

Piercing the Corporate Veil in Brazil's Labor Courts: What's at Stake in Themes 26 and 42

17.09.2025 3 min read

Authors

Cibelle Linero

Larissa Medeiros Rocha

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Piercing the corporate veil is a recurring issue in Brazil's labor courts. Although the concept was formally introduced into employment labor legislation in 2017 (articles 855-A et seq. following of the Consolidation of Labor Laws), it continues to raise important legal questions.

In recent years, the Superior Labor Court (TST – Tribunal Superior do Trabalho, Brazil's highest court in labor and employment matters) has sought to standardize how labor courts interpret and apply the doctrine. This effort is reflected in the Court's treatment of legal issues designated as temas ("themes"), which are specific questions selected for review under the TST's repetitive appeals procedure (Incidente de Recursos de Revista Repetitivos). These themes are intended to resolve conflicting decisions and establish binding precedent across the labor court system.

Currently, two such themes, Themes 26 and 42, are under review by the TST. Both focus on piercing the corporate veil, with the aim of consolidating existing precedents and ensuring consistency in future rulings.

Theme 26 focuses on whether labor courts have jurisdiction to hear veil-piercing claims involving companies undergoing judicial reorganization. The TST is assessing whether the amendments

made to Brazil's Bankruptcy and Judicial Reorganization Law by Law 14.112/2020 shift that jurisdiction to the reorganization or bankruptcy court, particularly when determining whether shareholders, controlling shareholders, or members of management have personal liability for the company's liabilities.

The case also raises a related question: when a debtor company is under judicial reorganization, does the existence of a specific legal framework override the application of the "lesser theory" of veil piercing, requiring courts to apply the requirements under the "greater theory" instead?

In broad terms, the lesser theory, which is found in article 28§5 of the Consumer Protection Code, allows courts to hold shareholders and members of management personally liable even without proof of fraud or abuse: it is enough to show that the corporate structure represents an obstacle to obtaining compensation for losses. The greater theory, found in article 50 of the Civil Code, requires evidence of misuse of the corporate form, such as diversion of purpose or commingling of assets, to justify piercing the veil.

Labor courts have historically applied the lesser theory in certain cases, based on the view that failure to pay employment obligations may itself suggest abuse or fraud. This practice, however, has drawn criticism for undermining

legal certainty, since it allows courts make shareholders' assets liable for their company's obligations without the procedural safeguards provided under the Civil Code and the Bankruptcy and Judicial Reorganization Law.

Theme 42 has a broader scope. It aims to determine which theory – the lesser or the greater – should apply to veil-piercing claims in labor and employment cases generally, beyond the context of judicial reorganization. Among the issues under consideration are whether courts may redirect enforcement proceedings to shareholders without first initiating a separate proceeding to decide whether the requirements for piercing the veil have been met, and whether attachment orders against shareholders' assets are valid in the absence of that procedure.

At present, cases involving Theme 26 are stayed pending the TST's decision. Cases involving Theme 42 continue to move forward until the court issues a final ruling.

The TST's decisions on Themes 26 and 42 will be essential to providing greater legal certainty to companies, shareholders, and members of management, by helping to reduce risks arising from inconsistent interpretations of the veil-piercing doctrine in employment disputes.

As the TST addresses these issues, there is hope that the court will priority to the legal standards set out in the Civil Code and the Bankruptcy and Judicial Reorganization Law, promoting greater consistency and coherence in how veil piercing is applied across the labor court system in Brazil.

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Cibelle Linero



Larissa Medeiros Rocha