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WORK ENVIRONMENT AND THE LEGAL PROTECTION OF WORK ACCIDENTS

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Karine Domingues da Silva Machado[1], Ana Paula Fleuri de Bastos[2], Cinthya Amaral Santos[3].

ABSTRACT

The analysis of the problematic of this work has as its starting point the appreciation of Brazilian legislation, jurisprudence and doctrine, with the objective of answering the main question: what is the importance of the legal protection of work accidents for the preservation of the work environment? The research is based on the statement that it is of great importance to maintain a healthy work environment, free of accident risks, respecting the norms of legal protection of workers, when it comes to work accidents, in order to minimize risks. The general protection of occupational accidents is analyzed, from the definition of civil liability in Brazilian law, accompanied by its elements and species, to the main concept of civil liability for accidents. It ends with an analysis of the importance of an adequate work environment for the safety of the worker, as well as for compliance with guardianship standards.

Keywords: Occupational accidents. Liability. Legal protection. Work environment. Worker safety.

[1] Master's degree in Law and Social and Labor Relations from UDF-DF, specialist in Labor Law, Labor Procedure and Tax Law. Labor Lawyer, Professor of Labor Law and Procedure, Labor Practice and TCC at UNI-goiás and FACUNICAMPS. Professor in postgraduate courses and legal course, Coordinator of TCC in the law course at FACUNICAMPS.

[2] Graduated in LAW from the Pontifical Catholic University of Goiás (2005). Specialist in Labor Law and Labor Procedure from Cândido Mendes University. (RJ) Specialist in Agrarian and Environmental Law from the Federal University of Goiás. (UFG) Master's degree from the University of the Federal District (UDF) in Social and Labor Relations Law. Legal Advisor of the company Contrato Prestadora de Serviços Ltda since 2006. Labor Lawyer militating since 2007 and professor at SENAC-GO until 2016. Professor at UFG- Federal University of Goiás (Campos Goiás) in the Law course between 2021 and 2023. Coordinator of the Undergraduate Law Course at the Goiano Institute of Law. Coordinator of the Practical Post-Graduation in Labor Law and Labor Procedure - Goiano Institute of Law. Professor at UNI-GOIÁS, since 2012, in the subject of labor law, Labor Procedure, Labor Practice and Labor calculation and settlements. Teacher still at IGD, in preparation for the first and second phase - OAB and public exams. He teaches courses at the Escola Superior de Advocacia in labor calculation and settlements and at the Goiano Institute of Law. Speaker.

[3] Dr.
PhD in Psychology from the Pontifical Catholic University of Goiás. Master in Society, technology and environment from the University Center of Anápolis. Specialist in Constitutional and Electoral Law (UCG) and University Teaching (UCG); graduated in Law (UniEVANGÉLICA - 1997). She was the coordinator of the Law Course at the State University of Goiás - Palmeiras de Goiás Unit.She was coordinator of the Law Course at the Educational Foundation of Goiás (Faclions), from 2015 to June 2016. Professor of Constitutional Law and Administrative Law at the University Center of Goiás (Unianhanguera). Supervisor of Course Completion Papers of the two educational institutions specified above.

INTRODUCTION

Every day, a large number of workers suffer work accidents in Brazil. Faced with the great competition for a vacancy in the labor market and due to the hyposufficiency of the worker, he submits himself to precarious working conditions, putting his own life at risk. However, the risks assumed and consummated in the face of the death or disability of an employee are the employer's objective or subjective responsibility, once the requirements for moral damages have been demonstrated.

The risks of occupational accidents must be curbed by employers, since they are responsible for maintaining a healthy work environment. Work must provide life and well-being, complying with the tutelary rules of labor law, not putting the worker's life at risk.

In order to answer the question about the importance of the legal protection of work accidents for the preservation of the work environment, it was necessary to deepen the study of civil liability, also covering the labor field; thus, brief notes on civil liability in Brazilian Law will be addressed. Civil liability derives from the transgression of a pre-existing rule, imposing on the person who caused the damage the legal duty to indemnify, in order to guarantee the injured party the reestablishment of his or her state prior to the damage through compensation for the damage suffered.

