





Labor outsourcing: the existential damage in outsourcing

Labor outsourcing: the existential damage in outsourcing

Received: 01/23/2019 | Accepted: 05/14/2019 | Published: 06/20/2019

Romeo Felix boy Junior¹

 <https://orcid.org/0000-0003-0792-2158>

 <http://lattes.cnpq.br/3935598530515302>

Instituto Federal de Brasília, IFB, Brazil

E-mail: romeu2100@gmail.com

Summary

The theme of this article is: Labor outsourcing: The existential damage in outsourcing. The following problem was investigated: is there a current in Brazil today that links outsourcing to existential damage? The following hypothesis was considered in view of the problem in question; how this helplessness, the existential labor damage, is treated by doctrine and jurisprudence. The General Objective of this work is to gather an understanding always divided between doctrine and jurisprudence linking existential damage to outsourcing. The specific objectives are: To present and differentiate existential damages from moral damages; the relationship between existential damage and the worker's health and ways of repairing existential damage. This work is important from an individual and social perspective, because analyzing the scientific historical context, giving up guarantees, returns us to a situation analogous to the dependence of the service taker, suppressing rights and subjecting the worker to damage, depriving him of prospering, moving away from him. that of fundamental rights, dreams, goals and objectives in life. This is a theoretical qualitative research lasting six months.

Keywords: Labor Law. Outsourcing. Existential Damage. Work relationship. Rights Social .

Abstract

The theme of this article is: Labor outsourcing: The existential damage in outsourcing. The following problem was investigated: is there a current in Brazil that links outsourcing to existential damage? The following hypothesis was considered in view of the problem in question; how this helplessness is dealt with, the existential labor damage by doctrine and jurisprudence. The General Objective of this work is to gather an understanding always divided between doctrine and jurisprudence linking existential damage until outsourcing. The specific objectives are: To present and differentiate existential and moral damages; the relationship of the existential damage and the health of the worker and the ways of repairing the existential damage. This work is important in an individual and social perspective, because analyzing the

¹Specialist in Labor Law, Tax Law, History and Geography Teaching Methodology. Student of Geography and Environmental Control. Bachelor of Law and Technologist in Environmental Management.

scientific historical context, giving up guarantees, returns us to a situation analogous to the service borrower's dependence, suppressing rights and subjecting the worker to damage, depriving him of prospering by moving away that of fundamental rights, dreams, goals and objectives of life. This is a qualitative theoretical research lasting six months .

Keywords: Labor Law. Outsourcing. Existential Damage. Work relationship. Social rights .

Introduction

The process about the changes that were caused by the course of capitalist productive restructuring over accumulation, performed by lean production, toyotist , resulted in the beginning of the precariousness of the workforce that is still present today. Outsourcing, as it is a contemporary modality that has a significant development in the sense of preventing hiring without direct effectiveness in order to exempt the contractor from final responsibility. The intermediation of human work has caused workers to be subjected to precarious conditions in the work environment, damaging the recognition of the worker as a subject of previously inviolable rights and obliged to implement the fundamental right to dignified exercise. For this excuse, there is the expectation of talking about existential damage as a way of situating the irregularities generated by outsourcing.

Time production based on the logic of Just in time is a new modality that arises with the circumstances that resulted from the flexible accumulation that is characterized by the set of transformations of capitalism. In this sense, it is no longer the market that adapts to the pace of production, as it was present in Fordism. Companies are horizontalized, and non-essential activities are relegated to companies that offer a specialized operation to cut costs, raising the company's capital once and for all with this cut in expenses. (Delgado, 2014, p.8).

This article seeks to make an analysis of the existence of damage to the worker, understanding its path and mitigating factors in the National condition, answering the question problem Is there a current in Brazil today that links outsourcing to existential damage? The 1988 Constitution of the Brazilian Republic represented a great step forward for society with regard to the consolidation of labor rights as fundamental social rights. Arising from the Constitution (BRASIL, 1988) there were great advances, on the other hand, the phenomenon of globalization and the political and economic transformations that took place at the end of the 20th century in the so-called capitalist societies that marked the beginning of the confidence that it was essential to abbreviate the state powers of regulation on society, resulting in a process of liberalization and freedom for buying and selling activities (Alves, 2015. p.18).

