

Suspension and Interruption of the Effects of the Employment Agreement: Is There Anything new in the Pandemic?¹

Suspensão e interrupção dos efeitos do contrato de trabalho: há algo novo na pandemia?

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Abstract

This article, based on the author's research project on the effectiveness and effectiveness of the Constitution and Fundamental Rights to work and work, carried out in the Postgraduate Program in Law at the Pontifical Catholic University of Rio Grande do Sul, The text approaches the institute of the suspension and interruption of the employment agreement from its classic concept. With the approach, we examine the emergency legislation that, among other hypotheses for preserving employment and income, listed the suspension of the employment agreement. The question is: has the pandemic changed the concept of suspension of the employment agreement?

¹ This paper is inserted in the Research Project "Efficacy and Effectiveness of the Constitution and Fundamental Labor Rights" and in the Research Group "Labor Relations and Unionism", both linked to the Postgraduate Program in Law at PUCRS, led by this author in the same academic environment. A Similar paper has already been published in Portuguese.

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Keywords: Covid-19. Emergency Labor Law. Pandemia. Suspension of Employment agreement.

Resumo

O presente artigo, fundado no projeto de pesquisa do autor sobre eficácia e efetividade da Constituição e dos Direitos Fundamentais ao trabalho e do trabalho, levados a efeito no Programa de Pós-Graduação em Direito da Pontfícia Universidade Católica do Rio Grande do Sul. O texto examina o instituto da suspensão e da interrupção do contrato de trabalho a partir do seu conceito clássico. Com a abordagem, examina-se a legislação de emergência que, dentre outras hipóteses de preservação do emprego e da renda, listou a suspensão do contrato de trabalho. Questiona-se: a pandemia mudou o conceito de suspensão do contrato de trabalho?

Palavras-chave: Covid19. Lei do Trabalho de Emergência. Pandemia. Suspensão do contrato de trabalho.

Introduction

The Postgraduate Program in Law at Pontifícia Universidade Católica do Rio Grande do Sul - Master's and Doctor's Degree - has stood out for excellence in research in Law.

Alongside the completion of credits for master's and doctor's degree, students from all over the world, which arrive each year, research groups open to the community are developed by the professors in order to deepen themes in their different areas of activity.

The Program, formed by two main concentration areas, namely: Constitutional Fundamentals of Public and Private Law and General Theory of Jurisdiction and Process, unfolds in lines and structures of research, in addition to the various sub-areas. It is in this context that many researches have been carried out in recent years in the following areas: Social Law - Individual Labor Law, Collective Labor Law, Procedural Labor Law and Social Security Law. The research project by this author (Efficacy and Effectiveness of the Constitution and Fundamental Labor Rights) annually trains teachers and legal researchers.

This paper deals with the classic institute of "Suspension and Interruption of the Effects of the Employment Agreement", questioning whether something new

occurred during the pandemic. The paper is descriptive and, after presenting the legal and doctrinal definition of the theme, it discusses its consequences and effects during the calamity period.

Therefore, it is necessary to have as a base, the fundamental principle inscribed in the Constitution of the Republic, of preservation of the social values of work and of free initiative (Article 1, IV)³, the social rights of labor and health (Article 6)⁴, valuing human work and free enterprise in the constitutional social order (Article 170)⁵ and the primacy of work in the social order (Article 193)⁶.

In this sense, the intention of the Public Power, whether executive in Provisional Measure No. 936, or Legislative, in Law No. 14,020, was to maintain the fundamental institutes that preserve employment and income. It was for this reason that this paper references suspension, where the employment agreement is provisionally and totally terminated, and not to interruption, where the effects of termination of the agreement are partial.

1. Employment Agreement

Title IV of the Consolidation of Labor Laws deals with the Individual Employment Agreement, from Articles 442 to 510⁷. The division, in nine chapters, deals with general provisions, compensation, alteration, suspension and interruption, termination, notice, stability, force majeure and special provisions.

Part of the general provisions are relevant here. In this sense, an individual employment agreement is the tacit or express agreement, corresponding to the employment relationship. Thus, it is possible to have a legal employment relationship without any formalization. There will always be at least three clauses, even if tacit:

³ BRASIL. **Constituição da República Federativa do Brasil 1988**. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: 20 nov. 2020.

⁴ BRASIL. **Constituição da República Federativa do Brasil 1988**.

⁵ BRASIL. **Constituição da República Federativa do Brasil 1988**.

⁶ BRASIL. **Constituição da República Federativa do Brasil 1988**.

⁷ BRASIL. **Decreto-Lei nº 5.452, de 1º de maio de 1943**. Aprova a Consolidação das Leis do Trabalho. Available at: http://www.planalto.gov.br/ccivil_03/decreto-lei/del5452.htm. Accessed on: 20 nov. 2020.

what the employee will do, in which way and how much he will provide the service and what compensation they will get.

The legal employment relationship emerges from the legal concepts of employer and employee, provided for in Articles 2 and 3 of the CLT:

Article 2. An employer is considered to be an individual or collective company, which, assuming the risks of economic activity, admits, pays salary and directs the personal service rendering.

Article 3. An employee is every individual that provides non-eventual services, to na employer, subject to the latter and upon a wage.⁸

It appears that, given the assumptions of the employment relationship, there will be an employment relationship. The policyholder may be an individual or collective company, or even an individual who, as an entrepreneur, assumes the bait of economic activity. To do so, you can hire individuals as employees, directing this benefit and paying it back with a salary. The service provided is non-contingent and subject to legal subordination (dependency).

