

The Parassubordination on Telework

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ABSTRACT

This research aims to study the parassubordination on teleworking. Seeks to define telework as a kind of service delivery at a distance, the result of changes in labor relations and technological advancement. Moreover, there is a crisis of subordination, creating the parassubordination as the middle ground between self-employment and the subordinate, which is not always peaceful or legally secure. In parassubordination workers carry out activities as stipulated in the contract, aiming to collaborate for the purpose of the project, but providing services in a less directed. The question then is whether teleworking speaks of parassubordination. When called telecommuting as a work parassubordinated, you lose legal protection by the lack of regulation of the institute in Brazil, there is no uniformity about which rights belong to the employee parassubordinated. Means necessary creation of a specific law to deal with disputes with greater accuracy and social justice.

Keywords: Teletrabalho¹, Parassubordinação².

INTRODUCTION

The world of work undergoes significant changes, both in the profile of employers and workers. Information technology and communications are now an inseparable part of the development of economic activity worldwide, being also an increasingly important factor in the organization and structure of modern societies. In this sense, the organizational environment is experiencing a period of change, coupled with the crisis of legal subordination, which walks a middle ground between work and the autonomous subject, the parassubordination.

The parassubordination autonomy arises because many workers have in their company, linked to the intellectual level of this, and while they are still subordinated. It appears that the face of new information and communication technologies is the emergence of a new kind of work: telework, the effects of social and organizational beginning to appear.

The main purpose of this paper is to seek primarily the study of telework and the phenomenon of parassubordination and thereby ascertain whether the teleworker is an employee subordinate, or standalone parassubordinated.

The work will be developed through research in relation to this theme. Through teaching, existing legislation, published articles, jurisprudence, legal journals and media Internet sites on the Internet. First, there will be a comparison of all data collected, interpreted so as to provide an analysis of the current scenario. Through a dialectical approach, thus, seek to solve the problems posed.

The research technique is literature, consulting books, articles and other printed materials. The research procedure is to document analysis and typological. The method adopted will be procedural and historical monograph, and will analyze the rise of telecommuting, noting its influence on society. Monograph for the understanding of carbon credits, in order to obtain a common idea.

1. LABOUR SUBORDINATED RELATIONSHIP

Technological change, economic globalization, the generation of new professions, the decentralization of production, constitute a pattern of changes that are associated with the emergence of new contractual figures. The new economic conditions determined by the technological revolution, increased global competition, as a result of recession or high unemployment rates, stimuli leads to a new reality in the national labor law, resulting in changes in current relations. There is need for a revision in labor relations, as the current concept differs from that of an industrial society. By introducing new technologies, eliminating job functions that the machine will perform, all for increased productivity, better quality and low cost. In this context of change, the Labour Law review questions about the flexibility of labor relations and its major features: the subordination.

1.1 Brief Thoughts about the Work Contract

The Consolidation of Labor Laws has an article 442 that defines the contract of employment as the "tacit or expressed, corresponding to the employment relationship." This device is widely criticized by legal writers, because there would be a mistake in his writing: the exchange of legal relationship to the employment relationship. In this sense Sérgio Pinto Martins.

The employment contract may not be relevant to the employment relationship. Or is it or not. Contract is legal business, the adjustment of wills. Employment relationship is a legal relationship. When talking

about employment, it should in turn would use the term contract of employment. Contract and working relationship would be gender and employment contract, the species was carried out only between employee and employer. [1]

Criticism aside, using the concept of employment contract. Second Magano Octavio Bueno [2]: "employment contract is the legal transaction by which a person undertakes, for remuneration, to provide services not possible, the other person or entity, under the direction of any of the last."

With this, we can conclude that one of the objects of the employment contract is the worker, his labor, and consequently the formation of an obligation to provide a job.

One subject of the employment contract is the employer. Article 2 of the Consolidation of Labor Laws employer considers the individual or collective enterprise, which, assuming the risks of economic activity admits, salaried staff and directs the provision of services. However, the employee is defined in Article 3 as: "any natural person who provides services of any nature is not the employer, under this and the dependence upon wage".

From these definitions, one can extract the characteristics of employment that are similar to the requirements for configuration of the employment relationship, which are: consensus, personal intuition, synallagmatic, commutative, and consideration of successive treaties.

The employment contract is agreed to be a fit whether express or implied, oral or written between contractors. [3]. This consensus is also present during the execution. Carmen Camino reports that "consensuality will always be invoked in favor of the employee, and these will be valid only when these do not result in injury for this [4]

Usually occurs expressly and writing, by signing the contract, opening the will of both, while the tacit, only the attitudes of consent to provide the service. Currently, a contract of employment can be achieved through an email, a click, accepting the terms of that contract.

