

# THE (DI)PROTECTION OF EMPLOYMENT DURING THE COVID-19 PANDEMIC IN BRAZIL

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## **Abstract**

The public calamity state resulting from the Covid-19 pandemic was recognized by the Brazilian Federal Government through Decree No. 6/2020, valid from March to December 2020. As a way of mitigating social and economic damage to workers, the main responses presented by policy makers included formal jobs protection measures, such as remote work, anticipation of vacations and non-religious holidays and an Emergency Employment Maintenance Program (EEMP), which allowed temporary contractual suspension or reduced working hours, situations in which the government would pay part of the salary and the employer would undertake not to dismiss for the period equivalent to that agreed for the reduction and suspension, under penalty. On the other hand, Brazil did not prohibit unmotivated dismissal and there was no protection against mass layoffs. On this specific matter, according to the labor legislative reform of 2017, there is no need for prior negotiation with a union entity or collective bargaining, commandment contrary to that established in the prevailing jurisprudence. Thus, this article seeks to assess whether such measures were effective in protecting jobs by analyzing the policies instituted by the federal government and their legal effects, the judicial precedents regarding collective dismissals and official data on unemployment and informal work in the chosen period.

**Keywords:** Collective Layoff, Employment Guarantee, Individual Dismissal, Labour Measures, Pandemic.

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# THE (DI)PROTECTION OF EMPLOYMENT DURING THE COVID-19 PANDEMIC IN BRAZIL

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## ABSTRACT:

The public calamity state resulting from the Covid-19 pandemic was recognized by the Brazilian Federal Government through Decree No. 6/2020, valid from March to December 2020. As a way of mitigating social and economic damage to workers, the main responses presented by policy makers included formal jobs protection measures, such as remote work, anticipation of vacations and non-religious holidays and an Emergency Employment Maintenance Program (EEMP), which allowed temporary contractual suspension or reduced working hours, situations in which the government would pay part of the salary and the employer would undertake not to dismiss for the period equivalent to that agreed for the reduction and suspension, under penalty. On the other hand, Brazil did not prohibit unmotivated dismissal and there was no protection against mass layoffs. On this specific matter, according to the labor legislative reform of 2017, there is no need for prior negotiation with a union entity or collective bargaining, commandment contrary to that established in the prevailing jurisprudence. Thus, this article seeks to assess whether such measures were effective in protecting jobs by analyzing the policies instituted by the federal government and their legal effects, the judicial precedents regarding collective dismissals and official data on unemployment and informal work in the chosen period.

**KEY WORDS:** Collective Layoff; Employment Guarantee; Individual Dismissal; Labour Measures; Pandemic.

## INTRODUCTION

On March 20, 2020, a decree<sup>1</sup> was issued in Brazil, recognizing the state of public calamity of international importance related to the Covid-19 pandemic. This measure was followed by several normative acts edited to face the healthcare crisis and its economic effects, in the latter, among others, intending to protect jobs and income.

This article aims to analyze the edited measures targeted the labor market and workers protection during the pandemic, comparing them with the current legal system and analyzing labor market statistics, in order to conclude whether such measures were sufficient for employment protection.

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<sup>1</sup> Legislative Decree No. 06, of 20/03/2020.

Thus, in the first section, we analyze the most important legislative measures for employment protection taken by the Brazilian Federal Government, as well as the possibility of unjustified dismissals. In the second section, an overview of the possibility of mass layoffs will be made, describing the relevant change that occurred with the Labor Reform carried out in 2017 in relation to its validity requirements and the absence of specific measures on this subject during the pandemic. Finally, after presenting a general context on the Brazilian Federal Government conduction of the pandemic, we researched the impacts on the labor market of the adopted protection measures.

## **1. INDIVIDUAL DISMISSALS: EMPLOYMENT PROTECTION MEASURES INSTITUTED DURING THE COVID-19 PANDEMIC IN BRAZIL**

Although the Brazilian Constitution provides that every worker has the right to an employment relationship protected against arbitrary or unfair dismissal (article 7, I) apart from some situations in which employees have temporary employment guarantees<sup>2</sup>, since 1966<sup>3</sup> there has not been a general employment stability regime in the country.

