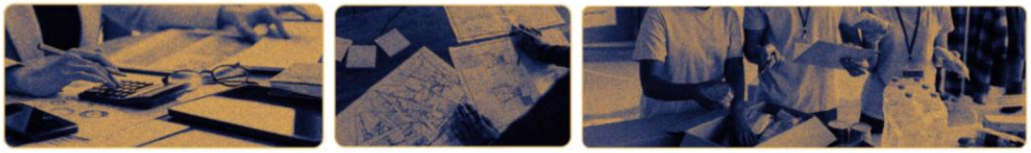

IMPACTO CIENTÍFICO EDITORA

THE RIGHT TO TEMPORARY STABILITY OF THE PREGNANT WOMAN IN THE FACE OF A FIXED-TERM EMPLOYMENT CONTRACT[1]

10.56238/edimpacto2025.021-001

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ABSTRACT

Maternity protection is one of the fundamental pillars of Labor Law, directly reflecting the constitutional principles of human dignity, gender equality, and the social valorization of work. The present work aims to analyze the right to temporary stability of pregnant women within the scope of fixed-term employment contracts, in the light of the constitutional principles of human dignity, gender equality, and maternity protection. The methodology adopted in this research is qualitative, with an exploratory and descriptive approach, based on bibliographic and documentary review. Constitutional provisions, infra-constitutional legislation, international conventions, specialized doctrine, and recent jurisprudence of the labor courts, especially the Superior Labor Court (TST), were analyzed.

Keywords: Employment Contract. Deadline. Stability. Pregnant woman.

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INTRODUCTION

Maternity protection is one of the fundamental pillars of Labor Law, directly reflecting the constitutional principles of human dignity, gender equality, and the social valorization of work. In the Brazilian legal context, the provisional stability of the pregnant woman is presented as an essential mechanism to ensure not only the rights of the working woman but also the protection of the unborn child, recognizing maternity as a relevant social value.

The Federal Constitution of 1988 consolidated important advances in this field, by expressly providing for job stability from the confirmation of pregnancy until five months after childbirth (article 10, II, "b", of the ADCT), in addition to guaranteeing maternity leave and establishing guidelines for non-discrimination on the basis of sex.

The research is justified given the controversies regarding the application of this guarantee in fixed-term employment contracts, a modality that has become increasingly common in the Brazilian labor market, especially after the Labor Reform. Given the above, the present research aims to answer the question: What are the main challenges faced in the applicability of the right to provisional stability to pregnant women in the form of a fixed-term employment contract?

The present research aims to analyze the right to temporary stability of pregnant women within the scope of fixed-term employment contracts, in the light of the constitutional principles of human dignity, gender equality, and maternity protection. To this end, the historical evolution of women's rights at work, the constitutional foundations of stability, the interpretation of jurisprudence, as well as the social and economic impacts of this protection, will be analyzed.

This is a discussion of high legal and social relevance, since it involves the realization of women's fundamental rights, the protection of maternity, and the promotion of a fairer and more egalitarian work environment.

In the end, it is intended to demonstrate that, even in the face of divergent interpretations, the stability of the pregnant woman must prevail as a constitutionally guaranteed right, regardless of the contractual modality signed.

The methodology adopted in this research is qualitative, with an exploratory and descriptive approach, based on bibliographic and documentary review. Constitutional provisions, infra-constitutional legislation, international conventions, specialized doctrine, and recent jurisprudence of the labor courts, especially the Superior Labor Court (TST), were analyzed. The method of approach used is deductive, starting from general principles of Constitutional Law and Labor Law to examine specific cases related to the stability of pregnant women in fixed-term contracts.

The structure of the work is organized into four chapters. The first chapter presents the historical evolution of women's rights in the workplace, with emphasis on the insertion of women in the labor market and legal protection for maternity before and after the 1988 Constitution. The second chapter delves into the constitutional foundations that sustain the stability of the pregnant woman, such as the principles of human dignity, equality, and protection of maternity and the unborn child.

In the third chapter, the provisional stability of pregnant women in Labor Law is examined, focusing on its legal provision, the interpretation of Precedent 244 of the TST, and the challenges faced in its implementation. Finally, the fourth chapter specifically discusses the application of this stability in fixed-term contracts, presenting the concept of this contractual modality, the existing jurisprudential divergences, and the practical impacts of this protection on the labor market.

This structure aims to offer a critical and in-depth analysis of the subject, contributing to the legal debate and to the construction of solutions that reconcile the constitutional protection of maternity with the contemporary dynamics of labor relations.

THE HISTORICAL EVOLUTION OF WOMEN'S RIGHTS IN THE WORKPLACE

The insertion of women in the labor market is marked by a historical path permeated by exclusions, stigmas, and overcomings. Before even talking about labor rights or legal protection, it is necessary to understand the origin of the concept of work and the role historically attributed to women in different societies.

From an etymological point of view, the word "work" carries a symbolic weight of suffering and punishment. It derives from the Latin *tripalium*, an instrument of torture used to immobilize animals, whose association with the idea of toil refers to the painful character attributed to work activities (Cassar, 2018).

In this sense, Leite (2022, p. 53) reinforces this conception by stating that "work in Antiquity was a punishment, giving us an idea of pity, fatigue, painful and heavy tasks", being reserved for the lower layers of society or the enslaved.

During Antiquity, productive work was largely performed by slaves, while free citizens, especially men, devoted themselves to politics, war, and philosophy. In this context, the role of women was restricted to the domestic space, focused on reproduction and family care.

As Martins (2023, p. 79) points out, "the slave was not considered a subject of rights, as he was the property of the dominus", and the free woman, in turn, did not have full citizenship or recognition as an autonomous productive force either.

