

# HOMOSEXUALS, BISEXUALS, TRANSGENDER AND INTERSEXUALS WORKING RELATIONS WITHIN ENVIRONMENT OF BRAZILIAN COLLECTIVE AGREEMENT

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## Abstract

This paper discusses how interests of gay, bisexual, transgender and intersex workers are embodied in Brazilian collective agreements arising from labor relations standardization. To perform research we have analyzed collective agreements and conventions among other documents filed in DIEESE's collective agreement monitoring system database, and growth of relevant legislation, with emphasis on federal level. We also made content queries of normative instruments included in Ministry of Labour Mediation System. No relevant references were found regarding transgender and intersex workers. Clauses dealing with guarantees to bisexuals and homosexuals workers were analyzed in contrast with juridical and legal environment.

## Keywords

Collective Bargaining, GLBT, Homosexual.

## 1. Introduction

The collective labour agreement is a process aiming to develop “law between the parties” that must govern working relations. Its objective is filling any regulatory gaps of legislation, jurisprudence and other normative acts to which is subject. Progressive recognition of rights of homosexuals, bisexuals, transgender and intersexuals, and especially the right to common-law partner, reveals need of adjusting situations at work to grant equal treatment to this population. In that respect, collective labour agreements play a fundamental role. We will study this role based in DIEESE's Collective Agreement Oversight System DIEESE (SACC-DIEESE) data. It is a computer system keeping - from 1993, information on a defined set of collective agreements held among representative employers and workers entities, and among them and private or public companies. Up to year 2002, SACC-DIEESE filed normative documents<sup>2</sup>

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<sup>2</sup> A normative document may arise from understanding between parties, such as a Collective Agreement, a Collective Convention or Addendum, or by a judicial decision as it is the case of a judicial judgment.

of 94 negotiation units<sup>3</sup>. In 2003 this volume was expanded and system began studying 220 negotiation units, covering around 50 professional categories in 18 units of the federation. The aim of choosing these negotiation units are to compose a panel revealing main Brazilian collective agreement trends. (OIT, 2011, page 20). This panel was again expanded in 2010 and is currently composed by 225 negotiation units.

## 2. Methodology

DIEESE developed its own methodology to analyze and file documents. Besides saving document properties, such as date of signature, qualification of the parties etc., each clause is fully transcribed and classified, based in a subject's group, type and hierarchical structure. Combination of this data allows producing a large number of findings. As an example, it is possible knowing each clause related to day care, effective from 2010 to 2012 in São Paulo having the word "employee" within its content. When saving a clause, it is also possible associate them to key-words, so they can be found from subjects not expressed by its classification.

The team in charge of saving documents in SACC-DIEESE is instructed to tie key-word "homosexual" to each clause whose content makes any reference to homosexuality or transexuality. Every each clause associated to key-word "homosexual" was considered in this study. We also researched document contents by terms: travesti, transexual, transexualism, transexuality, intersex, intersexual, intersexualism, intersexuality, transgender, gender identity, same-sex partner, companion of the same sex, homosexual (s), homosexuality, homosexualism, homoaffective, gay(s), lesbian (s), bisexual (s), LGBT, sexual , sexual orientation and option, trying to find some clause that, by mistake, had not been associated to key-word "homosexual". All remaining clauses arising from this research by content were also selected for the analysis.

We named clause of interest the one expressing or reiterating an advance, a more favorable situation than previous one, for certain segment. Among selected clauses, we did not find clauses of specific interest related with transgender or intersexual workers. Nevertheless, most of them were considered of interest regarding homosexual or bisexual workers.

NOTICE: The original text was made using words in masculine gender, when referring to men and women. We only mentioned gender in quotes and when talking about transgender and intersexual.

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<sup>3</sup> A negotiation unit is each core step of collective agreement among workers and employers representatives, consequence of regulating wage and working conditions. (ILO, 2011, p. 16). To know all negotiation units verified by SACC-DIEESE, see Annex I.

### 3. Transgender and intersexual persons within environment of Brazilian collective agreement.

Transgender persons are those whose gender self-perception<sup>4</sup> does not agree with gender correlated to its biological sex. This self-perception can be revealed through expressive elements, as it is the case of travesties and cross-dressers, and/or identity, as it is the case of transsexuals<sup>5</sup>. The intersexuals<sup>6</sup> have a congenital anatomical ambiguity not allowing them to be totally associated to one gender. Both transgender and intersexuals, almost always show external signs that are partially conflicting with masculine or feminine genders.

These persons face high rates of workplace discrimination; having huge problems to get jobs. It is not rare finding effeminate boys and masculinized girls that cannot finish school due to hostile school environment. It is true that these adolescents are not necessarily transgender or intersexuals; however they face similar problems to be accepted by its families and school and afterward to get jobs. In spite of constitutional provisions repudiating any form of discrimination, infraconstitutional legislation only punishes who denies or prevents someone to get a job in a private company due to race, color, ethnicity, religion or country of origin<sup>7</sup>. The attempt of including gender identity, gender, sexual orientation and elderly or disabled persons, as reasons of prejudice and discrimination to be punished by law, have failed based in the resistance of conservative sectors at the National Congress, including the support of the Federal Government.

The right to equal contracting treatment and professional progression of people having gender ambiguity, plus recognition of gender self-defined by workers, expressed by use of name (social name) he/she chose and access to sanitary facilities for such gender, could be granted by labour collective agreements. However they are not. Any document filed at SACC-DIEESE mentions this special type of population. The Ministry of Labour issued Normative Instruction 11/2009<sup>8</sup> in March 24, 2009, demanding that each normative instrument, understood as "a convention or labour collective agreement and its respective amendment terms", should be electronically saved by Mediador System<sup>9</sup> to be accessed through Internet. In May 27, 2014, there were 255,136 instruments registered in the system, and searches were done by terms travesti, transexual, transexualism, transexualidade, intersex, inter-sexual, intersexualism and interse-

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<sup>4</sup> We will not be able to discuss large-scale academic production regarding gender in this paper. However, in this context, the term refers to a social adequacy based in biological sex, as described by sex/gender system of Gayle Rubin: "sex/gender system is a set of arrangements through which a society transforms biological sexuality in products of human activity, and where these transformed sexual needs are satisfied" (RUBIN apud SENKEVICS, 2012).

<sup>5</sup> For complementary information, see Associação Brasileira de Homens Trans, at: <<http://homenstrans.blogspot.com.br/p/quem-sao-as-pessoas-trans.html>>. Accessed in June 11, 2014.

<sup>6</sup> For complementary information, see Intersex Society of North America, at: <[http://www.isna.org/faq/what\\_is\\_intersex](http://www.isna.org/faq/what_is_intersex)>. Accessed in June 9, 2014.

<sup>7</sup> Lei 7.716/89. At: <[http://www.planalto.gov.br/ccivil\\_03/leis/L7716compilado.htm](http://www.planalto.gov.br/ccivil_03/leis/L7716compilado.htm)>. Accessed in June 10, 2014.

<sup>8</sup> At: <<http://migre.me/kfft>>. Accessed in June 11, 2014.

<sup>9</sup> At: <<http://www3.mte.gov.br/sistemas/mediador/>>. Accessed in June 19, 2014.

xuality, transgender and gender identity in the whole content. Following terms were not found: travesti, transexual, transexualism, transexuality, intersex, inter-sexual, intersexualism, intersexuality and transgender. Only two negotiation units were found, related to discrimination originated by gender identity.