On employment relationship and employment agreement, see Martinez's lesson:

In the case of an employment relationship, the attribution link will necessarily be an employment agreement, tacit or express, and, if expressed, externalized in verbal or written form. It is said “necessarily” because there is no way to disconnect “employment relationship” and “employment agreement”. Once the work has started, hiring will inevitably be triggered.

An object, which is the element by which the relationship is formed and on which the obligations of active and passive subjects fall. In the case of an employment relationship, the object will be the provision of personal, non-transferable, subordinate and non-occasional work.⁹

Chapter I, Title IV of the CLT - General Provisions - continues until article 456-A¹⁰. The themes of the cooperative society (bond), proof of previous experience, autonomous, form and term of the agreement, stipulations of the parties, presumption of conditions in the verbal agreement, succession of employers, rights resulting from the dissolution of the company, replacement, extension, succession

⁸ BRASIL. **Decreto-Lei nº 5.452, de 1º de maio de 1943.**

⁹ MARTINEZ, Luciano. **Curso de direito do trabalho.** 10ª ed. São Paulo: Saraiva, 2019, p. 165.

¹⁰ BRASIL. **Decreto-Lei nº 5.452, de 1º de maio de 1943.**

between fixed-term agreements and indefinite term, intermittent work, calculation of contract periods, subcontracting, proof of agreement and definition of uniform by the employer.

2. Suspension and Interruption in the CLT

The suspension and interruption of the effects of the employment agreement are regulated in Articles 471 to 476-A, of Chapter IV of the Title that deals with the Individual Employment Agreement, in the CLT¹¹.

According to Martins

Suspension is the temporary and total termination of performance and the effects of the employment agreement. In the interruption, there is a temporary and partial cessation of the effects of the employment agreement. Termination must be temporary and not permanent.

In suspension, the employee does not work temporarily, but has no effect on his employment agreement. Obligations and rights are suspended. The employment agreement still exists, only its effects are not observed. In the interruption, despite the fact that the worker does not provide services, effects on his employment agreement are produced.

It is necessary to differentiate the very existence of the employment agreement and its execution, including in relation to its effects, hence the need for distinction between the two hypotheses.¹²

It appears that the basic similarity between suspension and interruption of the employment agreement is the absence of the employee's main obligation, that is, the performance of the job. The distinction between suspension and interruption of the employment agreement is related to the effects generated. In the interruption remain the payment of the salary, the counting of the time of service and the counting of the acquisitive periods for holidays and Christmas holiday. There is, therefore, a triggering event for the incidence of labor charges, such as payment of FGTS¹³,

¹¹ BRASIL. **Decreto-Lei nº 5.452, de 1º de maio de 1943.**

¹² MARTINS, Sergio Pinto. **Direito do trabalho.** 32ª ed. São Paulo: Saraiva, 2016, p. 516.

¹³ BRASIL. **Lei nº. 8.036, de 11 de maio de 1990.** Dispõe sobre o Fundo de Garantia do Tempo de Serviço, e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/leis/l8036consol.htm. Accessed on: 20 nov. 2020.

social security¹⁴ and tax¹⁵. In the suspension, there is no mention of payment of wages, counting length of service and other effects of the employment agreement. There is no chargeable event for the payment of FGTS, social security contribution or income tax at source. In practice, a suspended employment agreement, even if it exists because there was no termination, is not in force.

Martinez says that,

In suspension, despite maintaining the contractual bond, the provision of services and the corresponding payment are assigned. In the interruption, on the other hand, although the contractual bond is also preserved and the activities are paralyzed (as occurs with suspension), the granting of an amount equivalent to the consideration remains. It is noticed that the two mentioned figures are species of the type "*lato sensu* contractual suspension". According to the aforementioned author, the identical comparative effects of the institutes are the maintenance of the contractual bond and the return to service with advantages attributed to the professional category, and the different comparative effects are, in the suspension, the absence of salary, no stipulation of a deadline for return and exceptionality in calculating the period of suspension as length of service. In interruption, there is a salary, stipulation of a return period and calculation of the period of interruption as length of service.¹⁶

Exceptional cases of calculating the length of service in the suspension of the employment agreement, those expressly referred to by law (Article 4, paragraph 1, of the CLT)¹⁷, such as leave to provide military service, where there is no payment of salary by the employer, but from payment and leave due to work accident, where there is no salary, but rather, social security benefit after the 15th consecutive day of leave (Article 59, of Law No. 8.213/1991¹⁸).

In the provisions in which it deals with the institute, CLT provides for the right of the employee away from work, upon returning, to maintain the advantages

¹⁴ BRASIL. **Lei nº. 8.212, de 24 de julho de 1991.**

¹⁵ BRASIL. **Lei nº. 4.506, de 30 de novembro de 1964.** Dispõe sobre o imposto que recai sobre as rendas e proventos de qualquer natureza. Available at: http://www.planalto.gov.br/ccivil_03/leis/L4506.htm. Accessed on: 20 nov. 2020.

¹⁶ MARTINEZ, Luciano. **Curso de direito do trabalho.** p. 636.

