

Opinion/Recommendation

Occupational violence in pregnant women in Brazil: a sample of cases in the Labor Court

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Abstract: Brazilian women are still a recurring target of discrimination in the workplace, facing violence related to gender relations and moral harassment, especially when they are pregnant. When the worker perceives discriminatory acts and attitudes or any violation of the rights guaranteed by law, she may appeal to the Labor Court to initiate legal action. This in turn exposes the worker to a number of issues, such as workplace persecution and future dismissal. The rights of pregnant women to temporary stability, free time for medical examinations, change of duties and maternity leave contrast with the usurpation of the administration's workforce. The rights of pregnant women to temporary stability, free time for medical examinations, change of duties and maternity leave contrast with the growing power of labor administration.

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Generally, the work environment is crueler to women, for in addition to ever-present control and supervision, they also experience discrimination. Moral harassment against them is the main type of occupational violence.

Moral harassment in the labor sphere is characterized by differential treatment with the potential to affect the victim's dignity, and it may occur in different ways¹. In this context, women have numerous characteristics that place them in the position of victims, including primarily the vulnerability imposed when they are pregnant, which on occasion requires an adjustment of the work performed and a consequent reduction of their workload².

Most of the guarantees provided to women, through revisions to the Consolidation of Labour Laws (Consolidação das Leis Trabalhistas - CLT), are related to pregnancy, motherhood, and family responsibilities—approximately 80% of the total. The other 20% are distributed among topics related to working conditions (8%), performance (less than 2%), health (approximately 5%), and gender equity (close to 4%). As women have become protected by these new labor rights, an increasing number of them are entering the labour market³.

In Brazil, the concern with the protection of maternity arises both in maternity leave and in the guaranteed stability of the pregnant woman. Provisional stability was already present in the text of various conventions and collective agreements and stems from the fact that many women, when they became pregnant, were dismissed for the simple fact that they were pregnant women. In turn, the increase in maternity leave from 90 to 120 days sought to ensure maternal and child health, especially the mother's life, and to prolong the mother's time with the child is to ensure the newborn is breastfed with maternal milk, which reduces child mortality⁴. Extending maternity leave for a further 60 days is optional for working private institutions to join or not to join.

Another acquired right corresponds to the performance of function compatible with the situation of the pregnancy and with the guarantee of return when the maternity ends. The functions change of the pregnant worker is conditioned by exceptional cases, such as a harmful workplace: activity that offers risks; incompatible working conditions; health needs; and physical requirements, without definition of indicators that may characterize these situations⁴. It is also guaranteed by law that pregnant women may leave during working hours for the time required to perform at least six medical consultations and other complementary exams⁵.

Thus, the law criminalized the conduct of the employer requiring a test, examination, skill, award, certificate, statement, or any other procedure relating to sterilization

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or pregnancy. It was also considered a crime to punish any measure, by the initiative of the employer, to encourage genetic sterilization or the birth control promotion, not to mention the provision of counseling or family planning services, carried out through the public or private institutions.

Currently, it seeks to promote equal opportunities in the labor market between men and women. In this sense, laws related to women's work seeks equality between the sexes, admitting only the differentiation where it actually exists, for example with maternity leave.

It is notable that the permanence of women in the world of work is imbued with stereotypes, sometimes resulting in harassment and violent attitudes. Violence becomes even more serious when the woman is pregnant, as it has significant consequences for the health of the mother and child, such as low birth weight, miscarriage, preterm birth, and even maternal and fetal deaths, according to studies by the World's Health Organization (WHO) in the World Report on Violence and Health⁷⁾.

Examining all the facts, it is clear that pregnant women are not the targets of moral harassment because of mere eventuality. Pregnant women's rights to provisional stability, time off for medical examinations, a change in duties, and maternity leave contrast with management's usurpation of the workforce. Once pregnant women are viewed as a replaceable and disposable portion of the workforce, as occurs with all commodities in the mode of production instituted by capital, they are confronted with organizational impositions, becoming constant targets of violent and threatening manifestations⁸⁾.

The disclosure of labor lawsuits cases involving pregnant women's moral harassment is increasingly frequent in Brazil. On June 1st, 2015, The Public Ministry of Labor in Palmas (TO) presented on its website the case of a woman subjected to excessive service load in a particular banking institution, incompatible with her pregnancy situation. According to testimony from several employees, the woman felt sick, had a miscarriage, and, bloody, was prevented from leaving the agency until closing the treasury. She then guarded the fetus in a plastic bag for a period of three hours

The next day, after going to the doctor, she returned to the agency to finish her chores and still had her legal right of thirty days' leave reduced to only four. The lawsuit is still in court in secrecy.