The practice of outsourcing can be understood as a covered phenomenon, an old renamed practice. It is understood as old because it is a practice used since the Industrial Revolution in order to remain within the framework of modern capitalism until the present century and it is understood as a new phenomenon due to the breadth, nature and centrality that it represents in the theme of flexibility and precariousness of work in the current moment of world capitalism or flexible accumulation (Druck , 2011).

The hypothesis raised against the problem in question was; how this helplessness, the existential labor damage, is treated by doctrine and jurisprudence. In summary, the existential damage affects all the individual's daily activities, making it impossible to decide about his life. Furthermore, it leads to the frustration of the life project chosen by the individual, harming the dignity of the human person, directly

harming a fundamental right. It refers to the distinction between pecuniary damage and non-pecuniary damage and how the damage is repaired, according to the jurisprudential understanding in Precedent 37 of the STJ, applied to issues of Labor Law to reimburse the right affected by the injuries suffered by the worker (Brasil, 1992)

In Brazil, according to the understanding of Gabriela Neves and Helder Santos Amorim (2014, p.11), the insertion of outsourcing is the result of a periodic and gradual process of the implementation of the Toyotist model of production in the country, and which extended from the 1990s onwards. 1970s, with the introduction of “quality control circles” in large companies. According to Cristiano Paixão (2006, 2006, p.8), a certain service becomes the object of classic outsourcing, which takes the form of a product, but never the worker, the workforce is not included. Currently, another type of outsourcing has been multiplying, becoming atypical compared to the classic one. The idea is around two companies, changing the contracting object, with this the worker's strength, called labor, starts to be negotiated.

The General Objective of this work is to gather an understanding always divided between doctrine and jurisprudence linking existential damage to outsourcing. According to Maurício Delgado (2015, p. 473), the concept of outsourcing is like the dissociation of the labor relationship from the economic work relationship. In the course of this phenomenon, the worker is introduced into the service taker's mode of production without encompassing just-labor relations , which remain signed with an intervening entity. Bilateral relationship is the one in which the worker provides services directly to the employer in which the employment relationship was established, it is distinguished from the trilateral model that arises with the outsourcing process.

The dissociation between the employment relationship, signed with the borrowing company, from the legal employment relationship, which is signed with the company responsible for outsourcing, generates serious mismatches, challenging not only the protective principle, but also the very concept of employer, for subject who hires and would be salaried and another who directs, thus presenting opposition to the classic tutelary objectives that characterized Labor Law throughout history (Tamburrini & Zhang, 2014) The employment relationship, according to the classic model, the worker provides services of a material economic nature directly to the employer, with whom he has an employment relationship. In the trilateral relationship under outsourcing, services are provided to a borrower, but the employment relationship is determined with another subject, the providing company (Delgado, 2003).

The Specific Objectives of this work are: Present and differentiate existential damages from moral damage Case; the relationship between existential damage and the worker's health and ways of repairing existential damage. Society, through countless transformations, which have altered the configuration of work, with a deepening of the process of social distancing, resulting from labor inconsistencies. Does constitutional law, based on the premise of an order structured under the primacy of freedom and equality, have anything to say about this? (Porto, 2013).

Gabriela Neves Delgado (2006, p. 195) explains that precariousness, generated by flexibilization, has been acting in a destabilized way regarding the relevance of decent work and in favor of the influence of private autonomy. The persistence and consolidation of this scenario, without rigid reflection on the meaning of the Constitution, can transform Labor Law into something merely pretentious, resorting to the guarantee, social actors, of the conditions to negotiate labor relations in the private field. There is a need to rescue the relationship between the Constitution, or specifically its normative structures, with the world of work characterized by incessant

transformations, which motivated new and expanded forms of organization of the workforce. It is necessary to decide at the outset that the number of occupations in the labor market is a result of the existing demand for products, even if they are services and not a material good, which the worker performs. Therefore, the right of access to decent work cannot be conditioned by defined economic offers because, on the contrary, it can be easy to proliferate the so-called atypical types of employment (Amorim, 2014).

