

From inspection to injunction: the hidden danger in notices of labor standards infractions

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A company undergoes a labor standards inspection. The labor standards agent identifies an irregularity – non-compliance with one of the 37 Labor Standards Regulations issued by the former Ministry of Labor, for example – and issues a notice of infraction. Given that the amount of the fine is small, the company decides to pay it, benefiting from the 50% discount offered when companies waive their right to contest infractions.

This situation, so common in the course of business in Brazil, hides a significant danger: often these notices of infraction are forwarded to the Public Labor Prosecution Service (Ministério Público do Trabalho – MPT), which, once called on to act, is required to investigate the company's conduct in connection with the standards identified in the notice of infraction.

And so the saga begins. A civil inquiry is commenced, in which the MPT asks the company to show what it has done to bring itself into compliance with the law. And regardless of how robust the evidence is that the infraction did not occur, or that it has been corrected, such inquiries inevitably result in the MPT proposing an administrative settlement, under which the company is required to “comply with the law”, under penalty of heavy fines.

Most of the time, companies refuse to sign the settlement (officially known as a TAC – Termo de Ajustamento de Conduta or Conduct Adjustment Agreement), particularly when they are sure that the reported infractions no longer exist.

The result? A public civil action filed by the MPT, seeking injunctions to compel the company to perform the obligations proposed in the TAC, with fines for failure to do so.

Confident that it is compliant with the law, the company submits evidence in court that the infractions identified were an isolated incident, - now corrected – and that no law is being breached. The company is then surprised when it finds that the labor court has held in favor of the MPT and has issued the requested injunction.

This apparent contradiction reflects the prevailing position of Brazil's highest labor court, the Superior Labor Appeals Court (TST – Tribunal Superior do

Trabalho). Judgments finding companies liable in the situation described above are based on article 497, sole paragraph, of the Code of Civil Procedure, which provides that no evidence of injury to employees is necessary for a grant of this type of “inhibitory” injunctive relief. Under article 497, the courts must grant the relief requested by the MPT whenever there is a risk that an illegal act will be “committed”, “repeated” or “continued”.

This reasoning – which is clearly tortuous and open to criticism – has served as grounds for judgments granting injunctive relief. Arguments such as “the company’s conduct has been corrected”, “the infraction involved very few employees”, “the workplace where the infraction occurred has been demobilized” and “the company is under new management” have fallen on deaf ears in the TST, which went on to issue injunctions, even in those cases.

But the scenario is not entirely gloomy. The courts must also conform to a standard of “reasonability” in determining whether there is a risk that the infraction at issue will “continue” or “be repeated”. With the right evidence and good arguments, it is possible to pass through the fine sieve used by the labor courts to sift through public civil actions and emerge with a judgment dismissing the action.

One thing is certain, however: companies must be alert to the hidden dangers of notices of labor standards infractions and carefully weigh the risks associated with paying fines imposed in labor inspections.

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