In the employment contract, the obligations are reciprocal, the employer shall pay the salary and the employee providing the service. For this reason, if no remuneration, the contract assumes the default and not the absence of the contract. In this sense Mozart Victor Russomano about the employment contract:

Thus, it is bilateral, both in the sense of dependence on the will of two or more persons, either in the sense that it embraces both in a web, more or less complex, privileges and duties. It is costly, because they would result from reciprocal obligations for the contractors. It synallagmatic and commutative, because those rights and obligations arise from the time the legal relationship constitutes, within the assumption of perfect equivalence between the charges made by the employee and employer, one in the face of another. [5]

Another feature of the labor contract is the subordination because the employee submits to the power of direction of the employer. It is specific requirement of employment, whose analysis will be elaborated later.

The formation of an employment contract can be extracted three core concepts: rigid, flexible, and freedom of choice. At the core drive for autonomy of the state, public order regulations which can't be touched. While the core is flexible collective autonomy, namely, spaces not occupied by state intervention. And finally, the autonomy of the will that is the freedom to contract, Article 444 of the Consolidation of Labor Laws, "the contractual relations of work can be freely stipulation of the parties interested in anything that does not contravene the provisions of protection of labor, the collective agreements applicable to them and the decisions of competent authorities." [6]

1.2 Relationship of Labor and Employment Relationship

The legal relationship in the labor contract creates an employment relationship or an employment relationship is central to distinguish them. Jean Vincent uses the term contract activity to designate "all contracts in which the personal activity of a party is the subject of an agreement or the obligations it entails." [10] The employment relationship on a contractual activity. According to Mauricio Godinho Delgado is a generic character in the working relationship.

[...] Refers to all legal relationships characterized by having its provision essentially centered on an obligation to make embodied in human labor. It refers, for every type of contract labor in modern human admissible. The term working relationship encompassed thereby the employment relationship, the relationship of self-employment, the employment relationship is possible, work loose and other forms of agreement for the supply of labor. [7]

Therefore, it is said that the working relationship has wider character (*lato sensu*), covering all forms of provision of existing work. While the employment relationship arises from the labor contract, has a contractual nature, one species of the genus employment relationship, also called the employment relationship *stricto sensu*.

Among all types of employment relationship, the job is the most relevant socioeconomic weakened by time. Therefore, to be configured the employment relationship requires the presence of all requirements, in the absence of some, isn't characterized the employment relationship. Jorge Luiz Souto Maior believes in the existence of a tendency to obscure the relationship of employment, which is meant to exempt itself from labor charges, therefore avoiding the call of workers employed.

Thus, the employee is no longer employed, is a "collaborator" and that sometimes it's also "cooperated" (collectively, the workers were "cooperating" to "collaborate "...).

In many situations the employee to lose the name and the human condition itself, as becomes a legal entity, identified by the initials ME addition to its original name. Joao da Silva, an employee of the office, becomes John Smith ME, ceasing to be employed, although the factual situation pertaining to continue work exactly the same. And, if John Smith conducts the ME to perform their tasks outside the establishment's former employer, urging him to keep part of the corporate structure gives to the John the nickname of "entrepreneur," worker "independent." [8]

To disguise this legal relationship, compared to principles such as the primacy of fact the company is suppressing the rights relating to the status of employee John Smith has, and not "entrepreneur." For this reason, it is necessary to study the assumptions that characterize the employment relationship.

Through the concept of employment relationship have been assumptions [9] for its characterization. For Alice Monteiro de Barros only the working relationships that have the characteristics: the personal, non-event, consideration and subordination, identify an employment relationship. As can be seen below:

The main elements of the employment generated by the employment contract are: a) personality, or one of the subjects (the employee) has a legal duty to provide services on behalf of other staff, b) the nature of possible non- service, that is, it will be necessary for the normal activity of the employer; c) the remuneration of work to be performed by the employee, d) finally, the subordination of legal services to the employer [10]

The provision of service has an eminently personal, so the contract is a contract of personal intuition, it's clear that the relationship is a fiduciary relationship. You can also say that the provision of service is infungible, namely, prevents the worker to do substitute another person in the execution of the activity that has been entrusted.

When the service is provided in a manner not possible means that constitutes routine activities, namely the usual firm, permanent, related to the object of business activity. Carmen Camino defines the non-event, "reflected the non-event, referred to in Article 3 of the Consolidation of Labor Laws, as habitual expression of the natural routine of the company. We would say that the work is that any non-naturally inserted in the company's activities [...]" [11]

The burden, too, is a characteristic of the employment relationship and the contract of employment because the employee is compensated for his work through the remuneration paid to him. Note that for the distinction of various forms of employment relationship adopts the criterion of the existence or not of subordination. Tying is defined in the dictionary as "the act or effect of subordinating; state of dependence or obedience to a hierarchy, one power." [12].

As seen in the employment relationship has been a part of the subordination of the employee and others the power to direct ownership of the employer. Because the provision of direct services staff, assume the command of employment, the employer has the power to control his subordinate, dictating the rules.

