

Violence in the Workplace in Brazilian Society: A Conceptual Study and Mapping of Existing and Emerging Criminal Types in Light of Convention No. 190/2019 of the International Labor Organization

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How to cite this paper: Malaquias, R. A. D., & Leite, C. H. B. (2024). Violence in the Workplace in Brazilian Society: A Conceptual Study and Mapping of Existing and Emerging Criminal Types in Light of Convention No. 190/2019 of the International Labor Organization. *Beijing Law Review*, 15, 124-147.

<https://doi.org/10.4236/blr.2024.151009>

Received: December 5, 2023

Accepted: February 25, 2024

Published: February 28, 2024

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Abstract

This article analyzes the multi-causal phenomenon of violence in the workplace in Brazilian society, to be based on the spectrum of a conceptual study and the mapping of the elements of existing and emerging criminal types, in light of Convention No. 190/2019 of the International Labor Organization—ILO, referencing and exposing the consequences associated with the risks of physical and mental illness, absenteeism, increased turnover in jobs, decreased productivity and the damage caused to the organizational climate. Manifestations of violence in the workplace have always been part of the daily professional life of each category of working people. There is great difficulty in identifying, conceptualizing and individualizing harassers and victims. Anonymity is a common practice for the aforementioned assaulted people, in order to avoid personal exposure to other co-workers and their own family. It is necessary to outline a set of effective measures to produce positive effects in terms of prevention. In this conceptual study, the dialectical method was used to discuss and re-read the parameters contained in Convention No. 190/2019-ILO. This is a complex public health problem in which there is an exponential increase in various situations of violence in the workplace of companies and in the public service. These hidden criminal practices, transformed into routine facts, cause a deleterious impact on the dignity of the human person, directly influencing the quality of life of working people.

Keywords

Violence, Working People, Workplace, Conceptual Study, Convention No. 190/2019-ILO

1. Introduction

This article aims to analyze and deepen the debate on violence in the workplace, focusing on a conceptual study and mapping the elements of existing and emerging criminal types, in light of Convention No. 190 of the International Labor Organization—ILO, referencing and exposing the consequences associated with the risks of physical and mental illness, absenteeism, increased turnover in the workplace and decreased productivity, in addition to the damage caused to the organizational climate.

It is observed that manifestations of violence in the workplace have always been part of the daily professional life of each category of working people in a culturally heterogeneous way.

There are a small number of academic studies with due depth that indicate the effectiveness of interventions that can reduce and eliminate forms of violence in the workplace, allowing recommendations regarding the use of prevention techniques that are efficient for all areas of work.

Violence in the workplace in its various forms and types is a topic of great complexity, including in terms of classification and conceptualization, considering that it requires the individualization and identification of the harasser or group of harassers and also of the victims.

In this way, it will be possible to outline a set of effective measures so that they have positive effects in terms of prevention, in addition to the correct targeting of health treatment and the resulting psychological effects, including in terms of compliance with organizational justice and due investigation by state bodies.

The undeniable perception of the exponential increase in situations of violence in the workplace in several companies, including in the public service, has become a complex public health problem, transforming these hidden criminal practices that cause a deleterious impact on the dignity of the human person, directly influencing the quality of life of these working people.

In this context, this research proposes to discuss and re-read in search of the sedimentation of conceptual parameters, from the enlightening and modern perspective of Convention No. 190, of June 10, 2019, held in Geneva/Switzerland, convened by the Board of Directors of the International Labor Secretariat, through the 108th Session of the International Labor Conference—ILO, dealing with the elimination of violence and harassment in the world of work, facing the discussion of this complex multi-cause phenomenon of violence in the workplace.

Therefore, the problem theme of this research is the following question: the conceptual study in light of Convention No. 190/2019-ILO will be able to expand and consolidate the mapping of existing and emerging criminal types on violence and harassment in the workplace, in addition to all other forms of aggressiveness and the original interactions, including the concept of power (personal and institutional), with the objective of prevention and criminal sanctioning for the amplitude and derogatory sophistication of violence in the workplace?

The correct definition of this criminal phenomenon committed against work-

ing people in a work environment can avoid weaknesses regarding the subsumption of the fact into the norm, enabling the appropriate sanctions under labor and criminal law.

It is also noted that the promotion, production and sedimentation of knowledge for the effective elaboration of diagnoses on the real working conditions of Brazilian workers, will enable the elaboration of public labor policies that include the fight against violence in the workplace and the full exercise of citizenship.

The text of Convention No. 190-ILO was sent by the Executive Power through Message to Congress—MsC No. 86/2023 to the Members of the National Congress on March 13, 2023, based on the precept contained in Article 49, item I, combined with Article 84, item VIII, of the 1988 Brazilian Constitution, subject to analysis and approval by the bicameral Legislative House, accompanied by an Explanatory Statement from the Minister of State for Labor and Employment, the Minister of State for Women and the Minister of State for Foreign Affairs.

After this rapid legislative processing of the aforementioned MsC No. 86/2023, although the aforementioned international agreement has been in force since June 25, 2021, it is currently in technical legislative conditions to enter the voting agenda in the Committee on Foreign Relations and National Defense. Immediately, it must be forwarded to a vote in the Plenary, according to the priority proposal based on Article 151, item II, Internal Regulations of the Chamber Deputies—IRCD.

Therefore, only after this legislative process, with voting and approval by both Houses of the National Congress (Chamber of Deputies and Senate), will the aforementioned Convention No. 190-ILO come into force in Brazil.

This is the first international pact that supports the recognition of the right of working people to a world of work free from violence and harassment, including gender-based aggression.

The text was initially signed and ratified by Argentina, Ecuador, Fiji Islands, Namibia, Somalia and Uruguay, followed by Greece, Italy, Mauritius and South Africa, and currently there are more than twenty-five signatory countries, except Brazil which has not yet concluded this legislative process of discussion and approval of the aforementioned international pact.

