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INSURANCE CONTRACTED TO PAY OFF INDEMNITY DEBTS FOR HARASSMENT THAT OCCURRED IN THE WORKPLACE: A FORM OF COMPLIANCE

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ABSTRACT

Compliance has been increasingly established as an institute that leads to the sustainability of the company concerned with its future. Setting rules, worrying about adapting to the rules of the legal system and anticipating possible damage to the image and unnecessary costs, promoting the well-being of your workers, can be a way to remain stable in the labor market. This article studies communication as a form of compliance to avoid harassment practices and the contracting of private insurance to prevent harassment from taking hold and destroying the work environment, and consequently, causing irreparable damage to the company. Even repudiating the practice of harassment, it can occur and the simple contracting of insurance can lead to the safety of the work environment, which should always be healthy for the worker. It is concluded that the contracting of this type of insurance, which is not yet common in Brazil, could lead to fewer lawsuits to request compensation as a result of harassment, harassers who are more reported, avoiding new victims and sustainable profit.

Keywords: Compliance. Harassment Indemnity. Moral and Sexual Harassment. Harassment Insurance.

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INTRODUCTION

There is already talk about corporate social responsibility and there are companies that are adept at this reality, with a view to internal and external customer satisfaction. As an appendix of ESG - Environmental, Social and Governance, compliance, when practiced, can in several ways improve the performance and image of the corporate world, as long as it is concerned with adapting to the legal system.

Creating transparent and accessible rules, having effective and efficient communication, makes it less likely that errors occur in the company's environment, especially harassment. Such crime, committed in the workplace, makes it sick, making its workers need to leave and even leave their posts permanently because they cannot stand the actions and gestures that may characterize it.

A work environment observed by the employer, careful not to be hostile, should be the goal of every employing institution. If the company makes it clear to its internal and external public that it values the quality of life of its employees, linked to the dignity of the human person, in the work environment, it will also have numerous benefits inside and outside the company: more satisfied workers, fewer work accidents, less possibility of moral or sexual harassment and, consequently, lower costs with indemnity actions and a better image in the market.

The practice of harassment may still occur, which again goes back to the rules of *compliance*. Well-received communication, actively listening to workers in the company's environment, can avoid greater damage, such as the perpetuation of harassing acts with this or another victim(s) and even with the contracting of insurance for harassment, large lawsuits for compensation as a result of harassment can be avoided.

The general objective of this article is to study insurance for harassment as a form of *compliance* and maintenance of a healthy environment for all workers in a corporate environment. In the specific objectives, we will analyze whether *compliance* translates into a good tool to support a good work environment, with effective and efficient communication. We will see what is the model of a good work environment to have a good workplace and if the idea of contracting insurance to cover compensation as a result of harassment practices is already practiced and can be a form of *compliance*, generating a good work environment.

The hypothesis launched is that when the corporation invests in committees concerned with compliance with standards, that is, in *compliance*, it will have clearer rules and tools to achieve a healthier work environment for all and that, even if the practice of harassment still occurs, if the company is concerned about contracting insurance to cover

such practices and the damages resulting from it, The consequence of this is a more sustainable company.

The methodology used was bibliographic research in articles, news, international jurisprudence, written books and e-books. As for the approach, the research is qualitative, in which it seeks to evaluate the theme and its nuances, deepening the concepts and verifications.

*ESG (*ENVIRONMENTAL, SOCIAL AND GOVERNANCE), *COMPLIANCE AND COMMUNICATION* AS COMPANY RESPONSIBILITIES

Labor law in Brazil is regulated, among other norms, by the Federal Constitution, in its article 7, which establishes minimum rules to be complied with. These are rules that should give direction to labor law and execution by employers, due to the employment relationship, but, in addition, they should lead to management excellence for the satisfaction of their internal customers (workers) and positioning as a quality reference in the market.

Quality company management involves the satisfaction of its first customers, who are its workers, with not only compliance with existing laws, but also with the planning of compliance with excellence in relation to the work of these workers. Among other factors, knowing that the company they work for is concerned with the prevention of damage and maintains a social responsibility policy and rules, and compliance structure, is a gain when developing their daily activities.

Be aware that the company is concerned with issues such as the possibility of harassment, for example, leaving clear rules so that they do not occur, ascertaining facts for verification in case of a complaint of harassment, punishing even with dismissal for cause those who practice abusive conduct to their role within the company and, If there is damage, compensating them for the possible realization of the event, even without filing a lawsuit, it translates into a reliable environment to work in.

Labor *compliance* can be the salvation to avoid large property damage in the corporate environment. It will draw up daily rules so that inappropriate actions do not turn into greater damage in the future. A well-defined work environment, with compliance with labor rules, can avoid work accidents, avoid unnecessary demands, and can avoid actions that may cause moral and sexual harassment.

