

RECOGNITION OF THE "RIGHT TO CONTINUE TRAINING"

Reinsurance for telework

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ABSTRACT

Telework, as recent mode of supply of services through the use of ICTs (Information and Communication Technologies), produce certain impacts on the world of work and therefore, in the legal system governing it. At present there is no law regulating telework various projects there aim is to establish legal conditions "minimum" to define clear rules as a starting point for both the subsidiaries and companies. Thus, it is proposed to recognize the "right to continuous training of the teleworker and analyze a formula that discourages the worker's dismissal for failure to adapt to the new technology for a future legislative proposal.

KEY WORDS

Telework - Legal Regulation of Telework - Right to continue training.

1. INTRODUCTION

Is known and accepted by society, speed, safety, effectiveness and efficiency that can reach the production processes to incorporate the use of information technology and communication (ICT) within an enterprise. Any *businessman* recognized in these techniques a real "tool" that helps feed higher profits and economic efficiency [1]. The doctrine emphasizes the existence of a major restructuring process, characterized by greater flexibility in management, decentralization and networking of enterprises and increasing individualization, diversification of work relations [2].

According to an ILO report on work in the world [3] work as teleworking is emerging as an important mode of the information economy, existing social inequalities, particularly those of gender, are increased if measures are not taken appropriate policy formulation. Moreover, the transnational dimension of ICT's have highlights the need to coordinate and regulate the various aspects that arise from this mode.

2. Telework and its insertion into the current labor laws

In our country the legal regulations governing labor relations ranging from the National Constitution, Law 25 800 (ratified ILO Convention 177), Employment Contracts Act and amend 20 744., National Employment

Law 24 013, Law 24 557 (Irrigation Act Work), Law 12 713 of Home Work, Law 11 544 (Days), Law 19 587 of "Health and Safety" and its implementing regulations, among others. But this policy seems insufficient at the time of framing and responding to the needs posed by the use of ICTs in the workplace.

Law No. 25 800 of the ILO Convention No. 177 on "Home Work", Article 1 "Means work that a person, referred to as a homemaker,; at home or in other places you choose, other than the workplace of the employee, in return for payment; to produce a product or service as specified by the employer, regardless of who provides the equipment, materials or other inputs used, unless that person has the degree of autonomy and economic independence necessary to be considered independent worker under national legislation or court decisions, a concept that can be framed to "telework."

The international trend in legislation is to provide particularized rules on the issue taking into account the characteristics of teleworking in a dependent relationship. Understanding employment law from both the optical proper standard, the regulations stipulated in the Collective Bargaining.

To date we find the extensive activities of the Ministry of Labour, Employment and Social Security of the Nation through its Coordinating Committee on Telecommuting, promotes various activities with goals: * Promote the implementation of Telework platforms, * Assess the impact of teleworking in the preservation and creation of decent work, * To encourage the generation of better working conditions through the ICT. * Reconciling family and work. * Promote new content on collective bargaining. * To argue the advantages of industrial relations mediated by ICTs. * Disseminate regional and international best practice in Telework. "

In a note [4] of March 9, 2010, Viviana Diaz, coordinator of the Ministry Telecommuting area, reported that the intention of raising a new bill to be treated in the National Congress, specifying certain items deemed * obligation the company will provide different devices that require the employee to do their work, * worker must be covered by a Labour Risk Insurance (ART), * companies must pay a premium, which may or may not remunerative, for any costs incurred by the teleworker remote, * companies can not make any control or remote monitoring involving the invasion of employee privacy, * no one can be forced to telework, or the employee may require the company to give you a place to perform remote * possibility of returning to the traditional approach.

In this framework is inserted telework and resolution of conflicts that may arise in a relationship of dependency work and of these, the problems of interest to this paper is to identify some of which may occur as founders of a Contract Termination by the employer.

3. ISSUES-ISSUES OF TELEWORK legislators.

The doctrine [5] identified the particularities of telework take into account when making laws

a) affirm: * Equal treatment with other workers, * Consent of the teleworker;

b) guard: * Invasion of privacy vs. worker. right of control; * Property information, the definition and protection; * Protection of "risk" of teleworking: prevention, safety, health;

c) ensure: * Conventional regulation required complementary and union participation; * The issue of tools (equipment) and costs.