2. The Criminological Phenomenon and Working People

Brazilian society has reached a crucial point in its historical chronology regarding the unbearable daily violence suffered by its citizens in all social activities. Crime rates directly affect working people and low-income individuals. The criminological phenomenon never directly impacts with any relevance on the privileged classes, politicians and rich families who have countless layers of protection around them resulting from their corporatist mechanisms and security systems, both institutional and private, constituting their personal protection and family members.

Crime is a social fact, arising from activities and human nature itself. In view of this, it is essential to monitor daily routines in all social segments, including regulatory standards in light of historical and evolutionary events in society.

Thus, it is clear that the harmonious aggregation of dogmatic knowledge makes it possible to visualize with greater clarity the complexity of the issues involving the criminological phenomenon and the consequences of these various harmful events for the coexistence of the national and international community.

Crime is an activity of a multifaceted nature, presenting countless modalities and levels of complexity, arising from a multicausal origin and this makes it difficult to develop a single definition to contain the entirety of violence against working people in the social context.

Without departing from the labor doctrine, it is necessary to use Police Sciences to understand the criminological phenomenon, considering that the crime is an anti-legal action that violates ethical precepts and consists of two basic elements: social aggression and the sanctioning reaction.

Adriana C. Macedo et al., states that violence in the workplace is the result of several actions that have their origins in long social processes based on a social structure of injustices and inequalities between individuals. This is a theoretical-methodological approach analyzing knowledge and practices from different disciplines, requiring a thorough study with different views that is transdisciplinary. Thus, she teaches that:

“[...] the determinants of violence and its growth, as they involve economic factors (poverty, hunger, unemployment, lack of income, inequalities, generating frequent frustrations and ostentation of wealth), institutional factors (state failure to prevent and repression of violence), prevention (schools, housing, public health, inefficient public transport) and repression (police, justice and penitentiary system), require an organized social response with well-structured action plans, in addition to socioeconomic changes” (Macedo et al., 2001: p. 15).

In this line of reasoning, the theoretical discussion addressing violence in the workplace must continue analyzing all of these aforementioned phenomena, including the exclusively from external crime, in addition to the different forms of conflicts in work relationships, mainly because they cause different impacts on health. physical, mental and dignity of working people.

Augusto de Souza Campos, states that the problematization of this issue of violence in the workplace and the search for the concept could transform it into an instrument of knowledge production with the objective of developing accurate diagnoses about the working conditions of Brazilian workers.

In this way, it would be possible to formulate new structuring policies to effectively prevent and combat violence in the workplace and fully promote citizenship. It continues teaching that:

“Violence in the workplace is the result of the complex interaction of sever-

al factors, where work conditions and organization and worker-aggressor interaction stand out [...] Limitations in knowledge on the subject and regional differences justify the strategy of establishment of networks between workers, users, managers, communities and academia to combat them” (Campos, 2004: p. 18).

It is necessary to search for facilitated cognition about the complex phenomenon of violence in the workplace. An important exemplary illustration is the use of concepts and concrete cases in this highly relevant thematic setting under permanent discussion in the scenario of relations between professional and business categories.

In this context, it becomes undeniable to visualize the consequences of aggressiveness in the work environment resulting from the effective results in deficient public labor policies and how much progress will be possible from the perspective of Convention No. 190-ILO, which provides conceptual foundations and recommendations to member countries.

Regarding the essence of this thematic discussion, it is observed that the Ministry of Labor and Employment—MLE, the competent body responsible for monitoring compliance with all legal regulations concerning labor relations, has carried out some preventive activities, although still very incipient. However, the debate on violence in the workplace must be a permanent doctrinal construction, seeking to expand academic research and provide a doctrinal basis for the legislative process.

3. Convention No. 190/2019-ILO and the Elimination of Violence and Harassment in the World of Work

Labor relations must be exercised and consolidated in an environment of full respect for the exercise of citizenship based on the principle of human dignity. The parameters required are those of urbanity and ethics, creating a healthy coexistence to permeate interactions in the development of the work profession, valuing each individual for the simple idea of human nature conceived as central and organizer of people’s lives.

However, with the constant changes that have occurred in work environments, it is observed that the most precious values of ethics and human dignity have been forgotten, contributing to the increase in violence in labor relations, in addition to the emergence of new variations of violence, to the detriment of working people.

Those exclusionary labor managements that aim only at profit and understand work as a product of capitalist organization are aggravating violence in the face of non-participatory labor management policies, centered on power relations. In this way, they use psychological pressure and abusive hierarchical conduct, generating different types of violence against working people.

In this context, this research proposes to carry out a conceptual study of Convention No. 190, of June 21, 2019, held in Geneva/Switzerland, which came into

force on June 25, 2021, dealing with “the elimination of violence and of harassment in the world of work” and, as stated in its Preamble, the General Conference of the International Labor Organization, through the 108th Session of the ILC, decided that the Philadelphia Declaration stated that all human beings, regardless of race, belief or gender, have the right to seek and consolidate their material well-being and also spiritual development in conditions of freedom and dignity, economic security and equal opportunities, in addition to reaffirming the importance of the fundamental conventions of the International Labor Organization—ILO.

The highlighted and recognized international diploma continues, stating that “the right of all people to a world of work free from violence and harassment, including violence and harassment based on gender” [...] also emphasizing the extreme need for prevention, bearing in mind that “violence and harassment in the world of work may constitute a violation or abuse of Human Rights”, representing a threat to equal opportunities, being unacceptable and incompatible with decent and dignified work (Convention No. 190-ILO, 108th Session of the CIT, 2019, p. 1), also highlighting the importance of a work culture that is based on reciprocal respect and the dignity of the human person.

There are many recommendations set out in the introduction to this important international document, including the recommendation to all members on “the responsibility to promote a general environment of zero tolerance to violence and harassment, with a view to facilitating the prevention of such behaviors and practices” (Convention No. 190-ILO, 108th Session of the CIT, 2019, p. 2), alerting to the idea that all those involved in the work environment, anywhere in the world, must seek to effectively prevent and combat violence and harassment.

