

## **Juridical Forms of the Reduction of the Workweek in Brazil**

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### **RESUMO**

A redução da jornada de trabalho sempre esteve na pauta social de discussão no âmbito da luta dos trabalhadores por melhores condições de vida e de trabalho. Infelizmente, o Brasil ainda possui uma das maiores jornadas de trabalho do mundo, fato que motiva a busca por mecanismos de redução do tempo que o trabalhador dedica à sua atividade laborativa. Essa é perspectiva na qual se insere a defesa pela redução substancial da jornada de trabalho, em função da busca pelo melhor interesse da classe trabalhadora e de mudanças no contexto socioeconômico que favoreçam o aperfeiçoamento das relações sociais contemporâneas.

Palavras-Chave: Direito do Trabalho, Redução da Jornada de Trabalho, Negociação Coletiva

### **ABSTRACT**

The reduction of the workweek has always been on the agenda of the struggle of workers for better conditions of life and work. Unfortunately, Brazil still has one of the longest workweeks in the world, prompting the search for mechanisms to reduce the time that workers dedicate to their working lives. The defense of a substantial reduction in the workweek forms an essential part of the struggle for improvements in the lives of workers in the context of contemporary socioeconomic changes and social relations. This article explores the question of juridical forms and collective negotiations in the struggle for the reduction of the workweek in Brazil.

Keywords: Labor Law, Reduction of the Workweek, Collective Negotiation, Brazil

Summary: 1. Introductory Aspects; 2. Juridical regime of the workweek in Brazil; 3. The struggle for the reduction of the workweek in Brazil; 3.1. Legal reduction of the workweek; 3.2. Collective Negotiations for the Reduction of the Workweek; 4. Final Considerations.

### **Introductory Aspects**

For more than 20 years, there has not been a substantial reduction in the workweek in Brazil, whose duration is one of the longest in the world. Beginning from the premise that such a reduction is a measure that inexorably benefits the working class, this essay aims to study the possible mechanisms to accomplish such an intended lessening of the workweek.

Thematically, I will approach this question from two fundamental points of view. The first deals with possible changes in the legislative ambit through an alteration in the Federal Constitution of 1988 from the current baseline of 44 hours per week to 40 hours per week. The second perspective treats possible alterations in the workweek through separate collective negotiations in each professional occupational category involving employers and workers by way of the intermediary of unions.

The choice of this theme is directly linked to an historical fact of extreme relevance: the struggle for the reduction of the workweek was one of the first demands made by

workers, an attempt to limit the time dedicated to work. Even though it is an historical demand, it remains a quite current question since today the level of exploitation of the workforce is as abusive as it always has been in capitalism.

Thus, we aim to indicate the paths and discussion that scholars and activists have proposed in the struggle for better working conditions based on readings of the relevant secondary bibliography including technical, didactic and critical texts. It is our belief that is necessary to use this wide range of research instruments for this initial study and for future, more profound explorations.

The reduction of the workweek is firmly situated in the contemporary scenario of the current situation of the Brazilian labor force and political struggle. We are certain that the shortening of the workweek of Brazilian workers is a central issue since they can no longer permit such as an extensive workweek.

### **The Juridical Regime of the Workweek in Brazil**

The system that regulates the duration of the workweek in Brazil is defined in general terms in the Federal Constitution in lines XIII to XVII in Article 7 and in the regulations contained in Article 57 and other articles in the Consolidation of Labor Laws (CLT) as well as by specific legal provisions on the workweek in particular professional occupational categories. Faced with this relative complexity, we will focus solely on the pertinent aspects of line XIII in Article 7 of the Federal Constitution that establishes the general rule for urban and rural workers of a “duration of normal work not superior to eight hours daily and 44 hours per week, providing for the compensation of hours and a reduction of the workweek through a collective agreement or convention of labor”. The normal workday and workweek are thus treated as correspondent to determined times fixed daily and weekly, evidently excluding extra hours. As we may observe, the Constitution also leaves open the possibility of compensation of hours and the reduction of the workday and workweek through collective negotiations.

### **The struggle for the reduction of the workweek in Brazil**

The struggle for the reduction of the length of the workday and workweek is as old as the dispute between capital and labor itself. Indeed, one of the first demands of workers consisted of the limitation of work time and one of the first labor laws dealt with this issue. This struggle was inserted in a wider and older context dating from the first industrial revolution when workers frequently worked 16 hours a day.

In Brazil, there has not been a substantial reduction in the legal workweek for more than 20 years. The last alteration occurred with the advent of the Federal Constitution of 1988 when the workweek was reduced from 48 to 44 hours. Since then, workers have made a few important advances through collective negotiations. However, these are restricted to certain occupational categories, who through the power of their union and their mobilizations, were able to overcome employer resistance and negotiate specific reductions.

There appears to be a certain consensus among the working class that it is necessary to reduce the workweek. However, a polemic arises when we discuss the mechanisms through which a shortening of the workweek may be accomplished. There are those who

defend a simple reduction through legal means that would be sufficient to attend the demands of the working class. On the other hand, there are those who propose a collectively negotiated reduction of the workweek in each professional occupational category since the very Constitution provides for such possibilities.

### **The Legal Reduction of the Workweek**

Initiated in 2003, the National Campaign for the Reduction of the Workweek, promoted by the Brazilian trade union federations, with the technical support of DIEESE – the Inter-Union Department of Statistics and Socioeconomic Studies – aims to legally reduce the maximum limit of the workweek from 44 hours to 40 hours without salary cuts.

