

The High Potential and the Little Use of Brazilian Class Actions for Prevention and Penalization Due to Workplace Accidents in Brazil

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Abstract : Introduction: Work accidents and occupational diseases are a big problem for public health around the world and the main health problem of workers with high social and economic costs. Brazil has shown progress over the last years, with the development of the regulatory system to improve safety and quality of life in the workplace. However, the situation is far from acceptable, because the occurrences remain high and there is a great gap between legislation and reality, generated by the low level of voluntary compliance with the law. Brazilian laws provide procedural legal instruments for both, to compensate the damage caused to the worker's health and to prevent future injuries. In the Judiciary, the prevention idea is in the collective action, effected through Brazilian Class Actions. Inhibitory guardianships may impose both, improvements to the working environment, as well as determine the interruption of activity or a ban on the machine that put workers at risk. Both the Labor Prosecution and trade unions have to stand to promote this type of action, providing payment of compensation for collective moral damage. Objectives: To verify how class actions (known as 'public civil actions'), regulated in Brazilian legal system to protect diffuse, collective and homogeneous rights, are being used to protect workers' health and safety. Methods: The author identified and evaluated decisions of Brazilian Superior Court of Labor involving collective actions and work accidents. The timeframe chosen was December 2015. The online jurisprudence database was consulted in page available for public consultation on the court website. The categorization of the data was made considering the result (court application was rejected or accepted), the request type, the amount of compensation and the author of the cause, besides knowing the reasoning used by the judges. Results: The High Court issued 21,948 decisions in December 2015, with 1448 judgments (6.6%) about work accidents and only 20 (0.09%) on collective action. After analyzing these 20 decisions, it was found that the judgments granted compensation for collective moral damage (85%) and/or obligation to make, that is, changes to improve prevention and safety (71%). The processes have been filed mainly by the Labor Prosecutor (83%), and also appeared lawsuits filed by unions (17%). The compensation for collective moral damage had average of 250,000 reais (about US\$65,000), but it should be noted that there is a great range of values found, also are several situations repaired by this compensation. This is the last instance resource for this kind of lawsuit and all decisions were well founded and received partially the request made for working environment protection. Conclusions: When triggered, the labor court system provides the requested collective protection in class action. The values of convictions arbitrated in collective actions are significant and indicate that it creates social and economic repercussions, stimulating employers to improve the working environment conditions of their companies. It is necessary to intensify the use of collective actions, however, because they are more efficient for prevention than reparatory individual lawsuits, but it has been underutilized, mainly by Unions.

Keywords : Brazilian Class Action, collective action, work accident penalization, workplace accident prevention, workplace protection law

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