The work environment must be a space that provides dignity, safety and well-being to the worker, in accordance with the protective standards provided for in the legal system. However, the neglect of working conditions, the absence of preventive measures and the failure of the employer to comply with legal obligations contribute to the increase in accident rates. The problematization that guides this study can be formulated as follows: **what is the importance of the legal protection of occupational accidents for the preservation of the work environment?** By proposing this reflection, it seeks to understand how civil liability acts as an instrument for the realization of fundamental rights in the labor field.

The general objective of this work is to analyze the relevance of legal protection of occupational accidents as a means of ensuring the integrity of the work environment and ensuring the health of the worker. For this, it will be necessary to deepen the study of civil liability in Brazilian Law — especially its implications in labor relations — highlighting concepts such as objective, subjective, contractual and non-contractual liability, as well as the essential elements and their exclusions.

The approach to the theme will be conducted through bibliographic and legislative research, using the deductive method. Based on general theoretical premises on occupational accidents and civil liability, it will be sought to demonstrate its concrete

effects on the promotion and preservation of a healthy work environment. It is also important to address the elements of civil liability with the respective exclusions, as well as to conceptualize objective and subjective liability in Brazilian Law. Contractual and non-contractual liability was also studied and elucidated, arriving at specific liability in employment relations, which can only be derived from civil liability.

Finally, the importance of preserving the worker's health will be addressed, with obedience to protective standards, in order to ensure a healthy work environment, an answer that will be sought to be found through the use of the deductive method, starting from theoretical statements of a general nature about work accidents and civil liability and specifically demonstrating its reflection on the work environment.

LEGAL PROTECTION OF ACCIDENTS AT WORK

Civil liability in Brazilian law

Concept

The study of civil liability is important in any branch of law, since it is responsible for maintaining public order and protecting those who are victimized by the effect of harmful facts. Thus, for this work, it is necessary to carry out a preliminary study of civil liability as a basis for the definition, nature and limits of the employer's duty to indemnify, resulting from damage suffered by the employee, as a victim of a work accident.

In the line of thought of José Aguiar Dias, every human manifestation brings with it the problem of responsibility, being a kind of legal responsibility. When legal liability is taken care of, there is not only civil liability, but it also extends to the criminal, administrative, procedural, labor fields, among others. Civil liability derives from the transgression of a pre-existing legal rule, that is, it presupposes that the agent has failed to comply with a rule, imposing on the person who caused the damage the legal duty to indemnify.

In José Cairo Junior's lesson:

> [...] Civil liability presupposes the freedom of man. Because man is free, he has the ability to act in accordance with or against the legal system, but, in the latter case, he must bear the consequences of his unlawful act, through the compromise of his patrimony (CAIRO JUNIOR, 2008)

The legal notion of civil liability presupposes the harmful activity of someone who, acting a priori unlawfully, violates a pre-existing legal norm (legal or contractual), thus subordinating himself to the consequences of his act (obligation to repair). It derives from the aggression against an eminently private interest, thus subjecting the offender to the

payment of pecuniary compensation to the victim, if he cannot restore *in natura* the previous state of affairs.

Raimundo Simão de Melo (2008) explains that civil liability reflects a response to the unlawful act, when it appears in the reparation of the injured right. An assignment is sought from the agent who infringes a rule of public law and disturbs the social order. In view of this, the State itself seeks to implement the punishment of the accused. For Carlos Roberto Gonçalves (2022) the word responsibility originates from the Latin *respondere*, bringing the idea of security, restitution or compensation for an asset that was sacrificed.

According to Maria Helena Diniz:

> [...] Civil liability is the application of measures that oblige a person to repair moral or property damage caused to third parties, due to an act performed by him/herself, by a person for whom he/she is responsible, by something belonging to him/her or by simple legal imposition. (Diniz, 2022)

Civil liability translates, therefore, the idea of restitution or compensation from the aggressor to the victim, as compensation for an asset that was illicitly sacrificed in both the material and off-balance sheet spheres, according to the analysis of the requirements discussed below.

Purpose

The purpose of civil liability is to guarantee the injured party the restoration of his or her state prior to the damage, through compensation for the damages suffered, both in the moral and material spheres, being compensatory for the damage to the victim, that is, in the lesson of Raimundo Simão de Melo47, "[...] guarantee the right of the injured party to security, through full compensation for the damages suffered, reestablishing the *status quo ante* as far as possible, meeting a moral, social, legal and justice need".