International Labour Organization (ILO) Convention 158, which provides that the termination of labor relations must be motivated, entered into force in Brazil in January 1996<sup>4</sup>, however, in the same year it was denounced through an act<sup>5</sup> whose formal constitutionality is pending consideration by the Supreme Court since mid-1997<sup>6</sup> (Gunther 2016).

The prevailing understanding in national jurisprudence has been, therefore, that the country adopts the employment at will system, in which employer does not need to justify the dismissal of employees who do not hold a temporary employment guarantee (Delgado 2019). Even union assistance, which was mandatory in layoffs for employees with more than one year of employment contract, is currently waived, due to the repeal of § 1 of article 477 of the CLT by the 2017 Labor Reform (Law no. 13.467/2017).

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<sup>2</sup> Examples of employees holding a temporary employment guarantee are the union leader (article 8, VIII, of the Constitution), the employee who is a member of the National Social Security Council (article 3, paragraph 7, of Law n. 8,213/1991), the employee representative in the Internal Accident Prevention Commission (article 625-B, §1, of the CLT) and the pregnant employee (article 10, II, "a", of the ADCT).

<sup>3</sup> Law no. 5.107/1966 established the Employment Compensation Fund (FGTS), a fund made up of resources paid by the employer as a percentage of the salary and which can be withdrawn in some cases, such as in dismissal. The FGTS emerged as an option for the employee who, by adhering to the fund, would lose the right to the ten-year stability established in article 492 of the CLT. However, "in practice, the 'option' was a condition imposed by the employer to hire the employee" (Leite 2019, p. 1016). In 1988, with the enactment of the current Constitution, the FGTS became mandatory.

<sup>4</sup> The Convention was approved by the National Congress, through Legislative Decree n. 68, of 09/16/1992. On 01/08/1996, the Brazilian Government deposited the Letter of Ratification of the multilateral instrument, which became effective for the country on 01/05/1996.

<sup>5</sup> Decree no. 2100, of 12/20/1996.

<sup>6</sup> Direct Constitutional Action n. 1625.

Coupled with the lack of motivation for unjustified dismissal, the cost of dismissal in Brazil, which is proportional to the duration of the employment contract, is considered low and, for this reason, incapable of discouraging layoffs.

A survey carried out in the 1990s at the Center for Union Studies and Labor Economics at the State University of Campinas (CESIT) confirmed “the little significance of dismissal costs - when compared to the total expenditure on labor - and already high employment flexibility in Brazil” (Manzano 1996, p. 253-268).

The sums to be paid in the case of dismissal, in their majority, are proportional to the length of service and constitute “indirect salary compulsorily saved throughout the service period” (Manzano 1996, p. 256). Thus, the cost of dismissal is “quite small when compared to the cost that the employer would have if he continued to pay the worker salary” (Manzano 1996, p. 258) which allows us to conclude that such expense does not even constitute rigidity to the market and is a secondary factor for competitiveness in the economy (Manzano 1996).

The average time that Brazilians remain in jobs confirms the previous conclusion. The Annual Social Information Report (*Anuário RAIS*) released by the Ministry of Economy's Labor Department indicates that in 2018 the average duration of employment contracts was 68.3 months.<sup>7</sup> There are also sensitive variations depending on the field of activity<sup>8</sup>.

In this context, the immense concern with the maintenance of jobs was fully justified when the restrictive measures for the operation of many businesses as a result of the COVID-19 pandemic began to be implemented throughout the country.

The first Federation Unit to impose restrictions in order to control the spread was the Federal District on 03/11/2020, prohibiting events with an audience of more than 100 people and classes in public and private schools.<sup>9</sup> Then, in all states and in all capitals, “the degree of restrictions increased continuously until March 23-24, remaining at stable levels thereafter” (Moraes 2020, p. 10). Given the size and diversity of the country, in addition to the concurrent competence of states and municipalities to impose such measures<sup>10</sup>, “there was significant variation in the types of activities suspended” (Moraes 2020, p. 10).