With the publication of the Anti-Corruption Law (No. 12,846/13), much has been said about compliance with the laws in companies and even more about integrity programs, from Decree No. 8,420/2015, which deals with integrity programs. Although they are not the

same, integrity and *compliance program*, the Office of the Comptroller General of the Union understands that, according to article 41 of the aforementioned Decree, they ended up having connection points, but being a *broader compliance* program because it deals with several areas of the same company, in which an integrity program can be incorporated. (Comptroller General of the Union, 2015, p. 06).

The constant concern to comply with legal and ethical determinations makes *compliance*, in addition to seeking improvement, the sustainability of economic activity with respect to natural resources, professional governance and the quality of life of workers. In the corporate environment, the well-being of workers should be sought with customer satisfaction, without forgetting the greater good, which is the development of activities with the quality of being in a safe environment.

In order to have a more concerned, organized, planned management and in the daily search to be in accordance with legal precepts, we talk about corporate governance, whose concept has also been pursued by several institutions. "This more general concept of governance focuses on the possible mixtures of agents that can govern more efficiently" (Peters, 2013, p. 29). Good governance outlines the goals it wants to achieve, involves the participants, makes clear the desired objectives and identifies the means to achieve the goals. It is based on four elements, namely, the establishment of goals, the coherence so that these goals can be met, the implementation and the accountability and evaluation of the project, whether successful or not, so that it can continue on the right path or reshape the path (Peters, 2013).

The biggest problem occurs when one agent acts for another, and there are conflicts of objectives, such as employee and employer, when it is necessary for the principal to act firmly to establish a structure of incentives and monitoring aimed at aligning interests (Chiarello and Scalisse, 2019, p. 367). The concept of governance is not a closed idea, without questions or something to be added, but what there is consensus is that it is based on the search for compliance with the legal system in which the organization is subject and the improvement of interpersonal and power relations (Azzari, Scalisse and Chiarello, 2020).

The Brazilian Institute of Corporate Governance has formulated a document that it called the Code of Best Corporate Governance Practices and which provides, among others, the principle of corporate responsibility. This principle asserts that the economic and financial viability of corporations must be valued, to the point where negative externalities to their businesses are reduced and positive ones are increased, "taking into account, in their

business model, the various capitals (financial, manufactured, intellectual, human, social, environmental, reputational, etc.) in the short, medium and long term. (IBGC, 2018)"

As part of the governance of excellence, there is *compliance,* which derives from *to comply*, and translates into complying, being in agreement, in conformity, and means, within the parameters of governance, as being the adaptation to what the legal norms and regulations determine, to carry out planning, outline flows and guidelines for the constant search for compliance with the norms (Florêncio Filho and Zanon, 2019, p. 417). Among the rules and regulations to be complied with, there is the labor field, which has a voluminous collection of federal laws, administrative acts of the Ministry of Labor, such as Ordinances and Regulatory Standards – NRs, in addition to specific state standards, Collective Labor Conventions and Collective Labor Agreements, individual employment contracts and company regulations.

The concern to adapt to compliance with legal and regulatory rules must go through principles that must govern the company's activities, such as the fundamental of human dignity (art.1, III), which is the guide for all decisions. Decree 9,571/2018 brings national guidelines on business and human rights, which must be complied with voluntarily and companies that adapt to such situations will be granted by the Minister of State for Human Rights a seal of respect for human rights (art. 1, §3). In addition, the company must act in a preventive manner in its fields of activity "in order not to infringe the human rights of its employees, collaborators, third parties, customers, the community where they operate and the population in general" (art. 6, I). To be a "friendly" company of Human Rights and to go further, valuing the worker and his life as a whole.

The implementation of a *compliance* program will bring a greater probability of financial sustainability to the employer, with the reduction of risks such as labor claims with claims for compensation for moral damages as a result of moral or sexual harassment. A well-implemented and monitored compliance program goes beyond the simple pursuit of compliance, as it ends up being a strong tool for risk management.

One of the factors that must be monitored by the company for risk management is effective communication, internal to its workers and external to its customers and suppliers. Clear communication within the corporate environment reduces damage, avoiding, among other risk factors, moral and sexual harassment.

Communication within organizations is old, since since the middle of the twentieth century, the existence of internal newspapers in international companies has been registered. The communication process has undergone major innovations, especially in the pandemic period, and is no longer formed by only one sender, one message, and one

receiver. It currently presents another fundamental issue, which is the medium, vehicle or the media, which transmits the message (FIGUEIREDO, 2011).

According to Baldissera (2000), internal business communication is directed to the internal audience of organizations, especially employees, and whose main purpose is to promote maximum integration between the organization and its employees. It can be said that internal business communication is one of the ways for an organization to communicate with its priority audience, composed of its employees, with a primarily motivational function. In this way, it contributes to the development and maintenance of a positive organizational climate, which is very conducive to the fulfillment of the organization's strategic goals and to the continued growth of its activities, services and product lines (RÊGO, 2002).

