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THE BRAZILIAN CRISIS AND THE STRUCTURAL REFORMS, THE TURN OF THE LABOR REFORM

A CRISE BRASILEIRA E AS REFORMAS ESTRURAIS, A MUDANÇA DA REFORMA DO TRABALHISTA

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ABSTRACT

The world has changed the practices and laws that govern labor relations. Emerging countries that do not keep up with these changes will not be likely to receive direct foreign investments from foreign investors. Brazil has tried to implement some reforms in the labor area, this is a dilemma that its legislators have to face according to society. Economy and work have always been linked. Since the Industrial Revolution, with the replacement of man by machine, the labor market is undergoing profound changes. The competitiveness in the international market, increasingly fierce, requires countries an attitude change regarding its legislation to adapt to these changes and can develop

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themselves economically and socially, ensuring quality of life for its citizens. The Brazilian State é neoliberal and, welfare policies need to review its labor laws, created in the era Vargas and fascist bias, extremely patronizing, so that it is an obstacle to the economic development of the country, before the new reality imposed by globalization.

KEYWORDS: Human rights; International Labor Law; Foreign Direct Investment; Economic development.

RESUMO

O mundo mudou as práticas e leis que regem as relações de trabalho. Os países emergentes que não acompanham essas mudanças provavelmente não receberão investimentos estrangeiros diretos de investidores estrangeiros. O Brasil tentou implementar algumas reformas na área do trabalho, este é um dilema que seus legisladores devem enfrentar de acordo com a sociedade. Economia e trabalho sempre foram ligados. Desde a Revolução Industrial, com a substituição do homem pela máquina, o mercado de trabalho está passando por mudanças profundas. A competitividade no mercado internacional, cada vez mais feroz, exige aos países uma mudança de atitude em relação à sua legislação para se adaptar a essas mudanças e se desenvolver economicamente e socialmente, garantindo qualidade de vida para seus cidadãos. O Estado brasileiro é neoliberal e as políticas de bem-estar precisam rever suas leis trabalhistas, criadas na era Vargas e tendência fascista, extremamente condescendentes, de modo que é um obstáculo para o desenvolvimento econômico do país, diante da nova realidade imposta pela globalização.

PALAVRAS-CHAVE: Direitos Humanos; Direito Internacional do Trabalho; Investimento Externo Direito; Desenvolvimento Econômico.

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INTRODUCTION

This article aims studying at the same time, the need to maintain a Rule of Law and the economic crisis of business. Flexibility, in a responsible and non-abusive way, shows itself as a possible means of compiling this conflict.

As already stated, many factors and crises have transformed the world economy. Because of these transformations, the paradigm sought now is a model of Labor Law open to change, which can adapt to the new world economic situation and to the demand of each company, in other words, a model with slightly more flexible rules.

The twenty-first century began to observe, in a deeper way, the consequences of globalization. On the subject, in Cassar's words (2013, p.22) these changes are part of a whole formed by neoliberalism, privatizations, emergencies of multinationals, among other elements that structure the State and its political organization, as well as its international relations. These transformations strongly influence the national and global socioeconomic order.

The labor market, as already mentioned, does not remain outside these modifications, being even one of the most affected by this picture of transformations of liberal capitalism. Cassar (*idem*) states that:

> The labor market has undergone a profound change in the face of strong market volatility, of the increased competition, of narrower profit margins, of the need for increased production, of the international division of labor and of the subordination of the poorer to the richer countries.

The technological revolution and the deepening of global interdependence, despite stimulating a greater expansion of the industries and the increase in the productivity of the companies, result in the exchange of the man by the machine, with the consequent diminution of the participation of the human being, especially of those who are less qualified.

These transformations in the world of work and in the world economy generate logical consequences that affect everyone, such as the social, political and cultural inequality that lead to the growth of unemployment in the poorest countries, demanding

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intelligent solutions, adapting the various sectors of the market and of the society to this irreversible reality.

As already mentioned, over the last few decades, because of economic changes, the profile of jobs has changed and many workers have not been able to adapt. Those workers, generally less qualified, become part of the migratory masses to other countries. Brazil has been chosen as the destination of many of them, which has generated a precariousness of the workforce in the country.

Mello (1993, p.104) brings some criteria that can be used as a presupposition for definition. They are:

> a) would be those capable of influencing the economy of several countries by exercising activity in them; b) would be the commercial companies in which the power of decision is dispersed in its subsidiaries; c) would be those that operate abroad through subsidiaries or affiliates, etc.

And he continues (idem, p.104) arguing that:

> The characteristics of transnational corporations include: a) a large enterprise with enormous financial potential; b) it has a scientific-technological heritage; c) the administration of it is internationalized; d) there is an economic unit and legal diversity of the different subsidiaries or branches that have different nationalities.

When it has emerged, apparently in the United States of America in the 1960s, the term used was "multinational" in order to hide its true nationality, because about 85% of them are of American origin, and the term was used to avoid problems of nationalism in the countries where they acted.

More consistently, the UN chose to embody the term "transnational", since it is a company that operates beyond state borders and not that these companies have many nationalities (as the term "multinational" might suggest).

There are many factors that lead to the emergence, or to the development of a transnational corporation. Mello (ibidem, p.106) points out:

> a) the companies went abroad in search of cheaper labor; b) they seek to control markets in order to facilitate exports; c) they control the sources of supply of raw materials; d) they avoid competition from local companies; [...] they increase their profit by overbilling what is imported from the matrix, as well as the under-invoicing of what they sell to the matrix [...]

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These companies have immense economic power, affecting directly in the labor market and the economy of the countries where they settle. They now have a larger turnover than the gross national product of some states and grow on average twice as fast as the economy of the states in which they operate.

These companies usually produce products for commercialization both in the country where they are installed and in other countries, and it is common that this production occurs in several countries, in order to reduce the cost of production and increase the profit margin of the company.

Most transnational corporations are from developed countries. They conquer the domestic market and start installing their branches in developing countries, precisely because they offer economic advantages for the company, such as cheaper labor, potential consumer market, infrastructure, reduction of tax burden and abundant raw material. In counterpart, the companies generate new jobs and the industrialization of the region, which is also positive for the host country.

However, most of the profits are sent to the parent company, which makes many advocate the idea of regulating transnational corporations in order to limit their power and prevent it from being devastating to developing countries where they are installed because they often hold the exploitation of the basic product of these States, dominating their economy.

In Brazil, under the government of Juscelino Kubitschek, between the years of 1956 and 1961, transnational corporations began to be more important. During this period, Ford, GM, Willys, Volkswagen, among other factories were installed in the country. Currently several transnational companies have branches in Brazil, such as General Motors, IBM and Dell (United States); Peugeot (France); Nestle (Switzerland); Sony and Toyota (Japan); Nokia (Finland); Fiat (Italy) and Siemens (Germany).

Francisco (2016) states that there are currently about 40,000 transnational companies operating in the world market and that although most are from industrialized countries, there are also Mexican, Indian and Brazilian companies. He calls attention to the example of transnational corporations with headquarters in Brazil: Vale do Rio Doce, Sadia, Perdigão and Gerdau.