Sebastião Geraldo de Oliveira (2019) explains that civil liability provides compensation to the person who has suffered the damage. It is an instrument for maintaining social harmony, in the sense of helping the patrimony. It punishes misconduct and protects the victim, serving to discourage the potential violator and measure the weight of the replacement of the act or omission. When the legal nature of the affected good is not economic, and it is therefore impossible to recompose the *status quo ante,* the legal system protects the victim, making the offender responsible for the payment of compensation that compensates for the pain endured by the victim and punishes the offender.

Civil liability arises, therefore, as the duty to reimburse or compensate, which is imputed to the one who, by action or omission, by his own or a third party's fact, or by things dependent on him, causes the reduction or alteration of the material or moral assets

of others. In addition to the compensatory purpose, it has two purposes, which are the punitive purpose of the offender and the social demotivation of the harmful conduct (Cairo Junior, 2008).

The idea of punishing the offender is secondary, but of great relevance, because the payment of compensation for the offender's lack of caution leads him to no longer injure, according to Rodolfo Pamplona Filho (2025) teaches that there is a secondary function in relation to the restoration of things to the state in which they were, hence the idea of punishing the offender. Although it is not the basic purpose, the imposed performance reflects a punitive effect, for not having had the necessary caution in the conduct of its acts.

The second purpose is not limited to the person of the offender, it also extends to the general public, informing that similar conducts will not be tolerated, thus reaching the whole society, leading to the balance and security pursued by the Law and culminating in the third purpose of civil reparation, that is, the social demotivation of the harmful conduct.

Elements of civil liability

Anyone who causes harm to others is obliged to make reparation. For the configuration of civil liability, it is necessary to analyze the elements that characterize such an institute, leading to the definition of the duty to indemnify, attributable to the one who injured the right of others through his conduct. For most of the doctrine, the elements of civil liability are human conduct, causal link of damage or loss. Fault is not a mandatory element of civil liability, since there is civil liability without fault (strict liability), as described below.

Human conduct, for the purpose of civil liability, is not understood as the act simply derived from man. Human conduct, to be seen as the first element of civil liability, must translate an omissive or commissive behavior marked by voluntariness, that is, conscious will, which maintains the capacity to discern what it is doing. While action is a positive act of the agent, omission is the absence of an act that he should perform. It should be noted that it is not unlawful human conduct, since, although most of the conducts that generate liability are due to an unlawful act, there may be civil liability arising from a lawful act. In general, civil liability presupposes anti-juricity, but it is not always that it occurs.

The rule is the responsibility that arises from the conduct or act itself, with the agent responding with his assets. However, the person may be liable for the act of a third party, as in the cases of article 932 of the Civil Code, as well as for the act of an animal, for the fact of an inanimate thing and/or for a product placed on the market.

Article 932. The following are also responsible for civil reparation:

> I - parents, for minor children who are under their authority and in their company;
> II - the guardian and curator, by the wards and curators, who are in the same conditions;
> III - the employer or principal, by its employees, servants and agents, in the exercise of the work that is incumbent upon them, or because of it;
> IV - the owners of hotels, hostels, houses or establishments where they are housed for money, even for educational purposes, by their guests, residents and students;
> V - those who have participated in the proceeds of crime free of charge, up to the concurrent amount (Brasil, 2002).

The causal link is also a requirement for civil liability and, within the scope of legal dogmatics, translates the necessary link that unites the agent's behavior to the damage caused. If the behavior is not linked, there is no causal link, and there is no accountability for the fact. Fundamentally there are three explanatory theories:

The first, Theory of Equivalence of Conditions, makes a separation between the factual antecedents referring to the result of damage, explaining that everything that led to the result is considered a cause. This theory is not adopted in Brazil. Conceived by Von Kries, the Theory of Adequate Causality, in which only the antecedent who may have achieved the consummation of the result is considered a cause, and the indemnity must be adequate to the facts. Finally, the Theory of Direct and Immediate Causality stands out, which is more objective than the previous one. He explains that the cause is only the antecedent that determines the result, not making a proballistic judgment, but a judgment of necessity (Tartuce, 2008).

The theory adopted by CC/02 for Carlos Roberto Gonçalves and Pablo Stolze, among others, is the theory that best explains the causal link and was adopted by Brazilian Law. It is the Theory of Direct and Immediate Causality, inserted in article 403 of the Civil Code, which provides that, although the non-performance results from the debtor's willful misconduct, the losses and damages only include the actual losses and the loss of profits due to its direct and immediate effect, without prejudice to the provisions of the procedural law.