Internal communication is key to building good relationships between leaders and subordinates in a company, making it possible to share messages in a standardized, simple and efficient way, in order to favor the formation of consistent and solid bonds and avoiding violent and aggressive communication, which can cause them moral damage, with the duty to indemnify.

Employees who know the pillars and the current situation of the company well tend to identify with it, dedicate themselves perfectly to the execution of their tasks, and become true collaborators, promoting the brand in a genuine way. On the contrary, the lack of effective internal communication hinders the flow of important information, interferes with the organizational climate, and facilitates the transmission of rumors and, therefore, the generation of conflicts.

Nassar and Figueiredo (2005, pp. 73-74) state that internal communication "is a tool that will allow management to make common messages aimed at motivating, stimulating, considering, differentiating, promoting, rewarding and grouping the members of an organization", since "management and its set of values, mission and vision of the future provide the conditions for business communication to act effectively". The moment, especially in the relationship with employees, is to examine how managers' interpersonal communication is going and to make it possible to listen to the employee himself, as a driving instrument of appreciation and welcoming.

For all these reasons, investing in *compliance* (setting accessible and easy-to-understand rules), especially showing how workers should treat other workers and other people who access the company, is essential to feed team spirit, keep workers satisfied and motivated and, as a natural consequence, increase productivity without harm. But if they exist, the company must also provide solutions to remedy them, also being part of compliance, as it will avoid even greater damage, such as the departure of the victim and

the permanence of the harasser, who can continue his mission of displeasure and offenses and the filing of labor claims with claims for compensation.

Effective communication is only established in a climate of truth and authenticity. Otherwise, there will only be appearance games and time waste. However, it is not enough for communication to occur, it is necessary to make sure that the content is effectively learned so that people are in a position to use what is informed (RUGGIERO, 2002).

Curvello (2008) defines internal communication as the set of actions that the organization coordinates with the objective of listening, informing, mobilizing, educating and maintaining internal cohesion around values that need to be recognized and shared by all and that can contribute to the construction of a good public image.

According to Ruggiero (2002), the quality of communication comes from some important issues: preference for communication, that is, ensuring harmony between the effectiveness and resources of all employees with the organization's objectives; opening of essential information and guarantee of fundamental inputs to employees; authenticity in the relationship between employees, ensuring teamwork; guarantee of learning to improve communication; consider the differences of each one to improve the relationship in the company, increasing the degree of help to the objectives; Balancing technology with human contact increasing team strength.

To achieve effective communication, it is necessary to appreciate and provide the opportunity to speak to the receiver of the message. It is not enough that the means used for communication are comprehensive, as well as the language is understood by everyone indiscriminately, if there is no opportunity for the recipient of the message to feel valued, we will be doomed to failure.

In cases of harassment, for example, it is necessary to have channels for ombudsman, verification of facts and punishment of the harasser, in addition to there being forms of compensation still in the corporate environment, if the facts verify the inappropriate acts. According to Shapiro (2009, p. 36), appreciation demands, in addition to gratitude, understanding the point of view of each one of those involved; o Recognize the merits in each other's thoughts, feelings, and actions, as well as understanding through words and actions.

The employer should value what the worker thinks, the tone of his speech, the context in which he is involved, as a way of understanding what will be said to him by the worker who reports an act of harassment and worrying about how to proceed when such a situation occurs. By recognizing the merit of what the other person thinks, feels or does, even if they disagree with the consideration, one gives value to the thoughts and attitudes

of the other, and can even recognize the reasons, feelings of a certain attitude. "Recognizing the merits of the other's line of reasoning requires that you really see the merit of the other" (SHAPIRO, 2009, p. 38).

Finally, the last element is the recognition of the other person's merits through understanding through words and actions, clear and correct, in an appropriate way and without exaggeration. It is necessary not only that the recognition is clear, but that the communication, the message brought is understood. "You can let a person you are working with know that you have a specific point on which you would like to receive attention to be heard" (SHAPIRO, 2009, p. 51). Contracting indemnity insurance for its workers in case of damages incurred by harassment translates into effective communication that that corporation does not admit such situations.

Thus, the corporation that is concerned with the worker, establishing in its internal policy, accessible and easily understandable standards, as a way to maintain active *compliance*, including with regard to obligations with effective, courteous and professional communication, tends to offer a safe environment to each person who passes by. Such intentions and actions reduce the probability of damage to the company, but if there is, the company should also think about how to remedy them and how to indemnify the worker who may have suffered from them, which is also a form of *compliance*.

THE COMPANY'S RESPONSIBILITY FOR A HEALTHY ENVIRONMENT

After glimpsing that the corporate world can mitigate damage with implemented *compliance* policies and with accessible and effective communication, it is now seen that the work environment in which the worker is inserted must be conducive to his well-being and quality of life, always ensured by the employer, as he is responsible for such a mission. A bad and harassing work environment makes the worker sick and will lead the employer to compensation for the damages caused.