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All this is only possible as a result of globalization, since it provides the whole technological apparatus for carrying out these activities on a global scale, especially through interconnected transport and telecommunications services (idem, 2016).

Having this said, it is observed that the segment of law that studies labor relations, have been much stimulated by the consequences of this new and immutable reality. Until this moment, the studies have encountered difficulties, often ideological, to follow and process these mutations arising from globalization and rapid technological development as quickly as they occur.

In this scenario of economic crisis, technological rise and need for restructuring of management strategies is that the minimal intervention of the State emerges as a possible solution to the serious unemployment problem, as countries started to compete for the installation of companies in their territories, as an attempt to recover from the crisis, and hence generating new jobs. As this new reality began to demand more and more multifunctional employees, this is attributed to the precariousness of work.

All these factors triggered the raise of informal work, the deregulation and disorganization of the labor market. In the words of Delgado (2007, p.99):

> In this context of economic, technological and organizational crisis, it was consolidated in the main centers of the capitalist system by circumstantially decisive electoral victories (Margaret Tatcher in England in 1979, Ronald Regan in the USA in 1980, Helmult Kohl in Germany, In 1982) the cultural political hegemony of a deregulatory thought of the Welfare State. At the heart of this guideline, in favor of the deregulation of social policies and of the legal rules limiting the economic market was, by logical consequence, Labor Law.

The historical evolution of Labor Law was marked by the concern to ensure minimum rights to the worker. Cassar (2013, p.12) highlights that it emerges as a reaction to the post-Industrial Revolution scenario in which there has been an increasing and uncontrollable inhuman exploitation of labor. Over time, however, social, economic, and political changes begin to interfere with employment relations. What is sought with the flexibility is to solve the problem of the rigor of labor standards.

The Labor Law as it is systematized today emerged in the eighteenth century as a consequence of the social, economic, political and legal transformations that were provoked in that period by the Industrial Revolution. With the shift from slave or servile

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labor to wage labor, the first ideas of labor rights appear among the working class as a way of limiting the exploitation of the deregulated market and under the influence of the increasing development of corporate productivity.

Cassar highlights (2013, p.12) that:

> Ordinary law (related to civil concerns), with its private rules of the market, no longer served the wishes of the working class, oppressed and exploited in the face of the explosion of the labor market due to the discovery of the steam engine, of loom, of light and the consequent industrial revolution. In the face of the mechanization of work, learning was no longer required in an office or profession. Any "worker" would be fit for work, and his labor less expensive, his bargaining power, in the face of the numerous workers in search of the market, was insignificant.

The workers were tired of this exploitation and, motivated by the values of justice, dignity, preached at the time, they conquest of their rights by organizing themselves into trade unions, as a means of pressing and demanding better social conditions of work. In labor relations, important social rights derived from this mutation: the organization through unions, enabling workers to form associations recognized by the state with the function of representing them in the search for their rights; the creation of legislation that would guarantee the maintenance of dignity of workers, and, consequently, to soften and protect the exploitation of men, women and children.

The need for a new protective and interventionist legislative system gives rise to Labor Law with a tutelary, economic, political, coordinating and social function. (CASSAR, 2013, p.12). The focus now is to ensure a minimum of rights to the worker in order to avoid exploitation by the employer; is also "to inject capital into the market and democratize access to wealth"; the Labor Law will seek to harmonize the conflicts between labor and capital, with regard to guarantee "some improvement of the social condition of the worker, of society as a whole". (Ibid., P. 12).

Another important factor in raising awareness of labor rights was the creation of the International Labor Organization (ILO) after the First World War, with the aim of establishing labor standards at the international level. It represented a true framework of Community law, and also the incipient need for supranational actions by parts of the states to defend a global issue able to provide and guarantee some dignity for the

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worker. Cassar (2013, p.16) defines it as "a neutral, supranational body that establishes rules of global obedience to work protection."

In this way, the primary labor laws have emerged, at first reduced by means of occasional texts, and later they rise to constitutional level, a phenomenon that has been extended by a large part of Western international society.

Delgado (2011, p. 95) points out that in the first phase the laws were directed only "at reducing the brutal violence of corporate overexploitation". The aim was to give the laws a "humanitarian aspect, coming from an unsystematic construction".

The first labor laws were intended to discipline rights concerning the work of minors and women, given that in the absence of laws these minorities were the social segments most affected by abuse and exploitation perpetrated.

In a second moment, from 1848 until the First World War, Labor Law is governed by systematization and regulation. Delgado (2011, p. 96) points out that it was a period characterized by "advances and retreats between the action of the labor movement, the trade union movement, the socialist movement, and, at the same time, the State's strategy of action." It is from then on that the Labor Law has become an independent legal branch and the State "assimilates a wide space of action for the workers' pressure".

A major milestone of this period was the appearance of the Encyclical *Rerum Novarum* in 1891, edited by Pope Leo XIII, which translated the official manifestation of the Catholic Church (which has notable influence at the time) to demand from the State and the ruling classes a more comprehensive regulation of labor relations. (Delgado, 2011, p.97).

The precursor legislation to effectively address labor rights was the Constitution of Mexico in 1917 which prohibited the work of children under 12 years of age, it also established minimum wage, eight-hour day's work, maternity protection and protection against accidents of work. Following the Mexican Constitution, the Weimar Constitution of 1919 emerged in Germany with progressive social ideals of social justice, with great repercussions in Europe. Another important legislation was the *Carta Del Lavoro* of Italy, published in 1927, which served as a basis for the corporatist political systems of countries such as Portugal, Spain and Brazil, establishing formidable points regarding labor rights.

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However, after the Second World War, a crisis and transition phase of Labor Law was inaugurated. This context of critical situation was marked by economic, technological and organizational crisis, which undermined the cohesion of the economic system, increased inflation and raised intercompany competition, resulting in unemployment rates in the labor market, reducing jobs, placing in check the state's capacity to provide intense and generalized social policies. (DELGADO, 2011. P.98-99).

The Labor Law was designed with the purpose of establishing standards of protection against abuses that began mainly after the Industrial Revolution, which guaranteed to this branch of law, as already highlighted, an essentially protective character and over time was getting each time more paternalistic, using state intervention as a way of elaborating detailed and "fossilizing" regulations for labor relations.

The Labor Law has not always preserved the same attributes that have distinguished it since its appearance, since it underwent mutations, a consequence of the social transformations that occurred throughout history. Historical events such as the New York's Stock Market Crash (1929), the First and Second World Wars, and the economic crisis of the 1980s fueled by the rise in oil prices have brought about profound changes in international society, resulting in economic imbalance, a raise of unemployment rate and destabilization of the economy.

Cassar (2013, p.32) points out that many factors are responsible for the precariousness of the workforce, due to the transformations that operate in the world economy. She highlights:

> Financial crisis started in the 1970s and 1980s in Western Europe, due to the collapse of the Asian oil pole; the cash problems for continuity of the Welfare State adoption plan; the discovery of chips revolutionizing computing; telematics; nanotechnology; robotization and other technological inventions; the breaking down of customs barriers with the globalization of the economy, which increased competition between countries, imposing on them the need to produce more, at lower cost and better quality to compete in the globalized market; breakthrough in the media, the world trade divide, and the housing and economic crisis of the American economy.