Workers Union at Union Entities in the state of Espírito Santo collective agreements celebrated with Public Education Workers Union of Espírito Santo in years 2010 and 2012, and with Cleaning and Maintenance, Urban cleaning services and similar activities Workers Union of the state of Espírito Santo in 2013, have respectively agreed the following:

EIGHT CLAUSE – REGARDING ADMISSION TO EMPLOYMENT/FILLING A VACANCY

It is prohibited discrimination by gender, ethnicity, sexual orientation, age, civil state, gender identity, religion, for having or not children, or any other form of discrimination regarding admission or filling vacancies (Public Education Workers Union of Espírito Santo, 2012, my emphasis).

NINETEENTH CLAUSE - REGARDING MORAL AND SEXUAL HARRASSMENT, RACIAL DISCRIMINATION AND HOMOPHOBIA

The Board of SINDILIMPE/ES undertakes to adopt all procedures to prevent any practices of moral and sexual harassment, racial discrimination and homophobia within union premises or in its respective deliberation forums.

First paragraph: The complaint must be written and presented to the Board of SINDILIMPE/ES, being prohibited any form of retaliation to denouncer worker, granting job stability for 6 months to denouncer and follow up of complaint, until the conclusion of the investigation.

Second paragraph: All constitutional prerogatives will be granted to workers denouncing or witnessing practice of any act foreseen in the head of this clause.

Third paragraph: To investigate complaints regarding any act mentioned in the head of this clause, the Board of SINDILIMPE/ES will immediately open an administrative proceeding in the maximum term of thirty days, or delegate it to a union commission conduction of works, granting supervision of a representative of the union.

Fourth paragraph: The board of SINDILIMPE/ES undertakes to restrain within the environment of the institution any other discriminatory practice, including access to work or its maintenance due to sex and gender identity, origin, race, ethnicity, sexual orientation, generational, any disability, number of children, and civil state (Cleaning and Maintenance, Urban cleaning services and similar activities Workers Union of the state of Espírito Santo, 2013, my emphasis).

Gender identity is a different concept than sexual orientation, since first one refers to gender self-perception of gender and second one to sexual desire. Transgender and intersexuals may refer to themselves as asexual, homosexuals, bisexuals or heterosexuals, as any other persons. However, since there are similarities in search of right of not being discriminated, based in gender identity and sexual orientation, and also to try comparing how these two moti-

vations influence working relations expressed in collective agreements filed in the Mediador System, we also studied whole content of normative instruments using following terms: same-sex partner, companion of the same sex, homosexual (s), homosexuality, homosexualism, homoaffective, gay (s), lesbian (s), bisexual (s), LGBT, sexual orientation and sexual option. We found 2,145 documents matching any of these conditions.

## 4. Legal context

For a better understanding of legal environment where working conditions of gays, lesbians and bisexuals filed in SACC-DIEESE were agreed, it is important having in mind how the possibility of an erotic and affective relationship with somebody of the same sex affect these conditions. From a personal point of view, these workers are more likely to constraints and having its career impaired by discrimination, while within family environment they face difficulties to have recognized their marital link and take care of their children. However when talking about heterosexual unions, extending benefits to consort and leaves to take care of children, for example, it is already a long time they are granted in Brazilian legislation. Therefore, homosexuals ask not having private rights, but being included in already existing for other workers. In this sense, proceedings in Justice are mainly based in constitutional principles of equal treatment, dignity of human beings and not discrimination<sup>10</sup>. Besides jurisprudence, new laws, normative instructions and other provisions are influencing working situation of these people, among which we can mention pension, tax and family rights.

In 2000, the Federal Public Attorney's Office filed a proceeding demanding the National Institute of Social Security (INSS) to recognize same sex partner as legal dependent. After repeated victories and remedies from both parts, INSS issued a normative instruction defining criteria for recognition of same sex partner as legal dependent to award pension for death and reclusion aid. This instruction was reformulated, becoming normative instruction 45/2010<sup>11</sup> of August 6, 2010, in force until present days. National Treasury Attorney's Office legal opinion 1.503 approved in July 19, 2010 allows, since then, including same sex partner as legal for income tax purposes<sup>12</sup>. Same sex couples increasing recognition of government institutions, besides having influence in public sector complementary pension schemes and health insurance, made Brazilian society to reflect about concepts of family.

Throughout history, we may find several types of parental agreements, associated to the idea of cores making up a community. The way human beings organize in coexistence groups is modified by historical, cultural, economic and environmental factors. The union between two people to compose a nu-

<sup>10</sup> See Constitutional Principles item in Table 1: Quoted legislation.

<sup>11</sup> See Social Security rights item in Table 1: Quoted legislation.

<sup>12</sup> See Tax rights item in Table 1: Quoted legislation.

clear family was almost always based in social or political interests, and only a few centuries ago, affection began being considered between pact-makers.

From antiquity to Middle Age, parents usually arranged their children's weddings. A marriage did not consecrate a love relationship. It was a family business, a contract made by two individuals not based in his /her own pleasure, but in the advice of families and for the sake of it [...] Decision and passion played no part in decisions, and sex for reproduction was part of the established alliance. (ARAÚJO, 2002).

Dominant family model is basically patrimonial<sup>13</sup>, implying in the control of woman and sex, to grant power and material assets accumulate and then be transmitted to those that are considered as "continuations" from people that accumulated these assets. Family is also a privileged space to spread values and interfere in individual growth, in a way to make them more or less adjusted to the society. It is not by accident that in a family each member has rights and duties regarding other members, and that admissibility, conditions and consequences of its dissolution are under moral, religious and legal scrutiny.

The sexual revolution of the 1960's, contraceptive methods and divorce promoted the beginning of womanhood and increase of blended and one-parent families. The advance in conquest of social rights for homosexuals, plus assisted reproduction techniques allowed growth of adoptive and same-sex parent families<sup>14</sup>. Therefore it became necessary distinguishing among procreation, kinship, filiation and parenthood. According to ZAMBRANO et al. (2006), procreation is a biological relationship, parenthood is a genealogical bound, filiation is a legal recognition and parenthood a condition implying being responsible for children and, therefore,

The notion of couple or family cannot be considered in just one unambiguous and unquestionable sense. A priori we cannot say there is a "real mother" or a "real father", it will be just a moral and social decision determining to which elements of the notion of family we will give priority in a society. (PARSEVAL apud ZAMBRANO et al., 2006, p.13).

The Federal Constitution of 1988 (CF) introduces in article 226 common law partners legal arrangement, with similar characteristics to marriage. In order to regulate it, article 1.723 of Brazilian Civil Code defines as family unit the lasting, public and continuous coexistence of a man and a woman, esta-

<sup>13</sup> In opposition to this, we can mention polyandrous unions in Tibet. This type of family is composed by a woman and many husbands, brothers among them, and the children. The woman has freely relations with any of the men, and all children are considered sons/daughters of first-born brother, independently of who is the father. In this parent group, in spite of limited material resources, all work for the group and there is no asset transmission for some in detriment of others, since in certain was all descendents are children of all the ascendants.

