Piercing the corporate veil in the Labor Courts

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Imagine waking up one day to a call from your bank, informing you that your account has been frozen – it wouldn't be the pleasantest way to start the day, to say the least. Until November 2017, when the Employment Reform came into effect, the scene described above was a common one in the lives of many shareholders and partners of Brazilian businesses. Similar events still occur today, but it's fair to say that the Labor Courts now have a much more measured approach when it comes to piercing the corporate veil.

Service of process on shareholders and partners? The right to a full answer and defence? Applications by the interested party? Prior to the Code of Civil Procedure of 2015 (CCP 2015), there was no need for a separate proceeding to consider the issue of piercing the corporate veil. Judges could act at their own initiative, issuing orders to freeze the assets of shareholders and partners of debtor companies without notice of any kind. In such a scenario, foreseeability and consistency are impossible, and both are essential factors for secure and reliable system of justice. Only with the advent of the CCP 2015 was it possible to inject some stability into the law and the courts' practice in cases that involved piercing the corporate veil to impose liability on management, shareholders and partners.

Until the Employment Reform, there was no legislation that dealt specifically with piercing the corporate veil in employment-related matters, only a rule issued by the Superior Labor Appeals Court (TST – *Tribunal Superior do Trabalho*, the highest court in employment matters), IN no. 39, which governed incidental proceedings to decide applications to pierce the corporate veil, as provided for in the CCP 2015, in cases before the Labor Courts. TST IN 39 did not provide much direction, leaving it to each judge to apply the provisions of the CCP to employment lawsuits. The Employment Reform introduced specific rules to govern incidental proceedings to decide applications to pierce the corporate veil in the Labor Courts, under article 855-A of the Consolidation of Labor Laws (CLT – *Consolidação das Leis do Trabalho*). The provision contains rules applicable to the litigating parties, procedural deadlines, and requirements for bringing the incidental proceeding, none of which existed prior to 2017.

As can be seen, the Employment Reform did in fact provide greater legal certainty to parties in employment lawsuits in comparison with the earlier scenario, principally because the changes to the law give employers the chance to make a full answer and defence in applications to pierce the corporate veil.

As for effectively piercing the corporate veil, the Labor Courts tend to apply the "Minor Theory", under which proof that a company has failed to comply with alimentary obligations is sufficient to disregard the legal personality of the company in order to make shareholders' and partners' assets available to claimants. In other words, the Labor Courts' decisions show a tendency to relax the separation between the company's property and the property of its owners, and the owners' limited liability, rejecting the "Major Theory", under which proof of fraud, confusion or property or abuse of right is required before the corporate veil can be pierced.

Still, as this article shows, the Employment Reform has brought with it important advances, particularly in establishing rules for piercing the corporate veil to ensure that constitutional principles such as the right to a full answer and defence are respected.