With the advent of the Industrial Revolution in the eighteenth and nineteenth centuries, this scenario began to transform. The mechanization of production, accelerated urbanization, and the growing demand for labor in factories have made room for the massive entry of women into the labor market, especially in sectors such as textiles and food.

However, this inclusion was marked by degrading conditions: excessive working hours, absence of rights, lower wages than men, and strong exploitation of the female workforce, including children (Jorge Neto; Cavalcante, 2019).

Costa (2017) observes that women's work, in this period, was often associated with informality and precariousness, reflecting the social view that women were a secondary and complementary workforce to men's.

This perspective was also consolidated in the legal field, where the legal system was slow to recognize women as subjects full of labor rights. Even at the beginning of the twentieth century, it was common for labor laws to exclude women from basic guarantees, or to subordinate them to the authorization of their husbands to carry out paid activities.

In Brazil, the formal presence of women in the world of work gained strength only from the 1930s onwards, especially after the 1930 Revolution and the creation of the Ministry of Labor, Industry, and Commerce.

The 1934 Constitution was the first to provide for equal pay between men and women for work of equal value, and in 1943, the Consolidation of Labor Laws (CLT) was enacted, which systematized and regulated labor rights, including some aimed specifically at women (Brasil, 1943).

The first legislation aimed directly at the protection of working women, however, dates back to Law No. 1,597/1917, which established the State Sanitary Service and established restrictions on the work of pregnant women in industrial establishments. At the federal level, Decree No. 16,300/1923, which regulated the National Department of Public Health, provided for a rest period of thirty days before and thirty days after childbirth for employed women, although on an optional basis (Costa, 2017).

The CLT, in turn, represented an advance by consolidating rules such as the limitation of the working day, paid weekly rest, the prohibition of dangerous activities for women, and the granting of maternity leave. However, such norms were justified by a protectionist bias, which reinforced stereotypes of female fragility and incapacity, making it difficult for women to access certain jobs considered "inadequate" for their "biotype" (Delgado, 2020).

The conception of women as someone to be protected, and not as autonomous and competent workers, was dominant. Hirata (2002) points out that this patriarchal logic contributed to the maintenance of the sexual division of labor, in which the functions of care,

cleaning, and support were considered "natural" extensions of female responsibilities. Even when inserted in factory environments, women occupied the simplest, most repetitive, and lowest-paid positions.

It was only with the transformations caused by the world wars, the modernization of economies, and the strengthening of feminist movements that this reality began to change. Women, summoned to replace the men sent to the front, proved their productive, technical, and intellectual capacity, which contributed to altering, albeit slowly, the social perception of their role in the public sphere.

In Brazil, the struggle for the legal recognition of women's rights was driven, above all, from the 1970s and 1980s, amid the process of redemocratization and the rise of agendas for gender equality, reproductive freedom, and economic autonomy (Silva, 2010).

Therefore, the insertion of women in the labor market reflects a historical process of struggles and transformations. From the shackles of patriarchy and invisibility in ancient societies to the construction of a space of protagonism and citizenship, women have come a long way, still in constant dispute and renewal.

The recognition of this path is essential to understanding the contemporary dynamics of women's work and to building effective strategies for social justice and gender equity.

THE LEGAL PROTECTION OF MATERNITY BEFORE THE 1988 CONSTITUTION

Before the enactment of the Federal Constitution of 1988, the legal protection of maternity in Brazil was already the subject of specific regulations, albeit in a fragmented and limited manner. Since the 1930s, Brazilian labor legislation has provided for some guarantees aimed at the protection of pregnant women, based on a logic of tutelage and gender differentiation, rooted both in the European legal tradition and in patriarchal conceptions of the role of women in society (Brasil, 1943).

The CLT, enacted in 1943 through Decree-Law No. 5,452, was the main legal instrument for regulating labor rights in the period before the 1988 Constitution. It is observed that the CLT already provided, in its original text, a series of protective provisions for maternity, such as the right to maternity leave of 84 days, temporary job stability, and special working conditions.

It is noteworthy that article 392 of the CLT establishes: "The pregnant employee is entitled to maternity leave of 84 (eighty-four) days, without prejudice to employment and salary" (Brasil, 1943). This protection, however, was applied in a restricted way and often depended on the formalization of the employment relationship, which excluded a large part of informal workers.

In addition, job stability still lacked clearer regulation, which allowed many women to be dismissed during pregnancy or shortly after returning from leave.

The labor doctrine of the time recognized the protective nature of the rule, but also criticized its limited effectiveness in the face of the social reality of working women. According to Delgado (2018, p. 100), "the legislation prior to the 1988 Constitution was marked by a paternalistic and welfare vision, which saw women not as subjects of rights, but as someone to be protected in the workplace".

In addition to maternity leave, the CLT provides for other protection mechanisms, such as the prohibition of activities considered unhealthy or dangerous for pregnant and breastfeeding women, based on article 394. However, these restrictions were often used in a discriminatory way by employers, who saw the hiring of women as a possible legal burden. This practice contributed to the segmentation of the labor market, as studies on gender inequality point out.

Maternity protection is also reinforced by international standards ratified by Brazil, such as Convention No. 103 of the International Labor Organization (ILO), which deals with maternity protection and establishes minimum protection parameters, such as the right to paid maternity leave and not arbitrary dismissal arbitrarily during pregnancy and the postpartum period.

Brazil ratified the Convention in 1965, which demonstrated a certain commitment to women's labor rights, even though its practical application faced obstacles. According to the ILO (2000), "the effectiveness of conventions depends on internal normative adaptation and adequate supervision by the State".

Another important milestone was the Statute of the Married Woman, instituted by Law No. 4,121 of 1962, which, although not directly linked to work, represented an advance in the legal autonomy of women, removing the requirement of the husband's authorization to work. This achievement paved the way for a greater insertion of women in the formal labor market, which consequently increased the need for legal protection specific to maternity. (Brazil, 1962).