<sup>14</sup> Same-sex parent families are these where parenthood corresponds to a homosexual or a same-sex couple (co-parenthood: two fathers or two mothers).

blished to constitute a family. Common law partners do not change its civil state, do not use last name of his partner, cannot be accused of bigamy and are necessarily submitted to partial property ruling. Besides, its constitution and dissolution dispenses wedding formalities. The Federal Supreme Court (STF) upheld in May 5, 2011, by unanimity, Federal Public Attorney's Office actions and also from the Government of the state of Rio de Janeiro requiring that unions between same sex persons should be recognized as family entities<sup>15</sup>. Among main groundings basing the decision, we mention following: nevertheless law defines a family entity as the union between a man and a woman, it does not exclude possibility of unions between two men or two women being considered family; such unions always existed and with same characteristics of hetero-affective unions; all them need legal protection, and in the vacuum of legislation, justice must grant right of minorities; recognizing homo-affective unions does not diminish any rights; the Federal Constitution (CF) repudiates discriminatory actions that may hinder all-round development of any human being and its right to go in search of happiness. As CF also states that law must make easier common law partners become marriages, in 2013 the National Council of Justice issued Resolution 175, banning all notaries's offices within the country refusing register of civil marriage of duly authorized same-sex couples<sup>16</sup>. From then, although same-sex common-law partner has not been yet approved by law, it became a reality for any couple of men or women, adults, legally capable and without legal impediments. As a consequence of this, people began having such rights as adoption of children<sup>17</sup>, receive inheritances, asset sharing, alimony, income composition to purchase movable and immovable properties, income tax joint declaration, authorization for health or medical procedures, divorce and all other rights related to family law rules.

According to Portal de Notícias G1 (LAVEZO, 2012) first adoption allowed to a gay male couple in Brazil occurred in 2005, after a six-year legal struggle<sup>18</sup>. However, legislation regarding pay leave to adopters, only increased from 5 to 120 days license period for men adopters in October 2013<sup>19</sup> when right was equated right to women adopters. In the case of consanguineous children of a two-man couple, born through assisted reproduction techniques<sup>20</sup>, still today it must be discussed in Justice the right to have paternity leave such as maternity leave. Despite this, in June 6, 2014 the City Hall of Recife granted by administrative act, paternity leave of 180 days (equal to maternity leave) to a man worker married with another man (G1, 2014)<sup>21</sup>. This was first time it ha-

15 See right to marriage item in Table 1: Quoted legislation.

16 See right to marriage item in Table 1: Quoted legislation.

17 Adoption done by only one person is foreseen in Child and Youth Statute, established by Law 8.069 of July 13, 1990. See at: <[http://www.planalto.gov.br/ccivil\\_03/leis/L8069Compilado.htm](http://www.planalto.gov.br/ccivil_03/leis/L8069Compilado.htm)>. Accessed in May 31, 2014.

18 See at: <<http://migre.me/jyWnP>>. Accessed in June 2, 2014.

19 See right to take care of adopted children item in Table 1: Quoted legislation.

20 The Federal Council of Medicine approved in May 2013 the Resolution 2.013/13 authorizing assisted reproduction technique to same sex couples or single persons. See right assisted reproduction item in Table 1: Quoted legislation.

21 See at: <<http://migre.me/jKDrE>>. Accessed in June 10, 2014.

opened in Brazil.

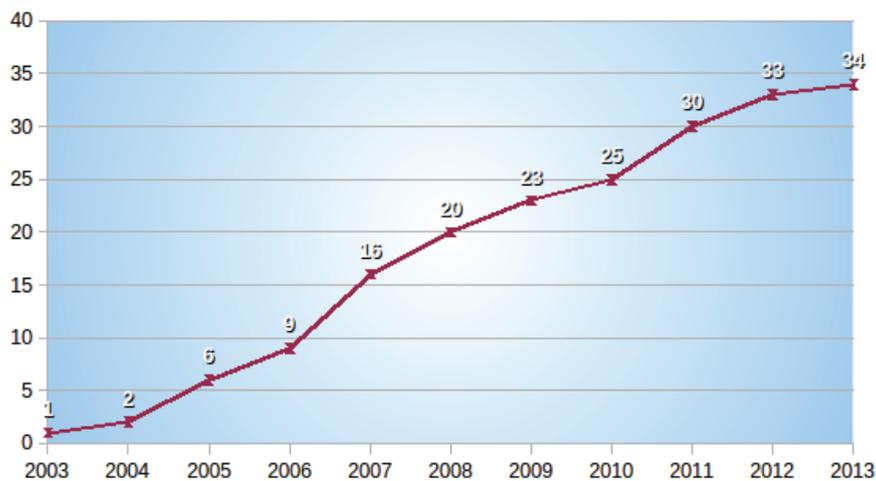
**Table 1: Quoted Legislation**

Item	From(a)	Legislation	Quote
Constitutional Principles	1988	Federal Constitution of 1988	<p>About Fundamental Principles</p> <p>Art. 1º The Federative Republic of Brazil, formed by the indissoluble union of the States, Municipalities and the Federal District o Federal, consists of a Democratic State, and has as groundings: [...]</p> <p>III – <i>the dignity of human beings</i>; [...]</p> <p>Art. 3º Following are fundamental objectives of the Federative Republic of Brazil:</p> <p>[...]</p> <p>IV- promote the good of all, without prejudice regarding origin, race, sex, color, age or <i>any other forms of discrimination</i>.</p> <p>About Rights and Fundamental Guarantees CAPÍTULO I ABOUT ABOUT INDIVIDUAL AND COLLETIVOS RIGHTS AND DUTIES</p> <p>Art. 5º <i>All persons are equal before the law, without distinction of any kind, granting Brazilian citizens and foreign resident in the country, the inviolability of the right to life, freedom, equality, safety and property in following terms:</i></p> <p>I – men and women are equal and have same rights and duties, within the terms of this Constitution; [...]</p>
Social security laws	2000	Normative Instruction INSS 45/2010 (b).	Art. 25. Pursuant to judicial decision given in Public Civil Action number 2000.71.00.009347-0, <i>the same sex partner</i> of policyholder registered at RGPS [General Social Welfare Policy] <i>is part of the role of dependents</i> , and if it is proved they live together, it will be considered for rights of pension for death and reclusion-aid, together with preferential dependents [...]
Tax laws	2010	Legal opinion 1.503/2010 of Ministry of Finance	Considers legal the <i>inclusion in the register of homo-affective partner as dependent</i> of federal public servant to deduct income tax, if meets criteria of other requirements needed to verify they are common law partners
Right to marriage	2011	Vote cast by minister rapporteur and adopted in plenary of Federal Supreme Court in May 2011, equating common law partnership between same-sex persons to the union of different-sex persons	On merit, I declare admissible the two proceeding in cause. And I give to article 1.723 of the Civil Code the interpretation according to the Constitution to exclude from it <i>any meaning preventing recognition of a continuous, public and lasting union between same-sex persons as a “family entity”, understanding it as a perfect synonym of “family”</i> . This recognition must be done according to same rules and <i>with same consequences of hetero-affective common law partners</i> . - My vote.
	2013	Resolution 175 of National Council of Justice, May 2013	Art. 1º It is prohibited to competent authorities refusing habilitation, civil marriage celebration or conversion of common law partners into marriage of same-sex persons.
Right to taking care of an adopted child	2013	Law 12.873/2013 equates conditions between men and women adopters.	Art. 71-A. The Social Security <i>policy holder</i> adopting or obtaining legal custody for purposes of adoption of a child will receive maternity pay during a period of 120 days.
Right to assisted reproduction	2013	Resolution 2.013/13 of Federal Medicine Council (CFM)	II – Assisted reproduction techniques patients [...] 2 – It is allowed using assisted reproduction techniques for homo-affective relationships and single persons, respecting the conscientious objection right of the physician.
Right to take care of consanguineous children	2014	Administrative act, June 2014 of the City Hall of Recife (G1, 2014).	paternity leave equated to maternity leave- 180 day – granted for the first time in Brazil
Notes:			
(a) This is the year when right was first recognized by law, by judicial process, by regulatory agency or by the Executive Power			
(b) Reformulation of Normative Instruction number 20, issued in 2007			