Causality is the cause and effect relationship, omission or action of the agent and the resulting damage. Without this requirement, there is no obligation to indemnify. The proof of injury is incumbent on the victim, hence the need for there to be a link between the unlawful act or fact and the damage generated. Damage or loss, as an element of civil liability, translates the injury to a protected legal interest, patrimonial or moral. There is no civil liability without damage. Damage is part of the structure of civil liability as a

prerequisite for indemnification. Without damage or loss, there is no need to speak of civil liability.

Damage means the damage experienced by a person in his material or moral assets that result from a certain act performed by another person. As a general rule, this injury is compensable, but it is necessary to prove the decrease in assets to an asset, which is protected by the right. This link, as explained above, is the causal link (Melo, 2008). The requirements are the violation of a patrimonial or moral legal interest, the subsistence of the damage (if it has already been repaired, there is no reason to speak of compensable damage, it must subsist) and certain damage (hypothetical, supposed, abstract damage cannot be compensated).

Exclusions of liability

Causes that remove the nexus built by the cause and effect relationship between the conduct and the damage, excluding the agent's fault for the occurrence of the accident and, consequently, the duty to indemnify are considered to exclude civil liability. They are recognized as fortuitous event or force majeure, exclusive liability of the victim and liability of a third party.

Unforeseeable circumstances and force majeure

The doctrine diverges as to the definition of fortuitous event and force majeure. It conceptualizes the doctrine in general force majeure as an inevitable, yet predictable, event (earthquake can be predicted, but cannot be avoided). The fortuitous event, on the other hand, is marked by unpredictability (a lightning kidnapping cannot be predicted). It is also noted that the CC/02, when dealing with the matter, in the sole paragraph of article 393, did not take care to distinguish the institutes. Flávio Tartuce teaches:

> As for the concepts of fortuitous event and force majeure, as is well known, there is no doctrinal unanimity. Therefore, this author believes that it is better, from a didactic point of view, to define the fortuitous event as a totally unpredictable event resulting from a human act or a natural event. Force majeure, on the other hand, is a predictable event, but inevitable or irresistible, resulting from one or another cause. (TARTUCE, 2008)

The debtor will not be liable for losses resulting from unforeseeable events or force majeure, if he has not been expressly held responsible for them. However, it is important to note that the case law uses the two expressions indiscriminately. In one case or another, as a rule, they break the causal link and exclude liability.

Sole fault of the victim

The exclusive fault of the victim is a cause for exclusion of the causal link itself because the agent, the apparent cause of the damage, is a mere instrument of the accident. As Sérgio Cavalieri Filho (2023, p.106) explains, "[...] The best technique is to speak of 'the victim's exclusive fact' and not 'the victim's exclusive fault', because the 'problem' is in the causal link and not in the fault". However, it is observed that the reduction of compensation resulting from concurrent fault is made by the judge, and there is no prior tabulation in the law a priori. Competition can only be applied in exceptional cases, "[...] when there is no question of manifest and proven causal preponderance of the agent's conduct".

Third-party fact

Similar to exclusive fault, it is the causal behavior of a third party, which can exclude the responsibility of the physical agent of the action. As Sérgio Cavalieri Filho points out (, a third party is any person other than the victim and the person responsible, someone who has no connection with the apparent cause of the damage and the injured party. But such a third-party fact only excludes liability when it breaks the causal link between the agent and the damage suffered by the victim. In these cases, the fact of a third party is equivalent to fortuitous event or force majeure, as it is a cause foreign to the conduct of the apparent, unpredictable or unavoidable agent.

Subjective and objective civil liability

Subjective civil liability, provided for in arts. 186 and 927 of the Civil Code, requires the verification of guilt in two modalities: proven guilt, which depends on proof by the plaintiff; and presumed fault, in which there is a reversal in the burden of proof, so that there is a presumption that the defendant acted with fault, and he must prove the non-occurrence of fault. Strict liability, on the other hand, is based on the theory of risk, in which the culpable or intentional attitude of the victim is of less relevance, as long as there is a causal relationship between the damage experienced by the victim and the act of the agent.