In general, restrictions were greater for holding events and for educational, cultural, sporting and religious establishments, followed by commerce in general, bars and restaurants, and transportation. Industry was the least affected sector (Moraes 2020). This scenario is especially worrying from the perspective of employment protection, because in Brazil most jobs are in the retail and services sector in general.

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<sup>7</sup> Available at: [http://bi.mte.gov.br/bgcaged/caged\\_anuario\\_rais/anuario\\_tempoemprego.htm](http://bi.mte.gov.br/bgcaged/caged_anuario_rais/anuario_tempoemprego.htm). Accessed: 3 April 2020.

<sup>8</sup> The average length of employment from 2008 to 2018 was 110.6 months in the public utility industrial services sector, only 24 months in civil construction, and 33.7 months in commerce (Brasil 2018).

<sup>9</sup> Decree no. 40,509, dated 03/11/2020.

<sup>10</sup> Confirmed by the Supreme Court rulling in the Direct Action of Unconstitutionality n. 6341

According to the Continuous National Household Sample Survey (*PNAD Contínua*), in the last quarter of 2019, among the 94.552 million employed people, 67.213 worked in the sectors of commerce, transportation and services in general, the sectors most impacted by restrictive measures. Industry, which suffered fewer restrictions on its functioning, employed, in that same period, only 12.86% of the employed population (Instituto Brasileiro de Geografia e Estatística 2019).

Hence, the prognosis was dire, which led the federal government<sup>11</sup> to institute mechanisms to protect formal employment that were materialized through some Provisional Measures (MP), among which three stand out.

MP 927, of 03/22/2020, instituted labor measures to face the state of calamity, including remote work, early individual and collective vacations, anticipation of holidays and compensatory time off. The norm, however, not converted into law, lost its validity on 07/19/2020. New rules with similar content were only re-edited in 2021 (MP 1.046, of 27/04/2021).

On the other hand, MP 936, of 04/01/2020, instituted the Emergency Program for the Maintenance of Employment and Income as a complementary labor measure to face the crisis. Under the program, employment contracts could be suspended for up to 60 days or suffer a proportional reduction of up to 70% of the working hours and salary for up to 90 days, upon payment by the Federal Government of a benefit (Emergency Employment and Income Maintenance Benefit) to employees in this situation, calculated based on the unemployment insurance rules.

The periods initially foreseen were later extended by decrees of the Executive Power for up to 180 days<sup>12</sup>. In 2021, when the Program was no longer valid, the government edited MP 1,045, on 04/27/2021, instituting the New Emergency Program for the Maintenance of Employment and Income, in terms similar to the previous one.

The third relevant measure, regarding job maintenance, was MP 944, of 03/04/2020, converted into law (Law No. 14.043/2020) instituting the Emergency Program to Support Jobs, subsidized with public resources and destined to carry out credit operations with companies for the purpose of paying their employees payroll.

Although these measures have sought through numerous mechanisms to reduce the employer cost in maintaining the employee, either with subsidies from public resources or with mechanisms that tried to mitigate the effects of any idle periods of work, in fact, *they did not go beyond measures with a merely persuasive character*, since the dismissal without reason, at no time, was prohibited.

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<sup>11</sup> In Brazil, it is the exclusive responsibility of the Union to legislate on labor law (Article 22, I, of the Constitution).

<sup>12</sup> Decree no. 10,422, of 07/13/2020, and Decree no. 10,470, of 08/24/2020.

It is true that, under the terms of the Emergency Program for the Maintenance of Employment and Income, both in 2020 and in 2021, there is a provisional guarantee of employment for the worker who has had the contract temporarily suspended or the working hours and the salary reduced, during the entire period of suspension or reduction, extending, after the re-establishment of the contract, for an equal period. However, the rules themselves already calculate the indemnity that will be due if the dismissal occurs despite the employment guarantee, in some case in an amount lower<sup>13</sup> than the one the employee would actually receive if the right were observed.

Another relevant aspect is that such measures were aimed exclusively at formal jobs, which, for the Brazilian reality, is also insufficient, once informality is quite considerable. In the last quarter of 2019, of the 63.520 million people employed, 18.938 million were in informality, which represents almost 30% (Instituto Brasileiro de Geografia e Estatística 2019). These workers received Emergency Assistance<sup>14</sup>, within the scope of Social Assistance, in amounts below the minimum wage in force in the country, and dependent on the proof of requirements, including low family income.