## 5. Homosexuals and bisexuals within the environment of collective agreements, contained in SACC-DIEESE

Following data was collected from SACC-DIEESE databank in March 24, 2014. We found clauses regarding working relation's particular aspects of homosexuals and bisexuals workers in 19 different negotiation units. This figure corresponds to 8.4 pct of the 225 negotiation units verified by the system<sup>22</sup>. Such clauses were found in documents signed from year 2003, and since then have increased. With validity starting in 2013, we found 34 clauses<sup>23</sup>.

### Chart 1 - Quantity of clauses regarding homosexual and bisexual interests, by year of coming into force



Source: SACC-DIEESE. Elaborated by the author.

It must be taken into consideration that a clause establishing a right does not necessarily mean an advance in working relations, since there are cases where it only was agreed a previous legal obligation. However, in these cases there is a clear recognition of parties, strengthening application of the law regarding pact between workers and employers. Besides tenor of what was agreed, there is the way these rights evolve over time. Analyzing this evolution from a legal point of view brings important elements to understand how Brazilian society has dealt with gays, lesbian and bisexual needs in working collective agreements.

Clauses regarding homosexual and bisexual workers interests filed in SACC-DIEESE may be organized by covering three main axis: anti-discriminatory actions, granting jobs, equal professional progression and wages, acting

<sup>22</sup> Some negotiation units have been reformulated by parties and received new nominations in the system. In these cases, we have respected both original and new nominations. Therefore it can be found more than 225 different nominations for negotiation units searched by SACC. See Annex I.

<sup>23</sup> Due to the time elapsed in picking up, analyzing and registering documents in the system, it is possible that some clauses of interest of homosexual and bisexual workers, valid in 2013, were not considered in this paper, since were not available at the moment when data was collected.

preventively through educational campaigns; recognition of affective union, equating status of same-sex partner to other dependents; and taking care of children/family, authorizing worker to be absent from work take any of them to the doctor, adoption leave, etc.

## 5.1 Anti-discriminatory actions

Since 2003, collective agreements for post office workers have a clause banning discrimination in the selection process.

### TENDER

Brazilian post and telegraph company - ECT – will grant that in its hiring tenders there will not be any racial, religious or sexual orientation discriminations, as stated in Federal Constitution of 1988 provisions, respecting 10 percent opening to disabled. (Post Offices, validity from August 1, 2013 to July 31, 2014)

In above clause of first Brazilian Post and Telegraph Company Collective Agreement filed at SACC-DIEESE, valid from August 1, 2013 to July 31, 2014, there was a quota provision for black people and indigenous: “§ Sole – The ECT will develop reservation in tenders, to allow increased access to black and indigenous people to its workforce”. However, following year this paragraph was removed.

The Manaus security guards, in a yearly rearranged contract since 2010, prohibit among others, sexual orientation discrimination in hiring:

### HIRING WITHOUT DISCRIMINATION

When hiring, if job seekers meet standards required by law, employers are banned from doing any kind of sex, color, race, religion or sexual orientation discrimination. The employer must channel best efforts to increase demand for working post for women security guards, until reaching target of 30 pct of total employees. (Manaus security guards, validity from February 1, 2013 to January 31, 2015)

In 2010, there was already a reference to the intention of increasing feminine workers, but target of 30 pct was only included in 2011. The Collective Bargaining Conventions for Manaus security guards also have a clause banning hiring maximum age for workers.

Collective Bargaining Conventions for machine operator metal-workers in ABC/SP (industrial region in greater Sao Paulo) grant since 2007 no discrimination due to sexual orientation, among others, when hiring or in worker’s professional progression. The Collective Bargaining Conventions in negotiation units of carmaker metal-workers in ABC/SP from 2007, and electro-electronic

metal-workers in Manaus, state of Amazonas since 2011, grant no discrimination in worker's functional or wage progression. Nevertheless, existing clauses granting no age, sex, ethnical origin or religion discrimination when hiring, do not make any reference to sexual orientation of candidates.

#### EQUALITY OF OPPORTUNITIES

In hiring or when filling positions, companies undertake non practising any kind of discrimination based in sex, race, color, age, sexual orientation, civil state, religious orientation, or for having children. Evaluations must always be based in performance, formation, qualification or knowledge required for the function. (Machine operator metal-workers – ABC/SP, validity from September 1, 2013 to August 31, 2015)

#### EQUALITY OF OPPORTUNITIES

Companies undertake offering equal opportunities for candidates qualified to compete for positions in hierarchical and administrative structure, independently of gender, race, religion, sexual orientation or nationality. (Carmaker metal-workers – ABC/SP, validity from September 1, 2009 to August 31, 2011)

#### EQUAL TREATMENT

Both men and women have equal opportunities and wages granted among people performing same function, with same experience, efficiency and quality, and also in new hiring cases. Differences regarding origin, race, sex, color, age, religion, sexual orientation and any other forms of discrimination are banned. (Electro-electronic metal-workers in Manaus, state of Amazonas, validity from August 1, 2013 to July 31, 2015)

The PETROBRÁS Collective Agreement, bans since 2011 unequal treatment in wage and functional progression, due to sexual orientation. The company plans clarification campaigns as strategy to combat discriminatory practices. However, it is not possible knowing if these campaigns deal with sexual orientation issue.

#### DIVERSITY

The company values human and cultural diversity in its relationships with employees, granting respect to differences and no discrimination.

§1º - The company will not practice any wage or progression difference in its employees careers in consequence of their color, race, gender or sexual orientation.

§2º - The company will prepare and disclose information material to the employees, to prevent discriminatory, gender and ethnic / racial practices and also moral and sexual harassment practices.

§3º - The company will implement a Care program approach to manage disability, consolidate dissemination of specific contents on disabilities, and sensibilisation of management and employees regarding this issue. Also, an

analysis of how to improve inclusion of disabled persons in working teams and in the workforce. (PETROBRÁS, validity from September 1, 2013 to August 31, 2015)

Collective Agreements for chemical workers in ABC and São Paulo/SP regulate since 1996 selection and promotion processes. In 2007, this regulation clause expressly banned sex discrimination.. From 2008, they were added restrictions to discrimination by nationality, color, race, age and civil state. Since 2012, such clause also prohibits discrimination due to sexual orientation and disability in selection processes, but without referring to functional promotions.

#### PROMOTION AND SELECTION PROCESSES [...]

c) When having a selection process, the company will give preference to internal recruitment, extending this right to all employees, *without distinction of position or respective area of work, sex, nationality, color, race, age, civil state, sexual orientation or disability*, respecting position profile and candidates.