When one reflects on the theory of risk, it is verified that it is the one who, through his activity, creates a risk of damage to third parties and must be obliged to repair it, even if the act practiced by him is exempt from fault. Thus, the cause-and-effect relationship between the agent's behavior and the damage experienced is verified (Rodrigues, 2008). Arts. 186 and 927 enshrine a subjective unlawfulness, based on fault or willful misconduct,

but, alongside this unlawfulness, there is also the recognition of objective unlawfulness (articles 187 and 927 and sole paragraph), which is why, in our law, two types of liability coexist: subjective and objective, namely:

> Article 186. Anyone who, by voluntary action or omission, negligence or imprudence, violates rights and causes damage to others, even if exclusively moral, commits an unlawful act.
> Article 187. The holder of a right who, in exercising it, manifestly exceeds the limits imposed by its economic or social purpose, by good faith or by good customs, also commits an unlawful act. Theory of abuse of rights or theory of emulative acts.
> Article 927. Anyone who, by an unlawful act (articles 186 and 187), causes damage to another, is obliged to repair it.
> Sole Paragraph – There shall be an obligation to repair the damage, regardless of fault, in the cases specified by law, or when the activity normally carried out by the author of the damage implies, by its nature, a risk to the rights of others62.

In article 186, the legislator, to define an unlawful act, used the subjective criterion based on fault. However, when defining what abuse of rights is, in article 187, it was the element of objective illegality, finalistic element, functional criterion. This means that, in the form of article 187, to prove the abuse of rights, it is not necessary to prove that there was an intention to harm others or carelessness (intent or fault), since the finalistic criterion was used, which diverted the purpose; therefore, it does not matter guilt or malice.

The technological development typical of the twentieth century, in the sense of the growing increase in the complexity of social relations, gradually determined the distancing of the notion of guilt as the sole premise of responsibility, in the face of the recognition of risk as a justification for a purely objective liability. Brazilian law enshrines both subjective and strict liability, under the terms of article 927.

According to the doctrine of Alvino Lima's (1998) thesis, it can be concluded that it is the risk of profit that justifies the imposition of civil liability, regardless of the analysis of guilt, because it subjects the victim to a greater danger of damage (probability) than other members of the community. Despite the clarity of the adoption of strict liability, the issue of civil liability still generates discussions within the scope of the Superior Labor Court regarding the configuration or not of the risk activity provided for in article 927, sole paragraph of C/C 02, which authorizes the adoption of the risk theory.

Thus, the formulation of a general rule for the employer's strict liability depends on a careful analysis of the aforementioned article 927, sole paragraph, of the Civil Code of 2002, which brings two relevant elements in the characterization of the risk activity: first, the need for the risk to be linked to activities normally carried out by the employer for the achievement of its economic purposes; and, second, the risk must be intrinsic to the nature of a given business activity, and it is essential that the company seeks to achieve its purpose by subjecting workers to a higher risk than the rest of the collectivity, with risk

being an intrinsic element of the business activity and inseparable from its production process (Brasil, 2002).

Therefore, for the configuration of strict liability, it is necessary that the activity habitually carried out by the company is risky to the workers, and this risk is the element through which the employer derives economic advantage for itself, as taught by Guilherme Augusto Caputo Bastos (2013) explains in order to characterize article 927, sole paragraph of the CC, there must be an exploitation of a dangerous activity, carried out habitually or with high offensive potential. Thus, for the application of the theory of strict liability, it is necessary to combine the risky nature of the business activity and relate the misfortune that occurred directly to the risk inherent to this activity.

Contractual and non-contractual liability

Depending on the legal nature of the rule violated by the agent causing the damage, civil liability can be divided into contractual and non-contractual or Aquilian. If the damage results from the violation of the law by virtue of the unlawful action of the offending agent, the liability is non-contractual; If there was already a contractual legal rule between the parties involved that bound them and if the damage arises from obligations not fulfilled in the contract, there will be contractual civil liability.

Thus, Pablo Stolze Gagliano and Rodolpho Pamplona Filho (2016) explain about Aquilian civil liability, in the sense that in this case the circumstances must be proven by the victim. Unlike the contractual one, in which it is already presumed, which leads to the reversal of the burden of proof. It is up to the victim to prove that the obligation has not been fulfilled, leaving the debtor with the burden of proving that he did not act with fault or that there has been some exclusion of illegality.

Contractual liability derives from a contract, whether written or tacit, signed between the parties, when one of the contracting parties fails to comply with an agreed obligation. The extracontractual or Aquilian derives from the breach of some legal duty, and there is no contract established between the parties, when one causes damage to another. In both there is an established norm of behavior that is not complied with by the parties, either by the law (extra-contractual) or by the declaration of the parties' will (contractual).