All this gives rise to the emergence of a labor market based on informality, composed of the large number of unemployed people coming from the most diverse

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conflicts in the planet, whether they are refugees, immigrants, etc. These facts are associated with the increasing globalization of the economy, with technological developments, and which end up aggravating them even more.

Associated with this new context, marked by the economic crisis, by the growing competition for consumer markets, by the increasing unemployment, by inequality and social exclusion, there is the automation, which is increasingly pressing for an exchange between the worker and the machine. This problem is already known from the times of the Industrial Revolution, which, however, has reached difficult levels to be contained, aggravating the situation.

However, it is important to reflect on whether or not such transformations would actually be contained, given that this constant human caprice of wanting to stop time fossilizing innovations does not address the most appropriate consequences. Automation is a reality, preventing it would not be the most coherent attitude to be done.

The legal science of labor law, as responsible for administering norms concerning labor relations, and, as an immediate reflection of them, was continually exposed to the instabilities and fluctuations of politics and economics in the social context. Its great challenge is not to stop technological advances, but rather to balance in a balanced way the aspirations of society with the irreversible productive improvement implemented by human technological intelligence.

2 ECONOMIC DEVELOPMENT AND THE LITTLE EFFECTIVE LABOR LEGISLATION

It is often believed that labor laws guarantee rights and that without them workers would be at the mercy of the savagery of the extremely competitive economic market, exposed to a situation of vulnerability and to a poor condition of work.

However, what are observed in the world context are countries with "better" labor laws exporting workers. In other words, the worker himself has sought employment in countries where laws are less protective.

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If labor law effectively protected the worker, it was expected that English would migrate to Spain or Portugal, places where it is almost impossible to dismiss someone; or that workers in the United States were attracted into Mexico, since, according to Narloch (2015), US law generally does not require prior notice, it does not provide for a fine for termination of contract or paid leave, while in Mexico, the average cost of a layoff is around 74 weeks of work (NARLOCH, 2015).

According to data from the World Bank (NARLOCH, 2015) There are almost 200,000 Portuguese and Spanish working in England, where it is much easier to hire than to fire. Some 4 million Indonesians are working in Malaysia, Australia and Singapore, where countries are not even predicts a general minimum wage, while Indonesia is one of the most costly countries for dismiss someone.

In this line, data from World Bank (NARLOCH, 2015) also shows that the seven countries with the least protective labor legislation are the United States, Canada, Australia, Singapore, Hong Kong (China), the Maldives, the Marshall Islands. So how can one explain that in these countries the workers with the best quality of life in the world live? If the magic of labor protection really exist, countries like Bolivia, Venezuela, Equatorial Guinea, Sao Tome and Principe, Tanzania, Congo and the Central African Republic should receive a large amount of these workers, since they are the ones that protect workers the most.

A possible answer to the above question may perhaps be based on the possibility of flexible working relationships. Countries with very rigid labor laws are bad places to invest because entrepreneurs are seen as villains and consequently big companies hardly venture to open jobs in places like this because there will be a drastic reduction in the possibility to earn profits.

In counterpart, in States with less protective labor laws, where labor relations are based much more on agreements and contracts between the parties, there is a greater freedom and will for enterprising. There is also a culture focused on economic development and respect for private property. In this way, the country attracts capital for its territory and, consequently, brings more opportunities for the unprivileged people.

Paternalistic laws provoke unemployment. This is what is happening in European countries. This is what is happening in Brazil too. Brazilian labor laws are

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brought together in the CLT, a law inspired by Italian fascism and enacted in the Vargas Era, thus denoting a paternalistic view of the legislator, who, although he had the intention to protect the worker, he in fact caused ruinous consequences for the economic development and, of course, he brought measures negatively reflects on the worker himself.

The United States of America represents the world's largest economy. The United States Labor Law guarantees an unemployment rate of only 5,5% (ILO). It regulates labor relations at the federal level, but in practice each member state has the power to legislate differently according to its local needs.

This study will analyze very briefly, just as example, some aspects of the labor laws of the State of Florida (YOUS/A, 2016). The minimum wage adopted is US$ 8.05 (eight dollars and five cents). With regard to overtime, there is no specific regulation in Florida. In this case, it applies the federal law that establishes there are no limits to the amount of hours of work that an employer may require of his employee, providing only that after 40 hours weekly (and without a daily hours limitation, as it has Brazil), and, as a consequence, the employer must pay 1.5 times the hour value for the employee.

Vacations are usually only two weeks a year, granted after one year of work (as in Brazil) and there is no legal determination in Florida that they should be remunerated, and it is up to each company to establish the relative rules and this. Similarly, there is no state regulation on holidays. Culturally works on holidays normally and receives the value corresponding to the normal working time. There is no, as in Brazil, the obligation of rest or double remuneration, if the worker works in such day.

Another very different aspect when comparing those countries to Brazil is the figure of the 13th (thirteenth salary). In the United States it simply does not exist. Some companies eventually grant a bonus at the end of the year to their employees, but of their own free will and at a value not tied to the value of the salary. Lastly, with respect to the Prior Notice, in the State of Florida, the system adopted is called "at will" and consists of the possibility of the employer dismissing without a good cause and without the need to give prior notice to the employee, except in cases of mass dismissal (at least more than 50 employees), which law provides for a notice of at least 60 days in advance and the payment must occur on the day following the dismissal.

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Germany also has interesting labor aspects. It is one of the countries with the most flexible labor legislation in Europe and it has an unemployment rate below 5% (ILO). In 2000 it underwent a legislative reform whose objective was to liberalize the rules to employ, creating temporary contracts, the called "mini Jobs", that have a workload of up to 30 hours a week, salaries limited to 450 euros that has not tax incidence.

The German logic was that it was better to earn little than to be without a job. And that is how they overcame the 2009 economic crisis without substantial interference with the level of employment. According to the deputy chief economist of Natixis, Sylvain Broier, a specialist in Germany (MÜZELL, 2015), reform in labor is a very smart measure that allows companies to retain skilled labor in times of crisis. So when economic growth picks up again, they can reuse this available labor without having to lose skilled and experienced human capital.

The same economist says that countries such as France and Spain were inspired by the German model and were able to flex the labor contracts by putting the economy back on the route of growing and reducing the unemployment rate.

With no intention of exhausting comparisons of Brazilian labor legislation with the world's largest economies, a brief consideration will be given, just as an example as before, but now with Canada (BARROSO, 2007). In Canada, the process of hiring employees by companies is unbureaucratic and it costs much less than in Brazil.

In Canada there is no 13th salary, FGTS, transportation allowance or meal voucher. When it comes to vacations, they vary according to how long a worker belongs to the company. For those who have worked for less than a year, one day of rest per month is guaranteed; between one year and five years, two consecutive weeks and for those who have worked for more than five years, enjoy three consecutive weeks and a week should be understood as five working days. It is possible to do extra hours to get another week of vacation, but it is prohibited to sell them, as can happen in Brazil.

The prior notice is also calculated according to the working time, not having that right who worked less than three months. Between three months and one year, the prior notice corresponds to week; from one to five years, two weeks; from five to ten years, four weeks and more than ten years, eight weeks.