We can thus affirm that the measures adopted by the Brazilian government, aimed at protecting jobs against individual or multiple layoffs were merely persuasive, creating mechanisms for the government to subsidize its cost or for the employer to compensate for the idle time of workers, with no prohibition on unreasonable dismissal, even for a certain period of time, as in Argentina<sup>15</sup>, for example.

This fact, added to the high informality in the country, the difficulties imposed for the effective protection of informal workers, the absence of a universal system of social security protection and the adoption of an employment at will system call into question the effectiveness of these public policies.

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<sup>13</sup> According to MP 936/2020, converted into Law n. 14,020/2020, the indemnity due would be 50%, 70% or 100% of the salary to which the employee would be entitled until the end of the guarantee period. The full indemnity (100%) would only be due in cases where the reduction of work hours and salary were above 70% or where the contract was temporary suspended.

<sup>14</sup> Pursuant to Law n. 13,982/2020, the Emergency Assistance was instituted in the amount of BRL 600.00, to be paid for three months, for people who fulfilled the following conditions: (i) over 18 years of age; (ii) without formal employment; (iii) who did not receive any social security or assistance benefits, except for "Bolsa Família"; (iv) with a per capita family income of up to ½ minimum wage or a total of up to 3 minimum wages; (v) who have not received income higher than BRL 28,559.70 in 2018; and (vi) who are self-employed, individual micro-entrepreneurs or informal workers. The benefit was extended by 4 more installments in 2020, however, in the amount of BRL 300.00 each (MP 1,000, of 09/02/2020) and, in 2021, by 4 more installments with values varying between BRL 150.00 to BRL 375.00 (MP 1,039, of 03/18/2021).

<sup>15</sup> Argentina was the only one among 15 countries that make up the Steering Group of the OECD Regional Program for Latin America and the Caribbean (LAC Program) to ban dismissals for 60 days (OECD 2020). Another exemple was Bolivia, not in this list, but where dismissal was prohibited during quarantine and for another two months, according to Law 1309 of 2020.

On the other hand, contrary to what happens with individual or multiple dismissals, Brazil had already consolidated, for more than a decade, measures to protect collective dismissal, which we will discuss next.

## **2. COLLECTIVE DISMISSAL: THE 2017 LABOR REFORM AND ITS PARADOX AS TO THE GREATER PROTAGONISM OF COLLECTIVE BARGAINING**

To face the health crisis and its economic effects generated by Covid-19 infection, as we have seen before, there was a concern about protecting employment and income. However, none of the rules issued addressed protection against collective dismissal. Therefore, conflicts brought to the judiciary could only be based on previous laws, international norms and judicial precedents.

The concept of *collective dismissals* is not outlined in Brazilian legislation and comparative law, a formal subsidiary source, can be used to fill this gap. In this sense, it is extracted from Directive 98/59/EC of the Council of the European Union, of 20/07/1998, that collective dismissal would be layoffs made by an employer for one or more reasons not inherent to the workers individually considered. The number or percentage of employees is considered according to each Member State's choice.

The guideline describes in its article 1 that collective dismissal occurs when: (i) in a period of 30 days, a minimum of 10 workers are dismissed in establishments that usually employ more than 20 and less than 100 employees; (ii) at least 10% of workers are dismissed in establishments employing between 100 and 300 employees; (iii) at least 30 workers are dismissed in establishments employing at least 300 employees; and (iv) within a period of 90 days, when at least 20 employees are dismissed, regardless of the number of workers usually employed in the establishment.

For this reason, it can be said that collective dismissal is based on objective reasons, whether technical, economic, circumstantial or even technological. Its foundation is, in consequence, external to the labor relations individually considered. Precisely as a result of this objectivity, it is said that collective dismissal is part of Collective Labor Law – instead of Individual Labor Law. In other words, this subject goes beyond the private sphere of each worker and reaches the collectivity, in many cases can also alter the very life of the community in which the company is located, as is the case, for example, of the Ford Company factory in Brazil that decided to close its doors in January 2021, during the health crisis experienced, laying off approximately 5,000 workers (Rizério 2021).