Raimundo Simão de Melo (2008) teaches that there is a bond that unites the parties, which differs from the extra-contractual one, where there is no legal link between the injured person and the person who caused the damage. Indemnity in the contractual, replaces emerging damages or loss of profits, while in the Aquilian, in the payment of expenses. Brazilian Civil Law has adopted both types of liability, with the non-contractual

one being addressed in arts. 186, 188 and 927 of the Civil Code, while the contractual is dealt with in article 389 et seq. of the same legal provision.

CIVIL LIABILITY IN LABOR RELATIONS

The employment contract creates reciprocal rights and obligations, which means a correlation between the employer's organizational power and the employee's subordination. Thus, in the event of non-compliance with obligations or extrapolation of the employer's directive power, the occurrence of damages can be verified, leading to civil liability in labor relations, which can occur in the pre-contractual, contractual or post-contractual phase, and its occurrence is also common in the case of work accidents.

In the case of an accident at work, according to Russomano (1973), two distinct situations arise in the field of substantive law: the first is the right to compensation for the misfortune by the INSS, that is, a social security relationship is established between the beneficiary and the State. The second is the right to compensation, derived from the same accident, when the employer's civil liability is identified in the manner already outlined. For Luiz José Mesquita, "[...] the right to compensation for work accidents, derived from breach of contract due to intent or fault of the employer, has the employee and the employer at its poles, consequently it is a material labor relationship".

In the second case, civil liability for moral damages is based on arts. 186 and 927 of the Civil Code. The same rule is applicable to moral damages arising from employment relationships, as there is no specific provision in labor legislation about the employer's civil liability. The employer's civil liability, as a rule, is subjective, being objective when there is an express provision in law or when the activities performed by the employer imply a risk to the worker's rights (Brasil, 2002).

Therefore, civil liability is the institute brought from Civil Law and, on a supplementary basis, regulates labor relations because there is no specific legislation regulating the matter in the labor field. In the case of compensation resulting from an accident at work, its legal basis is in the Constitution itself, in its article 7, item XXVIII, when it grants urban and rural workers "[...] insurance against work accidents, at the expense of the employer, without excluding the indemnity to which he is obliged, when he incurs in intent or fault".

ACCIDENT LIABILITY

The doctrine, following the legal conceptualization, establishes three types of work accidents: the typical accident, the occupational disease and the atypical accident, unlike

what occurs in the employer's civil liability, which is verified by the simple presence of the characterizing elements, as already outlined: culpable action or omission, causal link and damage in the liability for work accident, called by the doctrine as unfortunate. In order to perceive due compensation, it is necessary to classify the event causing the damage as a work accident.

Cairo Júnior (2008) teaches that it is necessary to classify the event that caused the damage that caused the work accident. The employer's liability is verified only by the mere presence of the elements of characterization, that is, the damage, the causal link and the omission or culpable action.

The misfortune is legally transferred to the State, especially to the National Institute of Social Security (INSS), with payment of a complementary contribution, limited to the pecuniary reparation of the loss of profit. However, the lawsuit for unfortunate compensation can be cumulated with a lawsuit for compensation based on common law, since the remuneration perceived by the worker is not fully covered by the accident compensation, because the social security agency establishes a ceiling on the benefit salary, which may be lower than the salary perceived before the accident.

In the case of accident liability, the employer is responsible for the risk of its economic activity, contributing with a certain amount, which the law instituted as a mandatory insurance, managed by the State. Thus, in the event of an accident that causes loss or reduction of the ability to work, regardless of fault, the state agency (INSS) must indemnify the victim with the payment of a monthly income.

In the face of a duly characterized work accident, the worker will not be helpless, since there is, in the legal system, the provision of social security benefits maintained through the occupational accident insurance (SAT), which is the responsibility of the employer, to guarantee such benefits. The benefit aims to protect the worker if he or she becomes unable to work (Sampaio, 2019).