¹⁷ BRASIL. **Decreto-Lei nº 5.452, de 1º de maio de 1943.**

¹⁸ BRASIL. **Lei nº. 8.213, de 24 de julho de 1991.** Dispõe sobre os Planos de Benefícios da Previdência Social e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/leis/l8213cons.htm. Accessed on: 20 nov. 2020.

attributed to his professional category (Article 471)¹⁹. There is also provision for maintaining the employment agreement in the event of departure for the requirements of military service or other public responsibility (Article 472)²⁰.

Regarding absences from work without prejudice to salary, the list of Article 473 of the CLT deals with dismissals that characterize interruption of the employment agreement. The list includes the death of a spouse, ascendant, descendant, sibling or other dependent, marriage, birth of a child (maternity leave and paternity leave), blood donation, electoral enlistment, military service, entrance exam, court appearance, international union meeting, monitoring the medical consultation of a pregnant wife or partner, accompanying a child up to six years old in medical visits and preventive cancer exams.

The suspension is expected to occur on leave of absence for more than thirty consecutive days (Article 474)²¹, retirement due to disability (Article 475)²², sickness insurance or sickness benefit (Article 476)²³ and participation in a professional qualification program (Article 476-A)²⁴.

It is important to highlight the classic definition of suspension and interruption of the employment agreement, proposed by Magano:

¹⁹ BRASIL. Decreto-Lei nº 5.452, de 1º de maio de 1943.

²⁰ BRASIL. Decreto-Lei nº 5.452, de 1º de maio de 1943.

²¹ BRASIL. Decreto-Lei nº 5.452, de 1º de maio de 1943.

²² BRASIL. Decreto-Lei nº 5.452, de 1º de maio de 1943.

²³ BRASIL. Decreto-Lei nº 5.452, de 1º de maio de 1943.

²⁴ BRASIL. Decreto-Lei nº 5.452, de 1º de maio de 1943.

There is no doubt that the total suspension of the execution of the agreement has different effects than the merely partial suspension, which, in our view, is sufficient to justify the questioned terminological distinction.

Suspension is the provisional but total termination of the employment agreement. Interruption is the provisional and partial termination of the employment agreement.

But what exactly is the distinction between suspension and interruption? "The suspension consists - according to Cesarino Jr. - in the provision of services by the employee, without the right to the perception of wages to which he would be entitled, if he were working, during the period of suspension.

In the event of termination of the agreement, the common feature is the termination of service, with the persistence, however, of some mandatory provision by the employer.²⁵

The aforementioned definition, complemented by the pacified doctrine, makes it clear that the suspension of the employment agreement ceases provisionally but completely the execution of the employment agreement. If there is no execution, there is no validity of the employment agreement, which will return, only when the suspension ends. On the other hand, if there is any mandatory benefit from the employer, whatever it is, we will be talking about interrupting the employment agreement.

3. Pandemic and Public Calamity²⁶

According to the Ministry of Health of Brazil²⁷, COVID-19 is a disease caused by the SARS-CoV-2 coronavirus, which presents a clinical picture ranging from asymptomatic infections to severe respiratory conditions. According to the World Health Organization (WHO), the majority of COVID-19 patients (about 80%) may be asymptomatic and about 20% of cases may require hospital care because they have

²⁵ MAGANO, Octavio Bueno. **Manual de Direito do Trabalho**. 4ª ed. Volume II - Direito Individual do Trabalho. São Paulo: LTr, 1993, p. 310-311.

²⁶ The part of the text dealing with pandemic and public calamity has already been addressed in another text by the author: STÜRMER, Gilberto; FINCATO, Denise. *Teletrabalho em tempos de calamidade por Covid-19: Impactos das medidas trabalhistas de urgência*. In: BELMONTE, Alexandre Agra; MARTINEZ, Luciano; MARANHÃO, Ney. **O Direito do Trabalho na crise da Covid-19**. São Paulo: Juspodvm, 2020. p. 341-364.

²⁷ CORONAVÍRUS BRASIL. **Portal Covid-19**. Ministério da Saúde. Available at: <https://covid.saude.gov.br>. Accessed on: 20 nov. 2020.

difficulty breathing and, of these cases, 5% may need support for the treatment of respiratory failure.

Coronavirus is a family of viruses that cause respiratory infections. The new coronavirus agent was discovered on 10/31/19, after cases registered in China. It causes the disease called coronavirus (COVID-19).

The first cases in Brazil occurred in late January 2020. On February 6, 2020, Law No. 13.979²⁸ was published, which provides for measures to deal with the public health emergency of international importance resulting from the coronavirus responsible for the 2019 outbreak.

The law conceptualized “isolation”, as the separation of sick or contaminated people, or luggage, means of transport, goods or affected postal parcels, from others, in order to avoid contamination or the spread of the coronavirus (Article 2, I). “Quarantine” was also defined as restriction of activities or separation of persons suspected of being infected by persons who are not sick, or of luggage, containers, animals, means of transport or goods suspected of being contaminated, in order to avoid possible contamination or spread coronavirus (Article 2, II). The law followed the definitions established in the International Health Regulations.

As a labor reflex, the law defined that the absence period resulting from the measures provided for in the law (Article 3, paragraph 3) is considered justified absence to public service or private labor activity.

On March 20, 2020, the National Congress issued Legislative Decree No. 6, recognizing the state of public calamity, pursuant to the request of the President of the Republic.