In this context, the legal protection of maternity before 1988 fulfilled an important function, but it was still quite limited. There was a lack of provisions that recognized maternity as a social right and that integrated this protection into the principle of gender equality.

Barros (2017, p. 482) observes that "the protective norms of women, especially pregnant women, have evolved from a paradigm of biological inequality, but not always accompanied by a policy of material equality in the work environment".

In addition, there was little supervision and effectiveness of the existing guarantees, especially with regard to the reality of domestic, rural and informal workers, who were often on the margins of the legislation. This scenario highlights the importance of the 1988 Constitution as a mark of rupture with this fragmented and excluding model, by enshrining the protection of maternity as one of the foundations of the social order.

Therefore, the period before the 1988 Constitution was characterized by a set of legal norms that, although significant for the time, were unable to fully ensure the rights of pregnant women in the labor market. Although the legislation provided for specific protective mechanisms, it lacked a more comprehensive and egalitarian vision, which would only be consolidated with the Citizens' Constitution.

ADVANCES WITH THE FEDERAL CONSTITUTION OF 1988

Article 5 of the Federal Constitution of 1988 enshrines the principle of formal equality between men and women, establishing that "everyone is equal before the law, without distinction of any kind" (Brasil, 1988).

Equality between the sexes is also reaffirmed in item I of the same article, which determines the equality of rights and obligations between men and women. This provision represented an important advance over the previous legislation, which treated women in a tutelary way, often linking their rights to the civil condition of wife or mother.

In the labor field, the advances are even more expressive, with emphasis on article 7, which deals with the rights of urban and rural workers, brings specific provisions aimed at the protection of women, highlighting item XVIII, which ensures "leave to pregnant women, without prejudice to employment and wages, with a duration of one hundred and twenty days" (Brasil, 1988). This provision extended the period of maternity leave, which was previously 84 days according to the CLT, and incorporated this right into the list of constitutional guarantees, making its protection more solid and effective.

In addition, item XX of the same article establishes the "protection of the women's labor market, through specific incentives, under the terms of the law", which represents an institutional recognition of the need for public policies that promote gender equality in the world of work. (Brazil, 1988).

According to Delgado (2018, p. 215), "the 1988 Constitution imposed on the Brazilian State the duty to promote policies that remove obstacles to the realization of equality between men and women in the workplace".

Another important advance was the introduction of temporary job stability for pregnant women, guaranteed in the Transitional Constitutional Provisions Act (ADCT), article 10, item

II, paragraph "b", which provides: "the arbitrary or unjust dismissal of a pregnant employee is prohibited, from the confirmation of pregnancy until five months after childbirth" (Brasil, 1988). This rule guaranteed legal certainty to workers during and after the gestational period, combating the discriminatory practice of dismissals motivated by pregnancy.

In addition to the guarantees directly related to maternity, the Constitution also innovated by recognizing the social function of maternity in the family and social context. Article 226, § 8, establishes that "the State shall ensure assistance to the family in the person of each of those who are part of it, creating mechanisms to curb violence in the context of their relationships". (Brazil, 1988). This indirect protection, although broader, reinforces the duty of the State to promote policies to support pregnant women and the family as an essential nucleus of society.

From a doctrinal point of view, the 1988 Constitution represented a paradigm shift, by abandoning the paternalistic bias of the previous legislation and adopting an approach based on the dignity of the human person and substantive equality.

In the words of Barros (2017, p. 495), "the protection of pregnant women has gained the contours of a fundamental right, requiring the State to take concrete measures for its effectiveness at the normative and institutional level".

The context of the country's redemocratization was decisive for the expansion of these rights, it should be noted that the National Constituent Assembly was marked by the intense participation of social and feminist movements, which acted decisively for the inclusion of provisions that contemplated the historical demands of women.

As Costa and Bruschini (2007, p. 97) point out, "the new Constitution legally translated a new social sensitivity about gender equality and the valorization of women as subjects of rights in the public space".

It is important to note that, as of the new Constitution, the legal system began to allow the expansion of maternity rights also through infra-constitutional legislation, such as the later Law No. 11,770/2008, which instituted the Corporate Citizen Program and made it possible to extend maternity leave to up to 180 days. Although this rule is later, it stems from the constitutional basis established in 1988, which opened space for more protective public policies.

CONSTITUTIONAL FOUNDATIONS OF THE STABILITY OF THE PREGNANT WOMAN

The principle of the dignity of the human person is provided for in item III of article 1 of the Federal Constitution of 1988 (Brazil, 1988) states that:

> Article 1 The Federative Republic of Brazil, formed by the indissoluble union of the States and Municipalities and the Federal District, is constituted as a Democratic State of Law and has as its foundations:
> […]
> III - the dignity of the human person;

The dignity of the human person has a higher function. Since dignity is the supreme constitutional value and, as such, it needs to serve, not only as a basis for the decision of concrete cases, but mainly as a guideline for the elaboration, interpretation and application of the norms that make up the legal order in general, and the system of fundamental rights, in particular (Novelino, 2016).

The principle of the dignity of the human person is not a right in itself, but an intrinsic quality of every human being, regardless of their origin, gender, age, social condition, or any other requirement. In this sense, it cannot be considered as something relative (Novelino, 2016).

In the words of Maurer (2016, p. 252):

> The person has no more or less dignity than the other person. It is not, therefore, a question of value, of hierarchy, of a greater or lesser dignity. That is why the dignity of man is an absolute. It is total and indestructible. It is what we call inadmissible, it cannot be lost.

It is noted that the principle of the dignity of the human person seeks, in general, to ensure that people have a dignified life, consisting of an existential minimum, observing the fundamental rights provided for in the Federal Constitution, such as the right to education, basic health, assistance in case of need, access to justice, among others.