One consequence of the power steering is *jus variandi*. The main feature lies in the power of employers to shape the activity of the employee to changes within the company. The *jus variandi* is a unilateral change of employment made by the employer. This is the autonomy of will, working in turn in the spaces "hollow" contract of employment. The limits of *jus variandi* will be analyzed in each case but must be those transformations arising from real business need. By contrast there is the *jus resistentiae* only attribute of the employee. In this sense, Delio Maranhão "The *jus variandi* isn't synonymous with the employer's discretion: only legitimate when it corresponds to a real need to accomplish these goals." [13] Simone Cruxên Gill brings a concept of *jus variandi*. "It's the power of the employer exercised its power under the directive, to introduce, unilaterally, within limits, modifications to the circumstantial aspects relating to service of the employee and the organization of the company." [14]

However, the legal subordination has been changing over the years due to progress in business practices and its own labor law. However, nothing more controversial than conceptualizing subordination. Manuel García Alonso [15] the real through the figure of a pyramid: "Imagine a pyramid upside down and see it will, in its upper surface, the entire labor law and its lower end to subordination."

It's believed that from this figure, the subordination supporting the Labor Law or any existing professional activity. For Amauri Mascaro Nascimento, [16] The subordination is defined "as a situation in which it is the employee, arising from the contractual limitation of freedom of choice, for the employer to transfer the power of direction over the activity to perform .

Thus, subordination and power steering are completed, it's impossible to engage in any activity not hierarchically subordinate to the workforce employed in it. Exactly why the employer sees the act of hiring an employee like operation designed to provide not only work but to work through subordination. [17]

The major difficulty is in qualifying the level of dependency that can be: legal, economic, technical or social. The legal subordination, or also called hierarchical dependence, it's the nature of the relationship of the contract, a consequence of non-event of services rendered by the employee. It is the power of command and direction of the employer. As Orlando Gomes. "In legal subordination it is a general right to supervise the activity of others, to stop it or raise it at will, his delineation without the need to continuously monitor the technical merit of the work performed, concluding bluntly, that the Direction and supervision are the two poles of subordination. [18]

The worker is subject to the employer for economic issues, because this pay his salary, as a way of survival is the employee's salary. Russomano said that economic dependence exists not only for the employee with the employer,

but that the opposite could happen someday. [19] Regarding the aspects of the legal relationship: personal, technical and economic; Alice Monteiro de Barros summarizes:

Looked at from the subjective perspective, tying has three aspects: personal, technical and economic. When the employee is subject to control time and abide by the orders, he makes himself personally to the employer, when it meets the rules of application emerges tying technique, and when your family budget and its assets consist primarily of salary is the employer, it's clear the economic subordination. [20]

Thus, the tie must be evaluated in each case and see how the work is provided. As seen, the subordination is fundamental to the characterization of the employee, the fact that the same profession may be exercised so as subordinate or autonomous. The key to the framework of the profession will be the feature of activity. In this sense, Amauri Mascaro Nascimento. "Therefore, the characterization of each case must be by exclusion, and eliminated the possibility of the employment relationship is to verify that another hypothesis, and are diverse, featuring the work of the legal relationship in question, defining the respective rights that do not coincide, depending on the type of linkage." [21]

From the peculiarities of employment relationship is possible to distinguish the work of subordinate self-employment. The self-employed labor has no legal protection, leaving your typing in the Civil Code. Mauricio Godinho Delgado builds interesting distinction between the self-employment, autonomy and subordination.

The central difference between the figures lies, however, repeat itself, in tying. Fundamentally, self-employment is one that takes place without the worker's subordination to policyholder services. Autonomy is antithetical to the concept of subordination. While this reflects the settled case law that the employee receives direction regarding the business mode of delivery of its services daily, autonomy reflects the notion that the provider itself is that it establishes and implements, daily, how to perform the services was agreed to provide. On tying, the central direction of the everyday mode of service transfers to the borrower, the autonomy, the central direction of the everyday way of providing services to preserve itself with the provider of job. [22]

Currently, the fear of losing their jobs in this period of crisis, causes many workers to surrender to the imposition of businesses, performing functions more or the number of their office. Thus, for example, working hours are dilated. Used overtime which can result in the "usual overtime, paid through compensation.

Souto Maior believes that if an employment relationship does not respect the social rights (which many of them exist to preserve the health of the worker and the social life), assuming there is a countervailing social, would result in a super- exploration. And yet, complete:

Tying is strengthened, giving rise, then the figure of supersubordination. The supersubordinated, therefore, is the worker, human being, 'the condition of reduced workforce. The supersubordinated is not a specific type of worker. It is the name of the employee in any employment relationship, which has had their citizenship denied by inexcusable and deliberate disregard for their constitutional rights [...]. [23]

However, the lack of registration and non-compliance with labor standards are evidence of supersubordination. This has degrees which depend on the level of disregard for labor rights. Almost always the supersubordinated is actually a call that parassubordinated.[24].

1.3 Parassubordination

Italy emerge from the second half of the twentieth century, discussions about the revision of the concept of subordination, as it verified the existence of a class of employees who were located in a nebula range between subordination and autonomy. Alice Monteiro de Barros believes in an intermediate situation where it is difficult to classify as an employee, because of the diverse content of work.

