The challenges in applying brazilian labor laws to decentralized autonomous organizations

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DAOs, or Decentralized Autonomous Organizations, are a new sort of organizational structure that has been growing rapidly in recent years. These organizations are collectively owned by their participating members, with decisions being voted on and rules executed via smart contracts. Instead of belonging to one person, or being controlled by a council, DAOs are collectively managed by their own members, attracting autonomy and transparency. There are no heads and subordinates so that all members participate in the decision-making process.

Contrary to some places, including Wyoming (USA), Switzerland, and the Cayman Islands, Brazil lacks any kind of regulation on DAOs, meaning that there is no definition regarding their legal personality and the extension of members' liability, as well as no provisions governing their operation in the country.

At first glance, it is possible to identify various challenges in applying Brazilian labor law to DAOs, bearing in mind the particularities of their functioning. This non-traditional model certainly does not admit the hiring of employees through the regime of the "Consolidação das Leis do Trabalho" (Brazilian Labor Laws Consolidation, or CLT), either by the several formal obstacles or by the very way DAOs operate.

Initially, the formalization of employee hiring, under the CLT, would face difficulties in the registration itself, i.e., when registering the hiring on the eSocial platform considering the employer is absent of legal personality, not being listed under the "*Cadastro Nacional da Pessoa Jurídica*" (Brazilian National Register of the Legal Person). Likewise, the payment of labor charges, including the collection of the FGTS (Brazilian Guarantee Fund for Time of Service) and welfare contributions, would turn impossible without the existence of a legal person under Brazilian legislation.

The concept of DAOs itself moves away from the usual application of the employer and employee concepts, provided for under articles 2º and 3º of the CLT, as these organizations are developed without legal hierarchy and subordination relations, so that members participate in the decision-making process horizontally and sharing the assumption of risks of operations.

By the "shared" essence of this model, it can be seen that this form of work is closer to another concept already provided for under Brazilian labor law: cooperatives, which consist of organizations created by members of a certain economic or social group with the aim to perform, for the common benefit, a particular activity.

Even though there are features that can make DAOs look like cooperatives,

there are many other features that differ them, such as the existence of legal personality for cooperatives (allowing the hiring of employees); the provision of members' liability extension (according to the legislation); and the presence of a minimum hierarchy by means of a Board of Directors or an Administrative Council, elected to manage the cooperative.

In light of this, it can be seen that the current labor legislation, as a rule, bypasses the new forms of work established by Decentralized Autonomous Organizations, being certain that the instruments currently available to govern formal work relations do not encompass the complexity and innovation brought by DAOs and blockchain technology.

Hiring outside the scope of the CLT may be considered for services provided by persons not fulfilling the elements of a working relationship. Nonetheless, it is important to evaluate what will be the effective relationship kept by such autonomous service providers, or structured via legal persons, the nature of the service, and the relation between the service provider and the members of the DAO in order to avoid labor risks that would affect these members jointly.

Each day we will face more challenges in the contemporary world, and although labor laws do not evolve at the same pace, it will always be worth an effort to adjust the legislation to reality, in order to not abandon those that do not fully benefit from new businesses (such as DAO's members), because labor precariousness will always be an object of attention from inspection agencies, such as Labor Courts and the Labor Public Prosecutor that, despite certainly recognizing the formal obstacles to hiring, certainly will not exempt DAOs from liability whenever finding labor relations not covered by the existing legislative protection.

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