To achieve sustainable development within the reality of the labor contract, the environment must be balanced between the conjunction of natural, artificial and cultural elements, providing the quality of life of workers and those involved, without degradation under the argument of development. This integration aims to achieve a unique environment that comprises natural and cultural resources (SILVA, 2007, p. 2). An environment complete in its balance or as well defined by Mateo (2003, p. 24), "the set of physical circumstances that surround living beings opposing the physical to the moral, and correctly acting in the continent and in the content: animals, plants and microorganisms that make up the ecosystems".

This concern with the environment, in fact, had as its first stage, in 1972, the International Conference on the Environment, in Stockholm and since then, the subject has only taken higher flights. In 1987, at the two conferences on the United Nations and Development, there was a need to adopt a new development strategy, broadening the concept of sustainable development. Later, in 1992, there was the United Nations Conference on the Environment and Development – Rio 92, in which the Stockholm principles were ratified. Among these, Principle 1 was seen, which says that "human beings are the center of concerns related to sustainable development. They have the right to a healthy and productive life in harmony with the environment."

Since then, a balanced environment, which provides a healthy life, as a source of sustainable development, has not ceased to be desired. It was a matter of making knowledge, so that it could be implemented, and help solve existing environmental problems. In Brazil, the Federal Constitution of 1988 brought an entire chapter dedicated to the protection of the environment, (art. 225), which had not occurred in previous Constitutions, bringing a protected environment as a set and not just a natural resource. The Federal Constitution of 1988 also elevates the right to a healthy environment to the category of fundamental human right, when it provides for the right of action for damage to the environment, in article 5, LXXIII.

In reality, to take precautions is to analyze, to see the possible mistake yet to be made and, when verifying this possibility of non-conformity, to take action so that the mistake does not come to fruition. In the environmental sphere, precaution requires a change of action, directly implying a change in the way economic activity is developed (DERANI, 1997, p. 166), which includes the vision and possible change in attitude of the corporate world, in what is not adequate to the legal and ethical in the conjunction of economic and environmental balance, included in the latter, that of work.

It should be remembered that article 7 of the CF/88, more precisely in item XXII, which brings a minimum level of protection to workers, asserts the "reduction of risks inherent to work, through health, hygiene and safety standards", which shows the concern for workers, permeating all the principles of labor law, social values and especially for the dignity of the human person. When, therefore, environmental damage occurs, all citizens lose quality of life and, therefore, also the worker.

Thus, it is observed that there should be no corporate solution that does not take into account economic development, but also the healthy environmental heritage for the next generations, along with the well-being of the worker. There will be no quality of life, considered a fundamental right, if there is no interaction between the work environment and

the external environment, both healthy, without losing the company's focus, which is profitability.

The degradation of the natural environment has a direct impact on the quality of life of workers, as well as the possible diseases acquired by them from the performance of their activities in the unhealthy work environment, since both debasements are inserted in the same economic and social context. It is no coincidence that the Constitutions subsequent to the Stockholm Conference of 1972 recognized the balanced environment as a fundamental right among the social rights of man (SILVA, 2007, p.69-70).

In order for this work environment to be balanced and always in accordance with the well-being of the worker, the employer must be vigilant in the attitudes of its workers and managers, in order to avoid the environment that makes it sick. The environment should be as healthy as possible, as it is the employer's responsibility with the obligation to indemnify in case of illness of the worker.

The work environment is not limited only to pre-established and legal contractual labor standards, but enters the legal and systematic system of Environmental Law, which has a characteristic of transversality and multidisciplinarity. It can be said that the work environment is everything that surrounds the worker, including social, psychic and physical factors, granting him conditions for full development. "In the environment, it is possible to fit practically everything, that is, the physical, social and psychological environment; in fact, the entire environment outside the organism, which affects its integral development", (PADILHA, 2011, P. 241)

Thus, Environmental Law crosses the entire legal system, and there is no rigid delimitation of relevant regulations, and it is no different with Labor Law. This correlated relationship entails the obligation to observe Environmental Law in each of the other branches and activities exercised by law, making the work environment protected by Environmental Law, avoiding any form of degradation and, therefore, also protecting the worker.

What is tried to be protected is the "working man", and, therefore, one cannot dissociate himself from the other, even if he performs the work activity. There will be no completeness of the human being, for the good exercise of his activities, if the environment is not healthy and providing him with conditions of quality of life (FIORILLO and RODRIGUES, 1997, p. 66). Man and nature complement each other "Indeed, as the epigraph quoting Karl Polanyi suggests, not only are we part of nature, but labor is also a key relation that constitutes the socio-ecological system" (ZBYSZEWSKA, 2018, p.11)

The worker's environment as "the interrelation of the human labor force (energy), and his activity in the economic plane through production (matter), affecting his environment (ecosystem)" (PADILHA, 2010, p. 377), is intrinsically linked to the conception of the natural environment that involves the relationship of ecosystems in the interrelation of living beings.