This work is important from an individual and social perspective, because analyzing the scientific historical context, giving up guarantees, returns us to a situation analogous to the dependence of the service taker, suppressing rights and subjecting the worker to damage, depriving him of prospering, moving away from him. that of fundamental rights, dreams, goals and objectives in life. Outsourcing in Brazil is a reasonably new procedure that has as a significant consequence the sense of always preventing the fine line between workers and their rights, always suppressed and now broken, the intermediation of human work causes workers to be subjected to the conditions precarious conditions at work, undermining the recognition of the worker as a subject of law and preventing the fundamental right to decent work from being implemented. For this reason, there is an expectation of practicing existential damage as a way of compensating for damage caused by poor management or even non-management of outsourcing.

This academic study is a literature review article, and has an estimated time of six months. In the first and second month, a survey of the theoretical framework was carried out; in the third and fourth month, the literature review; in the fifth and sixth month, the elaboration of the pre -textual and post-textual elements that make up the entire work. The research option chosen was qualitative, where data were obtained through research in articles, laws, jurisprudence and books, considering the relevant aspects raised by the respective authors.

The present work will use as a basis for its elaboration a wide bibliographical research, using both books and updated jurisprudence on the subject and the positions on it, in order to unite a wide collection in order to reach the desired objective for this article. A qualitative research was carried out jointly with the bibliographical base, aiming to find the most appropriate means to reach the core of what is sought (Gonçalves, 2019).

Labor outsourcing: the existential damage in outsourcing

The worker faced many transformations throughout the legislative transformation over the years and the main one was to obtain the identity, or rather, his recognition as a subject of value, excluding the idea of slave, servant or property of his owner (Almeida Neto, 2005).

Since changes in the means of production, working hours limits, existential minimum, guarantees, among other changes, considered primordial for the then future recognition of the contemporary human dignity directed to the worker, progress and conquest were that accompanied the industrial evolution, in which the balance between the physical limits and the demand for services was considered (Calgaro , 2014).

In this way, among recognized principles, norms and damages, the employer is daily faced with limitations due to being hierarchically at an advantage in relation to the worker who, without this normative support, is exposed to the will of his superior. In this context, Existential Damage is one of the possible damages in labor relations (Delgado, 2019).

Existential damage refers to a new class of off-balance sheet damage to human beings, its origin comes from Italian Civil Law, based on Italian doctrinal and jurisprudential studies in the 1980s and early 1990s. Brazilian courts. Including in labor courts in actions to repair off-balance sheet damages (Soares, 2009).

The relevant damages to man in relation to moral damages opened a space for the rest of the types of damages to come as soon and soon as they were appreciated by the law. In the sphere of biological damage, health disturbances, damage to psychological and physical integrity, damage to the individual's exterior and interior appearance, disturbances in the worker's sociability and psychological sphere were included. The intense scope for the point of view of biological damage, made the Italian doctrine elaborate the need for a new category of damage, systematizing the countless damages borne by the worker.

Existential damage, also known as damage to the worker's existence, consists of damage caused to relationships associated with the normal development of the human personality, in the personal and social spheres. Through the employer's conduct, when the employer imposes an exaggerated volume of work on the outsourced, this is how the existential damage develops, in which it inhibits and makes it impossible to live together and relate in society through social, spiritual, cultural, affective, sports and even activities. even the rest that provide well-being. (Lemos, 2020).