In this context, until 2017, although collective dismissals are not specifically regulated by the Brazilian legal system, the jurisprudence has established that prior collective bargaining with union organizations would be essential for its validity, in order to mitigate its social and

economic effects. This parameter was adopted from the interpretation of article 7, XXVI, of the Brazilian Constitution, which recognizes the importance of collective bargaining. The leading case was one of the company EMBRAER, which dismissed, in a single day in 2009, 4.2 thousand workers ruled by the Superior Labor Court.<sup>16</sup>

Such precedent used for many years by the Brazilian Labor Regional and Superior Courts was, however, object of an appeal to the Supreme Court (RE999435). The trial has not been concluded yet, but Minister Marco Aurélio Mendes de Farias Mello has already voted and considered that mass dismissals do not depend on prior collective bargaining, contrary to what was established by the Superior Labor Court.

To reach such conclusion, the Minister used a literal interpretation of the article 477-A of the CLT (Labor Code), introduced in 2017 by a deep Labor Reforma (Law No. 13.467/2017) which determines that collective dismissals are equal to individual dismissals for all purposes, with no need for prior authorization from a union or signing of a convention or collective agreement for its implementation. It should be noted that such provision contradicts even the main purpose of the labor reform, which would be to enhance and prevail collective bargaining between workers, even when it contradicts obligations imposed by law (Delgado 2019). This provision has its constitutionality being questioned at the Supreme Court (ADI 6142), but there has been no ruling yet.

In the National Conference on Material and Procedural Labor Law, conducted by the National Association of Labor Justice Magistrates, it was stated in Statement 1<sup>17</sup> that the aforementioned article is unconstitutional for violating articles 1, III, IV, 6, 7, I, XXVI, 8, III, VI, 170, *caput*, III, and VIII, and 193 of the Brazilian Constitution. In addition, it was stated that the article violates ILO Conventions no. 98 (article 4), no. 154 (article 5), and no. 158 (article 13). It also offends the prohibition against social retrogression, the right to information, transparency and participation of the union entity, the general duty of objective good faith in actions and the duty to search for alternative means for solving conflicts. Furthermore, such provision would be unconstitutional due to formal defect, since the subject could only have been regulated by a law approved by a qualified quorum, as determined by item I of article 7 of the Constitution.

In collective dismissals there is no conflict between individual interests, as is the case with individual layoffs, but a dispute between the employer's will and the interests not only of the collective of workers, but also of the community that develops around the productive activity. The entire society is affected as it burdens social security, leads to the massive use

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<sup>16</sup> TST-RODC 309/2009-000-15-00.4, Relator Min. Mauricio Godinho Delgado, data de julgamento: 10.08.2009, DEJT de 04.09.2009.

<sup>17</sup> Available at: <http://www.jornadanacional.com.br/listagem-enunciados-aprovados-vis2.asp?ComissaoSel=5> (Accessed: 19 June 2021).



of unemployment insurance and the withdrawal of the Workers Fund (FGTS) and can significantly affect a professional or economic sector, considering the unemployment of hundreds of workers in the same category.

Thus, when collective and individual layoffs are handled the same way, as carried out by the labor reform, without the possibility of dialogue with workers' representatives, it offends the Constitutional purpose of full employment, social justice, the centrality of the human person in the legal order and in socioeconomic life and for their dignity. In addition, the Constitution itself gives workers unions the legitimacy to defend workers collective rights and interests, and its participation in collective bargaining is mandatory (article 8, III, VI). These provisions were clearly violated by the ordinary law introducing the Labor Reform.

The doctrine and jurisprudence<sup>18</sup>, however, even after the introduction of article 477-A in the Consolidation of Labour Laws (CLT) still have not come to an agreement regarding its interpretation. Some say that the union's authorization for collective dismissal – as it is written in article 477-A – was never necessary, but only its intervention, that is putting the focus only on the dialogue between employees and employers (Meirinho & Porto 2020).