And regarding the quality of life, the importance given as a social factor to the worker coincides, both as a purpose to be pursued by Environmental Law and by Labor Law. Although both branches have the Industrial Revolution as their starting point, in the labor field the damage always manifests itself quickly in the worker, which demanded more energetic, almost immediate regulatory measures. In Environmental Law, on the other hand, the damage would take longer to appear as a scarcity of natural resources (FIGUEIREDO, 2007, p. 19-20), which led to the late concern of the subject.

In addition, a responsible company should be concerned with strict compliance with the laws, but not only. It should go further and ask itself what it can do more, within its core activity, for society in general, and improve relations, activities and the environment. It should be concerned with business ethics, with a focus on economic and socio-environmental development, which will surely lead to sustainable profitability (RIBEIRO and DINIZ, 2016, p. 17)

Currently, companies are concerned with Corporate Social Responsibility in their environments, which has ethics as a member of the concept. It was realized that, "in addition to being an ethical issue, CSR can be done strategically to have a positive impact on the company's core activities, thus generating greater return to the company in the medium and long term." (PUPIM, 2013, p. 26). It is about acting for the worker (social issue), for society (environmental issue) and for the company itself, which will inspire good internal conduct and a feeling of greater satisfaction in its internal and external customers with greater profitability (financial issue).

Such a decision cannot lead to a worsening of the company's income, but this index cannot be analyzed only immediately, because profitability, as already demonstrated here, may come in another guise and perhaps not at the first moment (first semester, for example). To the point where one of the advantages of telework at the societal level is "reduction in pollution levels due to the lower flow of vehicles circulating daily" (FARIA and LOUREIRO, 2021, p. 3), there is also a more environmentally protected and more satisfied worker, complete in his existence.

The fact is that the work environment should be as healthy as possible for the worker, as it contributes to the dignity of the human person. Dignity translates into a moral value that is naturally correlated to the person, manifesting itself in the will to live and that

requires respect from other people (MORAES, 208, p.22), making up an invulnerable minimum that legal systems must ensure.

In this way, a safe work environment cannot be a merely business analysis. It must take into account the dignity of the human person so that acts of harassment (among others) do not allow acts of harassment to occur (among others), for example, and, if they still occur, that the employer can have actions and compliance rules that allow the victim's human dignity to be restored and allow the work environment to continue to be a safe and pleasant place.

HARASSMENT AT WORK, THE DUTY TO INDEMNIFY AND INSURANCE

In order to have a good business performance and for the company to establish itself in a sustainable environment, it is necessary that its foundation is based on three essential pillars: the environmental (as already seen by the importance of a good internal and external work environment), the social (in which we have the employee as the main actor) and the profit (because after all, the company remains profitable, if it is not a philanthropic entity) (ANTONIK, 2016).

The importance of *labor compliance* in the corporate environment, with well-defined rules, providing a safe environment for the worker, translates into mitigation or non-existence of damage to employees, and, consequently, also to the employer, which will maintain the profit margin (third pillar) safely. However, if there is still an abusive relationship between the employer and the worker, or even between workers, there may be damages and compliance must also involve a policy of immediate compensation still in the work environment, without the need for contractual termination and the worker having to seek the judicial bodies to request compensation.

The company will be able to dedicate itself to avoiding damage with a sector focused on the conformation of standards, in constant thought and vigilance and still come across actions by its employees or managers that may constitute harassment. After all, harassment, also known as *mobbing*, psychological terrain or psychoterror (ALKIMIN, 2010), is characterized by the reiteration of acts, words, or even omissions, implicit or explicit, that destroy the victim's human psychology, being practiced by one or more people. A process of psychological destruction of the victim.

Such a situation, although it must be monitored by the employer, can sometimes occur even in the extension of the work environment such as hitchhiking, or only in the presence of victim and harasser, which does not allow the company to intervene in setting standards and compliance surveillance. Thus, it is necessary for the company to take

precautions to remedy the damages that have occurred, such as taking out insurance to indemnify the victim of moral damage and without the need to file lawsuits (labor claims).

Usually, by trying to shake the victim's psychological state, it ends up bringing diseases such as depression or panic syndrome, but there are also physical pathologies linked to harassment, which can cause even more aggravated damage such as heart disorders, alcoholism, *burn-out*, among others (THOME, 2009). In short, harassment, in addition to weakening the worker, will end up turning against the employer, as it will cause the worker's leave and possible compensation for bad marriages.

The fact is that cases of moral and especially sexual harassment have become more common over the years and already at the end of the last century and the beginning of this one, there are reports of an increase of almost 50% in the USA (CATLETT and GRAY, 2003). Thus, there was no other way but to think about taking out work insurance that also covered moral damage as a result of moral and especially sexual harassment.