Injuries that configure damage end up compromising their freedom of choice and cause an existential void in the person who loses the source of vital gratification. Damage of this kind makes the person, in this case the worker, dispossessed of the fundamental right and obstructing the right of others that is constitutionally conferred on him, with free will to decide that he will do or not do what is peculiar to him (Bebber, 2009).

Maria Cecília De Almeida Monteiro Lemos (2020, p.46) states that existential damage is understood to be any damage that the individual may suffer in his or her performing activities. for Flaviane Rampazzo Soares (2009, p.44), considers that damage encompasses every event that negatively affects a person's complex of tasks, being susceptible to having repercussions, in a consistent way – temporarily or permanently – on their existence. it is possible to reach several areas in the life of the individual, for example: a) biological subsistence activities; b) affective, family relationships; c) social relationships; d) cultural and religious activities; e) recreational activities and other activities take place, whatever the person, the right to a healthy family environment, tranquility in the development of professional tasks, or leisure is guaranteed.

The deprivations that the employer imposes have altered, in an unhealthy way, the habit of the outsourced workers submitted to it, especially when they are directly involved in carrying out the work activity for which they were entrusted in that period, preventing the self-determination that the work entails. Flaviana Rampazzo (2009, p. 76) contextualizes that the degrading living conditions that are normally imposed on such workers are also part of the existential damage, as there is no way for someone to maintain a dignified routine under such circumstances. Concluding that the existential damage consists of subjecting a third-party worker to a degrading condition or analogous to that of a slave.

The distinction between existential damage and moral damage is due to the fact that it is restricted to discomfort, such as distress, evidenced by the renunciation of a concrete activity. When dealing with moral damage in the original sense, it negatively

influences the person's disposition, which may be, concerning feelings, contrary to something that the person can do or has a duty to change the routine.

In Brazilian law, they are classified as material damages and off-balance sheet damages. Despite the fact that for many years there was evidence of a reduction of off-balance sheet damage to moral damage, which, according to Flaviana Rampazzo Soares (2009, p.44) formed not only a long paralysis regarding the development of damage to the person, but also a stir regarding the aforementioned concept of moral damage.

The moral damage expressed on the injury that the person suffered, in relation to his personality, configures by evil, vexation, humiliation that, beyond normality, affects intensely the psychological behavior of the individual, causing him afflictions, anguish and imbalance in his well-being (Cavaliere Filho, 2008).

The existential damage occurs through the consequences of frustration or a projection that prevented the individual's personal fulfillment from being achieved, forcing him to relate differently in the social context. What distinguishes it from moral damage is that it has intimate repercussions and its dimension is subjective; while existential damage is subject to objective verification (Alvarenga & Filho, 2013).

Porto (2013, p. 53) and Wacquant (2005, p.10) consider the social and spatial accumulation of economic deprivation, social disaffiliation and the deterioration of the working class to be daunting challenges to the modern institution of democracy. Therefore, workers with low qualifications, or those experiencing unemployment, due to the reduction of jobs in the Fordist-Taylorist model, have delicate links with the legal and widely protected labor network.

It becomes a strategy for companies to focus on activities linked to their central production core, the so-called core activity, with decentralization of middle activities to other peripheral companies, inevitably enabling a reduction in the number of costs of formal hiring (Delgado, 2006).

The situation of workers in outsourcing services, to which Tamburrini & Zhang (2014) refers, exhibits an analysis that is typical of all those affected by the new flexible work morphologies, in the sense that they wander in space and time, going back and forth , moving from employment to unemployment, underemployment and a new job, in a permanent "short-circuit" relationship. Considering that mass unemployment opens up possibilities for the withdrawal of historical guarantees from the world working class. For Cristiano Paixão and Tiago Muniz Cavalcanti (2017, p.98), in relation to time, service providers survive based on contracts entered into with third parties, lasting a maximum of one year. Thus, the outsourced worker looks to the future with almost absolute certainty of losing his job with the contract ending. The future becomes empty, uncertain, insecure and fearful.