It is imperative to remember that this type of violence affects people’s psychological, physical and sexual health, dignity, family and social environment. In this way, it is also observed that this aforementioned aggressiveness results in the poor quality of public and private services and can create obstacles for working people to have access to promotions and leadership roles to progress in the job market and in their professionals lives.

Convention No. 190-ILO brought important concepts such as “violence and harassment” into the world of work, which refers to a set of unacceptable behaviors and practices, or their threats, of single or repeated occurrence, that aim at, cause, or are likely to of causing physical, psychological, sexual or economic harm.

Another conceptual basis is “gender-based violence and harassment”, which means the disproportionate targeting of violent conduct towards people of a certain sex or gender, also including sexual harassment.

The aforementioned international pact makes an important warning by highlighting that the legislation and regulations of each nationality may provide for individual or ambivalent concepts for violence and harassment in the workplace.

Furthermore, it stipulates as fundamental principles of the aforementioned Convention No. 190-ILO, the acceptance and ratification of Member States that mobilize to encourage respect, promotion and realization of the right of all working people to a world of work free from violence and harassment, prohibiting by law these criminal conducts, guaranteeing the proposal and execution of structuring public policies that clearly address the issue of violence and harassment in the workplace.

There is great expectation in the legal world, especially in the labor sector, regarding Brazil's approval and ratification of the aforementioned Convention No. 190-ILO, considering that it will be based on a legal instrument that will cover all categories of workers in the public and private sector, regardless of registration and contractual basis, also enabling the supervision of apprentices and interns, urban or rural, whether in any physical or virtual work environment.

Data referenced in recent ILO research demonstrates that young migrant women face the greatest risk, being twice as likely to suffer moral and sexual harassment, as well as other forms of violence in the workplace, without excluding other risk groups, including affecting women and men indiscriminately.

It is important to highlight that, according to the doctrinal parameters of the aforementioned Convention No. 190-ILO, legal protection must also cover third parties, in the case of clients and patients.

Therefore, the importance of approving the aforementioned convention is inexorable, given its conceptual power to clarify and define what constitutes violence and harassment in the world of work, in addition to defining guidelines that must be followed by all contracting nations to prevent and curb the diversity of existing cases.

The breadth of the normative concept contained in the expression "violence and harassment" in the world of work, referring to a "set of unacceptable behaviors and practices, or threats, of single or repeated occurrence", making it clear that a single approach characterizing this mentioned conduct that results in "physical, psychological, sexual or economic harm, including gender-based violence and harassment".

Legal reasoning must be extended to classify harmful practices that transcend the work environment and also its results, such as during travel, training, institutional events, social activities or any other activities related to the employment relationship, whether through communications or tasks determined by the harasser using information technology in the institutional cyber environment or externally, when browsing the world wide web.

In the same sense, it adopts comprehensive strategies to reinforce preventive enforcement and monitoring mechanisms, in addition to access to reparation and support offices for victims, imposing sanctions on offenders and creating effective means of inspection and investigation of each specific case.

It is important to highlight that the aforementioned international diploma also provides recommendations for the application of sanctions and compensation

for damages, in addition to the creation of a policy for guidance, training and participation of organizations representing working people, including regarding methods of application and adaptation of national legislation.

The International Labor Organization—ILO, published institutional research on October 15, 2002, addressing occupational violence with the title: “Code of Practice on Workplace Violence in Services Sectors and Measures to Combat this Phenomenon”, in which it consolidated important technical-legal concepts and definitions, such as: “occupational violence is any action, incident or behavior that deviates from reasonable conduct in which a person is attacked, threatened, harmed, injured in the course of, or as a direct result of, their work “.

The aforementioned publication brought classification criteria into two categories for violence: 1) internal violence in the workplace is violence that occurs between workers, including managers and supervisors; 2) violence external to the work environment is violence that occurs between workers, managers and supervisors and any other individual present in the workplace.

Another prominent international institution, the Occupational Safety and Health Administration—OSHA, linked to the US Department of Health, in a journalistic article on July 22, 2023, presented the classification of violence in the workplace into four types, creating a certain differentiation regarding the figure of the harasser and the nature of the aggressive act.

According to the aforementioned institution, there are: 1) criminal violence (through serious threat, such as robbery, armed robbery, etc.) carried out by workers or people outside the company; 2) violence carried out by clients, patients and company consumers against workers (in these cases, examples are: physical or verbal aggression by patients against professional workers); 3) violence carried out between workers at any hierarchical level (bullying, moral or sexual harassment between workers, etc.); 4) violence in the workplace against workers by people close to them.

It is observed that the individual subjectivity of those involved in cases of moral harassment in the workplace creates serious obstacles regarding identification, verification of the fact, conceptualization of the illicit act itself, making it difficult to investigate or map, which makes its prevention highly complex in the course of daily work activities.

It is important to highlight that the Brazilian government also made a commitment to comply with the provisions of Convention No. 111 of the International Labor Organization—ILO, approved at the 42nd Session of the CIT, concluded in Geneva/Switzerland, on June 15, 1958, defining “the discrimination as any distinction, exclusion or preference, which has the effect of nullifying or altering equal opportunities or treatment in matters of employment or profession”, including extended to cases of harassment, of any type, whether moral or sexual, committed in environment labor.

Therefore, there are more than five decades of sedimentation and dissemination of the ethical regulations arising from this aforementioned Convention No.

111-ILO as an obligation and regulatory attribution of the Sectoral Ethics Committee of the Ministry of Labor and Employment—MLE, so that positive behavioral guidelines are created in the consolidation of ethical standards of employees so that the pedagogical effort has positive effects in expanding a culture of respect and appreciation of the dignity of the human person.

The basic guideline is to raise awareness among public and private managers so that they permanently adopt an ethical, respectful and valuing conduct towards working people who must also position themselves as dignified people and who do not condone any type of violent attitude expressly witnessed or through attitudes concealing moral or sexual harassment, as well as other forms of violence against working people.

Bullying at work is violence against working people, characterized by the abusive conduct of managers (harassers) towards their subordinates.