The Special Department for Social Security and Labor of the Ministry of Economy, issued SEI Circular Letter No. 1088; 2020 ME, on March 27, 2020, with general guidelines for workers and employers due to the COVID-19 pandemic. Such measures include issues such as good hygiene and conduct practices, practices regarding meals, practices related to the Internal Accident Prevention Commissions

²⁸ BRASIL. **Lei nº. 13.979, de 06 de fevereiro de 2020.** Dispõe sobre as medidas para enfrentamento da emergência de saúde pública de importância internacional decorrente do coronavírus responsável pelo surto de 2019. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/l13979.htm. Accessed on: 20 nov. 2020.

(CIPAs) and Specialized Services in Safety Engineering and Occupational Medicine (SESMT), practices related to masks, suspension of administrative health and safety requirements, such as medical examinations and practices related to workers belonging to the risk group.

From these basic and initial documents, several other acts of the Public Power came to light in order to regulate and define public policies in the different areas.

With regard to Labor Law, the Emergency Employment and Income Maintenance Program was created. The objective, as defined by the Special Department for Social Security and Labor²⁹, was to preserve 8.5 million jobs, in addition to requesting 3.2 million other benefits, with a total of 24.5 million beneficiaries under the CLT regime.

The general idea was to preserve employment and income, make economic activity feasible, given the reduction in activities and reduce the social impact due to the consequences of the state of public calamity and public health emergency.

In this context, several Provisional Measures were issued, since the requirements of relevance and urgency provided for in Article 62 of the Constitution of the Republic³⁰. In relation to Labor Law, the main Provisional Measures issued were 927, of March 22, 2020 and 936, of April 1, 2020. The MP 927/2020 was not considered by the National Congress, having lost its validity on July 19, 2020.

²⁹ GOVERNO FEDERAL. **Serviços da Secretaria Especial de Previdência e Trabalho podem ser acessados pela internet - Atendimento presencial foi suspenso em razão da pandemia de coronavírus.** Available at: <https://www.gov.br/pt-br/noticias/trabalho-e-previdencia/2020/03/servicos-da-secretaria-especial-de-previdencia-e-trabalho-podem-ser-acessados-pela-internet>. Accessed on: 25 nov. 2020.

³⁰ Article 62. In case of relevance and urgency, the President of the Republic may adopt provisional measures, with the force of law, and must immediately submit them to the National Congress, which, being in recess, will be extraordinarily summoned to meet within five days. BRASIL. **Constituição da República Federativa do Brasil 1988.**

4. Suspension of Employment Agreement - MP No. 927/2020 and Law No. 14,020/2020

MP 936, dated April 1, 2020, was converted into Law No. 14.020, dated July 6, 2020³¹. Provisional Measure No. 936, dated April 1, 2020, instituted the Emergency Employment and Income Maintenance Program and provided for complementary labor measures to deal with the state of public calamity recognized by Legislative Decree No. 6/20 and the emergence of public health of international importance due to the coronavirus (COVID-19), which Law No. 13.979/20³² deals with. The law also alters provisions of Laws No. 8.213/1991³³, 10.101/2000³⁴, 12.546/2011³⁵, 10.865/2004³⁶, 8.177/1991³⁷, and makes other provisions.

³¹ BRASIL. **Lei nº. 14.020, de 06 de julho de 2020**. Institui o Programa Emergencial de Manutenção do Emprego e da Renda; dispõe sobre medidas complementares para enfrentamento do estado de calamidade pública reconhecido pelo Decreto Legislativo nº 6, de 20 de março de 2020, e da emergência de saúde pública de importância internacional decorrente do coronavírus, de que trata a Lei nº 13.979, de 6 de fevereiro de 2020; altera as Leis nos 8.213, de 24 de julho de 1991, 10.101, de 19 de dezembro de 2000, 12.546, de 14 de dezembro de 2011, 10.865, de 30 de abril de 2004, e 8.177, de 1º de março de 1991; e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/L14020.htm. Accessed on: 25 nov. 2020.

³² BRASIL. **Lei nº. 13.979, de 06 de fevereiro de 2020**.

³³ BRASIL. **Lei nº. 8.213, de 24 de julho de 1991**.

³⁴ BRASIL. **Lei nº. 10.101, de 19 de dezembro de 2000**. Dispõe sobre a participação dos trabalhadores nos lucros ou resultados da empresa e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/leis/l10101.htm. Accessed on: 25 nov. 2020.

³⁵ BRASIL. **Lei nº. 12.546, de 14 de dezembro de 2011**. Institui o Regime Especial de Reintegração de Valores Tributários para as Empresas Exportadoras (Reintegra); dispõe sobre a redução do Imposto sobre Produtos Industrializados (IPI) à indústria automotiva; altera a incidência das contribuições previdenciárias devidas pelas empresas que menciona; altera as Leis nº 11.774, de 17 de setembro de 2008, nº 11.033, de 21 de dezembro de 2004, nº 11.196, de 21 de novembro de 2005, nº 10.865, de 30 de abril de 2004, nº 11.508, de 20 de julho de 2007, nº 7.291, de 19 de dezembro de 1984, nº 11.491, de 20 de junho de 2007, nº 9.782, de 26 de janeiro de 1999, e nº 9.294, de 15 de julho de 1996, e a Medida Provisória nº 2.199-14, de 24 de agosto de 2001; revoga o art. 1º da Lei nº 11.529, de 22 de outubro de 2007, e o art. 6º do Decreto-Lei nº 1.593, de 21 de dezembro de 1977, nos termos que especifica; e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12546.htm. Accessed on: 25 nov. 2020.