In relation to space, in the sense that the market for service providers is unpredictable, the employee is not linked only to the borrower, not belonging to the staff of the company that uses his workforce. The fall in employment, the extinction of traditional jobs, the practice of various forms of underemployment, the use of labor, qualified or not, through alternative pacts to the employment contract, under the pretext of the autonomy of the will, reaches the workers' collective (Almeida Neto, 2005).

Wacquan (2005, p.12) examines the various signs that point towards an excessive resocialization of salaried work, the growth of part-time work and positions with variable, flexible hours, with less benefits, the resurgence of part-time work on a piecework basis and work done at home; the development of telework; the institutionalization of permanently temporary work (Porto, 2013).

Precariousness becomes internalized, divided and fragmented, by workers in the scope of economic activity. The very logic of speed, innovation and overcoming exposed in technology is used not only in manpower management, but also in the treatment given to workers, who quickly become underdeveloped and disposable, must be overcome by others more modern, flexible and suited to the expectations of this new time and new way of working. Thébaud - Mony & Druck (2007, p. 26) argue that the time of new unemployed, of men employable in the short term, through (new) and precarious forms of contract and, among them, outsourcing/subcontracting occupies a prominent place .

A survey was carried out by DIEESE in partnership with CUT, containing data that are profound indicators of the outsourcing phenomenon that has expanded in Brazil. They report that, currently, outsourced workers account for an average of 26.8% of the formal labor market in the country. Considering that this number (2014, p.13), however, is undervalued, because a considerable part of outsourced workers is allocated informally, on the margins of a regulated and protected Law Regarding the contracted workday, this group of workers performs a 3 hours more work per week, without considering overtime or bank hours worked, which are not the target of the survey by the Ministry of Labor and Employment – MTE.

882,959 more job openings would be created if the working hours of workers in typically outsourced sectors were equal to the working hours of those hired directly. This, without considering overtime, bank hours and the pace of work which, as reported by union leaders, are greater and more intense among outsourced workers.

Another huge difference between direct workers and outsourced workers is length of employment, as the length of time spent at work is 5.8 years for direct workers, on average, for outsourced workers it is 2.7 years. It stems from the increase in the turnover of outsourced workers - 64.4% against 33% of those directly hired. Although there was a general increase in turnover - another exorbitant phenomenon in the national labor market - the rate increased by 19.5 percentage points among third parties, when we observe the study carried out in 2010. The research demonstrates that the precarious nature, flexible and inexpensive nature of outsourced contracts compared to direct employment contracts. Proving that the profit optimization strategy through outsourcing is totally linked to the precariousness of work. A fact that the outsourcing process causes numerous impactful distortions in the economy, in society, as advocated by Gabriela Neves and Helder Amorim (2014, p. 18).

Although any worker may suffer existential damage in terms of health, according to the research Dossier Outsourcing and Development: an account that does not close is an initiative of CUT/ DIEESE (2014), points out that outsourced workers are more exposed to risks of damage to health, due to excessive hours worked, compromising their schedule. Regarding the protection of workers' health, in a debate already held on the reduction of working hours to 40 hours a week in Brazil, it is mentioned that the extension of the time of human availability due to the employment contract introduces implications that have repercussions in several worker life plans. The author emphasizes that this extension of the time of human availability that comes from the labor contract causes incidents at levels in their health and their education, in addition to interfering in the plan of their family relationships, which include children and adolescents (Delgado, 2010).

In this sense, Amaro Alves de Almeida Neto (2005, p.7) assures us that the extension of the working day, including the reimbursement of overtime, drastically accentuates the possibilities of occurrence of professional and occupational diseases

or accidents related to work. , while its abatement significantly reduces such probabilities of the so-called misfortune of work.