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The minimum wage is paid at the rate of eight dollars an hour, and in general, 40 hours of work per week.

Brazilian labor laws, differently from the ones of the developed countries mentioned above, jeopardize the competitiveness of the Brazilian product in the international market by doubling the cost of the payroll. They conspire against the country's economic development, keeping the Brazilian standard of living below what it would be if they did not exist, at least not in the way they exist.

The minimum wage was instituted under the pretext of securing a minimum income for the poor and less qualified worker. But this worker is the one who tends to be fired and not rehired by companies in times of economic crisis. The minimum wage affects precisely who the legislator says seeks to protect.

The protectionist legislation around women, considering that she is a more "fragile" sex, make more difficult the process of hiring a women, due to the fact that men do not demand the numerous and costly benefits compared with a female employee.

They are provisions of this nature, whose intention is supposed to protect, which leads to the stiffening of the Brazilian labor market. Added to this is the fact that it is forbidden to the Brazilian worker to give up most of his rights. With this impossibility, there is a raise in unemployment rate and the economy gets more informal in the country, limiting or even hindering its economic development.

3 FLEXIBLE LABOR LAWS AND FOREIGN DIRECT INVESTMENTS IN BRAZIL

The contemporary economic, political and social crises have provoked a deleterious oscillation in labor relations, which generates mass unemployment and settles discussions on the traditional archetype of Labor Law. This, in turn, has not been able to effectively follow the speed with which social mutations have been processed.

It has been exposed in previous topics that transnational corporations are today a social actor in the global economy of great relevance. The world economy is now dominated by these companies and foreign direct investment.

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In this scenario, in accordance with Yazigi (2016), the amount of labor benefits provided under Brazilian law is a factor that scares foreign investment. He points out that:

> Many foreigners suffer to understand the Brazilian labor legislation, considering that some benefits provided in the Federal Constitution and in the Consolidation of Labor Laws are non-existent in several countries. The greater the impact is caused when it is found that all benefits are granted cumulatively causing perplexity and hampering the discernment of nations with very different labor ordering.

With increasing trade openness, transnational corporations are looking for the best places to invest. They understand by better places those who have the most conducive trading environment.

Brazil, despite having raw material and a large workforce, essential elements for production, it has a high contracting cost due to the excessive protection that is guaranteed by the laws to the workers. Yazigi (2016) highlights that:

> Currently, Brazil is considered one of the world champions of labor actions with an average of 2.5 million cases per year, where there is no plausible possibility of conciliation except by at the Labor Court. Moreover, the high labor cost with one employee compared to other countries is, at present, over 100% of the value of the employee's own salary.

This discussion clarifies that the classic model of labor law needs to be discussed because of its difficulty in harmonizing solutions for the poor conditions of labor in the 21st century and for the new labor relations arising from technological, social, economic and political developments.

Cassar (2013, p.32) argues that:

> Due to the transmutation of the world economy and the consequent weakening of each country's domestic policy, to the high levels of world unemployment and underemployment of millions of people, new measures should be taken aiming at harmonizing business interests with professional needs. That's justifies the bring flexibility of certain rigid rules or the creation of alternative rules to justify maintaining the health of the company and the source of employment.

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The rigidity of labor legislation appears to be one of the causes that make it difficult to contain the unemployment crisis that plagues the country, precisely because it distances the interest of large companies to invest in Brazil.

Labor Law is a means, an instrument for the idealization of guarantees and improvements, not an end in itself. Justice related to labor has to be adapted to social reality and not vice versa. The labor legislation ends up harming the one in which it should support: the worker. That occurs mainly when it promotes an unreasonable social protection that stifles the economic development.

That is why, once again, Cassar (2013, p.32) emphasizes the need for flexibilization as a way of maintaining the company and jobs. For her:

> To make flexible labor relations presupposes the maintenance of state intervention on it, establishing the minimum conditions of work, without which one cannot conceive the worker's life with dignity (minimum for survive), but authorizing, in certain cases, exceptions or less rigid rules, in a way that makes possible to maintain the company and the jobs.

It is imperative to assess whether our normative labor standards are still appropriate and effective, in the way they are, in order to conduct the labor relations of contemporary political and socioeconomic conjuncture.

Faced with this reality of the 21st century, the proposal for Labor Law to accompany these changes and adapt to the new socio-political and economic context would mean the introduction of some changes in labor legislation, in which they consisted in the State giving up of its paternalism and making way for norms that lead the labor relations so that these could be ruled by more flexible precepts that leave a greater freedom of negotiations between employer and employee.

The employee wants to earn more and have better working conditions. The employer wants to pay less to have higher profit or to keep the business and to ascent in market. Cassar (2013, p.32-33) points out that it is necessary to locate some solution in the Labor Law itself to reconcile the principle of worker protection with the current need to maintain the health of the company. According to her:

> There will be harmony of interests when the employee himself is aware of the precarious situation of his employer, of the difficulty of re-entering the market and of the threat of unemployment, at which point his interests will converge

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> with those of the employer, starting to pursue together the recovery of the company.

This is not to diminish the importance given to the effective protection of the worker within the system of production, to the detriment of a savage capitalism, which seeks only the laws of the market with the sole scope of contentment of the particular interests of those who are economically wealthiest.

In fact, Cassar (2013, p. 26) highlights that:

> The guarantee of minimum rights to the worker is part of a set of civilizing human values (minimum for survive), which finds support in the principle of the dignity of the human person constitutionally foreseen as the greatest patrimony of humanity.

On the "minimum for survive", Fachin defends:

> [...] the existence of a minimum patrimonial guarantee inherent in every human being, which is part of the respective individual juridical sphere alongside the attributes pertinent to the human condition itself. It is a minimum capital indispensable to a life worthy of which, under no circumstances can be dispossessed, whose protection is above the interests of creditors.

What is wanted is an extension of the negotiating spectrum of the parties, which is contained in situations that require the taking of certain decisions that would be advantageous for both parties. In this way, the bring flexibility to labor law should be used only when the real interests between employer and employee are convergent, in each concrete case.

The process of globalization has reached and continues to hit labor law intensively. Romita (1997, p. 87) gives the following lesson:

> With regard to the effects of economic globalization on the world of work, it is necessary to consider the impacts on the company and on employment. Regarding the last aspect, it is important to point out the importance of the right to work in relation to Labor Law.

Make labor law more flexible can seen as the best way to reconcile workers' interests with the economic crisis of companies. The need to relax is urgent, given the unemployment level that has taken hold in the country. In his words (ibid.):

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> In Brazil, the globalization of the economy produces effects corresponding to those registered in the first world, considering the characteristics of a country still in development. What aggravates the problems in Brazil is the need for economic integration of large marginalized social segments. The greatest impact is on the harmful effects provoked by unemployment. In Europe, there is concern about open unemployment. In Brazil, besides this, there is underemployment and the growth of informal employment, by-products of the underground economy, clandestine, marginal or hidden.

