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Maternity benefits are not taxable: the importance and expected impact of the STF's decision

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About seven months ago, Brazil's constitutional court, the Supreme Federal Court (*STF – Supremo Tribunal Federal*) held that it is unconstitutional to make maternity leave subject to social security contributions.

The STF's decision confirms the position it has taken in other cases: only amounts that are strictly in the nature of salary or wages are subject to social security contributions, and contributions do not attach to amounts that are not paid in exchange for work, but instead have an indemnificatory character.

What is the importance of the STF's decision, and how will it affect the inclusion of women in the job market?

First, the decision is important because it was made in a "mandatory affects" case, which means that it is binding on all lower courts and on administrative authorities, according to article 927(III) of the Code of Civil Procedure. The federal tax prosecutors (*PGFN – Procuradoria-Geral da Fazenda Nacional*) and the Federal Revenue Agency (*Receita Federal*) are already following the STF's decision, as can be seen from Guidance Opinion SEI no. 18361/2020/ME.

Second, the STF made some important observations on the obstacles to hiring women employees, noting that taxing maternity benefits is a burden that works against inclusion of women in the market work.

According to the International Labour Organization (ILO), women's share in the paid work force is 26.5% smaller than men's, and their unemployment rate is 0.8% higher.[1]

The ILO has also found that the additional cost to employers when hiring women is 1.2% of the woman's gross monthly compensation – and one of the additional costs is taxation of maternity leave.

In 2018, in its study on "The Statistics of Gender: Social Indicators of Women in Brazil", the Brazilian Institute of Geography and Statistics (*IBGE – Instituto Brasileiro de Geografia e Estatística*) found that women (i) earn 20.5% less than men and (ii) hold only 37.8% of management positions.[2]

Without question, taxation of maternity leave was a significant barrier to gender equality in the work force, representing a real disincentive to hiring women, because it cost more to employ women than men.

And this barrier was acknowledged by the STF when it found that a tax that applies *"only when workers are women and mothers creates a general obstacle to hiring women, for exclusively biological reasons, since it makes maternity an burden. Such discrimination finds no support in the*

Constitution which, on the contrary, establishes equality between men and women, and protection for motherhood, the family, and inclusion of women in the work force."

This, then, is the impact that can be expected from the STF's decision: a more equal environment, where men and women can compete on a leveler playing field in the job market.

Equal treatment of men and women, protection for motherhood and protection of women's place in the job market are all guaranteed by the Brazilian Constitution (article 5(I), article 6, and article 7(XVIII) and (XX)).

Taxing maternity benefits thus promotes exactly the opposite of the Constitution's objectives: gender equality.

Aside from ensuring a more plural work environment, diversity contributes to increased revenues, according to a study by the United Nations. Businesses that embrace diversity have seen a growth of 10% to 15% in their revenue.

There is still a long way to go to achieve gender equality. But unquestionably, not taxation of maternity leave removes a significant barrier to women's inclusion in the market work.

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NOTES:

[1]
See https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_619603.pdf and https://brasil.un.org/pt-br/79338-oit-participacao-das-mulheres-no-mercado-de-trabalho-ainda-e-menor-que-dos-homens

[2] See https://www.ibge.gov.br/estatisticas/multidominio/genero/20163-estatisticas-de-genero-indicadores-sociais-das-mulheres-no-brasil.html?=&t=o-que-e

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