To repair the damage, a fixing of the indemnity quantum is stipulated, José Felipe Ledur suggests certain parameters:

The condemnation in reparation for existential damage must be fixed considering the dimension of the damage and the patrimonial capacity of the offending party. To have a pedagogical and economic effect, the fixed amount must represent a considerable increase in the company's expenses, discouraging recidivism, but preserving its economic health (Brasil, 2011).

compensation for off-balance sheet damage is reserved. The Civil Code (Brasil, 2002) also offers indemnity protection, articles 12, caput, 186 and 927. These provisions apply in the labor sphere, based on article 8, sole paragraph, of the Consolidation of Labor Laws-CLT (Brazil , 1943), in which it grants subsidiary compliance with ordinary law to Labor Law. Contextualizing with respect to Brazilian civil liability, compensation for existential damage is a resentful fulfillment with emphasis on its incidence in labor relations.

In the matter of Precedent 37 of the Superior Court of Justice (Brazil, 1992), it is presented that compensations for material damage and moral damage are subject to accumulation, arising from the same fact that gave rise to them. There may be a concentration between both, since they come from the same fact. In the same way that greater types of damage caused are legally possible, such as damage arising from repairs suffered for aesthetic purposes, damage to the worker's health and existential damage (Dallegrave Neto, 2007).

If for some eventuality the case of moral damage is accumulated with material damage, which is an existing possibility in legal means, considering that one and the other start from different triggering events. We can understand how labor jurisprudence has been managing its understanding in the face of the configuration or not of existential damage in labor relations. For example, the existential damage due to the requirement of excessive working hours (Brasil, 2014).

Fragmented labor relations, fragile precisely because of the precarious process that contributed to the contracts becoming unfavorable to workers. This causes the disruption of the protective guideline of Labor Law, in order to meet the demands of a highly dynamic and competitive market. Based on competition and technical quality, neoliberalism ends up accentuating capitalist power and stratifies a utilitarian perspective, which sees social rights as high costs for the public and private sectors. Therefore, it is possible to obtain clarity regarding the real dimension that the transformations caused (Delgado, 2019).

Two points that should be highlighted about outsourcing is the counterpoint between apparent employer versus hidden employer, which the execution of outsourcing can offer as a recognized link with the hidden employer. Outsourcing the core activity of the company constitutes the constitutional prohibition, moreover, it ends up removing the legitimacy of outsourcing in its core activity, due to its exercise with diversion of purpose, since the company does not take the opportunity to dedicate to its main interest (Delgado & Amorim, 2014).

Maurício Godinho (2015, p.420) argues that the consequence of illicit outsourcing is the untying of the employment relationship with the employer, the service provider, composing the just-labor relationship of the worker directly with the disguised employee who takes services.

In Brazil, due to the absence of heteronomous guarantees and efficient union action, there is no effective protection against dismissal and the threat of unemployment is a factor that brings insecurity for workers and calls into question the freedom of contract, through the idea that they are induced to accept any occupation offered to them in order to have access and means of survival and consumption (Porto, 2013).

The labor legal system distinguishes between licit and illicit outsourcing. The generic pattern of hiring a workforce in the country follows the classic employment formula. Cases of lawful outsourcing are ensured by Precedent 331 of the TST, which delimits socio-legal situations.

Legal outsourcing in Brazilian law, there is no legal precept in the country's legal system to validate labor contracts through which a person provides non-continuous, costly, personal and subordinate services to others, making this borrower legally responsible for the employment relationship (Almeida Neto, 2005).

Setting constitutional limits on outsourcing becomes a crucial instrument for the constitutionalized Labor Law to solidify the civilizing function as a protected socioeconomic inclusion of the worker, valuing human work and the democratization of power over production relations (Delgado & Amorim, 2014).

final considerations

Labor outsourcing is an intense phenomenon and has reached a lot of space in the economic sector. Emerging with the purpose of enabling companies to adapt more efficiently to the globalized market and reduce their expenses. Thus, the trend in capitalist society grows through flexibility. State-enforced labor standards were seen as detrimental to the effective development of the economy.