³⁶ BRASIL. **Lei nº. 10.865, de 30 de abril de 2004**. Dispõe sobre a Contribuição para os Programas de Integração Social e de Formação do Patrimônio do Servidor Público e a Contribuição para o Financiamento da Seguridade Social incidentes sobre a importação de bens e serviços e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/lei/l10.865.htm. Accessed on: 25 nov. 2020.

³⁷ BRASIL. **Lei nº. 8.177, de 01 de março de 1991**. Estabelece regras para a desindexação da economia e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/leis/l8177.htm. Accessed on: 25 nov. 2020.

Regarding employment agreements, Law No. 14.020/2020³⁸, provides in its Article 3 that, amongst the measures of the Emergency Program for Maintenance of Employment and Income, are (I) the payment of the emergency benefit of job preservation and income; (II) the proportional reduction in working hours and wages; (III) temporary suspension of the employment agreement.

The institute analyzed here is the suspension of the employment agreement. As previously seen, suspension is the provisional but total termination of the employment agreement. Therefore, Magano's³⁹ definition is adopted. If the suspension is provisional, the word "temporary" provided for in Article 3, III, of Law No. 14,020/2020⁴⁰ is unnecessary. Obviously, if the suspension is provisional, it is temporary. It is also verified that this is a total cessation of the execution of the employment agreement.

Law No. 14,020/2020⁴¹, therefore, just as Provisional Measure No. 937/2020⁴² had originally done, deals only with the hypothesis of SUSPENSION of the employment agreement, making no reference to the interruption of the employment agreement.

Thus, it is reiterated, in any case, that it is talking about temporary but total termination of the execution of the labor agreement. During the suspension period there is no provision of work, no payment of wages, there is no counting of the length of service and there is no term of employment for any other purpose, such as counting the purchase period for holidays and monthly fraction for the acquisition of Christmas bonus.

It is true that the Emergency Program for Maintenance of Employment and Income, to be paid to the employee who had a proportional reduction in working hours and wages and, mainly, temporary suspension of the employment agreement,

³⁸ BRASIL. **Lei nº. 14.020, de 06 de julho de 2020.**

³⁹ MAGANO, Octavio Bueno. **Manual de Direito do Trabalho.**

⁴⁰ BRASIL. **Lei nº. 14.020, de 06 de julho de 2020.**

⁴¹ BRASIL. **Lei nº. 14.020, de 06 de julho de 2020.**

⁴² BRASIL. **Medida Provisória nº 937 de 02 de abril de 2020.** Abre crédito extraordinário, em favor do Ministério da Cidadania, no valor de R\$ 98.200.000.000,00, para os fins que especifica. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/Mpv/mpv937.htm. Accessed on: 25 nov. 2020.

is paid for with Federal resources and, therefore, there is no mention of a salary nature (Article 5, II and paragraph 1, of Law No. 14,020/2020)⁴³.

It is not possible to confuse the payment of a benefit paid by the State and for the purpose of maintaining employment by relieving the companies' cash, with salary. If there was any possibility of understanding the suspension of the agreement provided for in this law with some special type of interruption in the face of the payment of the state benefit, this hypothesis falls apart. The Emergency Benefit is NOT a mandatory benefit from the employer.

The suspension of the employment agreement is provided for in Article 8 of Law No. 14,020/2020⁴⁴. During the state of public calamity provided for in Legislative Decree No. 6/2020⁴⁵, the employer may agree to suspend the employment agreement for a maximum period of sixty days, divided into two periods of up to thirty days.

Provision was already made in MP 936/2020⁴⁶, the creation of the law referred to here, for the possibility of suspension of the employment agreement for up to sixty days.

On July 13, 2020, Decree No. 10.422⁴⁷, provided for in its Article 3, that the maximum period of suspension of the employment agreement, considering the MP and the law, is one hundred and twenty days, and may be divided into successive periods or interspersed for at least ten days each.

⁴³ BRASIL. **Lei nº. 14.020, de 06 de julho de 2020.**

⁴⁴ BRASIL. **Lei nº. 14.020, de 06 de julho de 2020.**

⁴⁵ BRASIL. **Decreto Legislativo nº 6, de 2020.** Reconhece, para os fins do art. 65 da Lei Complementar nº 101, de 4 de maio de 2000, a ocorrência do estado de calamidade pública, nos termos da solicitação do Presidente da República encaminhada por meio da Mensagem nº 93, de 18 de março de 2020. Available at: http://www.planalto.gov.br/ccivil_03/portaria/DLG6-2020.htm. Accessed on: 25 nov. 2020.

⁴⁶ BRASIL. **Medida Provisória nº 936, de 1 de abril de 2020.** Institui o Programa Emergencial de Manutenção do Emprego e da Renda e dispõe sobre medidas trabalhistas complementares para enfrentamento do estado de calamidade pública reconhecido pelo Decreto Legislativo nº 6, de 20 de março de 2020, e da emergência de saúde pública de importância internacional decorrente do coronavírus (covid-19), de que trata a Lei nº 13.979, de 6 de fevereiro de 2020, e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/mpv/mpv936.htm. Accessed on: 25 nov. 2020.

⁴⁷ BRASIL. **Decreto nº. 10.422, de 13 de Julho de 2020.** Prorroga os prazos para celebrar os acordos de redução proporcional de jornada e de salário e de suspensão temporária do contrato de trabalho e para efetuar o pagamento dos benefícios emergenciais de que trata a Lei nº 14.020, de 6 de julho de 2020. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/d10422.htm. Accessed on: 25 nov. 2020.

