, in all respects, the intense and extensive commitment of various sectors of society to the environment, in countless spheres, being certain that the green employment contract can obtain strong and continuous government incentives, as well as a seal of sustainability with the environment, opening the doors to demanding world markets increasingly committed to the climate issue.

The green employment contract is a new contractual modal that has two supports: climate commitment and business ecological commitment.

The climate commitment stems from the respect and concern demanded of companies for the sustainability of the planet earth and, consequently, of the human person, animals, forests, flora and fauna, rivers, seas and oceans, constituting not only an obligation but also a social commitment to provide the employee with a healthy and safe holistic working environment, encompassing physical and mental bias. Nowadays, it is imperative to advance and observe that the work environment must ensure humanistic integrity, going beyond the body perspective, and must also safeguard the worker's psyche, so they is not affected by anxiety, depression, burnout syndrome, phobia, panic disorder, persecution syndrome, stress syndrome, fear, and other mental disorders. It is past time to remove mental illnesses from work invisibility and recognize them with a social reality that afflicts millions of workers, which can lead to work incapacity and even death — including suicide. According to a survey published by the Brazilian National Association of Occupational Medicine, 63% of Brazilian workers have severe anxiety, while 37% are victims of acute stress and 59% have depression. The problem is such that the World Health Organization (WHO) reports the evil of the 21st century is depression — which today affects more than 300 million people worldwide.¹

The organizational work environment triggers or aggravates the situation of those suffering from a mental illness and therefore the company must act in a multifaceted manner, providing all workers psychological, medical, psychoanalytic help while at the same time generating a healthy work environment in all senses, including refraining from making meaningless reviews, having comprehensive and humane workhours, and imposing disproportionate targets. The emotionally balanced environment through the labor climate commitment is an imperative today, being a matter of citizenship and even democracy. The mental illness is serious, very serious, it shaves and heals the soul and kills the body.

The ecological commitment is the result of the pact that the company has with all current humanity, with future generations and with all kinds of life in the environment, revealing itself as an obligation of non-environmental degradation, and must act responsibly, fostering an ecologically balanced environment and

recovering, if possible, what has already been destroyed. For this, machines and instruments such as computers, smartphones, tablets and drones, powered by renewable energies, should be used, thus leading to cleaner and more productive work. Renewable energies such as wind, biomass and solar must be used in new energy grids, replacing energy from oil, coal, and gas, so that more and more companies stop emitting.

The social and ecological crises are interconnected and make the emergence of what we now coin of Climate Justice that should have as its epicentral matrix the Green Employment Contract, based on environmental educational commitments, use of renewable energies, in the reduction of carbon emissions and in the guarantee of a healthy physical and mental environment for all workers and workers.

Telework is an excellent alternative for the use of renewable and clean energies in new computers and telecommunications, so that the emergence of an ecological industry operationalized by the motor force of dynamic and technological growth, must be achieved through renewable sources, driven by a circular economy, under the archetype of renewal and adaptation. The use of oil, coal and gas should be decreased. The past puts pressure on the present, which are, so to speak, the body of time, and draw the future, which is why the green question, or the green challenge, permeates the world of work, and it is certain that telework can contribute enormously to environmental preservation and reducing the greenhouse effect, controlling the emission of methane and carbon.

Everything is part of the ecosystem, including tools and the work environment, so industries must limit the use of coal and fossil fuels, changing habits and using green technologies, wind, solar, biodiesel, hydraulics, and biomass, institutionalizing a sustainable socio-labor style, so that future generations can, like us and our ancestors, live the natural beauties of planet Earth. In fact, the importance of the topic is such that the President of the United States of America Joe Biden, in his speech at the 76th Session of the United Nations General Assembly on September 21, 2021, expressly defended green jobs as a necessity to be implemented by companies in all countries in the world on behalf of sust.²

Companies must use telework, in the midst of their production, and at the same time implement environmental and virtual education, since science, the environment and technological innovation go hand in hand, and so the social and ecological crisis are the same currency; after all, it is past time to think about the idea of Climate Justice, in which green employment contracts will be inserted, that should preferably come from collective bargaining, since through it trade unions and companies, from the geographical and socio-environmental reality, can establish green contractual clauses, that is, true autonomous legal norms, of a socio-environmental nature, and that they will settle, in the commutative estuary of the legal relationship, establishing a commitment, without setbacks, with the

respective and necessary archetypes towards the rescue of mother Earth.

In this ecological, labor, and industrial panoramic arrangement, telework gains prominence, because the world of contemporary work permeates the modal of telework. It is unthinkable today that companies develop their economic activities without telework, which contributes on several fronts and strands in reducing carbon emissions, global warming, and the greenhouse effect.