In addition, cases questioning the legality of collective layoffs during the pandemic have proliferated in Brazilian Labor Courts, generally with lawsuits filed by the Public Ministry (Maia 2020) in which the lack of prior dialogue with the workers' representative entities is questioned. The Courts, in turn, oscillate between injunctions or decisions determining the reinstatement of employees<sup>19</sup> or ratifying the dismissal<sup>20</sup>, revealing the legal uncertainty brought about by the subject.

In the absence of safe parameters to define what would be considered a collective dismissal, workers in small businesses are helpless. This fact is extremely important for Brazilian employees once companies with between 1 to 5 workers employ more than half (50.1% in 2016) of the country's active force. On the other hand, large companies, with 51 or more workers, corresponded to 26% of the total fraction, as demonstrated by a survey based on the National Household Sample Survey (Silveira 2017).

Consequently, the situation, more precisely after the change in labor legislation carried out in 2017, is dramatic for the working class, which is now unable to even demand the protection of its union in the case of collective dismissal.

It appears, therefore, that at a time of sanitary and economic crisis, in which 8.1% of companies in operation in Brazil reduced the number of employees (Instituto Brasileiro de

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<sup>18</sup> TRT 15 – MS:0008367-78.2017.5.15.0000, Rapporteur Evandro Eduardo Maglio, Seção de Dissídios Coletivos, Published in 06/02/2018; TRT-3 - MS: 0011778-65.2017.5.03.0000, Rapporteur Jose Eduardo Resende Chaves Jr., 1a Secao de Dissidios Individuais, Published in 30/04/2018.

<sup>19</sup> For instance, in the following cases: 0000533-09.2020.5.09.0122, of 05/08/2020; 0010097-70.2021.5.15.0102, of 06/04/2021; and 0100413-12.2020.5.01.0052 of 05/03/2021.

<sup>20</sup> For instance, in case 0000522-13.5.10.2020.0005 of 22/11/2020.

Geografia e Estatística 2021), there was no public policy aimed at collectively protecting workers from a possible mass dismissal, prioritizing social dialogue. The requirement of collective bargaining prior to collective dismissal which, before the Labor Reform, was a prevailing understanding in jurisprudence, is now being considered overruled by the Labor Reform in some cases, leaving workers helpless, unions weakened and employers legally insecure.

### **3. THE BRAZILIAN WORKING CLASS ONE YEAR AFTER THE DECRETION OF THE STATE OF PUBLIC CALAMITY**

The Federal Government's denial of the seriousness of the disease since the beginning of the Covid-19 pandemic led to action such as filing lawsuits in the Supreme Court questioning municipalities and some of the federation's states measures to try to curb the virus and decrease contamination. Even though the Supreme Court had already ruled<sup>21</sup> that local governments could impose social distancing measures, quarantine and decide which public services and activities were considered essential during the pandemic, the Federal Government had filed a lawsuit<sup>22</sup> in the Supreme Court questioned and required an injunction to suspend the effectiveness of a series of decrees imposing curfew and restriction on commercial activities in the states of Paraná, Pernambuco and Rio Grande do Norte. This happened in May 2021, when over 432 thousand lives had already been lost (Homero & Lopes 2021).

In addition, the contempt of the President of the Republic to non-pharmacological measures of protection and social distancing manifested in numerous ways, whether by encouraging participation in marches and protests (Soares 2021) or by his numerous appearances without mask and provoking agglomerations (Behnke 2021).

In many occasions the President stated that Covid-19 was just a "light flu" (UOL 2020) or encouraged the use of the so called "early kit" of drugs (Sobrinho 2021), which included medications not recommended by the WHO and with no scientifically proved effectiveness, such as hydroxychloroquine, ivermectin, among others. A Federal Court of Auditors report<sup>23</sup> informs that more than 2 million pills were distributed during the pandemic.

This neglect led to the public health collapse in the country, even with oxygen shortage in the capital of Amazonas. A study carried out by the Oswaldo Cruz Foundation (FIOCRUZ) in March 2021 pointed out that among the 27 Federative Units, 24 of them had

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<sup>21</sup> ADI 6341.

<sup>22</sup> ADI 6855.