Ianni (1996, p. 162) quotes the speech of the director of the International Monetary Fund (IMF) at the opening of the 48th Annual Assembly of the International Monetary Fund/World Bank in September 1993, in which he points to unemployment has the be faced by the industrialized countries, predicting that 32 million people in the rich world would be unemployed. That's in 1993. That's in the "rich world." At present and in poor or developing countries the quantitative is even more frightening.

If we recall the economic crisis caused by the demise of the real estate system that hit the United States in 2008 (EFE, 2009), with cascading effect worldwide, in August of that year some 600,000 applications for weekly unemployment insurance were filed in the United States, while on November 25 Of 2009 fell to 466,000 orders a week, demonstrating the rapid positive reaction from the US market.

With consequences in Brazil (EBC, 2009), there were registered in December of the same year, 654,946 layoffs; and in the first half of 2009, in January, 101,748; in February, 1.22 million; and in March, 1.38 million. Brazil spent with the payment unemployment insurance the amount of R$ 10 billion (G1, 2009) only in the first half of 2009.

These facts reaffirm that there is a need to rearrange labor relations to contain the economic crisis, through a responsible way to make legislation more flexible.

According to Reale (2012, p.645):

> As for the impact of the globalization of the economy on labor law, the theme opens up to the student's reflection a range of issues, all of great relevance, both in the field of individual law and of collective law. It is necessary to examine only two aspects: the crisis of the so-called "protective principle" and the effects of the requirement of competitiveness of companies on the traditional heteronomous regulation of working conditions. [...] The demands of the economy advocate the triumph of the market and impose flexible working conditions, as a condition for the reduction of the costs of the company [...] Flexibility has already acquired forums of constitutional precept (Constitution of October 5, 1988, articles 7, VI, XII and XIV), although it is not intended to provide gains or reduction of costs to the employer, but to provide

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> social actors with elements aiming to preserve the source of employment (the company) as a means of combating unemployment.

Undoubtedly, the labor legislation needs of deep innovations in order to address the political, social, economic and technological changes. What is intended with more flexible labor legislation is simply to make the interests of employees and employers converge, avoiding an increase in the precariousness of work, and thus reducing the unemployment crisis in which the country is suffering.

Nassar (1991, p.76) takes a side in the sense that:

> Make labor standards more flexible is an inherent part of a greater process of labor market flexibility, which consists of a set of measures aiming to enrich Labor Law with new mechanisms capable to respond to the changes of economic, technological order or of a different nature. This means that bring flexibility to labor norms does not finishes in one measure, but rather in the totality of the phenomenon of flexibility, which is more comprehensive, comprising political, economic and social strategies, and not just legal ones.

Criticize naively the laws of the market, capitalism or entrepreneurs, *per se,* is insufficient to make practical changes. In fact, the essential is to introduce harmonization and balance between the regulation of the legislation and the paternalistic and unproductive intervention of the State.

To make labor legislation more flexible appears to be a vital necessity to solve in face of the problem of unemployment crisis. This crisis is associated with a peremptory need that is inherent to Labor Law that seeks to regulate labor relations arising from technological development and globalization. In case of not solving it, it can at least improve the unemployment rates.

Even in the 1960s, in Brazil, people had started talking about more flexible labor laws. The law 4,923/65, which instituted the reduction of working hours and wages as a means of avoiding mass unemployment, in order to protect employment at all costs, shows that there was already a concern of Labor Law with company's finances and not only with the worker's rights, that is because labor market cannot continue without the presence of entrepreneurs.

The Employee's Severance Guarantee Fund (Fundo de Garantia por Tempo de Serviço in portuguese) FGTS, established in 1966, initially as an option, is another

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example of which the Brazilian legislator was already concerned about bringing more flexibility to it. Godinho (2007, p.1239) clarifies that:

> The system of the Guarantee Fund not only removed legal limits to the unmotivated exemptions (in the Fund's system, it would be no longer legally possible to reach the old bargaining stability), but also significantly reduced the obstacle Economic breakdown of contracts for less than ten years, replacing it with the pre-constituted systematic monthly deposits of the FGTS.

It is, therefore, a relaxation imposed by the State itself, in view of the need to permit the country's economic development.

The Consolidation of Labor Laws (CLT), despite being published in 1945, already provided for the possibility of contracting for a fixed period, which also corroborates the thesis that the market is volatile and presents different needs, and the law must safeguard the rights involving the specific case. In the context of economic crisis, the Law 9.608/98, which allowed such a compliance of contract for a determined period for a longer time, was widely used as a solution to the excessive unemployment then lived by society.

In 1988, the Federal Constitution was enacted. It instituted innumerable rights and individual guarantees and was all guided by the valorization of work as a social right. Its understanding was constructed under the primacy of the dignity of the human person, consequently, of the worker, having the human being as the focus of labor relations. But even it did not fail to anticipate situations of flexibility. It authorized in its text expressly the reduction of wages, the compensation of working hours and the increase of this journey for the uninterrupted shifts of the relay.

The measures aiming to make labor relations more flexible in Brazil did not stop there. Several other measures were adopted, especially after the privatizations of several public companies and mixed-capital companies. In 1995, the Ministry of Labor, by means of ordinance 865, directed the tax authorities not to impose sanctions on companies that did not comply with provisions of collective agreements and agreements. (BRASIL, 1995), thus demonstrating the importance of these instruments as directors of labor law.

Between 1999 and 2000, it became possible to suspend the employment contract for participation in professional training courses, to extend the one-year

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deadline for calculating the hour limit in the Bank of Hours and the institution of a profit and result sharing (PRS) of the company by the worker as a complementation of wages.

The jurisprudence, in turn, also conforms to the adoption of flexible measures. Summary statement 363 of the Superior Labor Court (TST) authorized the payment of salaries and FGTS only in cases of outsourcing of the activity of the Public Administration. Summary statement 331, also of the TST, in the same line of thought states that it is possible to outsource surveillance, conservation and cleaning activities.

Despite understandings such as that of Domingues and Teodoro (2010, p.75) in the sense that bringing flexibility through the possibility of outsourcing reduces the volume of workers regularly employed and brings as a consequence the reduction of labor rights and the precariousness of work. So there is a need to consider the idea of labor standards more flexible, since a plausible solution to the unemployment crisis in Brazil requires the adoption of such measures. And this has already been perceived by the legislator himself, a long time ago.

Labor rights less rigid are a current and controversial issue in the contemporary legal, economic and political context. Of course, it is urgent to carefully assess its positive and negative aspects, as well as the conceivable implications that such a measure can have on society at large. This is not the time to remain limited ideologically and therefore do not understand social notions that disadvantage the collectivity as a whole.

As already explained, the importance of a more flexible Labor Law is fundamental to the Brazilian economic order. The labor norms did not follow the development of society, in which new events converged, establishing a reality very distant from the one in which most of these rules were minted.

The labor contract, being regulated by law, limits freedom. These laws have emerged to ensure legal equality, since one party to the employment contract - the employee - is likely to be over-equal to the other - the employer. This justifies state intervention in the relation (TEXEIRA and SÜSSENKIND, 2003, p.239). It happens that in Brazil, with rare exceptions, it is not the will, but the necessity that causes this labor relationship to arise.

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These evidences a peremptory obligation to readjust to this new social panorama, which allows a greater movement and autonomy of the labor contracts, but without abandoning the maintenance of achievements that assert the dignity of the human person, the nuclei of such perceptions call for a balance in the social protection of the worker.