[...]

e) In cases of promotion, the company *will not make any distinction regarding sex, nationality, color, race, age or civil state*. (Chemical workers from ABC and São Paulo/SP, validity from: November 1, 2012 to October 31, 2014, our emphasis)

The Collective Agreement for chemical workers in ABC and São Paulo/SP also includes equal wages. Since 2003, clause regarding this issue bans discrimination by sex, nationality, color, race, age and civil state. In 2012, it also began referring to sexual orientation and disabled persons.

#### EQUAL WORK, EQUAL PAY

If function is identical to each work of same value, done for the same employer, in the same place, it will correspond same pay, without distinction of sex, nationality, color, race, age, civil state, sexual orientation or disability [...]

(Chemical workers from ABC and São Paulo/SP, validity from: November 1, 2012 to October 31, 2014)

The Collective Convention of banking employees, since 2004, and Collective Conventions of Banco do Brasil and Caixa Econômica Federal since 2006, provide on a comprehensive and preventive anti-discriminatory policy.

#### EQUALITY OF OPPORTUNITIES

The parties agree with each other maintaining a Bipartite commission to develop guiding proposals for orientation of employees, managers and employers to prevent eventual distortions driving to discriminatory acts and positions within work environment and society, in a general way.

§ 1º - The FEBRABAN diversity appreciation program in banking sector and the FEBRABAN Professional training and social inclusion program of disabled in banking sector, will act as premises to guide banks in the implementation of their actions, according to defined guidelines and action plans, or what will be defined in the program.

§ 2º -The Bipartite commission of equality of opportunities will hold quarterly meeting to monitor the diversity appreciation program.

§ 3º- Like in Diversity census done in banking sector in 2008, FENABAM and the commission mentioned in the head of this clause, will plan a new banking employees briefing profile in 2013, to make it effective in 2014. (Banking employees, validity from September 1, 2013 to August 31, 2014)

The first paragraph was introduced in 2009, second in 2011 and third in 2012.

Since 2005, DATAPREV Collective Agreement, mention a “policy of clarification and awareness regarding discrimination”, without specifying how it would be developed. From 2007, the clause points actions to implement this policy. In 2008, SERPRO Collective Agreement adopted a similar clause. However, we cannot know only based in these Collective Agreements, if social discrimination concept used by SERPRO and DATAPREV includes discrimination due to sexual orientation.

#### SOCIAL AND RACIAL DISCRIMINATION AND SEXUAL AND MORAL HARASSMENT

DATAPREV will implement orientation policies to prevent and combat social and racial discrimination, and moral and sexual harassment by:

- a) promoting through Life Quality and Social Responsibility areas, lectures and debates at workplaces;
- b) Publishing or disclosing specific works on this issues;
- c) doing workshops with area specialists;

§ 1º - Every social and racial discrimination or sexual and moral harassment reports shall be addressed to the Ethics Committee, that will provide absolute secrecy.

§ 2º - Social and racial discrimination or sexual and moral harassment reports will be analyzed by the Ethics Committee and responsible Life Quality area. (DATAPREV, validity from: May 1, 2012 to April 30, 2013)

The Collective Agreement for journalists at Brasilia, included in 2010 homophobia among issued to be treated in possible education campaigns.

#### EDUCATION CAMPAIGNS

Unions will organize periodical meetings to define awareness events on issues regarding working relations improvement on safety, moral harassment, smoking, chemical dependency, technological innovations, racism, and ho-

mophobia, among others. (Journalists at Brasilia, validity from: April 1, 2012 to March 31, 2014)

## 5.2 Recognition of affective union

In 2006, DATAPREV Collective Agreement included a clause agreeing with the commitment of establishing criteria to recognize as worker's dependent same-sex partner. Adopted criterion was based in INSS Normative Action 25/2000 and date of entry into force was 2007. In this same year, SERPRO Collective Agreement established similar clause.

### COMMON LAW PARTNERS

DATAPREV will recognize, from signature of this act, common Law partners for same sex couples, extending to dependent same benefits granted to other employees spouses, excepting cases demanding legal recognition.

§ Sole – To do the recognition, it must be presented, besides personal documents of the dependent, 3 material evidences, as down here detailed, proving union of the couple.

1. Employee's income tax declaration, stating that the partner is his / her dependent;
2. Last will;
3. Special declaration done before public notary;
4. Proof of address;
5. Proof of domestic charges and society or communion in acts of civil life;
6. Power of attorney or guarantee reciprocally granted;
7. Joint bank account;
8. Be registered in any association, stating that partner is dependent of the employee;
9. Insurance policy stating that the employee is institutor of the insurance and partner the beneficiary;
10. Deed of the property made by the employee in name of the partner;
11. Any other documents that may lead to conviction the fact to prove. (DATAPREV, validity from May 1, 2012 to April 30, 2013)

### COMMON LAW PARTNERS

Once proved same sex common law partners, and by INSS/DC Normative Instruction 25 of June 7, 2000 criteria, Serpro will apply to homosexual man or woman partner same rights granted to spouse, contained in this Collective Working Agreement. (SERPRO, validity from: May 1, 2012 to April 30, 2013)

The CELESC Collective Agreement for electricians recognized same sex partners as dependents in 2008. The 2013 agreement introduced a sole paragraph stating possibility of also recognizing partner's children as its dependents.

#### RECOGNITION OF DEPENDENT

Celesc Distribution recognizes as dependent same sex partner arising from homo-affective union, if it can be proved their common law partnership within terms of social security laws.

§ Sole - Celesc Distribution will create – during validity of present agreement, a work group together with INTERCEL, to study the possibility of recognizing as dependent the child of partner living in common law partners with man or woman employee. (CELESC, validity from: October 1, 2013 to April 30, 2014)

Both Collective Agreement of banking employees and Collective Agreements of Banco do Brasil and Caixa Econômica Federal, recognize since 2009 worker's same sex partners as spouses, in social security law terms.

#### EXTENSION OF BENEFITS – HOMO-AFFECTIVE RELATIONSHIP

The advantages of this Collective Working Convention applicable to spouses of employees, refer to cases of proven stable homo-affective relation unions.

§ SOLE- Recognition of stable homo-affective relation will be by complying same requirements of Social Security, as stated in INSS 45 Normative Instruction number 45.06.08.2010 (published in the Union Official Journal of August 11, 2010). (Banking employees, from BB and CEF, validity from: September 1, 2013 to August 31, 2014)

In 2010, the Collective Agreement of chemical workers from ABC and São Paulo/SP recommended recognizing same sex partners as dependents. The recognition occurred in 2012 convention.

#### SAME SEX COMMON-LAW PARTNERS

Benefits anticipated in present convention granted to legal employee's dependents, will be extended to same sex common-law partners. This union must be proved by presenting a common-law partnership public deed, except unfeasibility duly demonstrated considering current conditions negotiated with providers. The proof of same sex common-law partners and dependency will be done as established by the respective providers. (Chemical workers from ABC and São Paulo/SP, validity from: November 1, 2012 to October 31, 2014)

Collective Agreement of aeronauts and air service employees recognize same sex common-law partners as included in benefits since 2011.

#### SAME SEX PARTNER

From signature of this Collective Working Agreement, same sex partner will be considered as a partner for all legal purposes, and will have all benefits granted by the company to its employees, provided that sex common-law partners be registered at a public notary. (Aeronauts and air service employees, validity from: December 1, 2013 to November 30, 2014)

The Subway workers from Rio de Janeiro addendum of 2013, declares equally recognizing common-law partners between same and different sex couples.