The qualification, specifically, a particular relationship as employer and employee or self-employed can be difficult and controversial, especially in cases that fall in the "*zone grise*", namely, the gray zone or border inhabited by workers who may be both classified as employees or as stand alone, outside the orbit of labor law. The case law has held that the issue should be resolved in light of the circumstances of each case. [25]

It is known that the subordination is the key to characterize the employment relationship and that labor standards before the stand-alone has no protection. With the emergence of new working relationships for many workers who find themselves in this "*zone grise*" and become marginalized in the implementation of the Consolidation of Labor Laws. This new mode of work is called work parassubordinated. Amauri Mascaro Nascimento conceptualizes parassubordination:

The work parassubordinated is an intermediate category between the autonomous and subordinate, covering types of work that do not fit exactly into one of two traditional modes, among which is situated, as the commercial representation, the work of professional and other activities, atypical in which work is delivered with personality, continuity and coordination. Hypothesis would, if applicable, the self-employment with the employer and employee characteristics assimilable. "[26]

According to Pinho Pedreira [27], recognition of one kind of work consists of the elements of continuity, coordination, prevalence of personal service, developed without subordination, as well as weak economic and social worker, is the work parassubordinated. From these definitions, one can extract the essential characteristics for your configuration as personality, coordination and continuity of the relationship, as defined by Renata Orsi Bulgueroni:

Continuity indicates a non-sporadic of the activity, answering a need of the borrower which extends in time. In turn, the dominant personality prevents the service provider to make replacing in their activities, whether in the organizational stage of the business, either at the production stage itself. It's noteworthy that requires only the preponderance of personhood, so nothing prevents the provider is worth the aid of others in the supply of labor, since they do not delegate the provision. Finally, the coordination - seen as the distinguishing feature of parassubordination in relation to other forms of work - is marked by intense activity of the insertion of the provider organization in the company. [28]

To complement the idea of coordination, it is noted that the service provider may, within certain limits, to draw on the help of others to do the job, as a small entrepreneur. The activity of the worker is essential if the policyholder of its services to achieve their goal. The worker does not promise your personal activity for the development of any goal pursued by the policyholder, but puts its services available to only that specific type of activity, it is necessary to achieve the intended purpose. From this situation Otavio Pinto e Silva:

But the important thing to note is precisely the possibility of a collaborative activity of the worker come to be provided in an employment contract in order to achieve the goal of a series of results. Therein lies precisely in the importance of coordination as it allows the differentiation of both the subordination of how much autonomy. Coordination, then comes to mean "sort together" means that both parties have to propose measures to achieve the common goal. [29]

Thus, it appears that the difference with the employer and employee where the employee is subject to the power of directing the employer must comply with all determinations of this. It's noteworthy that in modern Italian doctrine jurisprudence is swinging towards extending the rights of the employee subject to parassubordinated Giancarlo Perone defer making the coordination stating that:

Coordination denotes the intent to use the provision of work organically within the company, as may occur in representing commercial featuring autonomous activity, organizational perspective of work activity is not unrelated to programming business, but it differs from the type of subordination determination of that program. In Italy instead of talking about employees, it is preferred dependent. [30]

Thus, for the self is framed as parassubordinated, we need to provide staff to be continuous and coordinated. In Italy, the legislature introduced through the Legislative Decree No. 276/2003 of the fattispecie the progetto lavoro, known as "Decree Biagi", namely, characterizing element of parassubordination. In the Legislative Decree in your article. 61 to provide the figure of the work parassubordinated the project, refers to the article. 409, paragraph 3, of the Code of Civil Procedure, specifically citing the "relations of co-ordinated and continuous collaboration, predominantly personal and no relationship of subordination," better known as "co.co.co..

With this kind of work, the legislature introduced a new element that characterizes relations parassubordination provided by art. 409, n. 3 of the Code: the project, or phase of this program. According to the new legal diction, therefore, all relationships should be coordinated and continuative collaboration, with the promulgation of the decree, involve a specific project in your setup, otherwise will be considered relations between employer and employee for an indefinite period since its constitution. [31]

With the release of "Order Biagi," so that the working relationships parassubordinated be valid, must be framed in an "employment contract to design," which became known as "co.co.pro." (Continued collaboration coordinated the project). Moreover, there is the Legislative Decree a provision which prohibits the continued renewal of the "co.co.pro." Enabling the "perpetuation" so precarious contractual through a series of renovations chained to one another, indefinitely, even compared to similar projects or programs. [32]

Given these considerations, there is a need for an adequate labor standards to the reality, especially when the crisis of subordination and the emergence of new working arrangements such as teleworking.