In the event of a work accident, in order to receive social security insurance, only the causal link is required, that is, the link between the performance of the service and the occupational accident or disease for the purposes of compensation. In summary, in the words of Rodolfo Pamplona Filho, the Brazilian legal system addresses three types of claims related to work accidents, which can be brought in court:

a) *Labor Action,* understood as the one that raises claims related to the consequences in the sphere of the subordinate employment contract [...];
b) *Accident Action,* which is the one that has its own procedural assumptions, not to be confused with the common law action for compensation. This is a claim related to

insurance against work accidents, mentioned in the initial part of item XXVIII of Article 7 of the CF/88, whose coverage is responsible for social security, [...]. With this, it is said that it is an objective civil liability provided for by law and that it is not to be confused with the generic objective civil liability of the public administration, provided for in Article 37, 6 of the constitutional text;

c) *Civil Reparation Action*, which is the claim mentioned in the final part of item XXVIII of Article 7 of the CF/88 ("[...] without excluding the indemnity to which he is obliged, when he incurs intent or fault"). If in the accident action, the state coverage for the occurrence of the accident is discussed – coverage that is priced in amounts established by the proper agencies – in this second action, full compensation is sought for the damages that occurred, whether in the patrimonial sphere or in the off-balance sheet sphere of the victim of the misfortune (Pamplona Filho, 2002)

This study covers the last claim, while the accident action is under the jurisdiction of the ordinary courts and the civil reparation action is under the jurisdiction of the Labor Courts, since the subjects of the dispute have the legal status of employee and employer and the controversy arises from the employment relationship, in which the civil liability for the full reparation of the damages occurred will be discussed.

CUMULATIVENESS OF THE FORMS OF REPARATION

As highlighted in the item above, the employee is protected by an occupational accident insurance, paid by the employer and managed by the State. However, the employer must have the obligation to protect, physically and psychologically, its employees, conferring the law in addition to compensation for unfortunate accidents, accident compensation, an indemnity based on common law, when the elements generating the duty to indemnify, already transcribed above, are present in the work accident. Such guarantee is enshrined in the Federal Constitution, article 7, item XXVIII, which establishes as a right of urban and rural workers insurance against occupational accidents, on behalf of the employer, without excluding the indemnity to which it is obliged when it incurs in intent or fault, as a residual matter for social security.

It is currently clear that the accident compensation resulting from the risk theory was inserted cumulatively with the common law civil liability. The doctrine and jurisprudence prior to that of 1988 diverged in this regard and understood, in one current, that the compensation of the common law should only be complementary, that is, deducting what was paid as an accident; another opined for cumulation without compensation.

> If there is intent or fault in the unfortunate occurrence, the injured party, or his beneficiaries, in the event of his death, may receive both reparations, without compensation. They are autonomous rights based on different assumptions: the accident pecuniary benefit covered by the contributions and paid by the Social Security, which is responsible for its own obligation, and the civil indemnity to repair the damage resulting from the unlawful act (SAAD, 1999, p. 97)

This constitutionalization gave greater guarantees to those who, suffering damage or violation of a right, expect patrimonial or moral reparation or both, being part of the constitutional rights and guarantees, being a social right considered fundamental like the classical freedoms (Ferreira Filho, 1995).

THE IMPORTANCE OF PREVENTING ENVIRONMENTAL RISKS IN THE WORK ENVIRONMENT

The legal protection of compensation for work accidents can also be found in the Federal Constitution, article 7, item XXII, which provides for the reduction of risks inherent to work by reducing the risks inherent to it, through health, hygiene and safety standards. In other words, the non-observance of such rules, when it leads to a work accident, may also oblige the perpetrator of the damage to indemnify the victim.

The employment contract gives rise to main obligations: for the employee, the obligation to provide services; and, for the employer, that of paying the salary. However, there are also ancillary obligations, including an implicit clause that imposes on the employer the duty to provide safety, hygiene and health to its employees. When the employee is hired, he also cedes his labor power to the employer, becoming a creditor both of the salary and of the guarantee that he will not be affected by any illness that affects his health, since the labor force is the main source of income of the worker.

The employer, as the holder of the directive power, must comply with the determinations contained in the safety, hygiene and health standards of its employees, to avoid the occurrence of occupational accidents. If the worker causes the accident, the employer will be relieved of any liability. But it is important to note that, when it comes to accident liability, the same does not occur, as the law protects the insured even in this condition, observing only the existence of the causal link, as narrated elsewhere.

For Arnaldo Süssekind (2002), the security of the individual is one of the fundamental principles of social security, but also a consequence arising from the employment contract. In addition to the ethical and economic duties of companies, there is this form of protection, in which the entrepreneur demonstrates through four specific

duties, such as accident prevention, claim repair, rational organization of work and finally the hygiene of places and industrial safety.