#### SAME SEX COMMON-LAW PARTNERS RIGHTS

The Rio de Janeiro Metro Company will not do any distinction between hetero or homo-affective common-law partners, if they are legally recognized. (Subway workers from Rio de Janeiro, validity: May 1, 2013 to April 30, 2014)

### 5.3 Care provided to children / family

Regarding adoption, Banco do Brasil Collective Agreements have changed with time. Between 2003 and 2005, women who had chosen to adopt had right to an adoption leave of up to 120 days, depending on age of child, and men who had chosen to adopt, only had a five-day adoption leave. Between 2006 and 2008, women who had chosen to adopt got the right of having an adoption leave of 120 days, regardless age of adopted child. Men who had chosen to adopt continued having a five-day adoption leave. In 2009, clause was reformulated and women started to have right of up to 180 days of adoption leave, and leave period for men, single or in a same sex union, was increased to 30 days. In 2013, adoption leave granted to these men equated women's rights, reaching 120 days. However, only women can extend the leave for another 60 days.

#### ADOPTION LEAVE

The BANK will pay to women employee, single man employee or having homo-affective common-law partner, registered in the BANK or INSS, having proven adopted children with ages up to 96 months, a 120-day leave, to be counted from date of definitive adoption certificate or temporary custody. First paragraph – Upon Express request of the employee, to be presented with at least thirty days before end of leave, the BANK will grant an extension of another 60 days, in terms of Law 11.770/2008.

Second paragraph – The employee applicant to the benefit stipulated in the first paragraph cannot accumulate it with absences authorized in clause 12a, items III and IV.

Third paragraph – The benefits stipulated in the head, first paragraph and second paragraph cannot be accumulated with same right requested by homo-affective partner employee. (Bank workers, BB, validity from: September 1, 2013 to August 1, 2014)

The clause regarding adoption leave in Collective Agreements of Caixa Econômica Federal was also reformulated with the time. In 2003 and 2004, women who had chosen to adopt had a 120-day leave, according to age of the child, while men had a 5-day period. In 2005, a paragraph was added, ex-

tending right to same sex partner of men who had chosen to adopt. In 2009, clause was improved by extending period to a 180-day leave and isonomy of rights to men and women:

#### ADOPTION LEAVE/PATERNITY LEAVE.

In case of adoption or judicial custody of child of up to 8 years, CAIXA will grant pay leave to the employee for period of 180 days.

§ 1º – In this case, if there is adoption, CAIXA will grant to its employee a paternity leave of 10 days, consecutive or not, in a period of 180 days after adoption was carried out.

§ 2º - To obtain this leave, the Term of Custody, Livelihood and Responsibility can be used as legal document, even in temporary character, stating opening adoption procedure.

§ 3º – When using adoption leave, the employee cannot do any remunerated activity and the child cannot go to any day care, nursery or similar.

§ 4º - In case of same sex common-law partner, if both persons work for CAIXA, only one of them will have right to the leave, while the other may usufruct same period and conditions granted for paternity leave.

§ 5º - In case of adopting more than one child simultaneously, both periods of adoption and paternity leave remain unchanged (Banking workers, CEF, validity from: September 1, 2009 to August 31, 2010)

In following year, the clause modified the limit age for adopted child, going from 8 to 12 years. On the other side, right was restrained to 180 days of leave to women, in case of couples of different sex. Besides, in an affective union between same sex persons, in which just one works in the institution, the adoption leave will be granted to the woman worker, but not to man worker.

#### ADOPTION LEAVE

In case of adoption or judicial custody, CAIXA will grant pay leave to the employee for a 180- day period.

§ 1º – To the father who has chosen to adopt, if he is an employee of CAIXA, it will be granted benefit stipulated in Clause 12 – Permitted Absences, point “b”, after the adoption.

§ 2º – In case of adoption when both adopting persons are employees of CAIXA, right to adoption leave will be exclusively be granted to women, while men can entitle same stipulated period and conditions for a 10-day paternity leave, consecutive or not, during period of 180 days after adoption.

§ 3º – In the case of single employee to adopt, adoption leave will be grant as stated in the head.

§ 4º – In case of same sex common-law partner, being both persons employees of CAIXA, just one will exclusively be benefited with adoption leave period, and other will be entitled to same stipulated period and conditions for paternity leave.

§ 5º - To grant this leave, Term of Custody, Livelihood and Responsibility will be considered as legal document, even in temporary character, stating opening adoption procedure purpose.

§ 6º – When using adoption leave, employee cannot do any remunerated activity and child cannot go to any day care, nursery or similar, except in contracts of simultaneous work signed prior to begin maternity leave.

§ 7º - In case of adopting more than one child simultaneously, both periods of adoption and paternity leave remain unchanged. (Bank workers, CEF, validity from: September 1, 2013 to August 31, 2014)

SERPRO Collective Agreements of 2003 until 2007 foresaw leave of up to 120 days for women adopting children with ages between 0 to 8 years and 5 days for the men, only in cases of children up to 12 months. In 2008, women's leave was increased to 180 days and men's to 30 days, maintaining children age limits in 8 years for women and 12 months for men. In 2009, Collective Agreement was modified, going to a 60-day leave for same sex common-law partner employees adopting children.

#### ADOPTION LEAVE

To employees adopting a child or having judicial custody to adopt a child, as defined in Statute of the Child and Adolescent, a maternity leave of 120 days will be granted. [Or the right to a prorogation of 60, as stated in specific clause]

§ 1º - To employees adopting a child, benefited by clause 27 of this Collective Agreement, it will be granted a 60-day leave.

§ 2º - To employees adopting a child with age of up to 12 months, it will be granted an adoption leave of 30 consecutive days.

§ 3º - To justify deadline corresponding to this leave, the employee will present child custody authorization to SERPRO, with a certificate of competent Notary Judiciary Court, with validity of issuance not exceeding thirty days, and terms stating the person who wants to adopt, made an adoption requirement. (SERPRO, validity from: May 1, 2012 to April 30, 2013)

Since 2005, Collective Agreements of bank workers from CEF accept same sex partners as direct dependents, for assistance and health issues.

#### HEALTH CARE PLAN - CAIXA HEALTH

CAIXA grants medical assistance, hospital, odontological, psychological and phonoaudiologic care, physiotherapy, social services and alternative medicine recognized by the Ministry of Health, to its employees and respective dependents, with a monthly contribution participation of employees and CAIXA, within limits and ways established in this clause, published in CAIXA normative manuals.

[...]

I - Direct dependents are:

- a) spouse;
- b) common-law partner;
- c) same sex common-law partner;
- d) children and stepsons up to 20 years, 11 months and 30 days.
- e) children and permanent disabled and incapable, with age exceeding above "d" item.

§ 6º - In cases where both persons are CAIXA's employees, monthly familiar group contribution will be paid to only one spouse or partner. (Bank workers at CEF, validity from: September 1, 2013 to August 31, 2014)

Also from 2005, CEF Collective Agreements of bank workers, grant right to justified absences due to situations related with same sex partners.