The procedures for moral harassment are diverse, but what is common is cold, verbal, derogatory, hostile, intolerant, insulting violence, among other forms of violence.

These are cruel and inhumane acts that characterize a violent and unethical attitude in this regard between employers and their agents against working people who are exposed to humiliating, embarrassing and humiliating situations during the performance of their job or work activity.

This is what is characterized as moral violence. These acts aim to humiliate, disqualify and emotionally destabilize the victim's relationship with the organization and the work environment, which puts the victim's health, life and employment at risk.

Carlos Henrique Bezerra Leite, co-author and supervisor of this research (Leite, 2022a: *passim*), teaches that there are several hypotheses of violations of the personality rights of working people, such as, for example, moral and sexual harassment, emphasizing that the protection of privacy and private life are protected by the precept contained in section morality resulting from its violation.

He goes on to state that several privacy violations are perpetrated in labor relations: strip searches (Article 373-A, item VI, of the Consolidation of Labor Laws—CLL), the use of cameras in locker rooms or bathrooms, moral harassment and sexual harassment.

It also highlights that another “important normative instrument to be applied analogously for the identification of moral harassment in any legal relationship, including work or employment relationships, is Law No. 13185 of November 6, 2015, which established the Combat Program to Systematic Intimidation”, also known as “bullying” (Leite, 2022a: p. 28).

He emphasized that the most common cases of moral damages in the employment relationship may occur in the period preceding the employment contract or even during and after the termination of the employment relationship, stating that:

“[...] in the pre-contractual phase, moral damage can occur during the se-

lection, interview and training process, through coercion, sexual harassment, degrading or vexatious physical examinations, malicious advertising to homosexual candidates or those carrying the virus HIV. Discrimination in hiring workers based on sex, religion, race, family situation, etc., can also constitute moral damage.” (Leite, 2022b: p. 31).

Moral violence causes emotional and psychosomatic disorders, affecting the dignity and identity of the human person, altering values, causing mental damage, negatively interfering with health, quality of life and, in extreme cases, inducing suicide. Moral harassment causes abominable solitary suffering, which is harmful to organic and spiritual health.

It is also observed that this practice is used to manage and control work processes and causes negative consequences for the physical and mental health of workers, weakening the work environment, professional relationships and the individual’s own functional performance.

It involves the imposition of humiliation, embarrassment, discrimination, attacks on honor and dignity that are beginning to be part of everyday work relationships and this harmful practice can be observed both in the private sector and in the public service environment.

This criminal practice in work relationships can be observed when a specific victim is “isolated” from the group, physically or merely functionally excluded, without explanation. From then on, he begins to suffer hostility, acts of ridicule and gestures of disbelief in his workplace.

Sequentially, co-workers are also observed breaking emotional relationships and personal ties with the victim, reproducing the aggressor’s rude attitudes in the work environment. At this stage of the problem, the fear of losing one’s job goes beyond personal shame and the anguish of collective execrations, in addition to perverse professional competition, understanding as normal the criminal conduct of the harasser who, as a rule, is the employer or your representative.

It appears that the preferential targets for this type of criminal practice in the workplace are black women, but it also affects white, brown or other ethnic men and women, people with sexual orientation other than heterosexuality.

It is necessary to emphasize that the work environment is always the most perverse for the women who face it, in addition to the classic control and strict supervision regarding compliance with hours and productivity by the employer, they also face the most common and banal discriminatory attitudes for the simple fact of being a woman.

This aforementioned situation is aggravated when it comes to women of African descent, in which moral harassment is aggravated by a frustrated attempt at sexual harassment. If these serious findings were not enough, women of African descent face discriminatory attitudes and embarrassment from the beginning when they are looking for a job, in which they suffer abusive criticism regarding their appearance and ethnic characteristics. Furthermore, while carrying out their work activities, they suffer threats, insults, isolation, among other preju-

diced attitudes.

There are also several consequences of moral violence against working people who become ill or have accidents. The result is that when they return to work after their leave of absence, they find that the position or function has been filled by another colleague on a permanent basis. From then on, this person is relegated to activities that are unimportant or devoid of any relevance to the production line. Indirectly, productivity comparisons are made between those considered healthy and those who are always causing problems for the company by taking time off for their own or family's health treatment. In some cases, there is even a certain resistance to receiving and processing the approval of the medical examination by the human resources sector of the company or public body to forward to the official social security institute, the National Institute of Social Security—NISS.

It may seem obvious, but the fact of being a man does not guarantee protection against routine and persistent moral harassment, especially against those who have a sexual orientation other than heterosexuality, in addition to some type of physical limitation or health disability.

There are not many scientific studies on this aforementioned phenomenon of the discussed problem, but it is clear that the basis of this harmful and perverse practice is cultural, linked to the roots of Brazilian basic education, in the sense of understanding what it means to be a man in our country society.

It is easy to see that there is still a strong structural male chauvinism, in which prejudices regarding sexual orientation are very serious and demand greater awareness of Human Rights and individual guarantees, aiming at the necessary social evolution.

But for this to happen, it is necessary to use techniques to identify the harasser, whether employer or employee. Moral harassment occurs in the workplace, although it can extend to personal activities outside the worker's private life.

To establish a conceptual basis that facilitates the identification of the aggressor and the victim, it is necessary to point out that moral harassment is a "triangular relationship" that occurs between the harasser, the victim and their respective co-workers.

In this aforementioned illicit act, the aggressor uses very specific strategies in order to emotionally destabilize the victim, creating constant professional embarrassment that leads him to resign because he cannot bear so much humiliation that is imposed on him daily.

In this way, it is very common to observe the harasser frequently threatening to lose their job so that the victim becomes emotionally destabilized, in addition to using inappropriate techniques such as, for example, climbing onto a table and proclaiming that a certain group or even a specific person it is incompetent and has produced little.

Sequentially, it starts repeating the same order mechanically dozens of times, seeming to mock the indicated incompetence, but with the clear intention of

emotionally destabilizing the intended target.