Flexibilization through deregulation, according to Gabriela Neves Delgado, clashes with the protection ensured by Labor Law, becoming contrary to every type of mechanism of protective norms, in which the legitimacy of the labor law is seen as illicit. In turn, flexibility in order to build a more malleable legal framework, especially for the employer class.

toyotist production model, dedicating itself exclusively to central production and transferring to third parties other peripheral phases of the production circuit in which reduced deadlines are sustained, demanding and transferring to workers the pressure for maximizing time, for high productivity rates, the reduction of labor costs and forms of insertion and contracts.

The profit obtained as gain through the human workforce generates the result for the outsourced worker being unfavorable. The workforce becomes the object of negotiation, the outsourced worker will have the value of his salary bargained, and what really matters is the acquisition of a contract for the provision of services. Although the Constitution presents the company with the social function of offering direct employment with the worker, with maximum protection, taking into account the double protective quality of the employment regime, guaranteeing and associating the worker with the company and requesting maximum continuity of the employment relationship work.

The just-labor bond being exact with the effective service taker that in the employment contract clarifies the norms pertinent to the real working class, with the purpose of repairing inequality of installments that occurred before the outsourcing process. The doctrinal and jurisprudential reflections originate from the premise that

the issue of the constitutional limits of outsourcing comprises, in addition to the entrepreneur's freedom of initiative, also the state duty of constitutional protection of the fundamental rights of workers. Due to the legislative omission on outsourcing, it is up to jurisprudence and doctrine to apply control of this process, with the purpose of limiting the effects with the essential principles and rules that use the workforce. In the matter of constitutional identity, which is always open, incomplete and fragmented, the relationship between what is ideal and what is real is important, reflecting the very nature of the law.

And the risks of maintaining a protection system that are not constitutionally adequate are, at the same time, weakening the constitutional practice and process of marginalization of workers, including all the consequences of insecurity due to the unequal treatment that can manifest.

Unlimited outsourcing conveys the idea that it protects social liabilities, leading one to believe that the practice actually produces numerous advantages. The actual fact is completely different. According to constitutionalized labor law, the employment relationship in outsourcing is greatly expanded, causing the worker to be unable to access rights and guarantees.

It is not true that outsourcing generates employment. These jobs would have to exist to produce and carry out the services needed by the large company. However, the company responsible for outsourcing provides precarious work in addition, with longer hours and extrapolated work rhythm, in fact, the number of jobs reduces.

And as a consequence of the effects of outsourcing being precarious, existential damage arises, which consists of several types, among them, one that develops in labor relations. A damage is constituted through the existence of the person, in order to make it difficult to allow them to decide to be happy, preventing their choices and decisions. The dislikes and disappointments generated by work make the employee get stuck in situations and conditions that make it impossible to carry out his life project, both personal and professional.

The provision of service is carried out in such a way that the employer bears the risks and damages incurred at any time. Subordination is an indispensable point, the employer administers the tasks and the employee must obey them, preventing them from making their own decisions and without the agreement of those in charge, which could be the entrepreneur, the manager, among others. The existential damage is real, it acquires characteristics, so it gives the possibility of compensation.

The Labor Court proposes to prevent and civilly refund the injuries imposed on the employee, observing the damage, the proportion of the employer's fault or intent and his economic condition.

Rescuing the promise of universalization of fundamental rights everywhere is important for Labor Law, it means inclusion in the protection system for workers. And the absence of a constitutionally inadequate system are factors that lead to a weakening of the constitutional practice for workers, as a result of insecurity and inequalities.

References.

Almeida Neto & Amaro, A., (2005). Existential damage: the protection of the dignity of the human person. *Journal of the Courts* , 6 (24).

Alvarenga, RZ de, & Boucinhas Filho, JC (2013). Existential damage and labor law. *Existential damage and labor law* . <https://hdl.handle.net/20.500.12178/39828>.

Alves, G. (2021). Outsourcing and neodevelopmentalism , *Blog boitempo* . Available at: <http://www.boitempoeditorial.com.br/v3/>. Accessed on: 09/04/2021.