2. THE TELEWORK

2.1 The Office of Telework

The integration of information technologies and communication in the current industrial relations has resulted in new working arrangements. Telework is one such way that has been developing and acquiring space in the market. The work itself has changed over time with regard to its structure, since the craft work with small family, the transformations of industrial society in the nineteenth century and currently lives in the globalized world, in post-industrial era. Telework has emerged in the seventies with the oil crisis, rising fuel prices and transport, the need for companies to reduce production costs, as Alexandre Agra Belmonte. [33]

Analyzing the word telework there is his Greek and Latin, as is the meeting of "telou" (away) and "tripaliare" (work). However, it has several synonyms, depending on which country is your scholar. The most widely used in the

U.S. is called tele travel (telecommuting), working with the network (networking) and work at home (homeworking). In Europe it is more commonly known as telework, or work at a distance, but also the expressions télétravail, telearbeit, and telelavoro Teletrabajo are commonplace. Telework can be conceptualized as a work performed at a distance, it does not work at home, at home, but provided in a decentralized manner can be accomplished in several locations such as telecenters, including satellite and center domicile. According to Francisco Ortiz Chaparro conceptualizes the telework in a simple and straightforward: "es trabajo distance using telecomunicaciones y las cuenta ajena by [34]. It is noticed that for all concepts studied elements in common as physical space outside the company which is linked to the worker, make use of information technologies and communication, and a change in the organization and execution of work.

2.2 Telework and the Domestic Labor

With the media and technology worker can provide services in multiple locations or even anywhere in the world. The homemaker remains subject to the employer, not necessarily with the aid of technology, and undertaking to perform the activity agreed upon.

The ILO has a convention number 177 of 1996 which regulates the work domicile, playing Bernard Gbezera convention draws a concept of teleworking:

[...] Is a new way of organizing and managing the work, which has the potential to contribute significantly to improving the quality of life, sustainable working practices and equal participation by citizens at all levels, and Seen as a key component of the Information Society, which can affect and benefit a wide range of economic activities, large organizations, small and medium enterprises, micro enterprises and self-employed, as well as the operation and provision of public services and the effectiveness of the political process. [35]

The Convention is accompanied by Recommendation 177 184, according to this recommendation should be guaranteed the safety and health at work. In its general provisions, mentions the need to appoint competent authorities to set the national policy on working at home. CLT positive work at home in Article 6, where it says verbatim that: "No distinction is made between the work done in establishing the employer and the employee's home run if they have characterized the employment relationship."

The characterization of work at home or employment relationship results from the way the service is able to identify and determining where the work should be developed. Roberta Coltro Gerhardt says the worker may be assisted by family members, but that the collaboration should not be routine. "[...] Personhood is needed for the configuration of the employment relationship. Thus, if the worker is replaced by a family member in service delivery, no labor pact. Family members can collaborate, as was pointed out, however, not frequently. "[36]

Work at home telecommuting is not exactly, nor vice versa. Teleworking is not just a way of working distance, but a form of organization and / or execution of the work that makes use of information technology and what can be done in the employer's premises or off-site as to what was negotiated between the parties. Thus, all observed characteristic features of the employment relationship, they refer to the worker at home and guarantees the rights inherent in that condition.

2.3 Classification

Define the classification of telework is very important, and should take into account the criterion for determining the rental choice of telecommuting to be followed. So teleworking can be: at home in telecentres and satellite centers in telecottage and nomadic or mobile. The first modality to be examined it is the most easily viewed, teleworking at home. Occurs when the teleworker performs the service in their own homes with the help of mandatory mechanisms telematics, or use of information through the combined use of computer and media.

Jack Niles said that the home can be an efficient base for teleworking, enabling significant cost savings for the employer and the employee, allowing people access to jobs that might otherwise be unavailable. [37]

As seen, the labor laws regulating the domestic labor that should be taken to telework at home. For without the use of technological tools is uncharacteristic of telework and the figure set to work at home. However, telework in telecentres that are local, so arranged geographically strategic, but outside the headquarters of the company, as a satellite center. This space is technically prepared to receive the teleworker and he play activities. Certifies Pine Quarry [38] that "telecentres are local enterprise, but outside of its headquarters." It may happen that the telecentres are not part of the company's teleworkers, possess various owners. Francisco Ortiz Chaparro regarding the ownership of the telecentres. Los pueden telecentres be owned by companies from the companies that asociaciones comparten costes. También pueden be owned by companies telecomunicaciones y / o computer companies, Crean with them that it intends to encourage consumption of both el equipos as líneas. [39]

There are companies that just are owners of telecentres, charging only the companies that teleworkers use the service. It is emphasized that these types of centers only employees of the company that owns or leases that are used workplace. These centers are located particularly in rural or semi-rural areas, which provide for local communities immediate access to information technology.

It is pointed out as one of the advantages of telework in telecottages able to avoid the rural exodus, thus the rural worker need not leave their land to move to urban areas in search of better pay. So the sets Francisco Ortiz Chaparro:

Son centers teleservicios asociados usually the instalaciones on farms, small pueblos, Ayuntamiento, escuelas locales public, ect. In las areas rurales. Jessica conform a mezcla of business, politics, de empleo y de altruism. With it comes to retention ellos a la población y autochthonous included to attract población más prepared, that Sueli vivir them in large urban centers. [40]

Generally, a telecottage allows the local community with easy access to equipment with telecommunications and computers needed to develop telework. Also, they are ways to improve the study of teleworkers through distance education.

The nomadic telework, also called mobile, is that provided by workers with no particular place to carry out its tasks. These labor work for a short time at other companies who are not subject, in the case of teleworkers who deploy and oversee technology or certify quality.