However, it is necessary to emphasize very emphatically that every employment relationship has a certain degree of demand in carrying out tasks, whether manual or intellectual, taking into account the requirements of the previously agreed employment contract itself. Therefore, it is completely normal and acceptable to have fair criticism and demands, in addition to a routine evaluation of the activity carried out, and this does not constitute moral harassment.

But if the harasser (employer, section head, manager, etc.) is acting in a pre-meditated manner, overloading the subordinate with tasks or even preventing the continuation of a certain work to the detriment of the worker, denying him information, demonstrating a mocking attitude with laughter, even if from a distance in other conversations, in addition to various types of humiliating jokes directed at the victim. In certain situations, approaching and questioning the content of that ongoing conversation or in other cases simply ignoring the presence of the person working, clearly demonstrates attitudes of moral harassment.

It is also very common for the harassed person to change work shifts without prior notification of the act. In some situations, it determines that the victim performs tasks that are above or below the specific skills of that worker.

It is also the result of acts of moral harassment, dismissing the worker, via telephone, telegram or email, with the aforementioned victim taking compensatory time off or vacation. Some perverse tactics can be observed, such as using cunning attitudes to publicize among other colleagues that the victim is suffering from nervous imbalance. In the end, he openly pressures the harassed person to resign, citing mental health problems.

In some more complex cases, the victim suffers enormous damage, being emotionally destroyed due to the intense and constant surveillance. There is isolation from family and friends, given the humiliation, starting to use drugs (alcohol and narcotics), becoming drug addicts and triggering or further aggravating pre-existing illnesses.

Each person who suffers this aforementioned act that undermines work relationships may react differently. Women generally react to bullying by triggering or worsening their own pre-existing illnesses, demonstrating indignation with crying spells, excessive sadness, resentment and hurt feelings.

Research has also shown that women develop feelings of worthlessness, failure and low self-esteem, in addition to tremors and palpitations, experience insomnia, depression and decreased libido, as strong symptoms of this traumatic phenomenon that is moral harassment in the workplace.

In this context, men try to demonstrate that they are strong, but they react with revolt, indignation and anger, showing low self-esteem, feeling betrayed and dishonored by their employers, and developing a feeling of revenge against the harasser. But they suffer from constant humiliation and feel ashamed in front of their own family (wife and children), they feel dejected and with a severe feeling of worthlessness, tending to remain silent and not reveal these circum-

tances in their personal family environment.

Continuing with the analysis of the profile of this research, the next topic under discussion is sexual harassment, duly typified in the Penal Code (Article 216-A, *caput*). It is a criminal action that violates the sexual availability of human beings, violating their sexual freedom.

It is a crime committed against a person's right to dispose of their own body, being forced to perform an unwanted and violent sexual act. This is an offense to honor and sexual dignity that will also be thoroughly analyzed in the following topics in the context of the forms of violence faced by working people.

This illicit practice is old and completely deteriorates work relationships. This is harmful conduct, as a rule, perpetrated by men against women that arose from women's entry into the job market, in which various aspects of this gender discrimination are constantly manifested.

Women have received lower wages when performing similar activities by their male colleagues. In some cases, they have a higher level of education than their male counterparts and, even so, they receive less pay and have fewer opportunities to obtain employment or functional promotions.

Furthermore, it is women who always appear on the large layoff lists whenever severe cuts are made to companies' workforce. As if so many obstacles weren't enough, they are still the biggest victims of sexual harassment. In very rare exceptions, a man may suffer sexual harassment by a woman or any other person.

But the cases presented are insignificant indices that do not require analysis and study, although in all cases it is characterized as a criminal practice, with specific legislation that regulates the topic, with the respective penalties.

The lessons from Maria Ester de Freitas state that the idea that the current discussion about sexual harassment in the workplace is just a matter of "fad" is mistaken, taking away the due importance of debates on this topic. Her position is that "this practice is not new. What is new is the search for discussion, punishment, criminalization. As societies become democratized, individuals, combined with greater access to information, become more aware of their role as citizens" (Freitas, 1996: p. 28).

Therefore, sexual harassment in the workplace consists of embarrassing a worker who is part of the same work team, being positioned at a higher functional level, causing embarrassment through frequent or intermittent flirtations and insinuations, with the aim of obtaining sexual advantages or favor.

These aforementioned attitudes can be expressive or subtle, verbal or just insinuations, written or through gestures, taking the form of coercion or promises of promotions, including when there is explicit or veiled blackmail.

There are two most obvious forms of sexual harassment that occur due to abuse of power in the workplace: blackmail and intimidation. Law No. 10224, of May 15, 2001, introduced into the Penal Code the classification of the crime of sexual harassment, giving the following wording to Article 216-A: "Embarrassing someone with the intention of obtaining sexual advantage or favor, prevail-

ing if the agent has his status as hierarchical superior or ancestry inherent to the exercise, employment, position or function”. The expected penalty is imprisonment for 1 (one) to 2 (two) years.

It is observed that from the year 2001 onwards, the inclusion of this criminal type represented a major evolution of the legislation in the sense of protecting working people against this criminal conduct that was only classified as a crime with less offensive potential, being characterized as “illegal embarrassment”, the penalty for which is detention for 3 (three) months to 1 (one) year or a fine for the transgressor, as provided for in Article 146 of the Penal Code.

Furthermore, the Consolidation of Labor Laws—CLL, authorizes the employer to dismiss for just cause an employee who commits serious misconduct, such as the misconduct listed in its Article 482, and sexual harassment committed in the workplace may be considered one of these hypotheses.

The working woman is a potential victim of the crime of sexual harassment. Thus, in general, when a man in a higher hierarchical position is interested in a working woman, without respecting ethical parameters, upon being rejected, he begins a personal and insistent pursuit in order to obtain sexual benefits.

The harasser’s immoral and unacceptable attitudes are perpetrated in several ways. In the work environment, he displays photographs of naked women, makes sexualized sexist jokes, as well as countless embarrassing comments about the female figure that should be avoided as a sign of respect given to any person.

These unethical behaviors have extremely violent and immoral consequences, with a view to exposing the worker to embarrassing situations, causing professional insecurity and great fear of losing their job or being transferred to unwanted sectors, among other consequences.