Much of this explosion was due to two well-known cases in the US, which were widely publicized and possibly motivated other people to seek compensation for the same purpose. These were the cases of Anite Hill, who accused Supreme Court Justice Clarence Thomas, as well as the even more well-known case of Paula Jones who accused former President Bill Clinton of acts of sexual harassment, in the late 90s.

Another very important case to raise awareness was what happened to Bill O'Reill, host of *The O'Reilly Factor* and who was sued along with the companies *News Corporation, Fox News Channel, Twentieth Century Fox Film Corporation* and *Westwood One, Inc*. (DUNCAN, 2005). In this case, they were sued for sexual harassment both for acts and words that occurred in person and for those uttered over the phone.

It is questioned whether even if there are transparent rules for repudiating acts of harassment, or channels for reporting practices of acts contrary to the company's policies, these acts can still occur. It was seen that keeping the work environment balanced, providing the environment of nature as healthy as possible, along with rules that can prevent acts of harassment, help a lot to prevent them from occurring. And that is the intention. But if they occur, the company must also act quickly to try to remedy the damage and reduce the damage to the victim's personality, as well as to try to reduce compensation expenses.

In the process in which O'Reill was involved, some graphic allegations were disseminated *online* and everyone quickly had access to them (DUNCAN, 2005). The terms of the agreement signed, however, were confidential, which did not prevent it from being known or speculated that it occurred in several million dollars, which in addition to having

alerted people even more about the matter, which was an asset, may have damaged the company's image and taken a few years to recover or has not yet occurred.

In the face of these events, companies warned that they would need insurance to cover this type of episode, and then the *Employment Practices Liability Insurance* or "EPLI" policy emerged. Such insurance has only grown in the USA, with the Federal basis for indemnity actions, Title VII of the Civil Rights Act of 1964 (but which were expanded to allow indemnity actions for such purposes, since before they only allowed injunctive relief) and also some state laws such as the New York State Human Rights Law–N.Y. Exec. Law §290 *et seq*., (DUNCAN, 2005).

In Brazil, the Civil Code regulates civil liability and the Consolidation of Labor Laws, the employment contract with an employment relationship, so that cases of sexual and moral harassment generate compensation for both material and moral damages, the latter being able to reach the ceiling of fifty workers' salaries, in cases considered very serious.

In 2001, here in Brazil, a law was published that deals with the subject of sexual harassment, when the crime ceased to be only illegal embarrassment to be typified as sexual harassment. The law says that embarrassment with the intention of obtaining favoritism or sexual advantage, because the agent is a hierarchical superior, when in the exercise of the function, is a crime and the penalty is from one to two years. But the CLT does not yet provide any typification.

Although there is still no regulation here in Brazil on sexual and moral harassment in the labor field, this does not mean that it is not necessary to compensate the victims of this crime in the workplace. On the contrary, both one owes and indemnifies, provided that some requirements characterized by civil liability provided for in the Brazilian legal system are met.

The victim may file a labor claim, as it is enough to prove the unlawful object that occurred (the crime), the damage (constraints, when in the presence of other people, and sometimes even physical and mental illnesses due to the repeated act and committed in exhaustion until the illness) and the causative agent (this being a hierarchical superior and even peers already accepted by the jurisprudence). The civil liability of the employing company is then characterized, which is the one that must provide a safe work environment for its workers.

Insurance with only general labor clauses, which are called Commercial General Liability Policies – CGL, in the USA, arising from work contact, insures, for the most part, only physical aggression, or even defamation, but not those expected or even intended. CGLs may also have coverage for personal injuries, such as false arrests, detentions, but

what we have is that there are still discussions in the American Courts about what would and would not be included in the coverage of the policy, because personal injuries arising from employment, not having occurred in the scope of work, for example, may not be insured.

As for the Directors and executives, it is stated that "directors and officers are covered for their wrongful acts, and the corporation is reimbursed for indemnifying them. Most of these policies exclude coverage for personal injury or bodily injury." (DUNCAN, 2005). Thus, even moral damages that may be incurred due to harassment should already be covered and the corporation should be compensated for possible compensation that it has to pay.

What can be observed is that the coverage of general and employment policies has gradually included issues and situations of repair, so that today we have issues such as: wrongful termination, discrimination, defamation, harassment, negligent hiring, among others also allowed by American state laws (DUNCAN, 2005).

But what is most certain is that when the policy is not EPLI Labor Practices Liability Insurance, it will rarely cover damages incurred by harassment in the workplace. General clause policies tend to exclude harassment in the workplace, which means that the company is always uncovered in relation to this issue, if it does not have the specific policy for the case.