2.4 Arrangements

Among the forms of teleworking is necessary to observe the way how is the relationship between teleworker and the company communicate. The methods of connection vary according to the level of interaction and can be teleworking: off line, one-way line, on line.

When the telecommuter does not maintain direct contact with the company's central computer, or even the use of computer, it is off line of telework, also known as off-line. Normally, as a tool for fulfillment of tasks (projects, graphics, text, calculations, etc.).. All production of the teleworker is sent by conventional mail or even personally delivered. [41]

Way line on teleworking, the teleworker can use to support software, and the result of their work delivered through a floppy disk or sent via modem or by a simple electronic connection, explains Carla da Silva Jardim [42].

However, telework is the most common online or connected, where teleworkers communicate continuously with the company, does not mean to be connected all the time, but in real time and continuously. In this sense Denise Fincato adds: "The connection is immediate bidirectional and facilitated by conversation rooms (chats) and systems such as ICQ, not counting the webcams, which allow conference calls with real-time images via the Internet." [43]

Currently, there are other forms of communication such as Messenger, Skype, cell phones are increasingly equipped with Internet access, Bluetooth technology, video call, including iPhone and Smartphone is the evolution of technology and the Internet by creating conditions that there were only, in science fiction movies.

2.5 Advantages and Disadvantages in Telework

Like everything in life there are two sides, telecommuting would be no different. Although seemingly tempting to be a telecommuter, it's not as easy as it sounds. Domenico De Masi [44] states that each production unit is currently connected to the other via the Internet, because the raw materials are not material, but immaterial (information). To be a teleworker, the candidate must possess the appropriate profile and be aware of the advantages and disadvantages of this new profession. To be divided into three parts: business, telecommuter and society. Furthermore, an analysis of reflex effects, because for a part is positive while for others not so much.

2.5.1 Advantages

It appears that not all companies are adapting to telework. This requires, first, consider whether your niche market allows this change, as the case of strictly personal and classroom activities, for example: hair salon, auto shop, hotels and others. Identified the potential of this company should be deciding on the types of telework, and from that definition make the investments necessary for its implementation, with the purchase of equipment and facilities. Completed this phase, the employer will determine how developed your power steering and its strategy for success in this endeavor. In this context, it appears that the company will have an economy of space and facilities, namely a reduction in housing costs (spending on leasing and acquisition of sites for the completion of work) by the reduction of space in offices.

The opportunity for the company to operate day and night and is active 24 hours, and may expand to other countries, regardless of what time zone the person is.

In the event of unforeseeable circumstances or force majeure such as natural disasters and strikes, among others, which do not affect or block the energy sector and telecommunications in the city. Thus, the activities do not suffer any changes, because teleworkers may continue their work without suspensions.

Another issue for the company is positive that with telecommuting is a reduction in absences and delays of its employees as salaries and social charges, for example will fail to provide the bus passes, because the employee does not need to travel to the company.

Research indicates that by managing for results and goals for improved productivity in teleworking (for the same activities) at the home of 10% to 50% higher productivity in the company, since 50% of the time would be devoted

to traditional work is dispensed with displacement range for meals, meetings and telephone conversations [45]. Increased productivity is also indicated by Otavio Pinto e Silva. "[...] Decreased work absenteeism and therefore increase productivity, since the problems that cause delays and absences (illness, traffic congestion and other physical impairments) may be irrelevant for those working at home. " [46]

Among the advantages adds up to marketing facility and customer, as the company has more visibility virtual.

They consider themselves to flexible schedules, autonomy, independence as the main advantages of telework for the teleworker. The possibility of having more time with their family and a better quality of life. So notes Alice Monteiro de Barros. "The main advantage is pointed in favor of the employee is the schedule flexibility can make it easier for the reconciliation of professional activities with family expenses. As a result, teleworking may be a way conducive to improving quality of life of the worker, since he can distinguish between working time and free time. "[47]

Where an employee is a disabled teleworking is an option and opens a world of career prospects and job opportunities as well. Since the difficulty of displacement and adjustment of business is complicated for this worker, the telecommuter doesn't need to leave home for work. This includes teleworking housewives, workers with advanced age, those with infectious diseases and even inmates, who are suffering discrimination in the workplace. In this sense E. Rodrigues Araújo and S. Benedict Cole: "It is considered that teleworking can take women who accumulate domestic duties (taken as needed) or who are in the postpartum period, and even those serving prison sentences." [48]

The important thing is the teleworker has the right profile, and can telework in their spare time and place where you are. Regarding the woman after delivery, this time when she is enjoying the maternity leave has to consider that telework should not affect the care of the baby. But it may be an alternative source of income for many mothers who do not have to leave their children.

It's believed that the main advantage of telecommuting would society. As for the inconsistencies in route to work as traffic accidents, traffic blitz and mega congestion, resulting from the tendency of all moving at the same time, because of working hours. All this would cease to be a problem for the teleworker. Thus, without commuting to work, there would be a significant reduction in the number of cars on the streets, bringing benefits to the environment, and consequently a decrease in the levels of carbon dioxide emissions, the main greenhouse agent.

