

SLAVE-LIKE WORK: RISKS TO EMPLOYERS AND OUTSOURCERS

Once a concern only of governments and non-governmental organizations, the work in conditions analogous to slavery, commonly referred to as modern or contemporary slavery, has become a focal point for private companies, as their image and position on the market are increasingly related to corporate social responsibility.

Brazil's labor law does not define work in conditions analogous to slavery. However, based on the definition in the Criminal Code, labor authorities usually hold that slave-like work is characterized upon one of the following conditions: forced labor, with restriction on freedom of movement; debt bondage; degrading conditions; or exhausting working hours.

Those are broad concepts that lead to uncertainty. Brazilian labor authorities are usually very rigorous on the concept of slave-like work and may hold conditions of work exhaustive or detrimental to the worker's health, safety or human dignity, based on different subjective criteria.

As Environmental, Social, and Governance (ESG) have become central criteria to evaluate companies, retaining workers in conditions analogous to slavery has serious consequences that may affect business and relations with investors. In Brazil, individuals or companies that subject workers to degrading conditions face not only fines and labor-related payments, but they may also be named in the so-called "dirty list" of the Labor Secretary of the Ministry of Economy and have their activities suspended.

The "dirty list" makes public the names of companies and individuals under investigation for modern slavery practices and that have their administrative appeals denied, regardless of a judicial decision on the matter. Names included in that list can only be excluded from it two years after proving the illegal working practices were remedied.

In order to mitigate the risk of being included in the "dirty list", companies need to adopt effective compliance measures to grant decent working conditions not only for their employees, but also for all workers somehow inserted into their supply chains.

Companies outsourcing services in Brazil are liable for unpaid labor and social security related debts of the contractor. Moreover, labor courts have conveyed this liability to commercial relations in which companies get advantages from use of work in conditions analogous to slavery of their suppliers.

In Brazil, as elsewhere, cases involving direct or indirect modern slavery usually reverberate in news and social media and may significantly affect the involved companies due to reactions from consumers and investors alike. Thus, implementing corporate programs and due diligence policies aiming to comply with employment rights and to improve worker's quality of life in the whole supply chain increase productivity, facilitate recruitment and improve the company's image, adding economic value to it and reducing its financial risks.

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