#### PERMITTED ABSENCES.

The employee can be absent from work, if he/she previously sends a personal request to his/her boss, in following cases:

- a) wedding, up to 8 consecutive days to be counted from date of the event;
- b) Paternity- leave due to birth of son: during 10 days, consecutive or not, including the day of register, within 180 days to be counted from date of the event;
- c) death of spouse, parents, children, brothers and partners, during 8 consecutive days to be counted from date of the death;
- d) death of grandparents, grandsons, in-laws, sons and daughters in law, or any person duly registered as dependent at the INSS, during 6 consecutive days to be counted from date of the death;
- [...]
- m) 1 day for hospitalization of spouse or partner, sons, father or mother.

[...]

§ 4º - In what is applicable, absence rights mentioned in the head, will be granted to same sex partner. (Bank workers at CEF, validity from: September 1, 2013 to August 31, 2014)

In Banco do Brasil Collective workers agreements, right to permitted absences is foreseen since 2006 in cases of same sex partner hospitalization or death of same sex partner. From 2009, this right was extended to cases of death of same sex partner relatives.

#### PERMITTED ABSENCES

without prejudice to respective remuneration, employees will be granted with following absences.

##### I – DEATH

- a) of following employees relatives:
  - a.1) parents, children, tutees, spouse or partners, including those of same sex, registered in the bank or the INSS, brothers, grandparents, great grandparents,

grandchildren and great grandchildren: 4 consecutive working days;  
a.2) in-laws, sons and daughters in law - 3 consecutive days  
a.3) brothers in law, uncles and nephews - 1 day.  
b) of following relatives of spouse or partner (a), including same sex, registered in the bank or the INSS:  
b.1) children and tutees - 4 consecutive days;  
b.2) grandparents, parents, grandchildren, sons and daughters in law - 3 consecutive days;  
b.3) brothers, brothers in law, uncles and nephews - 1 day.  
[...]  
VI - HOSPITALIZATION – spouse, partner, including same sex, children, parents – 1 day per year;  
[...] (Bank workers at BB, validity from: September 1, 2013 to August 31, 2014)

In 2007 and 2008, BB banking workers additive terms, declared it would not be considered absences, to have right to Participation in Profits and Results, in cases of same sex partner hospitalization or death.

§ 2º - What is declared in § 1º will not be considered interruption to the exercise of respective function, any absence arising from death of (parents, children, tutees, spouse, partner, including same sex, grandparents, brothers, grandsons, great grandsons, weddings, birth of children, donation of blood, hospitalization (of spouse, partner, including same sex, children, father or mother, and taking child or dependent with less than 14 years to the doctor.

Since 2007, in Vale do Rio Doce collective agreements, is established that same sex partners of workers, have right to medical assistance.

#### SUPPLEMENTARY MEDICAL ASSISTANCE

[...]

c) Health care for the spouse

The company will consider spouse and, within terms of its regulations the partner, including same sex partner, as a dependent of the employee for supplementary medical assistance, regardless of its admission date and wage.

[...] (Vale do Rio Doce, validity from: November 1, 2011 to October 31, 2013)

Since 2008, HOLCIM Civil Construction – MG Collective agreements, foresee childcare aid rights for men workers. According to the Ministry of Labour, stated in 2014, “Legally childcare aid is only granted to women workers. But collective agreements negotiated by unions may, eventually, extend these rights to the father<sup>24</sup>”. As a matter of fact, there are several normative documents at SACC-DIEESE extending childcare aid to men employees. HOLCIM Civil Cons-

24 See at: <<http://portal.mte.gov.br/imprensa/auxilio-creche-um-direito-da-trabalhadora.htm>>. Accessed in June 18, 2014.

truction – MG Collective agreements clauses have been chosen for this work because they expressly refer to same sex workers living in common-law partner. However they do not cover cases of single adopting fathers. As legislators consider the possibility of awarding aid to men workers, and let standardization of these clauses to collective agreements, childcare aid clauses seen in this paper have not been considered as being more favorable guarantees than law

#### CHILD CARE AID

The company will have an agreement with a duly registered daycare institution, or at its discretion, will directly reimburse to the woman employee duly confirmed expenses from custody, surveillance or assistance to any child with ages from 0 to 36 months, until the limit of 35pct % of wage level in force.

§ Sole – The benefit established in the head of this clause will be extended to men employees, in case of following situations:

- if he is a widow;
- if he is divorced and can prove he has the custody of their children;
- if he lives with same sex partner in common-law regime;
- if he can prove that children's mother does not receive same benefit in her job.

If two women workers at Caixa Econômica Federal have a blood-related child, just one of them will have right to maternity-leave, as stated in Collective agreements celebrated since 2010. In the case of two men workers, this right is not foreseen. Since these clauses do not mean an advance for workers and are a favorable situation to the employer because of case of a blood-related child, they will not be represented in the Synoptic Homosexual and Bisexual Chart of Working relations Advances in SACC-DIEESE.

#### MATERNITY LEAVE

The CAIXA grants to its employees a prorogation of 60 days in maternity leave, within terms of Law 11.770/08, totaling 180 days, included in this the 30 days of breast-feeding leave.

§ 1º - The maternity leave prorogation can be requested by the employee until the end of first month after childbirth.

§ 2º - The employee is not allowed to perform any other remunerated activity and the child cannot go to day care institutions or similar. Unfulfillment of these conditions will imply in loss of the right to prorogation, except in cases where there is a simultaneous work contract previously signed to beginning of maternity leave.

§ 3º - In case of maternity leave prorogation, foreseen in terms of Law 11.770/2008 and in the head of this clause being repealed by act of the government, CAIXA will adequate maternity leave of employees to 120 days, plus 30 days for breast-feeding leave.

§ 4º - In case of same common-law partner, being both employees at CAIXA,

just one will have right to the maternity leave period, and other one will be allowed to have same period and conditions established for paternity leave. (Bank workers at CEF, Validity from: September 1, 2013 to August 31, 2014)

The Collective agreements of Petrochemical workers at Camaçari/BA allow, since 2011, the right to education AID for workers having children under custody or tutelage awarded by court order, even in cases of children from same sex common-law partners. The reference to same sex persons union does not affect, since legal value of a tutelage or judicial custody does not depend of conditions that generated it. These clauses also foresee the right to the spouse, but not to a common-law partner, be it same or different sex than the worker.

#### EDUCATION AID

The companies will reimburse education expenses of their employees dependent registered children, in kindergarten, primary and secondary school, high school, technical courses, graduation and post-graduation, up to R\$ 3,266 basis September 2013, to be paid in September 2013, December 2013, March 2014 and June 2014, in four parcels of R\$816.50, to each family unit.

[...]

§ 5º - Single employees, married employees without dependents eligible to education aid in the terms of this clause, and spouses registered as dependents in the company, will also be entitled to this reimbursement.

[...]

§ 7º - Education aid will also be granted to employees that - because of judicial determination have children in custody or legal protection, while this situation lasts, even if legal protection was originated in a homo-affective relationship. (Petrochemical workers at Camaçari/BA, validity from September 1, 2013 to August 31, 2015)

Since 2011, the Collective agreements of Petrochemical workers at Camaçari/BA extended right to childcare aid for workers having the custody or legal protection of minors judicially determined, even in cases where custody or legal protection was originated in a same sex affective relationship. In this case, like in education aid, it is not possible doing any distinction to the custody or legal protection, based in the composition of the union which originated it.

#### CHILDCARE AID

The companies will reimburse 100 percent of monthly payments to the private day care nursery chosen by feminine employee, or by a widow masculine employee, until their children finish their fifth month of life. From that age, reimbursement will be limited to R\$551.48 basis September 1, 2013, by each child until 48<sup>th</sup> month of age.