The generation of jobs it provides a market inclusion of persons with disabilities, elderly, young people seeking their first job, besides being an alternative to soften the rate of unemployment in the country. Telework also allows the development of rural areas far from large centers, avoiding the rural exodus. It promotes the growth and improvement in population distribution to areas of lower economic centrality, and also the dormitory towns may acquire life with the people working on or near their homes.

2.5.2 Disadvantages

The vulnerability in terms of data and confidential company information, for both the teleworker as others who might easily have access to the site of domestic work, and thus have access to the computerized system and confidential matters to the company. As a result of modernization and use of technology, there is a total dependence on them. The undertaking is subject to breakdowns in communications, computer viruses, lack of energy, factors that lead to work stoppage.

Difficulty in controlling the activities of the employee, since he is absent from the physical inspection of the employer, but if the company invests in technologies to control their teleworkers this problem can be mitigated. The need to be at any time by updating and investing in equipment, since technology is constantly evolving. Creating the need for significant investments in equipment that often become obsolete, and the physical presence of staff support. According to Alice Monteiro de Barros [49] this is the primary disadvantage of teleworking.

He points out that the main disadvantage of telecommuting is social isolation. For the absence of daily movement occurs at the premises of a lack of social interaction. For this reason it is essential to psychological evaluation in order to avoid possible psychological impacts, such as depression. Julio Manuel Gomes adds. "Isolation tends to breed a lack of solidarity and the disappearance of the collective dimension of work, producing a phenomenon in which teleworkers will be unionist is probably less than the other, and also lower your participation in representative bodies." [50]

This social isolation can result in a feeling of insecurity, a feeling of loss of status as a worker, because of the lack of face to face contact with colleagues and informal with even higher. You can still leave the employee to telework experience difficulties in working together.

The physical remoteness of the place of business can lead to forgetfulness of the worker, and consequently does not receive any promotions, awards due to a poor assessment of his work, namely a reduction in job opportunities. And it is still a high possibility of being dismissed due to lack of emotional involvement with the company and hierarchical level.

For society teleworking has disadvantages less evident. The effects of the lack of relationship between people generates negative consequences, the social integration of teleworkers in society. It may happen a dispersion of the workforce, so the disappearance of collective forms of work. Also a possible breakdown in the transfer of teleworkers to less developed areas, only low-skilled and poorly paid, thereby exacerbating inequalities.

Unemployment could settle in places where they find professionals with cheaper labor resulting in *dumping social*, and even can happen with high qualification, robbing our cities with high potential teleworkers.

2.5.3 Reflections on the advantages and disadvantages

Note that many of the disadvantages cited generally relate to telework done in the home, conducted by a telecommuter unprepared or unskilled, no psychological profile to telework.

Telework brings losses to real estate in cities, because firms reduce their space, not needing to buy or rent places to accommodate their workers, and this has negative effect in the construction sector and property development.

The exploitation of workers most vulnerable such as women, children, disabled, ethnic. And inequalities and discrimination among an elite group of teleworkers well paid and stable position (male, white, highly educated and without disabilities) and a majority of teleworkers low pay and unstable position, in the case of women, members of ethnic minorities and disabled.

In relation to the disabled, there may be a false impression of social inclusion or the actual intention is to hide the special needs of living with society? Brazilian law provides for the inclusion through quotas and teleworking can be used to exclude these people from socializing, moving them to their home instead of adapting the workplace, removing the barriers of prejudice and include it in the workplace. Fitting the employer to assess and monitor risks to the security of your telecommuter. It should be borne in mind that you can tailor the nature of activity in the case of telecentres where responsibility is shared.

On the subject, Brazil ratified by Decree 1258 of 1994 to Convention 155 of International Labour Organization which deals with safety and health of workers and work environment. But if telework develop at home, it is the obligation of the employer assess the risks to ensure safety and health of the workplace, considering the nature of the activity that takes place in the homes of teleworkers.

Among the most alluring advantages of telework are schedule flexibility, however, imagine that the company where telecommuting 24 hours, the employer may require a telecommuter for the night shift. Only there is a vacancy, if the employee has no choice and he accepts this turn telework. This means that teleworking can still determine the time of service delivery, with no flexibility desired.

2.6 Working Hours in Teleworking

The working day is defined in Article 4 of the consolidation of labor laws, which considers the service time period in which the employee is available to the employer, waiting or executing orders. According to Carmen Camino. "Work hours is the longest time span during which the employee may perform duties or remain at the disposal of the employer, in a space of twenty four hours. Corresponds to the full implementation of the employment contract. [51] From this definition it follows that the time and labor is the boundary of day and the weekly workload is the number of hours worked per week, subject to the constitutional limit of 44 hours. [52] The journey is linked to the teleworker teleworking mode chosen. For the levels of interactivity influence the complexity of employment contracts, namely the setting of the journey and possible additional charges. In the case of teleworking at home, you can be working at home during the entire period or fractionally. So Denise Fincato elucidates:

[...] The whole period (pure system) or fractional it (hybrid system), performing for example, half round and half round in the company's home or some of the week in the company and others in your home. Any schemes will change the physical structure of the company that embrace, instead of numerous offices and individual work stations, spaces for use rotary, pluralistic and democratic, impersonal and functional. [53]

However, in the forms offline and one-way line, there is no possibility of control of the workday, so the fee is paid by the work / task. Only in the online mode is feasible to verify the teleworker's journey through a company intranet the employee work in a certain period of the day, which is identified by a password to access personal and nontransferable.