Subsequently, on August 24, 2020, Decree No. 10.470⁴⁸, extended the period of suspension of employment agreement by sixty days, totaling a maximum of one hundred and eighty days, limited to the duration of the state of public calamity.

Therefore, considering the limits of MP No. 936/2020⁴⁹, Law No. 14.020/2020⁵⁰, and Decrees No. 10.422/2020⁵¹ and 10.470/2020⁵², adding up all the periods of suspension of the employment agreement resulting from the pandemic, the maximum is one hundred and eighty days, limited to the duration of the state of public calamity.

The form agreed for the suspension of the employment agreement does not matter here, regulated in the paragraphs of Article 8 of Law No. 14.020/2020⁵³. What is important is to make clear the fact that the intention of the legislator and the Executive Power at the origin, as it is a case of relevance and urgency, is to preserve jobs. The preservation of jobs, clearly, is due to ways to unburden companies.

The monthly compensatory aid referred to in Article 9, of Law No. 14.020/2020⁵⁴, is not a mandatory benefit of the employer, as it has a legal compensation nature and does not integrate the income tax calculation base, the social security contribution calculation base and the basis for calculating FGTS deposits (Article 9, paragraph 1, items II, III, IV and V, Law No. 14.020/2020)⁵⁵.

This is the reason why there is only provision for suspension of the employment agreement, and not for interruption. There would be no plausible reason to encumber the company with effects that only persist in cases of interruption of the agreement, such as payment of wages, payment of charges and the days for the vacation period and proportional Christmas bonus.

⁴⁸ BRASIL. **Decreto nº. 10.470, de 24 de agosto de 2020.** Prorroga os prazos para celebrar acordos de redução proporcional de jornada de trabalho e de salário e de suspensão temporária de contrato de trabalho e para efetuar o pagamento dos benefícios emergenciais de que trata a Lei nº 14.020, de 6 de julho de 2020. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/D10470.htm. Accessed on: 25 nov. 2020.

⁴⁹ BRASIL. **Medida Provisória nº. 936, de 1 de abril de 2020.**

⁵⁰ BRASIL. **Lei nº. 14.020, de 06 de julho de 2020.**

⁵¹ BRASIL. **Decreto nº. 10.422, de 13 de julho de 2020.**

⁵² BRASIL. **Decreto nº. 10.470, de 24 de agosto de 2020.**

⁵³ BRASIL. **Lei nº. 14.020, de 06 de julho de 2020.**

⁵⁴ BRASIL. **Lei nº. 14.020, de 06 de julho de 2020.**

⁵⁵ BRASIL. **Lei nº. 14.020, de 06 de julho de 2020.**

With regard to vacations, it should be noted that Article 130 of the CLT⁵⁶ provides that, after each twelve-month period of the **Term** of the employment agreement, the employee will be entitled to vacation. Now, it is clear that the suspended agreement is not in force, since there is a temporary cessation, but total execution.

In the same vein, there is the proportionality of the Christmas bonus. Pursuant to Article 1, paragraph 1, of Law No. 4.090/1962⁵⁷, the bonus will correspond to 1/12 (one twelfth) of the compensation due in December, per month of service, of the corresponding year. As the agreement is suspended, there is no provision of services.

Thus, the suspension of the employment agreement resulting from the pandemic period (MP 936/2020, Law No. 14.020/2020⁵⁸, Decrees No. 10.422⁵⁹ and 10.470/2020⁶⁰), does not generate any effect on the employment agreement while in force, except those exceptionally provided for and already mentioned.

There is no counting of the time of service, there is no payment of wages, there is no chargeable event for the payment of FGTS, social security contribution and income tax and there is no counting of the vacation period, nor the proportionality of the Christmas bonus.

In this sense, by way of example, if a certain employee was hired on December 1, 2019 and had his employment agreement suspended during 2020 at the maximum - one hundred and eighty days - until the date on which his employment agreement work would have completed an year (December 1, 2020), it would only be 6/12 of its vacation period, and should complete it on June 1, 2021, with the new concession period being 6/1/2021 to 6/1/2022. The Christmas bonus, on the other hand, takes the calendar year into account. Thus, with one hundred and

⁵⁶ BRASIL. **Decreto-Lei nº 5.452, de 1º de maio de 1943.**

⁵⁷ BRASIL. **Lei nº. 4.090, de 13 de julho de 1962.** Institui a Gratificação de Natal para os Trabalhadores. Available at: http://www.planalto.gov.br/ccivil_03/leis/l4090.htm. Accessed on: 25 nov. 2020.

⁵⁸ BRASIL. **Lei nº. 14.020 de 06 de julho de 2020.**

⁵⁹ BRASIL. **Decreto nº. 10.422, de 13 de julho de 2020.**

⁶⁰ BRASIL. **Decreto nº. 10.470, de 24 de agosto de 2020.**

eighty days of suspension in the year 2020, the employee would have the right to a 6/12 Christmas bonus.

With regard to the institutes of suspension and interruption of the employment agreement, therefore, nothing new happened in the pandemic period.

Final Considerations

The public calamity resulting from the Covid-19 pandemic showed changes in the social fact, which generated responses in the legal field. In relation to Labor Law, the main focus was, in the light of the fundamental principle of valuing work and free initiative (Article 1, IV, of the Constitution of the Republic)⁶¹, to focus on the social rights of LABOR and HEALTH, provided for in Article 6, also of the Constitution. Without labor and health, other social rights would fall apart.