Paragraph 1º - Childcare aid reimbursement will not be paid if the child has been included in the education aid mentioned in clause 12.

[...]

Paragraph 3º - Childcare aid is extended to employees who, by judicial determination have minors under custody or legal protection, while this situation lasts, even if legal protection was originated in a homo-affective relationship.

Paragraph 4º - The benefit will be extended to reimburse individuals certifying hiring register in work cards, and proof of Social Security tax collection. The benefit will begin after ending maternity leave, limited to 24 months.

Paragraph 5º - From the 24th month, the beneficiary may opt by using a private care day unit, and value of reimbursement will be limited to the above stipulated value, until child's 48th month of age. (Petrochemical workers at Camaçari/BA, validity from September 1, 2013 to August 31, 2015).

Synoptic Table – Advances in labour relations regarding Homosexual and Bisexual workers – SACC-DIEESE											
NEGOCIATION UNITS	YEARS										
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
<b>Anti-discriminatory actions</b>											
Post and Telegraph Company	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO	CO
Metalworkers – ABC/SP					CO						
Security guards – Manaus/AM								CO	CO	CO	CO
Chemical workers - ABC and São Paulo/SP										CO	CO
Bank employees		CA									
DATAPREV			CA								
Banco do Brasil				CA							
Caixa Econômica Federal				CA							
SERPRO						CA	CA	CA	CA	CA	CA
Journalists – DF								CA	CA	CA	CA
PETROBRÁS									CA	CA	CA
Metalworkers – ABC/SP					PF						
Metalworkers (cars) – ABC/SP					PF						
Electro-electronic metalworkers – Manaus/AM									PF	PF	PF
PETROBRÁS									PF	PF	PF
Chemical workers - ABC and São Paulo/SP										IS	IS
<b>Recognition of affective union</b>											
DATAPREV					RE						
SERPRO					RE						
CELESC						RE	RE	RE	RE	RE	RE
Bank employees							RE	RE	RE	RE	RE
Banco do Brasil							RE	RE	RE	RE	RE
Caixa Econômica Federal							RE	RE	RE	RE	RE
Aeronauts									RE	RE	RE
Air service employees									RE	RE	RE
Chemical workers - ABC and São Paulo/SP										RE	RE
Subway workers - Rio de Janeiro/RJ											RE
<b>Care provided to children / family</b>											
Caixa Econômica Federal			AP								
Banco do Brasil				AP							
Banco do Brasil					APP	APP					
Caixa Econômica Federal			AS								
Vale do Rio Doce					AS						
Caixa Econômica Federal			LA	LA	LA	LA	LAE	LAEP	LAEP	LAEP	LAEP
SERPRO						LA	LA	LA	LA	LA	LA
Banco do Brasil							LA	LA	LA	LA	LAEP
Construction - HOLCIM – MG						AC	AC	AC	AC	AC	AC

Obs . Featured ( blue background ) the gains that exceeded the current legislation in the year.

**Anti-discriminatory actions**

CA – Promote awareness campaigns that help inhibit sexual orientation discrimination , among others.

CO - Preventing discrimination in hiring based on sexual orientation, among others.

IS - Prevent wage discrimination based on sexual orientation , among others, for the same function.

PF - Prevent discrimination based on sexual orientation, among others , on career and /or salary advancement.

**Recognition of affective union**

RE -recognize as worker's dependent same-sex partner.

**Care provided to children / family**

AC – Childcare aid for men workers.

AP – Absences to care for partner / children.

APP – Absences allowed to care for partner / children are not considered in the calculation of Profit Sharing and Results.

AS - Health care of partner / children.

LA – Men's adoption leave for longer than is provided by law .

LAE – Men's adoption leave equal women's.

LAEP – Men's adoption leave partially equal women's.

Nevertheless these clauses of Collective agreements of Petrochemical workers at Camaçari/BA refer to homo-affective union; they are not an advance in homosexuals and bisexuals working relations. Therefore, they have not been included in the synoptic chart of homosexuals and bisexuals working relations advances at SACC-DIEESE and as well, respective negotiation unit is not enhanced in Annex I.

## 6. Conclusion

The SACC-DIEESE data analysis and database model of query database of the Ministry of Labor Mediator System show a big difference among workers situation with gender ambiguity and homosexuals and bisexuals, within environment of Brazilian collective working agreements. When data was collected, there were 3,529 normative instruments registered for the system. Not anyone of them refers to the segment of travesti, transexual or intersexuals. Besides, in more than 255,000 documents saved in Mediator System, the right to not being discriminated due to identity gender is only present in three collective agreements.

First document saved in SACC-DIEESE with a clause regarding homosexual and bisexual working interests was signed in 2003. Since then, every each year more clauses with this characteristic have been added. During 2013 negotiations we found 34 of these clauses distributed in 19 negotiation units, as follows: 11 negotiation units with one clause, 4 with two clauses, 2 units with 3, one with 4, and 1 unit with 5 clauses<sup>25</sup>. The system verifies a total of 225 negotiation units<sup>26</sup>. We have observed that amount of collective agreements including guarantees to homosexual and bisexual workers increases as discussion on civil rights of this population advances in the society. Such guarantees have always been in already existing clauses, as in example annually negotiated where not any worker would be prejudiced in its professional progression due to his/her race, color, ethnicity, religion or origin. And after a certain point, it was also agreed non discrimination based in sexual orientation. With exception of one negotiation unit that established a clause benefiting homosexual and bisexual workers for the first time in 2013, all clauses like this are being agreed since years ago. Considering legal condition of this population when each clause was agreed for the first time, we see that 12 of them just granted a right already foreseen in the law, 14 brought more favorable conditions than the law and 7 treated about education campaigns, without legal prevision. With the admissibility of equaled same sex common-law partner and adoption leave between men and women, obtained in 2013, all clauses dealing with homosexual and bisexual rights save in SACC-DIEESE data bank have been overcome by Brazilian legislation.

The collective working agreements are in permanent dialogue with so-

<sup>25</sup> See Synoptic chart of advances in Homosexual and Bisexual Working Relations, in present paper.

<sup>26</sup> See Annex I.

ciety, and to study them will help us in understanding relations among employers and persons which establish affective and sexual bonds with other same sex persons, but also among them and its union entities, with working class and the own society. We cannot reach to a conclusion to about reasons making that needs of these workers occur in only 8.4% of negotiation units save at SACC-DIEESE files. However, it is probable that this happens in part due to resistance of employers and in part due to workers actions.

Promote adequate working conditions for same sex people starting a family, will help making impossible gender-based iniquities, because if a couple may not only be composed by a man and a woman, we cannot presume that women must carry most of family responsibilities as it almost happens. One example of this is recent enactment of a law equating adoption leave period between men and women. This is an advance which will improve single adopting men conditions or common-law partner men to take care of just adopted children. Until then, when a couple of a man and a woman made an adoption, woman was granted a leave to take care of the child, and therefore imposed her that task, without taking into consideration couple's will. Besides, any single man wanting to adopt a child only had a five-day adoption leave. We must advance in leave periods to take care of children, blood-related or not, in such a way that people liable for the child may decide between them, how they want to share professional and parental duties, preserving the right of recovery of woman ready to give birth and then breast-feed the child.

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