4. Conceptual Study and Permanent Doctrinal Construction

Initially, it is necessary to point out that Resolution No. 351, of October 28, 2020, of the National Council of Justice—NCJ, establishing a policy to prevent and combat moral harassment, sexual harassment and discrimination within the scope of the Judicial Power, came to encourage and propose a new preventive and repressive strategy for this aforementioned aggressive practice against working people.

This way, avoiding attitudes that favor harassment or disrespect for the professional values of the public judiciary service and the Judiciary, based on the precept contained in Article 8, item XII of the Resolution NCJ No. 240/2016, in addition to other previously issued standards (NCJ Resolution No. 198/2014, organizational environment and quality of life of its members; NCJ Resolution No. 230/2016, institution of Permanent Accessibility and Inclusion Committees; in addition others).

This search for standardization directly influences judicial decisions in the sphere of labor justice, in light of Convention No. 190-ILO, previously mentioned. It is also important to highlight that the NCJ opted for the UN Agenda

2030 pact in the implementation of sustainable development objectives, which includes support and protection for Human Rights that are recognized internationally.

It is also noted the relevance of unconditional support for the principle of human dignity, the social value of work, the prohibition of all forms of discrimination and the right to health and safety in the work environment as set out in Article 1, item III and IV; Article 3, item IV; Article 6; Article 7, item XXII; Article 37 and Article 39, §3; Article 170, *caput*, all of the 1988 Brazilian Federal Constitution.

The aforementioned Resolution No. 351/2020 was recently modified by Resolution No. 413, of August 23, 2021, to amend Article 15 and Article 17, in order to expand the resolute decisions of the Commission for the Prevention and Confrontation of Moral Harassment and Sexual Harassment at each level of jurisdiction, with multidisciplinary participation of judges, civil servants and outsourced collaborators, taking into account the representation of gender diversity, including in terms of the position they occupy.

It also determined the need for rigorous investigation of cases of violence in the workplace that must be processed by the competent bodies to assess disciplinary responsibility, when they constitute violations of the duties provided for in the Brazilian Federal Constitution of 1988, in Complementary Law No. 35/1979, in the Civil Code, in the Penal Code, in the Code of Ethics of the Judiciary, in Law No. 8112/1990, in state and district legislation or in the various laws and normative acts in force.

It is easy to see that the NCJ itself has made changes to its resolutions in order to adapt and follow the conceptual evolution brought about by Convention No. 190-ILO, which is the specific objective of the conceptual study of this research, in addition to the analysis and permanent observance of doctrinal evolution on this topic.

For the national legal doctrine, moral harassment would only be characterized by observing the recurrent and persistent nature of violence against the worker.

However, the horizons must be resized, taking into account the new conceptual parameters brought by Convention No. 190-ILO, which states in its Item 1) Definitions, Article 1, paragraph 1, that for the verification of these aforementioned unacceptable practices of violence or threat, it is enough that there is a “single or repeated occurrence” causing damage or simply creating the susceptibility of immediate or subsequent harm to the victim, whether physically or of a psychosomatic, sexual or economic nature, in addition to other emerging forms and the element of the type criminal offense in the subsumption of violence and harassment in the workplace against said worker.

In this new conceptual context brought by the aforementioned Convention No. 190-ILO, consistent international parameters are established to seek the guardianship and effective protection of working people, below, delimited into topics by this research.

Moral harassment: any abusive conduct manifested, directly or indirectly, in a single or repeated occurrence, expressed through gestures, words, insinuations, behaviors, verbal aggressions or attitudes that undermine the dignity, physical or psychological integrity of a person worker, frightening or intimidating, provoking or threatening her job, degrading her work environment.

Organizational moral harassment: is a structured and uninterrupted process of varied hostilities, through management policy and organizational activities of the company or public management, under the allegation of increasing productivity targets, reducing operational costs, with strict control procedures or also in the sense of excluding workers unwanted by the company, excluding them from its staff.

Interpersonal moral harassment: is that which aims to affect victims with decompensation in physical health, with immediate psychosomatic effects, altering the general working conditions of the worker, in which the manager uses dismissals, transfers of sectors, leaves of absence, changes of functions and other institutional subterfuges.

In this way, it is observed that the practice of these aforementioned harmful behaviors effectively strengthens discrimination at work, the maintenance of the degradation of labor relations and social exclusion, being directly linked to the exercise of the respective functions, whether in private companies or also in the work environment of public service.

Authoritarian hierarchical relationships tend to generate negative conduct in which inhumane and unethical relationships prevail over a relatively long period of time, being exercised by one or more bosses and directed at one or more subordinate people.

However, it may occur exceptionally in an upward direction, in which the subordinate exercises harassment or other forms of violence against the boss, especially when it is a woman exercising the aforementioned leadership role. There are several ways to destabilize the victim's relationship with other colleagues and the work environment itself.

Discreet, subtle, malicious humiliation constitutes an almost "invisible", but substantially real and concrete risk of destabilizing work relationships, compromising mental health and, subsequently, weakening the physical structure of working people who are victims of this cunning practice.

The complexity of this aforementioned problem that imposes itself as a criminal attitude against working people can only be assessed and the real damages can only be assessed by precisely analyzing the profile of the harasser, the surreptitious attitudes practiced and seeking to understand them adequately as a preventive technique of coercion.

Thus, it becomes possible to understand the real harmful extent in labor relations and the complexity of the problem to implement the first steps towards effectively combating moral, sexual harassment and other forms of violence against working people in the workplace.

A terrifying form of violence against working people is sexual harassment in the workplace, which consists of embarrassing colleagues through words and gestures, flirting, constant “catching” and insinuations, physical contact without consent, subtle “buttock slaps” and discreet acts, in addition to various other humiliating and disrespectful acts, with the aim of obtaining advantages or sexual favor.

This attitude can be clear or subtle, spoken or just insinuated, written or made explicit in gestures, in addition to coming in the form of coercion, when someone promises a promotion to the woman, as long as she does not accept the offer or even, in the form of embarrassment or bribery.