<sup>23</sup> The Report is available at: [https://drive.google.com/file/d/1NhH5-LM7d6H-atmgT1EyLKCAcL\\_GnRb2/view](https://drive.google.com/file/d/1NhH5-LM7d6H-atmgT1EyLKCAcL_GnRb2/view) (Accessed: 17 June 2021).

hospitalization rates above 80%, in addition to places that had a queue of patients waiting for hospital vacancy. Elective hospitalizations were paralyzed for a period of time in the country and, besides deaths by Covid-19, other patients suffered or died from other causes once they did not have the necessary medical care. The same study points out the need to increase restrictive measures to non-essential activities by local governments, given that the federal government did nothing in this regard (FIOCRUZ 2021).

After numerous actions of indifference to the population and the dismissal or resignation of three Health Ministers in a little more than a year, in May 2021 a Parliamentary Inquiry Commission (CPI) was established with the objective of investigating actions and omissions of the federal government in confronting the pandemic and the collapse of the healthcare system in the state of Amazonas at the beginning of the year (Castro 2021). The conduction of the pandemic by the Brazilian Federal Government has been the target of criticism because of the extremely high number of deaths in the country, surpassed only by the United States of America so far.<sup>24</sup>

According to what the press reported, the CPI learned so far that the federal government has refused 11 offers to purchase vaccines (Guedes 2021), in addition to the numerous unanswered e-mails with laboratories offers, which means that the vaccination could have started much earlier.

The chaos in the healthcare system and the absence of minimum measures to guarantee the population living conditions led to a record hunger increase in the country, as 19 million Brazilians faced hunger and more than 100 million are in a state of nutrition insecurity, that means that they do not have full and permanent access to food (Rede Brasileira de Pesquisa em Soberania e Segurança Alimentar 2021). The occurrence of hunger was four times higher among people with informal work and six times higher among the unemployed, which demonstrates the relevance of being employed, especially in times of crisis.

Besides the insufficient public health and sanitary measures, as observed throughout this article, the Brazilian population had not had better luck when it comes to labor and social protection policies adopted during the pandemic.

A March 2020 decree recognized the public calamity state resulting from Covid-19 until December 31, 2020, and had only been extended due to a Supreme Court's decision<sup>25</sup>, not by an act of the federal government. The measures adopted regarding the suspension of employment contracts and reduction of working hours and salaries, as well as the granting of the Emergency Assistance, which was also intended for informal workers, were not extended,

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<sup>24</sup> Notice that India surpasses Brazil in number of cases, but not in deaths.

<sup>25</sup> ADI 6625.

leaving businessmen, employees and other workers to fend for themselves from January to April 2021. It was only in May 2021 that the government published MP 1045 and 1046, resuming these policies, but even so, in the latter case, with a lower amount of aid.

Statistics show that by August 2020, 21.4% of companies had adopted at least one of the available measures with government support (Instituto Brasileiro de Geografia e Estatística 2021). It also indicates that by September 2020, 17.5 million agreements had been signed involving approximately 9.7 million workers (Neri 2020). Anyway, of the BRL 51.55 billion reserved in 2020 for expenses with the Emergency Employment and Income Maintenance Benefit, only BRL 33.50 billion were effectively paid, which means that the program could have protected more people. In 2021, until June, only BRL 2.52 billion were used (Tesouro Nacional Transparente 2021).

Regarding the Unemployment Insurance<sup>26</sup>, statistics show that from January to April 2021, 2,117,677 formal workers filed the application (Brasil 2021). In 2020, the number was 6,784,102 (Brasil 2020).

Social inequality worsened with the Gini Index reaching 0.674. The national average income, for the first time, dropped to below BRL 1,000 monthly, reaching BRL 995.00, while the general average income fell 10.89%. When considering only the poorest half of the country's population, the fall in income was 20.81% (Neri 2021).

The National Survey of Samples by Household shows that Brazil ended the first quarter of 2021 with an unemployment rate of 14.7% (Instituto Brasileiro de Geografia e Estatística 2021). In 2020, the underutilization<sup>27</sup> of the workforce was 28.7%, while the informality rate was 38.7%. People who were self-employed and consequently without income guarantee, in the third quarter of 2020, were 27% of the active population (Instituto Brasileiro de Geografia e Estatística 2021). Even when we consider people with formal jobs, we must regard that the major Labor Reform in 2017 expanded the possibilities of atypical hiring, such as intermittent work and partial contracts, which means that people may also be engaged in precarious job relations.