An interesting publication by DIEESE presents in a systematic and didactic manner diverse arguments favorable to the adoption of such a measure, highlighting the three key aspects of work time, the Brazilian economy and the lifetimes of workers.

Related to the first aspect, the text justifies the reduction of the workweek through the following arguments: a) reduction of unemployment; b) the very extensive length of the normal workweek; c) the very extensive length of the total workweek; d) the intense rhythm of work; e) the growth in the flexibilization of working time; f) the increase in the number of occupational sicknesses.

With respect to the Brazilian economy and specifically questions related to economic growth and productivity, DIEESE centers its arguments on the following issues: a) the favorable conditions of the economy; b) the low percentage of salaries in production costs; c) the low cost of labor in Brazil; d) the creation of a desired circuit between productivity gains, income distribution and economic growth; e) the appropriation of productivity gains by workers; f) the reduction of the workweek as an instrument in income distribution.

Finally, with respect to the lifetime of the worker, the text emphasizes: a) the options for free time or unemployment; b) the extensive time dedicated to work, including outside the workplace; c) the existence of little free time; d) the loss of control over life time; e) the quality of life.

In sum, all these arguments, to a greater or lesser degree, corroborate in a consistent form the benefits that would accrue from a legal reduction of the workweek. They deal precisely with the probable consequences and results of the implementation of a measure for reduction of the workweek in a way that predicts the beneficial conjuncture that will result from such a change.

It is evident that one or other result may not be realized since we are dealing with social facts that may not be predicted with the same mathematical accuracy as natural phenomena. Yet this simple uncertainty should not impede the proposal for a legislative change of such dimensions since the risks would be sufficiently compensated for by the improvement in the life of the worker and by the significant social and economic development that the measure would bring.

### **A Negotiated Reduction in the Workweek**

Although we may affirm that Professor José Pastore is a fierce opponent of the reduction of the workweek in Brazil, we cannot ignore that he himself has suggested a

favorable proposal for the adoption of such a measure, with all its critical warnings about the measure, involving the negotiated settlement of a reduction in the workweek. Principally, he makes a clear distinction between the legal workweek and that contracted through collective negotiations, understanding the first as that fixed in law (in the wide sense) and the second as a result of collective accords or negotiations between workers (through their unions) and employers.

According to this author, this distinction is important for understanding the question mainly when we place Brazil and other countries in a comparative context. In the great majority of countries that possess a longer legal workweek than Brazil, the negotiated workweek tends to be shorter. This leads him to believe that even if a workweek previously established in law exists, this must be understood as the limit above which it is not possible to surpass, even if in some economic sectors there are shorter workweeks established via collective negotiations.

Yet an interesting question remains with regard to Professor Pastore's arguments: why then do countries maintain longer workweeks? He himself answers this in a convincing manner: "There are moments when it is necessary to work more. To do this through negotiation is easy. By law, it is almost impossible. Moreover, there are sectors that are more intensive in technology and, for this reason, may work less hours. Others cannot. Negotiation accommodates the differences."

The argument is seductive, but not pleasing. We must be very cautious with this type of rationale that is logically correct, but does not satisfy the initial objectives of the working class. In other words, what happens is that the employers' class, in preferring a negotiated reduction of the workweek, foresees the possibility of easily "manipulating" a determined union or occupational category as a whole at the moment when the reduction of the workweek is in discussion. As such, we have a certain preoccupation with the adoption of a measure to reduce the workweek through collective negotiations that nevertheless may not be ignored because it is simply a collateral effect of the adopted juridical form.

Reduction of the workweek has already occurred in Brazil. Due to the force of their unions and their organizational capacities, particular professional occupational categories have established workweeks that are substantially shorter than that provided in the Constitution. This is the case, for example, of bank workers, dentists, lawyers, miners and data processors, among others.

In a severe criticism of the attempt to legally shorten the workweek, Pastore affirms that:

It is artificial to want to impose a homogenous straitjacket onto the heterogeneous reality of Brazil. This will not create employment. Employers will adjust production, buy machines or intensify the work of current employees. This has already happened in the past. It did not generate jobs.

He concludes: "The theme is one of the most seductive from the electoral point of view. But, a simple reduction of the legal workweek will not guarantee jobs. If it were true, there would be no unemployment in the world."

While the criticisms presented by Pastore are pertinent, they should only be partially considered. It is clear that they underpin primarily the interests of the employers, in the sense that a negotiated reduction will be subject to diverse circumstantial factors that will inevitably interfere in the result of the negotiations. In addition to not being desirable for the working class, such a strategy collides with the original intention to reduce the legal workweek.

### **Final Considerations**

After a long period without alterations that effectively shorten the workweek, there has emerged the social necessity to search for mechanisms through which it is possible to adopt flexible measures that benefit the worker. There are ample and numerous arguments that justify the legal reduction of the workweek. Even though it is not possible to predict the exact effects of such a measure, there are no outstanding risks in its adoption within the context of the deleterious effects of the maintenance of the current length of the workweek. We may even say that the possible risks are sufficiently compensated for by the betterment in the quality of life of the worker and by the social and economic development that the policy would bring.

While it is possible to affirm that the reduction of the workweek has already widely occurred in Brazil it is necessary to be careful regarding its utilization. In truth, its adoption through collective negotiations in determined occupational categories speaks to the greater power of the employer class that diverges from the interests of the working class. Therefore, reducing the legal workweek is much more secure and beneficial to the worker in addition to being a measure that appreciates the social value of labor that is rooted in the democratic state of law inaugurated by the Federal Constitution of 1988.

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