The minimum conditions of the employment contract determined by law, collective bargaining agreement, collective bargaining agreement, or normative sentence, form the basis of the employment contract, which means that, even if it has not been expressly agreed, the obligation for the employer will remain, such as minimum wage, overtime remuneration, vacations, and labor protection.

The Federal Constitution of 1988, in its article 7, item XXII, establishes as a right of workers the reduction of risks inherent to work through health, hygiene and safety standards. The Consolidation of Labor Laws, on the other hand, reserves a chapter for occupational health and safety standards (title II, chapter V), instituting preventive measures against occupational diseases and accidents, in addition to those dedicated to workers' health.

By legal permission of article 155 of the CLT, the Ministry of Labor and Employment can issue normative acts, called Regulatory Norms (NRs), responsible for complementing legal protection, also binding on the employer (Brasil, 1943). On the other hand, workers must be informed about the risks they may pose in the workplace and the means of prevention, as well as the measures adopted by the company.

Thus, there is a complex of imposing norms that are part of the employment contract, which, if not complied with, imply sanctions, provided that intent and fault are verified. In employment contracts, there is an implicit clause, called the safety clause, which imposes on the employer the duty to provide safety, hygiene and health to its employees, ensuring their physical and mental integrity, ensuring that, at the end of the employment contract, the employee is in the same health conditions that he or she enjoyed at the time of admission.

Thus, when it comes to civil liability for work accidents, it is important to address the issue of the work environment, modified in its nature and complexity by the action of man (cultural environment), which is closely related to work, since "[...] there is no way to talk about quality of life if there is no quality of work; nor can a balanced and sustainable environment be achieved while ignoring the aspect of the work environment" (Santos, 2010)

When the employee is inserted in the company's production chain, he starts to perform his tasks in a work environment, which is considered as a set of production conditions in which capital and labor are transformed into goods and services. The employee has the right to an environment that provides him with good living conditions, since he spends a good part of it working, as provided for in article 200, item VIII, of the

Federal Constitution. The work environment is thus inserted in the general environment (Alvarenga, 2016).

Giuseppe Ludovico, Marcelo Borsio and Raimundo Simão de Melo teach:

> It can be seen from the foregoing that, as never before, the 1988 Constituent Assembly was concerned with the risks in the work environment and with the health and physical integrity of the worker, seeking to eliminate the former and protect them. As seen, the Federal Constitution, item X/art.5 establishes that the intimacy, private life, honor and image of people are inviolable, ensuring the right to compensation for material or moral damage resulting from its violation. Thus, the reparations resulting from work accidents, at the expense of the employer, may be for moral, material or aesthetic damages, according to the repercussion of the accident on the material and/or moral assets of the worker and must serve as a punitive – preventive means, because no money pays for the life of a worker. (LUDOVICO, BORSIO AND MELO, 2019)

Raimundo Simão de Melo (2008) considers that a safe and adequate work environment is one of the most important fundamental rights of the worker, praising this legal protection. The same author argues that the main purpose of environmental labor law is the prevention of civil liability.

Although there is a greater relationship between accidents and occupational diseases with the organization of work, the environment also influences directly, so that it is the determining cause of many diseases, the most expressive being the one called RSI-WMSD. Several factors contribute to the non-compliance with the prevention and maintenance of a healthy work environment, such as the cost of implementing safety measures, the deficiency of inspection, the low value of fines and the excess of regulatory standards.

FINAL CONSIDERATIONS

After the studies, it was found the importance of maintaining a healthy work environment to avoid work accidents, misfortunes that put the worker's life at risk, generating responsibility to indemnify the employer. Keeping the work environment preserved is part of the legal protection of the worker, preserving him from the risks of work accidents, considering that such a task is the responsibility of the companies, since the memories assume the risk of the business.

In addition, the employer holds the directive power, and must comply with the determinations contained in the safety, hygiene and health standards of its employees, to avoid the occurrence of occupational accidents. Thus, the reduction of risks inherent to work through the reduction of risks inherent to it, through health, hygiene and safety standards, is a norm provided for in the Federal Constitution of 1988 and the non-observance of such rules, when it leads to a work accident, may also oblige the author of

the damage to indemnify the victim. It is important to emphasize that, for any of the cases, it is necessary to analyze the configuration of the elements of civil liability, so that the employer has a duty to indemnify.

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