It is also noteworthy that telework allows the digital inclusion of people, allowing seniors to be reinserted into the labor market, and the urban exodus since it allows people to work away from large centers.

During the COVID pandemic, the telepresence sessions allowed conciliation, instruction and trial hearings to be held; while senators, deputies, councilors and executive chiefs were able to debate, deliberate and draft laws; countries exchanged information, agreed agreements with each other, and led their nations; economic blocs and international organizations met; people and families communicated; the economic sector carried out its activities; schools, colleges and universities held classes; workers have been able to provide services. Certainly, this whole context was on a smaller scale when compared to work and face-to-face activities. But, the unquestionable fact is that the world did not face the economic, social, legal and political collapse due to the telework that served as a guiding thread for the business and working class, the Judiciary, Legislative and Executive Branches to carry out their respective activities. Metaphorically, telework represented an oxygen tube for humanity. It can be mentioned that: "The sources of these values can be found in the social philosophy known as social solidarity. According to its representatives, social life is based on interdependence and co-responsibility of all its participants. Solidarism advocates the compatibility and commonality of interests of all individuals and social groups within a given community, as well as the obligation to participate in the burdens imposed on society. It assumes mutual understanding between individuals, social groups and the state".³

In this milieu, telemedicine emerged, standardized in Brazil through Law no. 13.989/2020, allowing and expanding access to health services and assisting the medical professional in the process of digitizing patient care.

Brazil, inspired by the Portuguese Labor Code and recognizing that the current world is digital and that telework is a reality of millions of workers, standardized this modal and inserted, in its legislation, the Article 75a to Article 75-E, through Law No. 13,467/2017, creating a Chapter II-A to regulate telework, thus filling a normative gap that existed until then, which was the object only of Article 6 of the Brazilian Consolidation of Labor Laws (CLT), which, until then, did not regulate the subject in a specific and detailed manner.

The teleworker is an employee, who must fill 7 (seven) legal technical elements concomitantly, being them: work

performed by individuals, personality, non-eventuality, subordination, burden, besides working predominantly outside the company and using information technology and communication tools. In this case, he has the same labor rights as the employee in person, not least because Article 6 of the CLT, establishes that it is not distinguished between the work performed in the employer's establishment, the one performed in the employee's domicile and the one performed at a distance, provided that the assumptions of the employment relationship are characterized.

It is noteworthy that Article 75-B of the CLT considers as telework 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 an external work. Its sole paragraph states that attendance at the employer's premises for the performance of specific activities that require the employee's presence in the establishment does not mischaracterize the telework regime.

It is essential to point out that in telework legal subordination must be present, after all, it is a modal of the employment relationship. Mauricio Godinho Delgado and Gabriela Neves Delgado collect that: "The first observation on the regulation of telework in the legal order of the country concerns the full possibility of the presence of legal subordination in the situations of work performed through the telematic and computerized means of command, control, and supervision, even if carried out in the employee's home and/or in other situations of distance work" (Delgado & Delgado, 2017).

Standardized telework is a genus, as demonstrated above, formed by several species inserted in the binary relationship composed of the work performed predominantly outside the company and through technology instruments.

Antonio Umberto de Souza Júnior, Fabiano Coelho de Souza, Ney Maranhao and Platon Teixeira de Azevedo Neto teach: "It should also be recorded that, according to the new 75-B of the CLT, telework will not always take place in the context of the so-called home office, that is, the work performed in the worker's own residence. Despite, in fact, in practice, whether this is the rule of telework, the legislator did not necessarily link his configuration to the provision of services at home. Nothing prevents, therefore, the telework is provided in more diverse places, such as airports, hotels, shopping malls and even in the family home. Execution in these locations should therefore be taken as effective work for all legal purposes. As can be seen, the legal essence of telework lies not in residential labor, but in the work practiced predominantly outside the company's premises using telematic resources. The home office, then, constitutes a modality of teleworking" (de Souza Júnior, de Souza, Maranhao & de Azevedo Neto, 2018, p. 104).

For its part, Article 75-C of the CLT establishes that the provision of services in the telework modality must be expressly included in the individual employment contract, which will specify the activities that will be carried out by

the employee, and that the change between face-to-face and telework arrangements may be made, provided that there is mutual agreement between the parties, registered in a contractual additive, as well as the change of the telework regime to the face-to-face by determination of the employer, guaranteed transition period of at least 15 (fifteen) days, with corresponding registration in contractual additive.

For the teleworking contract to be valid it is mandatory to be agreed in writing and must bring with it the specification of the activities that the worker will perform and also the use of equipment in the tasks.

Article 75-D of the CLT provides that the responsibility for the acquisition, maintenance or supply of technological equipment and the necessary and adequate infrastructure for the provision of remote work, as well as the reimbursement of employee expenses, shall be provided for in a written contract, and, in the event of payment or restitution in this respect, these amounts will not integrate the employee's remuneration.