Bebber , JC (2009). Off-balance sheet damage: Aesthetic, biological and existential: brief considerations. *Off-balance sheet damage: aesthetic, biological and existential: brief considerations* . <https://hdl.handle.net/20.500.12178/169556>

Brazil. (1943). *Decree-Law No. 5,452* , of May 1, 1943, Available at: http://www.planalto.gov.br/ccivil_03/decreto-lei/del5452.htm.

Brazil. (1988). *Constitution of the Federative Republic of Brazil From 1988* , Available at: http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm Accessed on: 09/04/2021.

Brazil . (1992). Superior Court of Justice – STJ, Precedent 37, *Special Court, judged on 03/12/1992, REPDJ 03/19/1992, p. 3201, DJ 03/17/1992, p. 3172* . Available at: https://scon.stj.jus.br/docs_internet/VerbetesSTJ.pdf Accessed on: 09/04/2021.

Brazil. (2002). *Law nº 10.406* , OF JANUARY 10, 2002, Available at: http://www.planalto.gov.br/ccivil_03/leis/2002/l10406compilada.htm Accessed on: 04/10/2021.

Brazil. (2011). *Regional Labor Court – TRT/RS, RO 105-14.2011.5.04.0241*. Reporting Judge José Felipe Ledur , 1st Panel, Electronic Diary of the Labor Court, Porto Alegre, 3 jun. 2011.

Cavaliere Filho, S. (2008). *Civil Liability Program*. 8. ed. rev. and amp . Sao Paulo: Atlas.

Dallegrave Neto, JA (2007). Controversies about labor moral damage. *Rev. TST, Brasília*, 3 (2).

Delgado, MG (2010). Working hours: the debate on the reduction to 40 hours a week. *Labor and Social Security Summary Magazine, São Paulo, year XXII* , 256.

Delgado, MG (2015). *Labor Law Course* . 14th. Ed. São Paulo: LTr .

Delgado, MG (2019). *Labor Law Course* , 18th Ed. São Paulo Editora LTr .

Delgado, GN, & Amorim, HS (2014). *The constitutional limits of outsourcing* . 1 ed. São Paulo: LTr .

Druck , G. (2011). The advance of work outsourcing: main trends in the last 20 years in Brazil and Bahia. In: *Bahia Data Analysis Magazine* , 21 (2).

Franco, T., Druck , G., & Seligmann -Silva, E. (2010). The new work relationships, the worker's mental exhaustion and mental disorders in precarious work. *Revista Brasileira de Saúde Ocupacional* , 35 (122), 229–248. <https://doi.org/10.1590/s0303-76572010000200006>

Gonçalves, JR (2019). HOW TO WRITE A LITERATURE REVIEW ARTICLE. *JRG Journal of Academic Studies* , 2 (5), 29–55. <https://doi.org/10.5281/zenodo.4319105>

Gonçalves, JR (2019). *Scientific Methodology and Academic Writing* . 8. ed. Brasília: JRG.

Lemos, MCAM (2020). *Existential Damage in Intermittent Labor Relations* . Ed. LTr , 1st ed.

Martins, SP (2014). *Outsourcing and Labor Law* . 13th. Ed. revised and expanded. Sao Paulo: Atlas.

Martins , SP (2014). *Procedural Labor Law* . 34th. Ed. Sao Paulo: Atlas.

Passion, C., & Cavalcanti, TM (2017). *Combating Slave Labor* . Achievements, Strategies and Challenges, Editora LTr ; 1st Ed.

Porto, N. (2013). *Work as a constitutional category of inclusion*. São Paulo. LTr .

Tamburrini , G., & Zhang, W. (2014). Entrepreneurship in Time of Crisis: The Outsourcing of Services Through Franchise Arrangements in the Italian Food Service Industry. *Journal of Foodservice Business Research* , 17 (1), 28–47. <https://doi.org/10.1080/15378020.2014.886913>