It should be noted that the principle of equality is also based on the objective of reducing social inequalities, as well as several specific equality rights were also guaranteed in the constitutional text, such as: (a) equality between men and women; (b) between urban and rural workers, regardless of gender, age, color, marital status or type of work (c) between native and naturalized Brazilians, except in the cases provided for by the Constitution itself, and (d) between the votes of each voter (Novelino, 2016).

Novelino (2016) teaches that this stems from the principle of equality, since the Federal Constitution provides for equality and the prohibition of discrimination on the grounds of, namely, sex, race, color or ethnic or social origin, genetic characteristics, language, religion or beliefs, political or other opinions, membership of a national minority, property, birth, disability, age or sexual orientation.

Along the same lines, Article 3 of the 1988 Federal Constitution states:

> Article 3 The fundamental objectives of the Federative Republic of Brazil are:
> [...]

> IV – to promote the good of all, without prejudice of origin, race, sex, color, age, and any other forms of discrimination." Thus, this principle is fundamental and aims to ensure compliance with equality in society. This refers to equal treatment and fairness. (Brazil, 1988).

It is important to clarify that the principle of non-discrimination derives from the principle of equality; the difference between the two principles occurs in their application, as the principle of equality determines that all people must be treated equally, without undue privileges or disadvantages (Ferraz, 2013).

Now, about the principle of non-discrimination, it is a direct consequence of the principle of equality, functioning as a mechanism to prevent unfair treatment based on personal characteristics, such as gender, race, age, religion, or social condition. It ensures that no one is harmed or denied their rights based on arbitrary factors (Ferraz, 2013).

It should be noted that the protection of maternity and pregnant women is provided for in the Federal Constitution in Article 201, item II, about social security. Social assistance, provided to those who need it, does not depend on social security contributions, and must protect the family and maternity, as also stated in article 203, item I, of the FC. (Brazil, 1988). Both provisions guarantee women that, when they become mothers, when their children are born, they will enjoy special protection by the Brazilian State.

The Federal Constitution of 1988, in article 7, item XVIII, guarantees working women, among others, "the right to maternity leave, without prejudice to employment and salary, lasting 120 days." (Brazil, 1988).

The importance of these rights for women who are mothers is evident when one considers that, from a historical point of view, many women were restricted to the domestic space because they exercised the social function of mothers, wives and housewives.

Thus, article 7, XVIII, guaranteed maternity leave of 120 days, while item XX provides for the protection of the women's labor market, through legal incentives, also prohibiting, in item XXX, the difference in wages, exercise of functions and admission criteria by reason of sex, age, color or marital status. (Brazil, 1988).

Maternity leave aims to guarantee women that they can stop working, without ceasing to receive their salary, to breastfeed their child at least until the fourth month of life. This right is recognized and effective for all women who have a formal employment relationship (Ferraz, 2013).

In addition, it also affects the unborn child, since maternity protection extends to the unborn baby, guaranteeing it adequate conditions for development and survival.

Thus, the recognition of the unborn child as a subject of rights is essential to ensure that he receives the necessary care from pregnancy, which includes the preservation of the

health of both, the right to life, and protection against situations that may compromise his well-being.

THE PROVISIONAL STABILITY OF THE PREGNANT WOMAN IN LABOR LAW

The pregnant woman also has a guaranteed job, from the confirmation of pregnancy until five months after delivery. In this sense, article 10, II, "b", of the ADCT of the Federal Constitution (Brazil, 1988):

> Article 10. Until the complementary law referred to in article 7, I, of the Constitution is enacted:
> [...]
> II – Arbitrary dismissal or dismissal without just cause is prohibited:
> [...]
> b) of the pregnant employee, from the confirmation of pregnancy until five months after delivery.

In other words, it means that the pregnant employee cannot be dismissed, except for just cause, from the confirmation of pregnancy until 5 months after delivery (art. 10, II, b, ADCT). In cases where the death of the mother occurs, stability will be ensured to the one who has custody of her child (art. 1, LC 146/14). In the same sense, Gaia (2017, p. 512):

> The provisional stability of pregnant workers, from the confirmation of pregnancy until five months after delivery, was one of the structural measures adopted by the Federal Constitution of 1988 to protect women's work. But not only are women protected with the guarantee of temporary job stability. The child in his development and formation is also guaranteed protection, as an individual subject of dignity, when the pregnant worker is guaranteed protection against arbitrary dismissal.

It should be noted that this constitutional protection also applies to the adopting employee to whom provisional custody has been granted, according to article 391-A, sole paragraph, of the CLT (Brazil, 1943).

It is important to highlight that the guarantee in question goes beyond the personal protection of the employed woman, aiming mainly to ensure minimally favorable conditions for the unborn child, both during pregnancy and throughout the first months of life. Exactly for this reason, the waiver of the job guarantee by the pregnant woman is not normally admitted, as she would waive the right of a third party.

The unborn child is an entity already conceived, however, it differs from the person who has not yet been conceived and who may be a subject of rights in the future, depending on the birth. It is a future condition, that is, an eventual offspring.

This context is related to the eventual right, that is, a right in a mere situation of potentiality, of training, for whom it was not even conceived (Venosa, 2023). It means that the unborn child is an entity in expectation, that is, the law exists by reason of this being that is

expected, thus, if it is born alive, the trilogy of law is completed. And if he is not born alive, the law is not integrated (Pereira, 2022).

In this sense, the Federal Supreme Court (STF) decided, as well as the Superior Labor Court (TST), through the OJ of SDC 30: "Stability of the pregnant woman. Waiver or Settlement of Constitutional Rights."

Under the terms of article 10, II, b, of the ADCT, maternity protection was elevated to the constitutional hierarchy, as it removed from the scope of the employer's potestative right the possibility of arbitrarily dismissing an employee in a pregnant state.