It is imperative that the parties negotiate, that is, that they clearly establish the contractual bases, and that the responsibilities for the acquisition, maintenance, or supply of telematic and technological equipment for the performance of telework are established, and that the employer is being limited to passing on to the worker the costs of this investment.

The employer must instruct employees, expressly and ostentatiously, as to the precautions to be taken to avoid illness and accidents at work, and the employee must sign a term of responsibility, committing himself to follow the instructions provided by the employer, *ex vi art. 75-E, clt.*

Taking into account that telework is carried out outside the business environment, thus without the supervision of the Internal Commission for Accident Prevention (CIPA) and occupational safety professionals, it is necessary to take measures to prevent occupational diseases and accidents at work, and the employer must instruct its employees in an express and ostentatious manner, as determined by law, providing the worker with all the information and recommendations for the development of his activities in a healthy and safe manner.

In view of the possibility of flexibilization of the schedule in this modal, as well as that some of these teleworkers are in a situation incompatible with the control of schedules, the Article 62, III, of the CLT, determines that teleworkers would be excluded from the regime provided for in Chapter II — Work Duration, which regulates working hours, inserting them alongside employees who carry out external activities incompatible with the setting of working hours (Article 62, I, CLT) and managers, thus considering those who hold management positions, who are associated, for the purpose of the provisions of this article, with the directors and heads of department and/or branch (Article 62, II, CLT).

It is noteworthy that as Mauricio Godinho Delgado and Gabriela Neves Delgado teach: "In fact, in several telework situations, it is difficult to see strict control of the duration of work, given the wide freedom that the employee has, far from the sight of his employer, regarding the choice of the best times to fulfill his or her details from the employment contract. Thus, the legal presumption launched by Article 62, III of the CLT is not shown to be misplaced" (Delgado & Delgado, 2017, p. 138).

Although the teleworker's rule is its exclusion from the working hours and labor breaks, it is noteworthy that the illustrious indoctrinators assert that "it is, of course, a relative presumption — which can be discontinued by evidence in the opposite direction", and should be analyzed on a case-by-case basis, because, exceptionally, if the employer makes and has skilled and efficient instruments to carry out the control of schedules, the teleworker will have a working day and will be included in the general scheme provided for in Chapter II — Duration of Work.

Conclusion

History makes us remember that science and technology, through new discoveries, allow man to achieve unimaginable achievements and achievements, overcoming challenges and adversities and with it constantly evolving.

Humankind was made to relate with each other and interact with nature; always to look and walk in the progressive imaginary, making it possible to achieve improvements in the quality of life, so that it can live more and better, adapting to new situations. "But technology is not destiny. In fact, better understanding the technological forces behind the decline of labor is crucial for shaping our agenda on how to best protect workers going forward" (Korinek, 2019).

Telework is the result of science and technology that offer rationality to the work scene in the face of digital, cybernetic and telematic innovations that foster and facilitate more and more dynamism in communication, exchange and sharing of information, documents, and data.

It is a founding and structuring issue of the Democratic Rule of Law that telework be used in companies and industries in green development, using new sources of electricity, coming from renewable energies (solar, wind, hydro, and biomass), preserving biodiversity, promoting a new type of employment contract, it is worth saying, the green employment contract, meaning that it is a new contractual modal that has two supports: climate commitment and business ecological commitment.

Climate justice requires new attitudes, new thoughts and, in parallel with the imperative state intervention, collective bargaining should be used so that trade unions and companies can think and appropriate and improve

the archetype existing among the respective geographical and socio-environmental realities. After all, it is through the dialogical process that democracy is built, citizenship is made effective, the human being valued, and the environment preserved.

For this, the public and private sectors must invest in sustainable technological innovation, so that innovations and breakthroughs that help keep the planet at a lower temperature may arise. Coping with the climate crisis is everyone's duty, and so the work environment must be cleaner and more productive and unquestionably telework has much to contribute to this long process. Here the words from the social teaching of the Church can be recalled: "The environment is a public good, the property of all humanity, and all are responsible for it. Whoever owns a part of it has it only to manage it for the good of all."⁴

It is in this prosperous scenario that telework emerges, which rightly reflects the law following the changes that have occurred in the labor, economic and social spaces, arising from the Third and Fourth Industrial Revolutions, which brought virtual and cyberspaces to the world, causing various benefits to emerge for the good of humanity.

We live in a digital and cyber society, led by computers, smartphones and tablets, which support

social platformization, and through these devices people and companies, via the Internet, remain connected daily, communicating with the whole world.

Consequently, the regulation of telework by Labor Law means a great and important normative advance, inserting in the context of the employment relationship the teleworker, allocating it a founding social inclusion, because when filled the 7 (seven) legal technical elements the worker will be entitled to the entire constitutional and Brazilian Consolidation of Labor Laws labor framework.