The jurisprudence of the American courts is proof of this, as they deny that umbrella insurances that cover generic clauses should not even cover issues related to moral harassment in employment contracts, since there are specific policies for these cases. If the company wanted coverage for harassment cases, it should have contracted specifically (EPLI) (*Truck Insurance Exchange v. Gagnon*, 33 p.3d 901, 906 (N.M. Ct.App. 2001).

There is still much to be said about the insurance currently carried out to cover claims for sexual harassment in the US (and there is talk because there is no news of these in Brazil). What we have is that there is currently real consumption of these products due to the large pecuniary amount that is attributed to indemnities of this nature in that country, especially the sexual one. It is a specific product that seeks not to decapitalize the company with an amount not foreseen in the budget, which may destabilize and even make it impossible for the company to operate depending on the amount set as compensation.

Thus, the ideal would be for companies to be able to offer their employees safe work environments, even if they were better in a teleworking regime. And that in order to always provide better working conditions, they can have a specific sector taking care of compliance with the laws and seeking to monitor compliance with established and

transparent internal rules for all. And, if there are still cases of harassment, which may extend the company's compliance to compensation, without filing a lawsuit, but only with internal verification of facts. Such concerns and attitudes can lead to responsible and sustainable profit.

FINAL CONSIDERATIONS

It was seen that there are ways to have a sustainable profit within the business environment, which is not only with an emphasis on gain, because it is worthless to earn and not be able to retain values for growth and sustainability of the business. What is most cautious is the adaptation to the legal system in place, and companies should always seek this framework for survival.

When *compliance* becomes a priority for the company, always seeking to have trained personnel for it, specific objectives, goals to be achieved and budget, there should also be a more organized company, with less wasted cost due to fines, fewer convictions due to administrative and judicial proceedings. And when it comes to compliance, as a member of Corporate Social Responsibility, there are not only precautionary rules for the damage to occur, but also quick solutions so that the damage does not increase, if it was inevitable that it would occur.

In labor law, there is a lot to adapt in a company. Among these, the work environment should be a constant concern of the employer, since it is responsible for providing a healthy and safe environment for the worker, as well as having the duty to supervise that the worker always complies with the rules dictated by the state, to also keep him safe.

The work environment, whatever it may be, on the premises of the company or even at the worker's home, must provide him with quality of life in full harmony with the dignity of the human person, which is so inherent to the worker, in the exercise of the function. The work environment, whether internal or in contact with nature, dignifies the exercise of daily work and when molested, brings illness to the worker, physically or even morally, or psychologically.

Harassment in the workplace, whether moral or sexual, can kill the worker, all at once (there are many cases of worker suicides due to overwork due to harassment) or little by little with the emergence of pathologies such as depression, panic syndrome or *burn-outs* and heart diseases.

The employer who cares about his human and material assets and invests in the company's compliance, creating transparent and accessible rules for repudiation and non-acceptance of harassment, should have fewer problems related to this issue. But situations

related to this problem may still arise, as they will not always be in control of the relationship between workers and managers, such as in social media messages or voluntary rides between them.

In these cases, the company may be penalized in compensation actions for moral or sexual harassment, without even knowing what happened, until the moment of knowledge of the lawsuit filed by the victim. And being in compliance with the laws can be much more than having an ombudsman channel, for example, but to solve the problem so that the work environment is harmonious again without the victim having to leave the company because he can no longer support the actions or gestures of the harasser.

If you have contracted insurance with a policy that protects these situations as a result of an employment contract, you can designate the compliance sector to investigate reported facts and indemnify the victim. Upon knowing that the company maintains this type of policy, the harassed worker will certainly be able to seek the company to be compensated even before filing a labor claim or even having to leave his work environment, the harasser being the one who must be terminated and no longer practice any unlawful act.

In this article it was seen that in the USA, since the beginning of the century, this practice has already been taken as true, which may have even reduced damage to the company's image, because when disclosed, even if without the intention of harming, it takes a long time to have the company's image added back to good practices. In several lawsuits, it is not accepted that these indemnities are covered by genetic policies, since there are already specific policies for these situations.

In Brazil, there are still no rules within labor law that provide for harassment and its compensation, but it would be interesting to start the practice of contracting these insurances, including with a possible provision in Collective Labor Agreements, as the result of collective bargaining between unions. Possibly, there would be a lower number of labor complaints, healthier work environments, more satisfied workers, more denounced harassers and the company's image preserved, with consequent sustainable profit.