Therefore, according to article 9 of the CLT, the clause that establishes the possibility of waiver or transaction, by the pregnant woman, of the guarantees related to the maintenance of employment and salary becomes null and void.

In the same sense, the TST in the decision of the Appeal of Review RR-1141-74.2013.5.03.0039 judged:

> [...] PROVISIONAL STABILITY. RESIGNATION. PREGNANT. The current, iterative and notorious jurisprudence of this House positions itself in the sense of the impossibility of renouncing the provisional stability of the pregnant employee, according to the guideline outlined in article 10, II, "b", of the ADCT, insofar as it is a rule especially aimed at the protection of the unborn child and, therefore, the pregnant woman could not have it. Rather, the employer's strict liability for the wages and guarantees inherent to the employment contract is established throughout the period during which said stability is ensured. Previous. Appeal for review not known (TST, 8th Panel, RR-1141-74.2013.5.03.0039, Rel. Des. Summoned Breno Medeiros, Judgment Date: 16.12.2015, DEJT 18.12.2015).

In this context, Law No. 9,029/95 in article 3 asserts that the termination of the employment relationship due to a discriminatory act, in addition to the right to compensation for moral damage, allows the employee to choose between: (a) reinstatement with full compensation for the entire period of leave, upon payment of the remuneration due, monetarily adjusted, plus legal interest; (b) the perception, in double, of the remuneration for the period of leave, monetarily corrected and legal interest (Brasil, 1995).

The prevailing jurisprudence recognizes that, even if there is adherence to the Voluntary Dismissal Plan (PDV**),** if the employee is pregnant at the time of contract termination, the right to stability remains, unless there is an express resignation, with full legal assistance. This interpretation is supported by Precedent 378, item II, of the TST, which reiterates the protective nature of the stability institute.

From a doctrinal point of view, Delgado (2020, p. 430) observes that pregnancy stability is justified not only as a measure of social justice, but also as an instrument of public health policy, as it contributes to ensuring financial security, access to medical services, and better living conditions for the mother and newborn.

Still, in practice, many women face difficulties in fully enjoying this guarantee. Cases of disguised dismissal, psychological pressure to request dismissal, and denial of reinstatement are frequent.

Data from the Public Ministry of Labor (MPT) and the Brazilian Institute of Geography and Statistics (IBGE) reveal that, in 2022, about 30% of workers who became pregnant reported some type of professional instability or embarrassment in the workplace after confirmation of pregnancy (Brasil, 2023).

In these situations, the legislation provides for the possibility of reinstating the employee to the job or the payment of substitute compensation corresponding to the stability period. The decision between one measure and the other may vary according to the circumstances of the specific case and the interest of the employee, as long as there is no prejudice to her condition.

It is important to note that stability also extends to domestic workers, as provided for in Constitutional Amendment No. 72/2013 and regulated by Complementary Law No. 150/2015, which extended labor rights to domestic workers, including gestational stability, maternity leave, and FGTS.

Therefore, the period of guaranteed employment of pregnant stability is configured as a fundamental right of a social nature, supported by the Federal Constitution, by the consolidated jurisprudence of the higher courts and by international instruments of maternity protection.

Its purpose is to safeguard the health of women and children, promote equity in the labor market and combat discriminatory practices based on the reproductive condition of women. It is, therefore, a historic achievement that, despite normative advances, still faces significant challenges for its full effectiveness in the daily reality of Brazilian workers.

THE STABILITY OF THE PREGNANT WOMAN IN A FIXED-TERM CONTRACT

Professors Jouberto and Jorge Neto (2019, p. 245) explain that the individual employment contract represents "a legal transaction by which an individual (employee) undertakes, through the payment of a consideration (salary), to provide non-occasional work for the benefit of another person, individual or legal entity (employer), to whom he is legally subordinated.

The main classification of the employment contract is: for a fixed period and an indefinite period. For this study, the fixed-term contract will be deepened.

The execution of the fixed-term contract must comply with the legal hypotheses and rules determined in Article 443, paragraphs 1 and 2 of the CLT. (Brazil, 1943):

> Article 443. The individual employment contract may be tacitly or expressly agreed, verbally or in writing, for a fixed or indefinite term, or the provision of intermittent work.
> Paragraph 1 - An employment contract whose validity depends on a prefixed term or the performance of specified services or on the performance of a certain event that can be approximately foreseen is considered to be of a fixed term.
> Paragraph 2 - The fixed-term contract shall only be valid in the case of:
> a) of service whose nature or transitory nature justifies the predetermination of the term;
> b) business activities of a transitory nature;
> c) of a probationary contract.

It is important to highlight that, observing the principle of continuity of the employment relationship, present in Labor Law, the presumption is that the contract is for an indefinite term, allowing for a fixed-term contract only in the cases admitted in the article cited above (Garcia, 2024).

The fixed-term employment contract is not only the one in which a deadline has been set for its termination, since it is also included in the aforementioned contractual modality: the labor agreement whose duration depends on the execution of specified services, such as the construction of a certain work; and the contract whose validity depends on a certain event susceptible to approximate forecasting, such as the harvest contract (Garcia, 2024).

In the case of a service whose nature or transitory nature justifies the predetermination of the term occurs when the employee is hired to provide a transitory service, such as due to an increase in production during festive seasons, the fixed-term contract is valid.

In business activities of a transitory nature, this happens when the nature of the service is transitory. For example, the company constituted only to carry out a certain activity of a certain duration, such as organizing an excursion to visit a certain event in a certain place, or selling products related to the festivities of the month of June, ending the business activity soon after these events.

In this case, the hiring of the employee for a fixed period is admitted, that is, with the duration of the employment relationship only for the duration of the company itself, understood as an organized activity (Garcia, 2024).