The standardization established in the arts. 75a to 75-E of the CLT, provided for in Chapter IIa, establishes a directive for telework, that until then was the subject of only Article 6 of the CLT which intended only a partial directive. Thus, a normative vacuum was duly filled to bring legal certainty, and, on the other hand, there is room for a standardization of a new contractual type — the green employment contract.

Contemporary society must recognize the crucial importance that telework has in the lives of all of us, who in one way or another is or depends on a teleworker, a modal that has been contributing more and more and more so that we have a better and safer life through the new technologies that permeate relationships today and will surely guide us in the hereafter.

Notes/Przypisy

¹ <https://beecorp.com.br/doencas-do-seculo-21/>. (01.09.2021).

² <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/09/21/remarks-by-president-biden-before-the-76th-session-of-the-united-nations-general-assembly/> (21.10.2021).

³ Judgment of the Polish Constitutional Tribunal of 30 January 2001, Sign. K. 17/00.

⁴ Laudato si, of the Holy Father Francis on care for our common home, 95.

References/Bibliografia

- de Souza Júnior, A. U., de Souza, F. C., Maranhão, N. & de Azevedo Neto, P. T. (2018). *Reforma Trabalhista: análise comparativa e crítica da Lei no 13.467/2017 e da Med. Prov no 808/2017*. 2a ed. São Paulo: Rideel.
- Delgado, M. G & Delgado, G. N. (2017). *A Reforma Trabalhista no Brasil: com os comentários a Lei no 13.467/2017*. 2a ed. rev., atual. e ampl. São Paulo: LTr.
- Garcia, G. F. B. (2018). *Manual de Direito do Trabalho*. 10 ed. ed. ver., ampl. e atual. Salvador: Editora JusPodvim.
- Korinek, A. (2019). Labor in the Age of Automation and Artificial Intelligence. *The Ohio State Technology Law Journal*.
- MOTOR Tech Content (2020). *O que é gig economy e qual sua relação com conteúdo on demand?* Joinville. <https://motortechcontent.com.br/o-que-e-gig-economy-e-qual-sua-relacao-com-conteudo-on-demand/> (26.12.2020).
- OECD/IDB. (2016). *Broadband Policies for Latin America and the Caribbean: A Digital Economy Toolkit*. Paris: OECD. <https://dx.doi.org/10.1787/9789264251823-en> (26.12.2020).

Dr Marta Zbucka-Gargas, Associate Professor of the Faculty of Law and Administration of the University of Gdańsk. PhD and LLM in Law. Practitioner with many years of managerial experience in human resources and global supply chain management in companies from the energy and offshore sectors.

Dr Marta Zbucka-Gargas, adiunkt na Wydziale Prawa i Administracji Uniwersytetu Gdańskiego. Doktor nauk prawnych i LLM w zakresie prawa. Praktyk z wieloletnim doświadczeniem menedżerskim w zakresie zarządzania zasobami ludzkimi oraz globalnymi łańcuchami dostaw w spółkach z sektora energetycznego i offshore.

Prof. dr Cláudio Jannotti da Rocha, Professor of the Law Department of the at Federal University of Espírito Santo, in the undergraduate course and in the Graduate Program in Procedural Law (Master's). Post-Doctorate in Law at the Federal University of Bahia. PhD and Master's in Law from the Pontifical Catholic University of Minas Gerais. Leader of the Research Group Work, Social Security and Process: dialogues and criticisms. Member of the Research Group Working Relations in Contemporaneity. Member of the Research Group Work, Constitution and Citizenship.

Guilherme Alves Jevaux, Master's student at Federal University of Espírito Santo. Researcher of the Research Group on Labour, Social Security and Process: dialogues and criticisms.

Prof. dr Cláudio Jannotti da Rocha, profesor na Wydziale Prawa Uniwersytetu Federalnego Espírito Santo, na studiach licencjackich i w programie Graduate Program in Procedural Law (Master's). Doktorat z prawa uzyskał na Uniwersytecie Federalnym w Bahia oraz Papieskim Uniwersytecie Katolickim Minas Gerais. Lider grupy badawczej „Praca, zabezpieczenie społeczne i proces: dialogi i krytyka”. Członek grupy badawczej „Stosunki pracy we współczesności” oraz „Praca, Konstytucja i Obywatelstwo”.

Guilherme Alves Jevaux, student studiów magisterskich na Uniwersytecie Federalnym Espírito Santo. Członek grupy badawczej „Praca i zabezpieczenie społeczne i proces: dialogi i krytyka”.



Nowość



Po więcej informacji zapraszamy
na stronę Wydawnictwa www.pwe.com.pl