In addition to the outlined argue that a worker's right to have continuous training in order to avoid potential conflicts that result in the termination of employment.

3.1.- CONTINUOUS TRAINING LAW.

We understand that it is the employer who has the power to organize your business. We distinguish within the concept "organization" the decision in the choice of mode, tools and methods to use to carry your company, this power is recognized by the Act Employment Contracts 20 744 (LCT) which in Article 64 states "The employer has sufficient powers to organize economically and technically the company, holding or establishment."

As it pertains to work through the use of software and hardware, among which is telework, the employer who will decide the execution of a specific computer program, the possible change, once implemented, "the choice of computer equipment and update as the rapid technological changes. The will of the worker is reduced to a mere advice, but who took the final resolution will be the employer, only the power to decide.

Train teleworker not only be an obligation that may be imposed on the employer, but becomes a real right which the employee may claim in the course of employment and legal recognition of which act as a preventive measure for possible terminations based on the inefficiency for the execution of work, inefficiency framed the hypothesis that note, in no way be the responsibility of the employee at the lack of training for adaptation to technological changes proposed by the employer.

In 1995, Law 24 576 Chapter VIII is incorporated under Title II of the Labor Contract Law 20 744, entitled "From professional training." There is regulated towards establishing different guidelines to ensure training for all workers, stands out:

- The promotion and training in the workplace as a fundamental right of workers under conditions of equal access.
- The implementation of training and professional development with state assistance.
- Union participation in training actions, particularly the hypothesis providing incorporation of technology to the company to prescribe: "The union representing workers in accordance with current legislation to technological innovations and organizational basis of the company, may ask the employer for implementation of vocational training for the best fitness of staff to the new system. "
- Obligation to indicate in the certificate of work orders Article 80 LCT, the training received.
- Promotion of vocational training by providing, through collective agreements, a number of hours of annual time of labor.

We welcome the intention of the law, but we believe important to consider the teleworkers as a group to protect, because this new approach would benefit not only to that sector but the entire society, because the telecommuting is considered advantageous to reduce unemployment and promote the work of neglected sectors such as women and the disabled [6]. Hence the need to consider preventive measures that allow continued employment.

Legislative technique is aggravate the amounts of layoffs when they are articulated on unprotected sectors, suffice as an example LCT Article 182 which establishes a special allowance in cases of groundless dismissal within maternity protection of the worker or in cases dismissal of presumption of marriage.

We propose to analyze the transposition in the current or specified future complications of the amounts of compensation for dismissal in the absence of training before a change in the technological tools that were provided to the teleworker by the employer, at the time of hiring or when the change of mode with the use of ICTs to-face at a distance. We caution that this technique should in no way operate as an unjust enrichment of the worker, but as a disincentive for the employer who fails to comply with its obligation to provide work in appropriate conditions.

4. CONCLUSIONS

The traditional employment relationship formed by a worker who served under the orders of an employer in the headquarters of the company, using the tools that he offered to perform its work, was the general rule until the advent of teleworking. This, understood as a way to change the traditional concepts to provide the service by using ICT's in the worker's home or at a different address than the employer, came to favor the labor market in terms of its advantages is held between decreasing unemployment rates and promotes the employability of vulnerable sectors (women, disabled, etc.).

In this regard, we propose to explicitly recognize the "right to continuous training of the teleworker" to the changing technological means provided by the employer and the completion of a form of legislation that discourages the disengagement of the employee for failure to adapt to them.

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[3] DE VIRGILIIS, MA - DE VIRGILIIS, MI "Teleworking. From the Chimney to the Information Society ", DT 2001-B, 1365. ... Report of the ILO's World Labour " Life at Work in the Information Economy. ") It insists that the work in the information economy can be an effective tool to promote social and gender equality, but only half able to direct intervention to eradicate the disparities and protect the needs and rights of workers affected (Noeleen Heyzer, Executive Director of UNIFEM). For further may be also the Declaration of Florianópolis, June 2000 at the ECLAC website. "

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