It should be noted that the probationary contract has several doctrinal discussions about its legal nature. According to the legal guidance § 2, c, of article 443 of the CLT, added by Decree-Law 229/1967, the aforementioned agreement was inserted as one of the modalities of a fixed-term contract. Thus, according to the guidance of our Positive Law, the probationary contract is subject to a final term (Garcia, 2024).

Therefore, the fixed-term employment contract is one whose validity depends on a prefixed term or the performance of specified services or even the performance of a certain event susceptible to approximate foresight. It is admitted in the following cases: (a) of service

whose nature or transitory nature justifies the predetermination of the term; (b) business activities of a transitory nature; (c) a probationary contract.

According to Leite (2019, p. 303), "the provisional stability of the pregnant woman does not distinguish the type of employment contract signed, as it aims to protect maternity and the unborn child, and not the contractual form". This understanding has been reiterated by the Superior Labor Court (TST), whose jurisprudence consolidated through Precedent 244, item III, is clear in stating that "the pregnant employee is entitled to the provisional stability provided for in article 10, item II, paragraph 'b', of the ADCT, even in the event of admission under a fixed-term contract" (TST, 2024).

The protection of pregnant women in fixed-term contracts is based, above all, on the dignity of the human person, a constitutional principle provided for in article 1, item III, of the Federal Constitution, and on the social value of work. The rule seeks to ensure minimum conditions of maternity protection, including job stability, access to maternity leave, and financial security during and after pregnancy.

Delgado (2020, p. 432) reinforces this perspective by highlighting that "the stability of the pregnant woman has ethical-legal content deeply linked to the social function of work and the full protection of the unborn child, integrating into the system of fundamental rights".

In this way, stability is conceived not as a privilege of the worker, but as an instrument of social justice that aims to ensure the well-being of the mother and child.

However, the application of this guarantee to fixed-term contracts is not without controversy. One of the main objections refers to the possible incompatibility between the provisional stability and the transitory nature of the contract. It is argued that, since the temporary contract is signed with an end date previously known by both parties, there would be no arbitrary dismissal, but only the fulfillment of the contractual term.

This line of reasoning was adopted, for example, by decisions of Regional Labor Courts that denied stability to pregnant women hired under a temporary or trial regime (Brasil, 2023).

However, this interpretation has been superseded by the most recent case law of the TST, which understands that the end of the contract determined, when pregnancy occurs during its term, does not remove the right to stability.

In these cases, it is understood that the dismissal, even if formally justified by the termination of the contract, constitutes a violation of the constitutional right to maternity protection. Thus, either the employee must be reinstated to the job, or she must receive compensation corresponding to the stability period.

This understanding is also in line with the provisions of article 391-A of the CLT, introduced by Law No. 9,029/1995 and expanded by Law No. 13,509/2017, which states that "the confirmation of pregnancy during the course of the employment contract, including during the notice period, ensures the right to stability." (Brazil, 2017).

It should be noted that the aforementioned rule applies equally to the adopter who has provisional custody for adoption purposes, evidencing the centrality of child protection, more than the contractual modality.

Martinez (2019, p. 219) summarizes this idea well when he states that "provisional legal stability is characterized by the temporary prohibition on the employer's right to terminate, justified by specific and transitory taxable events", and the type of contract signed is irrelevant to its incidence. The focus of the rule is on the condition of the worker, and not on the agreed duration of the work provision.

In addition to legal and jurisprudential support, Convention No. 103 of the International Labor Organization (ILO), ratified by Brazil, which establishes minimum standards of maternity protection, including the guarantee of employment for pregnant women, should also be considered.

Although Brazil has evolved towards Convention No. 183, which is more modern and comprehensive, the ILO principles continue to be relevant interpretative references, especially in the sense of not allowing setbacks in the social rights conquered.

Therefore, the provisional stability of the pregnant woman is fully applicable to fixed-term contracts. The constitutional protection of maternity and the unborn child cannot be relativized due to the temporary nature of the employment relationship.

In this context, this interpretation is essential to ensure coherence in the labor legal system and to enforce women's fundamental rights, especially in a society where informality, turnover, and precarious contracts are still realities faced by many workers.

The application of stability to pregnant women in fixed-term contracts, although it generates practical challenges for employers, must be interpreted based on the principles of human dignity, the social function of work and full protection of the child. It is, therefore, an essential right to build a fairer, more equitable work environment free of gender discrimination.

5.1 JURISPRUDENCE AND DIVERGENT UNDERSTANDINGS

On the subject, there are cases in which the Labor Court has removed the right to stability of pregnant women hired under a temporary contract. The Labor Court of the 3rd Region, for example, in one case denied it. Judge Alexandre Reis of the 1st Labor Court of Pouso Alegre-MG, ruled out the right to job stability intended by a pregnant woman hired

under a temporary employment contract, basing his decision on the terms of Law 6.019/1974 (Brasil, 2023).

In this case, there was no doubt that the employee was pregnant when she was dismissed. However, according to the magistrate, in the absence of a legal provision, the guarantee of provisional stability to pregnant employees provided for in article 10, II, b, of the Transitional Constitutional Provisions Act (ADCT) is inapplicable to the temporary work regime, governed by Law 6,019/1974 (Brasil, 2023).

In the ruling, it was pointed out that the date of conception, whether before or after hiring, is irrelevant for the recognition of the stability of the pregnant woman, under the terms of articles 373-A, IV, of the CLT, and 2, I, of Law 9,029/1995, only the fact that, when dismissed, the plaintiff was pregnant.

Thus, the analysis of the issue was limited to verifying whether, having signed a temporary employment contract, the employee would or would not be entitled to the stability provided for the pregnant woman. And, for the judge, the answer to this question is negative (Brasil, 2023).