Moreover, as already seen, Brazil did not provide any employment guarantee during the pandemic. Even though employers who adopted measures to suspend the employment contract or to reduce the working hours would have to keep their workers' jobs for an identical period of time, the layoff could happen if the employer paid an indemnity, anyway.

Once again, the Brazilian government fails to apply what the Constitution establishes in article 7, I (guarantee against unfair dismissal) and ignores that, even in a crisis-free

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<sup>26</sup> Not every dismissed formal worker is entitled to receive unemployment insurance as a minimum period of employment is required for this.

<sup>27</sup> Underutilization of the workforce is the percentage of unemployed people, underemployed due to insufficient working hours, and the potential workforce in relation to the entire active population.

scenario, losing a job means losing the possibility of paying rent, food, medication, and therefore surviving with some dignity. It is with no surprise that we now see the growth of nutritional insecurity, hunger and extreme poverty in the country.

Given the above, the scenario currently experienced by the Brazilian population is not only the result of the central government's denial and minimization of lost lives, but also of adopted measures, which were unable to protect the working class.

## **CONCLUSIONS**

The Brazilian labor market is marked by a high informality rate. Furthermore, those who have a formal job are subject to an employment at will system. Taking into consideration such vulnerability, when businesses began to be affected by the restrictive measures carried by local governments as a result of the Covid-19 pandemic, the maintenance of jobs was an important concern.

The federal government took some legislative measures to protect jobs, however, as we were able to analyze, these rules were merely persuasive, as they did not prohibit layoffs during the crisis period, but only eased the cost of job maintenance or the effects of employees' temporary leave. Also, although the Emergency Program for the Maintenance of Employment and Income, which allowed the suspension of contracts and the proportional reduction of working hours and salaries, provided for a provisional guarantee of employment for a certain period to employees affected, the rule itself already indicated an indemnity, in some cases in an amount lower than that which would be earned by the employee if the contract was maintained until the end of the guarantee.

In consequence, these measures were insufficient in protecting formal jobs at the individual level. At the collective level, the federal government did not adopt any legislative measure to mitigate the effects of a mass layoff. The situation was aggravated by the fact that the 2017 Labor Reform made collective dismissals equivalent to individual dismissals, with collective bargaining not being mandatory prior to its validity, breaking a tradition established a little over a decade ago in jurisprudence and increasing insecurity for businesses and workers.

Although it was not the scope of this work, we cannot forget to mention informal jobs, considering their relevance in the Brazilian context. For these workers, it was only granted an emergency assistance with amounts below the current minimum wage and limited to families with low income.

Besides the inefficiency of these legislative measures, only 21.4% of companies adopted at least one measure with government support, which is considered a low percentage and proves its limited reach. Moreover, unemployment, underutilization of the workforce,

informality, hunger, and social inequality have increased. The national average income, for the first time, reached a level below BRL 1,000.00.

The weakening of labor legislation, initiated in 2017 and enhanced by the current government, which sees labor rights as barriers to job creation and the success of Brazilian companies, took its toll during the Covid-19 Pandemic: thousands of jobless workers, without decent income, and with no adequate social protection.

Workers still had to experience a lack of health protection that threatened their own lives, as the federal government did not draw serious guidelines for the use of non-pharmacological protecting measures, such as the imposition of lockdowns. On the contrary, it has always been against them, with countless situations in which the President of the Republic himself encouraged agglomerations, discouraged the use of masks, and advertised drugs with no scientifically proven efficacy. The result of this was a huge number of deaths, hospitalizations, the collapse of public healthcare, the exhaustion of health professionals, and of course, economic chaos.

In a society where work is essential for living and where household consumption represents more than half of the national Gross Domestic Product (GDP), do not ensure real guarantee of employment, especially in times of a pandemic crisis, means aggravating an already precarious situation. Without a job, there is no assurance that a consumer market will be maintained, which is not interesting for those who work, but also for those who invest in businesses throughout the country.

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