With regard to labor, the Economic Order and the Social Order (Articles 170 and 193 of the Constitution)⁶² also deserved attention in the period.

On the other hand, the need to preserve labor and health (including mental health), made the implementation of urgent and relevant public policies necessary. In this sense, the enactment of Law No. 13.979, dated 2/6/20⁶³ and Legislative Decree No. 6, dated 3/20/20⁶⁴, as well as the enactment of several provisional measures, with emphasis on MP No. 936, brought the emergency job and income maintenance program, providing for complementary measures to deal with the state of public calamity due to the pandemic. MP No. 936/2020⁶⁵, gave rise to Law No. 14.020, dated July 6, 2020⁶⁶.

In order to contextualize the idea of the MP and the law in relation to the employment agreement suspension institute, this text examined the employment

⁶¹ BRASIL. **Constituição da República Federativa do Brasil 1988.**

⁶² BRASIL. **Constituição da República Federativa do Brasil 1988.**

⁶³ BRASIL. **Lei nº. 13.979, de 06 de fevereiro de 2020.**

⁶⁴ BRASIL. **Decreto Legislativo nº 6, de 2020**

⁶⁵ BRASIL. **Medida Provisória nº. 936, de 1 de abril de 2020.**

⁶⁶ BRASIL. **Lei nº. 14.020, de 06 de julho de 2020.**

relationship, the employment agreement and, in its core, the agreement suspension and interruption institute of work.

Doctrinal definitions of the institutes were presented, as well as the legislation on the matter was addressed.

It was found that on suspension, the effects of the employment agreement cease provisionally and totally. Thus, there is no counting of length of service, there is no salary, there is no triggering event for labor, social security and tax payments, there is no counting of the holiday acquisition period or the proportionality of the Christmas bonus.

Law No. 14.020/2020⁶⁷ established, among other hypotheses for preserving employment and income, the temporary suspension of the employment agreement for up to one hundred and seventy days. As mentioned, if the suspension is provisional, the word “temporary” in the law is unnecessary. Anyway, being the objective, to preserve jobs, the idea of unburdening the company seems obvious. The law could not, therefore, as it in fact did not, deal with interruption of the employment agreement, where the termination of the effects of the employment agreement is partial.

There has been many discussions about the matter and the claim of the Public Power in this pandemic period. For this reason, the title of this paper is “Suspension and Interruption of the Effects of the Employment Agreement: Is there anything new in the Pandemic?” The answer is: regarding the concept of suspension and interruption of the employment agreement, there is nothing new in the pandemic. The institutes continue with the same classic concept and the emergency legislation had as sole focus the institute of the suspension of the agreement.

⁶⁷ BRASIL. Lei nº. 14.020, de 06 de julho de 2020.

References

BRASIL. **Constituição da República Federativa do Brasil 1988**. Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm. Accessed on: 20 nov. 2020.

BRASIL. **Decreto-Lei nº 5.452, de 1º de maio de 1943**. Aprova a Consolidação das Leis do Trabalho. Available at: http://www.planalto.gov.br/ccivil_03/decreto-lei/del5452.htm. Accessed on: 20 nov. 2020.

BRASIL. **Decreto Legislativo nº 6, de 2020**. Reconhece, para os fins do art. 65 da Lei Complementar nº 101, de 4 de maio de 2000, a ocorrência do estado de calamidade pública, nos termos da solicitação do Presidente da República encaminhada por meio da Mensagem nº 93, de 18 de março de 2020. Available at: http://www.planalto.gov.br/ccivil_03/portaria/DLG6-2020.htm. Accessed on: 25 nov. 2020.

BRASIL. **Decreto nº. 10.422, de 13 de Julho de 2020**. Prorroga os prazos para celebrar os acordos de redução proporcional de jornada e de salário e de suspensão temporária do contrato de trabalho e para efetuar o pagamento dos benefícios emergenciais de que trata a Lei nº 14.020, de 6 de julho de 2020. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/d10422.htm. Accessed on: 25 nov. 2020.

BRASIL. **Decreto nº. 10.470, de 24 de agosto de 2020**. Prorroga os prazos para celebrar acordos de redução proporcional de jornada de trabalho e de salário e de suspensão temporária de contrato de trabalho e para efetuar o pagamento dos benefícios emergenciais de que trata a Lei nº 14.020, de 6 de julho de 2020. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/decreto/D10470.htm. Accessed on: 25 nov. 2020.

BRASIL. **Lei nº. 4.090, de 13 de julho de 1962**. Institui a Gratificação de Natal para os Trabalhadores. Available at: http://www.planalto.gov.br/ccivil_03/leis/l4090.htm. Accessed on: 25 nov. 2020.

BRASIL. **Lei nº. 4.506, de 30 de novembro de 1964**. Dispõe sobre o imposto que recai sobre as rendas e proventos de qualquer natureza. Available at: http://www.planalto.gov.br/ccivil_03/leis/L4506.htm. Accessed on: 20 nov. 2020.

BRASIL. **Lei nº. 8.036, de 11 de maio de 1990**. Dispõe sobre o Fundo de Garantia do Tempo de Serviço, e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/leis/l8036consol.htm. Accessed on: 20 nov. 2020.

BRASIL. **Lei nº. 8.177, de 01 de março de 1991.** Estabelece regras para a desindexação da economia e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/leis/l8177.htm. Accessed on: 25 nov. 2020.