In addressing the process of turn labor standards less rigid as a fact of great importance, allowing a greater increase in labor relations, it has been demonstrated that the balance in the treatment of these norms can promote an increase in the hiring of workers. It can also increase the progress in working conditions and in the maintenance of companies, and especially a decrease in the poor conditions of work and unemployment. Finally, these measures consequently attract foreign investors to the country.

Roboredo (1997, p.92) clarifies that:

> One of the primary principles of flexibility is the protective principle of Labor Law, which encourages the trade unions to act as a representative of the employees aiming to care for the working class. This protective principle is basically based on another principle: reasonableness or rationality, whose premise is that the human being acts reasonably and rationally, structuring his actions and behaviors within socially pre-established patterns.

What happens in Brazil is that, in the scope of protecting the worker, the state operates rigidly, having arrived at a prospect of, or not, a fossilization of labor relations, and often prevents the emergence of new jobs, fostering precariousness and unemployment.

In today's dynamic society of the twenty-first century, in a constant evolution, a reevaluation on the new ways to understand the labor relations and the socioeconomic and political development of society is a necessary in face of the new technologies and convergences of the contemporary world. All this should occur to maintain and to stimulate the proper performance of the economic order, adjusted to the social well-being and to the completeness of the dignity of the human person.

Another relevant principle about flexibility, according to Cassar (2013, p.34) is the one of adaptability. She ponders:

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> It is essential to consider that the labor standards aim at serving employees and employers, which makes the State the point of balance between these two sides. That, of course, in order to reach the ideal point of adaptability, it is necessary for the State to be the regulator of standards, allowing, in most cases, flexibility.

Undoubtedly, this balance is sought by the state, society, employees and employers.

Sarmento (2001, p.234) emphasizes that the Brazilian Federal Constitution is social, "concerned with the exploitation of man by man." As a result, the State has the constitutional function of providing health, education, security, leisure and culture to its citizens. And he continues (ibidem) defending "the direct application of the principles in it (Federal Constitution) contained as a means of reinforcing the protection of the unprivileged.

But in matter of fact the world is going through a crisis in labor relations. This crisis is provoked by the changes generated by the process of globalization and globalization of the economy, which, as already seen, is a constant and accelerated phenomenon and, therefore, often incapacitates the Legislator to accompany such speed of social change, and the law is not in a position to resolve contemporary labor conflicts.

Hence the importance of applying the principle of reasonableness to industrial relations. On this matter, Bonavides (2000, p.76) argues that:

> This is what is new, comprehensive and relevant in every theory of contemporary constitutionalism: a principle whose vocation moves, above all in the sense of reconciling the consideration of realities not captured by or excluded by legal formalism.

However, Brazil intervenes with a highly paternalistic attitude, eliminating the autonomy of will of both employers and employees. Such attitude make this relationship become costly, unbalanced and with forms of antipathy, what scares the foreign investor.

The State, instead of attach itself to its essential functions, in which it cannot conceal its inefficiency, it tends to interfere in juridical relations. These juridical relations would flow much more freely without the State's participation. Moreover, the State's functions would be much better executed by the private initiative.

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What is sought with regulatory flexibility is precisely to prevent the extinction of companies and the consequent increase of unemployment, situations that cause per se the general deterioration of economic conditions for society.

The process of turning Labor Law more flexible seeks to respect the legal aspects of the national legal system and the dignity of the worker. It uses instruments provided by the labor law itself, *verbi gratia*: collective bargaining, conventions, individual contracts; always having in mind that the maximum purpose of less rigid labor law is the preservation of employment relations and the full exercise of business and industrial activities.

Cassar (2013, p.35) advocates that:

> There must be a balance between the making labor relations more flexible and the realization of social values that preserve the dignity of the working human being through the application of post-positivist theory of constitutional principles, giving priority to man, the worker and his dignity, always in the light of Brazilian needs.

The imperative of common sense says that, despite the attenuation, one should always allow the maintenance of the heart of the issue, that is, the employment's relation and the operation of the activities of the companies.

The process of making Labor Law more flexible is shown as a means to compose the needs of joint effort in reconciling the economic order, the principles of social justice and the valorization of work. Society must ponder these interests and check the broader reflexes in a larger economic and social context, essentially defending the social and economic well-being of the collectivity. Rigidity in labor relations has led to unemployment, and the last one to a widespread social dissatisfaction. The inflexibility also takes away the interest of multinationals to settle into the country.

Martins Filho (2013, p.55) explains this approach:

> The globalization of the economy as a current, growing and irreversible phenomenon must lead to the search for realistic solutions in the field of labor relations, as one of the factors of production, solutions that go through the reduction of indirect social charges, compensation for profit sharing, human factor, self-management, etc., since the traditional patterns of excessive labor law protectionism may lead to the dichotomy: higher wages and higher unemployment.

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The basic goal of bringing flexibility to labor relations has been to make way to the practice of new work processes and thus to avoid the annihilation of the companies, with evident reflexes in the indices of unemployment and in the quality of the social conditions of the citizens.

For Martins Filho (2013, p.56):

> The need to make labor standards more flexible arises both during periods of crisis in the economy and as a result of technological progress, which makes a superfluous part of the labor force employed. In these periods, the practical impossibility of companies to bear all the labor burdens, under penalty of losing competitiveness in the international market, in a globalized economy, being that the rigidity of Labor Law as a protective element of the weakest pole in the labor relation, could lead to the disintegration of productive factors: bankruptcy of the company entails damage not only to the entrepreneur, but also to the worker who loses his source of livelihood.

It is imperative to remember that deregulation cannot be confused with flexibility, since the former removes the shelter of state protection, allowing for unconditional private autonomy. According to Bauman (2008, p.15-18), deregulation can be understood as the absence of state norms governing employment relations, so that only the rules agreed between employee and employer would have a prevalence in the legal order. For him, "shifting the task of re-commoditizing labor to the market is the deepest meaning of the state's conversion to the cult of 'deregulation' and 'privatization'.".

In the same way Uriate (2002, p. 28) defines deregulation as "the elimination or reduction of intervention by the protective state of the individual worker and restriction of collective autonomy, both at the limit of the politically possible".

Still on deregulation, Teodoro (2014, p.12) teaches that:

> Starting from the construction of Bauman, solid modernity gives way to liquid modernity, characterized by the fragility of human relations, by the uncertainty, by the flexibility and deregulation of the work and flatness of the public sphere. It is maintained that in this scenario the company begins to produce on the Schumpeterian logic of creative destruction, alternating between crest of the wave, with high profitability, in other moments needing to reinvent itself. And in this sense, the idea of progress in today's liquefied societies becomes vague and imprecise because in the society of individuals progress is assumed by the filters of deregulation and privatization. In this way, individuals, in search of this progress, try to raise the level of reality present, try to perfect themselves, but are faced with innumerable offers and have to decide alone.

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In this way, deregulation is the elimination of labor standards. It would be the same as disregarding all the achievements of workers over the years and allowing the subjects of the labor relationship to regulate their labor pacts on their own.