2.7 Remuneration

One of the employer's obligation is to remunerate his employee for the service provided. This economic consideration has a character named contra-delivery salary and / or remuneration. Mauricio Godinho Delgado defines wages as: "a set of plots contra-delivery paid by the employer employed at the basis of the employment contract." [54]

The remuneration is broader, that is, a set of all monies received by the employee, while salary is an integral part of remuneration. According to Sergio Pinto Martins salary is divided into: fixed, variable and mixed.

Fixed salary is set at the sum certain, invariable. Fixed salary is calculated on basis in unit time, such as hours, days, months, etc.. The fixed salary independent of the number of hours worked by the person, it was a fixed hourly rate, for example, from \$ 1.50 per hour worked. Variable salary is set according to the production of the employee and may be by piece, task, commission, etc.. Do not have any fixed part variable salary. Includes earnings mixed fixed and variable portion. It is composed of a salary. [55]

Teleworking remuneration is linked to their qualification. The more specialized, qualified the telecommuter, the better conditions to negotiate their conditions of wage work. and teleworking can be per unit time, when the payment is a function of the duration of the service, and does not take into account productivity.

With the help of technology, appropriate software, allow the employer is registered in the computer memory of teleworking the actual time of use. And so it is possible that earnings per unit of time. However, there are activities where it is difficult to set an hourly rate, the yield is on the complexity of the work to be developed. The qualification of the teleworker is directly associated with quality of service. Situations where what matters is not the quantity but the quality of service are called fees per unit of work or for work. It is, in these cases, the work done, completed, independent of time spent. It is understood that this salary is most suitable for telecommuting. As for wages per unit of work, Manuel Martin Pino Estrada:

Unlike office workers who are normally paid as an hourly wage, teleworkers at home, especially those that handle insurance claims, transcribe dictation recorders automatic send catalogs, etc., are frequently paid on a formula that takes into account their productivity, as translated pages, minutes of conversation, etc.. Thus, the modality wage per unit of work is not only possible in teleworking, but may be frequent.
[57]

Soon, with the model of earnings per unit decides how much work the telecommuter will receive salary, because the determinant is the level of productivity to be achieved. A telecommuter unskilled must do more to achieve the same productivity a telecommuter qualified. One must be careful not to extrapolate the times and turn the activity into "teleworking slave."

CONCLUSION

This thesis sought to understand the Office of teleworking as a new way of working and their analysis in the Brazilian legal system with special focus to the aspect of subordination. Teleworking arises from changes in labor relations, resulting from a globalized market economy and technological advances in the field of computing and communication, bringing greater flexibility in space and time worker.

We tried to also define telework as a kind of service delivery at a distance, not meaning to be working exclusively at home, but labor provided in a decentralized manner can be accomplished in several locations. It is emphasized that the main difference between working at home and how to telework at home is to use technological means for carrying out their work. Telework can be a species of the genus homeworking.

The requirement of the legal relationship of greatest concern in teleworking is the subordination, since the traditional subordination refers to a type of physical subordination, where the worker is present and within reach of the employer.

From the classification of telework verified the relevance of the criterion for determining the rental choice of telecommuting may be: at home in telecentres and satellite centers in telecottage and still nomadic or mobile. However, methods of connection between the teleworker and the company vary according to the level of interaction and can be: off line, one-way line, on line. It was found that there is need for psychological preparation to be a telecommuter, ie specific knowledge to develop the activity, self motivation, self-discipline, flexibility, creativity, physical environment suitable for telework and social contacts to maintain an interaction with people, "real "because not all employees who telework can migrate to and succeed. During the study of telework, extract a number of advantages and disadvantages. After constructing this database, resulting in the appointment of reflexes arising from the counterpoint between advantages and disadvantages.

Moreover, the crisis of subordination, which has now revised its concept, has composed the picture. It analyzes the figure of parassubordination, as the middle ground between self-employment and dependent. The parassubordination doctrine was born in Italy through the employment relationship of a continuous nature, in which workers carry out activities that fall under the organizational needs of borrowers of their services as stipulated in the contract, aiming to collaborate for the purpose of the project, but providing strategic a less directed.

It's felt that teleworking is a subordinate, but different because the peculiarities existing in this kind of work, where the teleworker has some autonomy, but it is still subordinate. The inquiry, in fact, it is in talks on telework parassubordination. When called telecommuting as a work parassubordinated, you lose legal protection because of the lack of regulation, there is no uniformity of which rights belong to the employee parassubordinated.

To further this understanding, without scratching the s principle-based protective labor law means necessary to create specific legislation on telework in order to resolve conflicts arising from it, helping to make this new working relationship in their conflict, with greater accuracy and social justice.

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