REFERENCES

1. Alkimin, M. A. (2010). Assédio moral na relação de trabalho (2ª ed.). Juruá.

2. Antonik, L. R. (2016). Compliance, ética, responsabilidade social e empresarial [Edição Kindle]. Alta Books.

3. Azzari, B., Silva, A. S., & Chiarello, F. (2020). Ética e integridades nas instituições de ensino superior: A importância da implementação de programas de compliance nas universidades. Revista Direito e Brasil. https://www.indexlaw.org/index.php/rdb/article/view/6252

4. Baldissera, R. (2000). Comunicação organizacional: O treinamento de recursos humanos como rito de passagem. Unisinos.

5. Catlett, S. T., & Gray, M. J. (2003, January 13). Employment insurance is complex. National Law Journal, 26, B10.

6. Chiarello, F., & Scalisse, A. (2019). Compliance na administração pública. In A. S. Higa & A. B. de Sousa Júnior (Eds.), Temas atuais de direito público: Estudos em homenagem ao Professor Toshio Mukai (pp. [número de páginas não especificado]). Thoth.

7. Controladoria Geral da União. (2015). Programa de integridade: Diretrizes para empresas privadas. https://www.gov.br/cgu/pt-br/centrais-de-conteudo/publicacoes/integridade/arquivos/programa-de-integridade-diretrizes-para-empresas-privadas.pdf

8. Curvello, J. J. A. (1996). A comunicação interna e o fim do vínculo e da estabilidade nas organizações [Paper apresentado no GT Comunicação Organizacional, XIX Congresso INTERCOM, Londrina].

9. Dimbley, R. (1990). Mais do que palavras: Uma introdução à comunicação (P. Cabral, Trad.). Summus.

10. Duncan, E. E. (2005). Insurance coverage for sexual harassment in the workplace. [Documento online]. https://[insira URL válida, a fornecida está incompleta]

11. Faria, L., & Loureiro, N. (2020). Equilíbrio família-trabalho: Considerações a partir da pandemia do Covid-19 para o trabalho e a aprendizagem em casa. Psique, 16(2). https://repositorio.ual.pt/bitstream/11144/5094/1/PSIQUE_XVI_2_Equilibrio.pdf

12. Figueiredo, E. J. de. (2011). A importância da comunicação interna nas organizações. [Editora não especificada].

13. Figueiredo, G. J. P. de. (2007). Direito ambiental e a saúde dos trabalhadores (2ª ed.). LTr.

14. Fiorillo, C. A. P., & Rodrigues, M. A. (1997). Manual de direito ambiental e legislação aplicável. Max Limonad.

15. Fisher, R., & Shapiro, D. (2009). Além da razão: A força da emoção na solução de conflitos (A. Shapiro, Trad.). Imago.

16. Florêncio Filho, M. A. P., & Zanon, P. B. (2019). A efetividade das políticas públicas de criminal compliance para a prevenção da corrupção no Brasil. In A. F. Messa, P. de T. Domingues, & J. L. M. Esteves (Eds.), Governança, compliance e corrupção (pp. [número de páginas não especificado]). Almedina.

17. Instituto Brasileiro de Governança Corporativa. (2018). Código das melhores práticas de governança corporativa (5ª ed.). IBGC. https://conhecimento.ibgc.org.br/Lists/Publicacoes/Attachments/21138/Publicacao-IBGC-CodigodasMelhoresPraticasdeGC-5aEdicao.pdf

18. Justia US Law. (2001). Truck Insurance Exchange v. Gagnon, 33 P.3d 901, 906 (N.M. Ct. App. 2001). https://law.justia.com/cases/new-mexico/court-of-appeals/2001/f580-2536a-2611e.html

19. Mateo, R. M. (2003). Manual de derecho ambiental (3ª ed.). Aranzadi.

20. Moraes, A. de. (2008). Direito constitucional. Atlas.

21. Oliveira, J. A. P. de. (2013). Empresas na sociedade: Sustentabilidade e responsabilidade social (2ª ed.). Elsevier.

22. Oliveira, S. G. de. (2002). Proteção jurídica à saúde do trabalhador (2ª ed.). LTr.

23. Padilha, N. S. (2011). O equilíbrio do meio ambiente do trabalho: Direito fundamental do trabalhador e de espaço interdisciplinar entre o direito do trabalho e o direito ambiental. Revista do Tribunal Superior do Trabalho, 77(4), [número de páginas não especificado].

24. Peters, B. G. (2013). O que é governança? [Documento online]. [URL fornecida inválida, substituir por URL válida].

25. Rêgo, F. G. T. (2002). Tratado de comunicação organizacional e política. Pioneira Thompson Learning.

26. Ribeiro, M. C. P., & Diniz, P. D. F. (2015). Compliance e Lei Anticorrupção nas empresas. Revista do Senado Federal, 52(205), 87-105. https://[insira URL válida, a fornecida é um caminho local]

27. Ruggiero, A. P. (2002). Qualidade da comunicação interna. [Editora não especificada].

28. Silva, J. A. (2002). Direito ambiental constitucional. Malheiros.

29. Thome, C. F. (2009). O assédio moral nas relações de emprego. LTr.

30. Zbyszewska, A. (2018). Regulating work with people and nature in mind: Feminist reflections. Comparative Labor Law & Policy Journal, 40(1), 9-34.