Flexibility, on the other hand, is an adaptation of the labor rules to the different realities that involve such a dynamic and particularized relationship, according to the needs of employees and employers in the concrete case.

It implies the intervention of the State, however, operating in a softened manner, guaranteeing a basic normative protection, without which one could not imagine the dignity of the worker.

Martins Filho (2013, p.57) advocates that:

> Flexibility represents the attenuation of the rigidity of the so protective Labor Law, with the adoption of labor conditions less favorable than those provided by law, through collective bargaining, in which the loss of economic advantages can be offset by the institution of other benefits, of social security nature, which did not excessively burden the company during times of economic crisis or transformation into the reality of protection.

Therefore, flexibility, because of the clash of globalization, may allow a broad oxygenation of labor relations by the parties (employee and employer), reducing state intervention.

Cassar (2010, p.40) argues that "the process of making labor relations more flexible means creating exceptions, giving malleability to the rigid labor laws, authorizing the adoption of special rules for differentiated cases."

Catharino (1997, p.51), in turn, affirms the need for more flexibility as a way of "adapting labor legal norms to meet changes in the economy, reflected in labor and capital relations."

In a democratic state of law, one cannot be naive to the point of believing that the dignity of the human person would be naturally protected from the laws of the market. It is necessary to allocate the worker as a fundamental part in this process, guaranteeing their basic needs - paid rest, vacations, working hours, etc. - their well-being corresponds to a core rigid fundamental to pay the result obtained by the autonomy of negotiation between employer and employee.

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An elementary protective state foundation, coupled with the negotiation terms, will make the company offer the opportunity for the worker to feel useful, with their rights guaranteed, generating greater productivity, with less financial and social burden. This framework can attract direct foreign investment to the country.

The tendency to conceive flexibility as deregulation is what brings about an intense debate around it. Deregulation is a situation, as already mentioned, unacceptable. Deregulation reaches the hard core of workers' rights. It brings poor conditions of work to workers. (Martins Filho, 2013, p.57). On the contrary, flexibility is acceptable, especially in combating precariousness of work and unemployment, and it shows itself as an active and balanced way of stipulating well-defined working conditions by terms negotiated between stakeholders.

Flexibility tends to the ideal, since it restricts state intervention in the labor field, by adopting the self-regulation system of labor relations, by the stakeholders themselves, through collective bargaining (Ibid.).

Thus, the implementation of the inter-party composition order, through the adaptation of legal norms, has been expanded to accept the derogation of formally preconceived conditions, which are accommodated to conjectural and circumstantial situations.

Delgado (2003, p.107) explains that by reducing the rigor of the norms, the forms of service delivery are attenuated, which leaves the work more flexible. He claims that:

> […] the seek for more flexible labor rights, through collective bargaining, is reflected in the attenuation of the supposed rigor and imperativeness of legal norms. It is the phenomenon that allows the reformulation of a more malleable legal scenario from the point of view of labor contractors, especially the employer.

Labor legislation lacks rehabilitation to the new social context of the 21st century, since the Consolidation of Labor Laws (CLT), at the time of its elaboration, outlined a society and a socioeconomic context very different from the present. By making this comparison, the present inability to compensate for relations within the labor market of this instrument remains quite evident, in order to allow an adjustment between the mutual interests of the social agents. The picture of the present historical

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moment, completely different from that of the consolidation of labor laws, leads to this inefficiency in its application.

The reality is that the company burdened with excessive tax and labor charges, will have a more expensive national product. This leads it to outsource its activities, "going over the simplest ones to be made in countries where there is cheaper labor, a more affordable source of energy and more legal certainty regarding labor and tax regulations." (Martins Filho, 2013, p.54-55).

Martins Filho (idem, p.56) explains that:

> On the one hand, if market reserve or taxation of imports could defend the domestic industry (protectionism), on the other, they are mechanisms that favor the increase of inflation due to the lack of internal competition (cartels), as well as not being compatible with the creation of regional economic spaces (EU, Mercosur, FTAA, etc.) aimed at the expansion of national economies.

A time characterized by broad social, economic, political and technological changes makes way to open labor legislation to innovations. These innovations need to contain more generic norms, in order to harmonize an environment for collective bargaining, in which trade unions can freely transact in favor of workers flexibly, considering regional, entrepreneurial and professional particularities of each professional category.

In times of economic crisis, the reversal that must be paid to the difficulties should not be authoritarian or bureaucratic as the Brazilian State knows, in adverse, it must seek solutions based on the effectiveness of actions and based on reciprocal social dialogue.

This negotiation autonomy between parties clearly would be guided by parameters aiming to avoid a complete deregulation. Martins Filho (2013, p. 59) points out that make labor norms more flexible on matter of collective bargaining finds obstacles:

> a) no complete suppression of legally recognized right is allowed; b) inflexible social security, tax, procedural, medical and occupational safety norms is allowed.; c) flexibility of rights related to wages and working hours (CF, Articles 7, VI, XIII and XIV) is admitted, with reduction and implied compensation, in view of the theory of globalization (on the whole, the collective norm is favorable to workers).

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With the changes brought about by globalization in the world of work, an innovation is made in the ideological configuration, seeking to be effective in the activities of the interested parties. Thus, the State, unions, employees and employers, aiming to achieve some harmony to promote economic efficiency with social justice, should rather ensure the implementation of the basic principles of Labor Law and human dignity. However, these principles must be agreed with the obligation for the development of companies, which benefit and promote the improvement of the whole society, with the increase of the supply of employment and income.

Martins Filho (2013, p.57) points out that, although these objectives can only be achieved:

> […] with a strong unionism, extended to all productive branches, when the employer's economic power (on wages) can oppose, on equal terms, a labor union power (on service provision), so that such bargaining power, that were achieved by the union of workers, make the dialogue between employers and employees balanced. In this case we would have the prevalence of the negotiated over the legislated.

Globalization corroborates that the labor relations, *lato sensu*, need to be updated for a better regional and international balance in the interdependence between labor, economic and legal issues, given the aspect that entrepreneurs and investors are caught up with, among other externalities, by more flexible legislation and with less labor charges.

Thus referring to the understanding that the disorders between capital and labor no longer find solutions through state supervision and intervention, since it has been absolutely incapable of resolving conflicts of this nature, always seeking to impose and not to stimulate the self-composition between the parts.

However, Delgado (2002, p.212) presents a restrictive view of broad flexible labor relations. He divides the rights into absolutely unavailable and relatively available. The former cannot, for him, be relaxed, because they are part of a "minimum level of civilization." In this sense, the minimum level of civilization is the limit for collective bargaining.

This is not the understanding of some ministers of the Superior Labor Court. Cassar (2013, p.38) points out that they:

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> Argue that if the constituent authorized the most, that is, if the Constitution authorized the reduction of the highest of all rights (salary), by convention or collective agreement, then the least is also allowed. In this sense, anything other than the employee's own base salary is less.

Currently, in a world without frontiers, the autonomy of stakeholders must prevail and the solution of problems must be implemented jointly, constantly trying to open the opportunity for dialogue and negotiate favorable conditions to their interests without the intervention of the State.