In the same sense:

> REGULAR EXPERIENCE CONTRACT. PREGNANT. LACK OF STABILITY. The pregnant employee, hired on an experimental basis, does not enjoy the guarantee referred to in article 10, II, b, of the ADCT, when the contract is terminated at the end of this period. It is inferred that the constitutional protection is against arbitrary dismissal or dismissal without just cause, both of which do not occur when the probationary contract is not transformed into a contract for an indefinite term (TRT4. 8th Panel. RO 00962005020065040381. Judge Maria Cristina Schaan Ferreira).

However, the Superior Labor Court (TST) reinforces the need for a protective interpretation of the worker, highlighting that the principle of human dignity and maternity protection must prevail over the transitory nature of the contract. In the same sense, the 8th Panel of the TST recognized the right to stability of a worker dismissed in the second month of pregnancy, when she was still on a probationary contract after the TRT had taken a contrary position.

> APPEAL FOR REVIEW OF THE COMPLAINANT FILED UNDER LAW 13,467/2017. PROVISIONAL STABILITY. PREGNANT. APPRENTICESHIP CONTRACT. COMPATIBILITY. POLITICAL TRANSCENDENCE RECOGNIZED.
> 1 – In the present case, the TRT understood that the recognition of provisional stability to the pregnant employee was improper, on the grounds that the hiring took place for a fixed term.
> 2 – Article 10, II, b, of the ADCT, prohibits the arbitrary or unjust dismissal of a pregnant employee, from the confirmation of pregnancy until five months after delivery, not establishing any restriction as to the type of employment contract, especially because it is intended for the protection of the unborn child. Judged. Appeal for Review known and granted.

It is noted that there are different positions on the subject, two Labor Courts of Justice have expressed themselves against it, however, the TST has positioned itself in a more protective and favorable way to women.

It should also be noted that, in light of the theme discussed above, it directly impacts the correlation of women with the labor market. As seen in the first section in which the historical evolution of women's rights was addressed, the struggle for them to reach a space in the labor market resulted from long processes of struggle and claims for equal rights and opportunities (Ferraz, 2013).

The prejudice against women in the labor market is due to the cultural factors presented above, but also to the natural condition of being able to become pregnant at any time, which could imply a burden for the employer. The issue of maternity leave in Brazil has always left women at a disadvantage in the labor market (Ferraz, 2013).

This is because, by ratifying ILO Convention No. 3 of 1919, Brazil committed itself to the adoption of maternity leave that should be paid for by a social insurance system. It so happens that the CLT determined that the maternity salary was paid in full by the employer (Ferraz, 2013).

Thus, employing a woman meant the high probability of staying for twelve weeks paying the full salary of someone who was not working, and having to hire, during this period, another employee to take her place. The burden on the employer of women is undisputed. In other words, the application of the stability of the pregnant woman in fixed-term contracts generates significant impacts on the labor market, especially with regard to female employability.

Although the rule aims to ensure maternity protection and avoid discrimination against pregnant women, there are practical impacts of this stability in the hiring of women in certain sectors of the economy (Trubano, 2020).

It turns out that, in recent years and after the Labor Reform, fixed-term hiring has increased, since companies have chosen to keep their employees only during the period in which they really need them, thus not extending contracts unnecessarily, thus reducing charges and expenses (Trubano, 2020).

As a result, fixed-term contracts have increased, discussing the feasibility of the right to stability due to the costs that are generated for the company when a pregnant woman is away postpartum, since she needs to hire another person to replace, pay salaries and even benefits and additional benefits depending on the case.

In light of this, employers may become more cautious in hiring women of childbearing age, especially for temporary and trial contracts, due to the fear that pregnancy will imply the

extension of the contract beyond what was expected. This can result in indirect discriminatory bias, making it even more difficult for women to enter and progress in the labor market.

FINAL CONSIDERATIONS

The present study investigated the correlation and application of the right to stability of pregnant women in fixed-term employment contracts, in the light of constitutional foundations and current labor legislation. From the doctrinal, legal and jurisprudential analysis, it was possible to observe the complexity and relevance of this theme in the current context of the Brazilian labor market.

Initially, the historical path of women's insertion in the work environment was recovered, highlighting the obstacles faced over time and the legislative achievements obtained, especially after the promulgation of the Federal Constitution of 1988. With this, it was evident that maternity protection is a social achievement that directly reflects the principles of human dignity, gender equality and full protection of the unborn child.

The research showed that the provisional stability of the pregnant woman is a fundamental right of a social nature, being constitutionally guaranteed from the confirmation of pregnancy until five months after delivery, regardless of the type of contract signed. This interpretation is also supported by the majority jurisprudence of the Superior Labor Court, based on article 10, II, "b", of the ADCT, and by Precedent 244 of the TST, which expand the protection of working women in the name of the effectiveness of fundamental rights.

However, it was observed that the application of this right in fixed-term contracts is still the subject of controversy in regional courts, revealing a scenario of legal uncertainty and divergent interpretations that directly impact the lives of pregnant workers. This reality reinforces the need for a protective constitutional hermeneutics, which places in the foreground the purpose of the norms and the fundamental values of the Brazilian legal system.

The analysis of the jurisprudence allowed us to identify that, although there are decisions contrary to the granting of stability in temporary or probationary contracts, the dominant trend is towards recognizing the right of the pregnant woman, even in the face of the transitory nature of the employment relationship. This is because the focus of protection is not the contract itself, but the condition of the worker and the rights of the unborn child.

In addition, the theoretical approach to the fixed-term contract showed that its very existence must respect the restrictive legal hypotheses, and cannot be used as an instrument to suppress constitutional guarantees. In this sense, the work also reflected on the social and economic impacts resulting from the granting of stability in temporary contracts, especially

with regard to female employability and the challenges faced by companies, reinforcing the need for public policies that reconcile social protection and market dynamism.