The time has come to expand technical-legal reasoning in the light of Convention No. 190-ILO, seeking to deepen the axiological analysis to point out that there is still no Special Legislation, at the federal level, that is adequately preventive and protective, moving away from the classic forms of violence in the workplace of private and public institutions, including the emerging and subtle expressions of workplace violence that constantly haunt the lives of working people.

The legal precept contained in Article 6 of the Brazilian Federal Constitution of 1988 (Constitutional Amendment No. 90, of September 15, 2015), Chapter II, consolidating various social rights, including work, safety, health, among others, must be understood as programmatic norm that depends on subsequent regulation. Therefore, it is necessary to mobilize the Legislative Power for appropriate regulation, with the preparation and approval of the respective proposed law.

There is a “legislative vacuum” to be filled through academic and doctrinal research that awakens Brazilian society to the reality of aggressive, violent and inhumane labor activity in which all Brazilian workers, whether in the public or private sector, are immersed, demanding urgent regulatory improvement.

The idea that violence is not organic to human nature and does not have biological roots is an almost unanimous position in social sciences, considering that it concerns the complexity of the social phenomenon and the development of life in society.

Following this understanding, it is possible to see that violence is one of the eternal problems of societies and of humanity’s political and relational practices. There is no known society in which violence has not been present.

Maria Cecilia de Souza Minayo teaches that “since time immemorial there has been a concern for human beings to understand the essence of the phenomenon of violence, its nature and its origins, in order to mitigate it, prevent it and eliminate it from social coexistence” (Minayo, 1994: p. 18).

It is possible to see how much Brazilian society has advanced in the construction of discourses and structuring public policies that underlie Human Rights and enable the exercise of citizenship, although there is still an insurmountable prejudiced barrier of privileged classes and political representations that are silent in the search for an immediate solution in the labor area regarding moral,

sexual harassment and other forms of violence against Brazilian workers.

The crime of sexual harassment provided for in Article 216-A of the Penal Code, together with the various coercive ordinances and normative instructions from the Ministry of Labor and Employment—MLE, proved to be insufficient for preventing various forms of violence and protecting workers in the workplace.

Although it can be viewed as a modest evolution of legislation, considering that these aforementioned acts of violence in the workplace were classified only as crimes with less offensive potential, that is, the subsumption of the fact occurred in the crime of illegal constraint, whose The penalty is detention for 3 (three) months to 1 (one) year or a fine for the transgressor, in accordance with Article 146 of the Penal Code, representing a much milder criminal sanction than that of the crime of sexual harassment.

Furthermore, the Consolidation of Labor Laws—CLL, authorizes the employer to dismiss for just cause an employee who commits serious misconduct, such as the misconduct listed in its Article 482, and sexual harassment committed in the workplace may be considered one of these hypotheses.

Looking to the future, Bill No. 2203, of June 16, 2021, presented by Senator Nilda Gondin (MDB/PB), adding Article 223-C of the Consolidation of Labor Law—CLL, providing for moral and sexual harassment in labor relations, was archived at the end of the last legislature, on December 22, 2022.

Bill No. 1521, of March 15, 2019, authored by Federal Deputy Marcos de Jesus (PL/PE), establishes moral harassment as a crime, characterizing criminal conduct as “repeatedly offending someone’s dignity, causing them physical or mental harm or suffering.”

It is currently awaiting designation of the Rapporteur, since September 13, 2023, with dozens of bills attached to it, addressing the same matter. As noted, here in the theme of this project, the restrictive type of “reiterated” conduct is still adopted, unlike the current understanding of Convention No. 190-ILO, which values “single or repeated occurrence”.

Bill No. 2369, of October 28, 2003, presented by Federal Deputy Mauro Passos (PT/SC), which was attached to Bill No. 4742/2001, provides for moral harassment in work relationships.

After a lengthy process that already includes archiving and unarchiving, withdrawal of the agenda, several requests for review, in addition to more recently receiving several additions (Bill No. 2593/2003, Bill No. 4593/2009, Bill No. 6625/2009, Bill No. 7146/2010, Bill No. 3760/2012, Bill No. 10632/2018, Bill No. 11212/2018, Bill No. 3258/2020 and Bill No. 167/2020), that is, 9 (nine) additional Bill proposals (with similar, corresponding and comprehensive themes) were added, which was in the “conclusive phase of assessment” by the thematic committee and the Board of Directors, since February 18, 2010.

However, on May 11, 2023, all of these projects mentioned above, including Bill No. 2369/2003, were attached to Bill No. 6757, of February 5, 2010, authored by Senator Inácio Arruda (PC do B/CE).

Legislative debates do not seem to appreciate the urgency of this issue and progress has been insignificant. It is necessary to create a new mentality of community coexistence and labor relations so that there is space and commitment to a collective conscience that is fair and fraternal and concerned with the destinies of the Brazilian nation in order to structure and consolidate new labor rights and the guarantee of individual and collective rights.

Fundamental rights and guarantees follow the path of sedimentation obtained with the visualization of Human Rights that expanded, inexorably, with the Universal Declaration of Human Rights, which stipulates in “Article 1st. All human beings are born free and equal in dignity and rights. Endowed with reason and conscience, they must act towards each other in a spirit of fraternity”, enshrining the expectations of their origins and beginning a long process of universalizing these rights.

In this context, it is necessary to emphasize that fundamental labor rights, following the parameters of the 1988 Brazilian Federal Constitution, are based on democratic parameters under the spectrum of the regulatory plan of bilateral employment contracts between employer and worker, ensuring a high affirmative level with regard to labor value, including the consolidation of the principle of human dignity in labor relations, in order to protect the large population masses of workers who enter economic-social life, with a non-occasional employment relationship and onerous, with a personal subordinate offer.