The freedom for agreement between the parties in the sense of self-composed decisions, based on the autonomy of the will, and made by observing the basic principles and rights of the worker in every step, do not bring any economic damage to the worker or to the company. Consequently, has a positive impact on the economic environment in a generalized way.

It is on the basis of this reasoning that Cassar 92013, p.39) argues that:

> If the employer really is in serious financial difficulties and this remains properly and robustly proven, reductions in labor advantages can be accepted for the sole purpose of keeping all or part of the existing jobs. However, as an exception measure, this situation will be maintained only during the recovery process of the health of the company, no matter how long this represents.

The importance of companies in the face of the new reality of today's globalized society is very great, and the rigidity of labor normalization has in many cases blocked in a not very convincing way the autonomy of negotiations between employer and employee.

The full functioning of companies is vital for the economic order, which is interconnected today by globalization. They are an extraordinary agent of modification of society. They are increasingly adopting new roles and having to take care of the humanization of work and maintenance of the dignity of the worker's person.

Gusmão (2016) emphasizes that the International Labor Organization (ILO) itself favors collective bargaining, and that the "collective autonomy must be legitimized in order to detail what only those who are part of the productive chain would be able to detail."

The state has to enable a healthy business environment that also allows entrepreneurs to achieve their goals. This possibility makes that the employers be able

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to perform their important function as a promoter of jobs, services and products, cooperating for the collection of taxes to maintain the state and the circulation of wealth in the economy. The direct interconnection between unemployment and the fall in economic activity confirms that companies deserve special attention from all sectors of society.

In a nutshell, make labor more flexible is an adaptation of the labor norms to the labor reality experienced by each group of professionals in a particular way. The attempt to make labor relations more flexible is guided by the valorization of the principle of autonomy of the will and the valorization of collective bargaining. It cannot be viewed in a negative way as, for example, the simple reduction of employees' rights in favor of the economic success of companies, a measure that is only conceivable by some parties of society in times of crisis.

In this line of thought, flexibility should be used as a way of promoting the dignity of the worker, as a person, a human being, deserves the protection of the legal system. Teodoro (2007, p.3) emphasizes that all work deserves a consideration for the energy expended, but since it is not possible to return work, the legal order must treat it in a differentiated way, elevating it to the condition of fundamental, social and human right.

The protection of the worker and the promotion of the valorization of the human being is the goal aimed when someone advocates for the adjustment of labor standards to each situation, a measure in line with the Brazilian Federal Constitution itself. This adaptation passes through the application of the more favorable norm to the worker, in the concrete case.

The General Theory of Norms proposed by Hans Kelsen, according to which the Federal Constitution is at the top of the legal order and, therefore, its precepts must be strictly applied in priority to the other existing norms, has never been applied to labor law. He has always been a supporter of the Principle of the Standard More Favorable, which, in Delgado's words (2007, p.178) means that:

> The hierarchical normative criterion that prevails in Labor Law operates in the following way: the normative pyramid is constructed in a plastic and variable way, electing to its dominant vertex the norm that most closely approximates the teleological character of the subversive branch. Insofar as the teleological matrix of Labor Law points in the direction of giving solution to employment

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> relations according to a social sense of restoring, hypothetically, in the juridical plane, a balance that cannot be verified at the level of the economic-social relation of employment -, aiming, thus , the improvement the socio-occupational conditions of the worker. The hierarchical pyramid tends to prevail in the norm that best expresses and responds to this central teleological goal of labor. In such a framework, the hierarchy of legal norms will not be static and immutable, but dynamic and variable, according to the guiding principle of its configuration in the juridical order.

Advocating in the same line, Cassar (2010, p.64) argues that:

> Unlike Kelsen's formal pyramidal prediction of common law criteria, labor law does not apply to the hierarchically "higher" norm, or to the special to the detriment of the general, but rather the more favorable to the worker or even the most beneficial factual situation to the employee, unless otherwise specified in Law. Thus, the hierarchical normative pyramid of labor legal norms departs from the traditional classical model to assure the worker, at the apex, the best condition and right, under a dynamic criterion that varies in each case, moving away from the Civil Law in which the norms are static in their hierarchies.

It does not matter the type of norm, but its content, and even the Principle of the Standard Most Favorable must be applied both at the time of the norm's elaboration and in the confrontation between competing rules and in the interpretation by the applicator of the Law, as taught by Delgado (2007, P.79):

> The guiding principle of Labor Law, which best incorporates and expresses this constitutive teleological meaning, is, as seen, the principle of the standard more favorable to the worker. Thus, it will apply to the specific case - being in that case hierarchically superior - to standards more favorable to the employee. The vertex of the normative pyramid, variable and changeable - although apprehended according to a permanent criterion -, will not be the Federal Constitution or the federal law necessarily, but the norm more favorable to the worker. There is thus no irreconcilable contradiction between state heteronomous rules and autonomous collective private rules (between state law and social group law), but a kind of harmonious coherence: the rule that disciplines the relationship in a more beneficial to the employee will prevail over the others, without permanent derogation, but mere preterit in the focused concrete situation.

However, in this way, there is nothing to prevent the subjects of the employment relationship from agreeing to rules that apply to that particular case, since they are the most knowledgeable of what is "more favorable", by reason of what can be positive for the worker in a certain context (political, economic or social), it may cease to be at another time.

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In 2015, 1.54 million formal jobs were closed in Brazil, according to the Ministry of Labor. That is another fact that proves that protective laws do not effectively protect the worker. This study does not intend, as has already been pointed out, to defend the end of the labor rights won over the years, but it is necessary to recognize that some changes is demanded in order to create conditions for a new market and a new world economy.

The environment must be supportive so that the creation of alternative forms of work could be safely implemented and lead to its essential function, which is effectively protect the worker. The country's legal insecurity undermines global competition under this pretext of protection.

The Brazilian government, aware of this reality, had announced the Program for the Protection of Employment (PPE - Programa de Proteção ao Emprego in Portuguese, in 2015. This program allowed the relaxation in the work day, authorizing companies to reduce it with the corresponding reduction of salary as an emergency measure in times of economic downturn, in order to discourage layoffs in companies with temporary financial difficulties.

The measure is praiseworthy insofar as it stimulates the country's economy, helping to maintain the balance and contributing to the preservation of the worker's FGTS balance and reducing the impact on the INSS, Income Tax and other indirect taxes collections. The employee continues to be part of the consumption cycle, generating wealth, benefiting the economy of the country as a whole.

CONCLUSION

Economy and work have always been linked. Since the Industrial Revolution, with the replacement of man by machine, the labor market is undergoing profound changes. The competitiveness in the international market, increasingly fierce, requires countries an attitude change regarding its legislation to adapt to these changes and can develop themselves economically and socially, ensuring quality of life for its citizens. The Brazilian State, capitalist, with social and neoliberal welfare policies need to review its labor laws, created in the era Vargas and fascist bias, extremely

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patronizing, so that it is not an obstacle to the economic development of the country, before the new reality imposed by globalization. With the protective order, sometimes the Brazilian labor laws generate helplessness to the poorest and most needy. economically developed world markets are non-bureaucratic and there is a flexibility for hiring and firing. In many respects employee and employer is to decide what is more favorable, and not the State.

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