Thus, it is concluded that the stability of the pregnant woman, even in fixed-term contracts, is an indispensable measure for the protection of maternity and the promotion of social justice, being a direct expression of the dignity of the human person and the social function of work. Its implementation represents a civilizational advance and must be safeguarded as an unavailable and essential right for the construction of a more just, egalitarian and democratic society.

In view of this, the elaboration of this research proved to be satisfactory, as it allowed the deepening of the applicability of the stability of the pregnant woman, from a critical and multidisciplinary perspective. The proposed objectives were achieved, contributing to the legal debate and raising awareness about the importance of a more inclusive and protective labor system.

REFERENCES

1. Barroso, L. R. (2022). *Curso de direito constitucional contemporâneo: Os conceitos fundamentais e a construção do novo modelo* (10th ed.). SaraivaJur.

2. Brazil. (1988). *Constituição da República Federativa do Brasil de 1988*. Diário Oficial da União. http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm

3. Brazil. (1943). *Decreto-Lei nº 5.452, de 1º de maio de 1943*. Diário Oficial da União. http://www.planalto.gov.br/ccivil_03/decreto-lei/del5452.htm

4. Brazil, Supremo Tribunal Federal. (2018). *Recurso Extraordinário nº 629.053/DF* (Rel. Min. Roberto Barroso). https://www.stf.jus.br

5. Brazil, Tribunal Regional do Trabalho da 4ª Região, 8ª Turma. (n.d.). *Recurso Ordinário nº 0096200-50.2006.5.04.0381* (Rel. Des. Maria Cristina Schaan Ferreira). https://www.tst.jus.br/jurisprudencia

6. Brazil, Tribunal Superior do Trabalho. (n.d.). *Súmula nº 244*. https://www.tst.jus.br/jurisprudencia

7. Cassar, V. B. (2018). *Resumo de direito do trabalho* (6th ed.). Forense; Método.

8. Costa, A. de O. (2017). *História das mulheres no Brasil*. Contexto.

9. Costa, C. C. T. G. de A. (2017). *O direito ao aleitamento materno e a preservação do vínculo mãe-bebê para as militares brasileiras após a licença-maternidade* [Unpublished master's dissertation]. [Institution not specified].

10. Delgado, M. G. (2019). *Curso de direito do trabalho: Obra revista e atualizada conforme a lei da reforma trabalhista e inovações normativas e jurisprudenciais posteriores* (18th ed.). LTr.

11. Ferreira, M. C. S. (2013). *Jurisprudência trabalhista comentada*. TRT4.

12. Gaia, F. S. (2017). Contratação por prazo determinado e estabilidade provisória de gestantes: Uma releitura necessária. *Revista Jurídica Cesumar*, *17*(2), 511–532. https://periodicos.unicesumar.edu.br/index.php/revjuridica/article/view/5556/3028

13. Garcia, G. F. B. (2024). *Curso de direito do trabalho* (19th ed.). SaraivaJur.

14. Hirata, H. (2002). *Nova divisão sexual do trabalho? Um olhar voltado para a empresa e a sociedade*. Boitempo.

15. Instituto de Pesquisa Econômica Aplicada. (2019). *Retrato das desigualdades de gênero e raça*. IPEA.

16. Jorge Neto, F. F., & Cavalcante, J. de Q. P. (2019). *Direito do trabalho* (9th ed.). Atlas.

17. Kanegava, G. C. de J., & Souza, G. M. S. (2022). Licença-maternidade: Uma análise da aplicabilidade da lei que garante estabilidade à empregada gestante. *Jusbrasil*.

https://www.jusbrasil.com.br/artigos/aplicabilidade-da-lei-que-garante-estabilidade-a-empregada-gestante/1680401182

18. Leite, C. H. B. (2022). *Curso de direito do trabalho* (14th ed.). SaraivaJur.

19. Martinez, L. (2019). *Curso de direito do trabalho: Relações trabalhistas individuais, sindicais e coletivas* (10th ed.). Saraiva Educação.

20. Martins, S. P. (2024). *Direito do trabalho* (40th ed.). SaraivaJur.

21. Maurer, B. (2016). [Untitled contribution]. In M. Novelino, *Curso de direito constitucional* (11th ed., pp. [page range not specified]). JusPodivm.

22. Novelino, M. (2016). *Curso de direito constitucional* (11th ed.). JusPodivm.

23. Pereira, C. M. da S. (2022). *Instituições de direito civil: Introdução ao direito civil: Teoria geral do direito civil* (34th ed.). Forense.

24. Resende, L. F. (2023). *Manual de direito do trabalho* (2nd ed.). JusPodivm.

25. Resende, R. (2023). *Direito do trabalho* (9th ed.). Forense.

26. Sandes, F., & Renzetti, R. (2020). *Direito do trabalho e processo do trabalho* (2nd ed.). Somos Educação.

27. Sandes, R. N. P. (2020). *Direito do trabalho: Teoria e prática* (5th ed.). LTr.

28. Silva, M. O. da S. e. (2010). *Trabalho e cidadania: Desafios da inclusão das mulheres*. Cortez.

29. Tribunal de Justiça da 3ª Região. (2023). *Justiça do Trabalho descarta estabilidade à gestante admitida por contrato de trabalho temporário*. https://portal.trt3.jus.br/internet/conheca-o-trt/comunicacao/noticias-juridicas/justica-do-trabalho-descarta-estabilidade-a-gestante-admitida-por-contrato-de-trabalho-temporario

30. Trubano, C. (2020). *Mulheres e o mercado de trabalho: Impactos da estabilidade de gestantes em contratos temporários*. CRV.

31. Trubano, T. R. D. R. (2021). A estabilidade da gestante nos contratos por tempo determinado. *Âmbito Jurídico*. https://ambitojuridico.com.br/a-estabilidade-da-gestante-nos-contratos-por-tempo-determinado/

32. Venosa, S. de S. (2023). *Direito civil: Parte geral* (23rd ed.). Atlas.