BRASIL. **Lei nº. 8.213, de 24 de julho de 1991.** Dispõe sobre os Planos de Benefícios da Previdência Social e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/leis/l8213cons.htm. Accessed on: 20 nov. 2020.

BRASIL. **Lei nº. 10.101, de 19 de dezembro de 2000.** Dispõe sobre a participação dos trabalhadores nos lucros ou resultados da empresa e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/leis/l10101.htm. Accessed on: 25 nov. 2020.

BRASIL. **Lei nº. 10.865, de 30 de abril de 2004.** Dispõe sobre a Contribuição para os Programas de Integração Social e de Formação do Patrimônio do Servidor Público e a Contribuição para o Financiamento da Seguridade Social incidentes sobre a importação de bens e serviços e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/lei/l10.865.htm. Accessed on: 25 nov. 2020.

BRASIL. **Lei nº. 12.546, de 14 de dezembro de 2011.** Institui o Regime Especial de Reintegração de Valores Tributários para as Empresas Exportadoras (Reintegra); dispõe sobre a redução do Imposto sobre Produtos Industrializados (IPI) à indústria automotiva; altera a incidência das contribuições previdenciárias devidas pelas empresas que menciona; altera as Leis nº 11.774, de 17 de setembro de 2008, nº 11.033, de 21 de dezembro de 2004, nº 11.196, de 21 de novembro de 2005, nº 10.865, de 30 de abril de 2004, nº 11.508, de 20 de julho de 2007, nº 7.291, de 19 de dezembro de 1984, nº 11.491, de 20 de junho de 2007, nº 9.782, de 26 de janeiro de 1999, e nº 9.294, de 15 de julho de 1996, e a Medida Provisória nº 2.199-14, de 24 de agosto de 2001; revoga o art. 1º da Lei nº 11.529, de 22 de outubro de 2007, e o art. 6º do Decreto-Lei nº 1.593, de 21 de dezembro de 1977, nos termos que especifica; e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12546.htm. Accessed on: 25 nov. 2020.

BRASIL. **Lei nº. 13.979, de 06 de fevereiro de 2020.** Dispõe sobre as medidas para enfrentamento da emergência de saúde pública de importância internacional decorrente do coronavírus responsável pelo surto de 2019. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/l13979.htm. Accessed on: 20 nov. 2020.

BRASIL. **Lei nº. 14.020, de 06 de julho de 2020.** Institui o Programa Emergencial de Manutenção do Emprego e da Renda; dispõe sobre medidas complementares para enfrentamento do estado de calamidade pública reconhecido pelo Decreto Legislativo nº 6, de 20 de março de 2020, e da emergência de saúde pública de importância internacional decorrente do coronavírus, de que trata a Lei nº 13.979,

de 6 de fevereiro de 2020; altera as Leis n os 8.213, de 24 de julho de 1991, 10.101, de 19 de dezembro de 2000, 12.546, de 14 de dezembro de 2011, 10.865, de 30 de abril de 2004, e 8.177, de 1º de março de 1991; e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/L14020.htm. Accessed on: 25 nov. 2020.

BRASIL. Medida Provisória nº 936, de 1 de abril de 2020. Institui o Programa Emergencial de Manutenção do Emprego e da Renda e dispõe sobre medidas trabalhistas complementares para enfrentamento do estado de calamidade pública reconhecido pelo Decreto Legislativo nº 6, de 20 de março de 2020, e da emergência de saúde pública de importância internacional decorrente do coronavírus (covid-19), de que trata a Lei nº 13.979, de 6 de fevereiro de 2020, e dá outras providências. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/mpv/mpv936.htm. Accessed on: 25 nov. 2020.

BRASIL. Medida Provisória nº 937 de 02 de abril de 2020. Abre crédito extraordinário, em favor do Ministério da Cidadania, no valor de R\$ 98.200.000.000,00, para os fins que especifica. Available at: http://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/Mpv/mpv937.htm. Accessed on: 25 nov. 2020.

CORONAVÍRUS BRASIL. Portal Covid-19. Ministério da Saúde. Available at: <https://covid.saude.gov.br>. Accessed on: 20 nov. 2020.

GOVERNO FEDERAL. Serviços da Secretaria Especial de Previdência e Trabalho podem ser acessados pela internet - Atendimento presencial foi suspenso em razão da pandemia de coronavírus. Available at: <https://www.gov.br/pt-br/noticias/trabalho-e-previdencia/2020/03/servicos-da-secretaria-especial-de-previdencia-e-trabalho-podem-ser-acessados-pela-internet>. Accessed on: 25 nov. 2020.

MAGANO, Octavio Bueno. **Manual de Direito do Trabalho.** 4ª ed. Volume II - Direito Individual do Trabalho. São Paulo: LTr, 1993.

MARTINEZ, Luciano. **Curso de direito do trabalho.** 10ª ed. São Paulo: Saraiva, 2019.

MARTINS, Sergio Pinto. **Direito do trabalho.** 32ª ed. São Paulo: Saraiva, 2016.

STÜRMER, Gilberto; FINCATO, Denise. Teletrabalho em tempos de calamidade por Covid-19: Impactos das medidas trabalhistas de urgência. In: BELMONTE, Alexandre Agra; MARTINEZ, Luciano; MARANHÃO, Ney. **O Direito do Trabalho na crise da Covid-19.** São Paulo: Juspodvm, 2020. p. 341-364.

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