On March 16, 2015, the Superior Labor Court released the judgment of the worker's case of a credit union that received compensation for changing her place of work and lowering her duties upon returning from maternity leave. According to the testimony of the pregnant woman, she had to move away from work due to placental detachment complications. Such license was questioned by the company and the manager, who even suggested that the worker performed an abortion. In view of the company's

lack of control, the ruling concluded that the elements present in the case constituted moral harassment, fixing the payment of compensation to the woman¹⁰⁾.

The Regional Labor Court of the 10th Region (Federal District) published on October 31, 2014 the sentence that condemned a telecommunications company to pay for collective moral damages after finding that pregnant workers were isolated, without any assignment, in places with little ventilation and with bathrooms distant. The judge cited a doctrine that "bullying is an abusive, intentional, frequent, and repeated conduct that occurs in the workplace and seeks to demean, humiliate, vex, embarrass, disqualify, and demolish an individual or group, degrading their working conditions, attaining their dignity and endangering their personal and professional integrity." And according to the judge, testimony from witnesses during the civil inquiry is consistent when describing the discriminatory conduct practiced by the manager of the defendant against pregnant employees¹¹⁾.

Furthermore, the increasing number of actions brought to the Brazilian's Labor Judiciary by virtue of the layoffs of pregnant workers reflects the discriminatory tendency of the working world. An example of this is a woman's case who was dismissed for falsifying a certificate during pregnancy, and after six years of a police investigation, it was found that the company was responsible for the forgery of the document and consequently the injury suffered by the worker¹²⁾.

From this angle, the examples presented here illustrate the numerous cases involving moral harassment against pregnant women in the Labor Courts. They are diverse situations of worker's subjection to vexatious and embarrassing cases in a continuous and systematic way, capable of destabilizing her morally and physically.

Unfortunately, even by acquiring their constitutional rights to equality, women are still discriminated and re-criminated when they become pregnant. The working world prefers to not deal with pregnant employees and their protections under the Labor Laws Consolidation and in the Constitution of the Brazil's Federative Republic (1988)¹³⁾. Thus, because they cannot be dismissed without just cause, they end up suffering the well-known moral harassment, passing several constraints, emotional and psychological, in the moment so sensitive that is the pregnancy.

Examining all the facts, moral harassment causes damage to a victim's health and also to the victim's heritage and has a high effect in damaging the victim's interpersonal relationships. The worker's family and social life will inevitably be committed. It is common for the victim not to be taken seriously because of disorders to other spheres of her life, as she is discredited before her friends and family, leading to social isolation. The victim's sexual life and her relationship with her children and spouse can also be affected. This in turn can lead to a situation in

which relationships stop being a source of emancipation and personal fulfillment and become a source of suffering and disgust.

The elaboration of a specific juridical concept is a hard thing because it shocks the individual moral, therefore some doctrinators analyze the concept of the psychological damage caused to the victim by occupational violence already described, while others emphasize the vexatious situation and the damage the image that moral harassment causes.

However, there are essential elements around which doctrine and jurisprudence are in agreement in characterizing moral harassment. These include the following: the intensity of violence over time; the conversion into pathology that presupposes clinical diagnosis; and whether these pathologies are permanent or transitory.

In the presented cases, it is analyzed the moral harassment and its consequences against the women, more specifically the pregnant ones. Women are still struggling to win their rights in the field of work, which has been an arduous battle.

When the female worker perceives discriminatory acts and attitudes or any infringement upon the rights guaranteed to her by law, she may turn to the Labour Court to initiate a lawsuit⁸⁾. In turn, this exposes the worker to a number of issues, such as persecution in the workplace and future dismissal. According to the Ministry of Labour (Ministério Público do Trabalho - MPT), the practice of violence against women in the workplace is criminal and recurrent, but few complaints are heard.

It is clear that work can be a space of stress, conflict, and endless routines. But it can also be a space where people develop their ideas, impregnate their tasks with meaning, and work collaboratively.

To combat moral harassment in the workplace, workers must be proactive in this process, always referring to their needs to achieve good performance. Joint action only happens when everyone recognizes the contribution of each individual.

It is evident that the construction of a privileged work space demands that values are articulated by the organization and the collaborators. In this sense, it is necessary to overcome the conceptions of management based on command and control and all the practices that stem from it.

Conflicts of interest: The authors declare that there are no conflicts of interest.

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