Maurício Godinho Delgado teaches that in the Brazilian legal system the standard is made up of specific normative principles and rules: “In the foreground, the labor rules and principles inserted in the Constitution of the Republic. Illustratively, in its ‘Preamble’, in its ‘Fundamental Principles’—Arts. 1st to 4th—in some normative dimensions of its Article 5th; in Arts. 6th and 7th, specifying numerous fundamental social rights” (Delgado, 2007: p. 24).

He continues in his points stating that these precepts are found “in certain provisions of Collective Law, regulating fundamental rights, contained in Article 8 to Article 11, although here it cannot be said, obviously, that the entire constitutional collective model, including in terms of clear inspiration and dynamics that are not necessarily democratic, it corresponds to a fundamental right to work” (Delgado, 2007: p. 25).

It is also observed that the definition of fundamental labor rights is presented through principles, values and foundations contained in the chapters reserved for the economic order and also for the social order that manifest themselves as affirmative parameters of the valorization of work and the dignity of the human person (Delgado, 2007: pp. 25-26).

5. Conclusion

The harasser’s abusive and cruel behavior must be understood as an offense to the victim’s personality. However, the production of evidence of the criminal act is very complex, surrounded by a degree of difficulty because moral harassment

imposes itself with its concealment and factual “invisibility”, being surrounded by subjectivity.

Thus, the causal link is not always apparent, given the difficulty in proving that the victim’s suffering is the result of the alleged harassment or assault.

In the same sense, the criminal practice of sexual harassment against working people continues, surrounded by prejudice and excessive fear of communicating and presenting crime news and identifying the harasser, with the consequent exposure of the victim.

The legal instruments to curb these aforementioned abusive acts are still insufficient to cover all concrete cases and consequences, requiring special attention from the national legislator in the design of a more efficient legal basis for the protection of workers against all types of violence occurring in the work environment, mainly expanding legal understanding, in light of Convention No. 190-ILO, as was widely debated in this research.

A due caveat must be made regarding the idea that not every conflict in a work environment can be characterized as moral harassment or another form of violence against the working person, considering that the different types of conflicts consist of the divergence of opinions between two or more people on certain topics that can occur from different origins and positions due to the difficulties of coexisting with countless personal and collective differences.

Responding to the problem formulated in the introduction of this research, synthesizing the reasoning developed to solve the scientific problem presented regarding harassment (moral and sexual) suffered by working people in the workplace (public and private) as a reflection of the violence supported by Brazilian society, he noted in competitive environments, especially in work relationships, where the participation of workers requires productivity, divergent positions and opinions between working individuals and managers are quite common.

In this way, in accordance with the conceptual study in light of Convention No. 190/2019-ILO, which expanded the legal understanding of violence and harassment in the workplace, it was possible to debate and substantiate the mapping of existing and emerging criminal types during this research, in addition to all other forms of aggressiveness and original interactions.

Starting from now, it will be possible enabling a new formation of judgment and improvement of sentences in labor courts, for the effective prevention and protection of working people and adequate criminal sanction for harassers.

Productive and enhancing conflict can be defined as a confrontation arising from different professional cultures, individual values, in addition to the inevitable professional tensions resulting from claims, internal disputes and other structural and organizational factors of the company or public body.

Therefore, disagreements are healthy and can generate conflict situations and do not evolve into gratuitous aggression or various forms of harassment and violence against working people. These are specific situations that must be ma-

naged appropriately so as not to turn into unethical and negative conduct. The conflicting nature of human beings permeates all family, social and work routines.

As has been extensively discussed throughout the narrative of this article, moral harassment is abusive conduct, occurring once or repeatedly and often manifested through harsh or humiliating words, disguised aggressive gestures, deviant behavior or also in writing, in order to belittling and mistreating the victim, embarrassing and disqualifying the harassed person or a group of individuals, intentionally hurting their dignity and causing their physical and mental weakness, directly affecting the professional and personal life of the aforementioned worker.

This harmful practice often occurs in a subtle way, worsening later as there are no confrontational reactions, causing serious damage to the harassed individual, resulting in effects of great destructive potential in the emotional structures of the victim, resulting from authoritarian hierarchical relationships, with the predominance of negative conduct and unethical relationships between one or more bosses, directed at one or more subordinates, in a work environment.

It is also observed that productivity losses are linked to these harmful practices of moral harassment, both for companies and their employees or servants, having as additional consequences the definition of a negative image of the company before consumers and the job market.

Regarding the criminal nature of sexual harassment in the workplace, it was observed throughout this research that this insidious act can be committed at different gender levels. The advances that have occurred in society in the field of sexuality in recent decades have not yet managed to overcome the criminal phenomenon of sexual harassment, and it is still a delicate issue to be addressed and confronted.

Many times and incidents are still interpreted in a solitary and isolated way by the victim. Women still adopt the “guilty” stance in dozens of situations, choosing to question whether their actions and conduct were inappropriate and provocative.

The harassed worker needs to break the silence on this issue and report it whenever there is an incident. It becomes necessary to leave the position of submission and position yourself clearly telling the harasser not to accept such a criminal attitude, immediately reporting it to other co-workers, in addition to gathering evidence (testimonies, notes, gifts, etc.), recording the incident in the sector human resources and with the police authority.

Due to its growing importance in labor relations and its perverse effects, moral and sexual harassment in the workplace must be debated in a serious and committed manner, not only by the working class and businesspeople, but by society as a whole, in a broad and democratic.

There is a need to demystify this issue of moral and sexual harassment in the workplace so that it can safely follow social guidelines that can efficiently pre-

vent and eradicate these criminal practices in the workplace.

The numerous bills currently being processed in the legislative house propose to regulate and curb moral harassment and other covert forms of violence in work relationships, bearing in mind that there is still no adequate and sufficient criminal classification.

The fight against violence in the workplace against working people depends on the engagement of all citizens with seriousness, sensitivity and social commitment, given the high degree of complexity of this criminological phenomenon.

It is necessary to create and maintain spaces for dialogue between workers and employers, strengthening labor ties based on the principle of human dignity, through communicative actions that promote the construction of humanized labor pacts solidified by through democratic argumentation.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

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Appendix

Reading Suggestions Related to the Research Topic

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