



Trabalho, Educação e Saúde

Provisional decree n. 905/2019 Green Yellow Program: the reform within the labor reform

Renata Queiroz Dutra¹  Selma Cristina Silva de Jesus² 

On November 12th, 2019, Brazilian President Jair Bolsonaro issued provisional decree n. 905/2019 (PD 905/2019), which establishes the 'green and yellow employment contract' and promotes other changes in the Brazilian labor legislation (Brasil, 2019).

The goal of the decree, as explained in its abstract, is to create jobs for workers aged between 18 and 29 years old. This goal would supposedly be reached through a more precarious contractual figure, established by a fixed deadline and with severe restrictions of rights, with the possibility of encompassing contracts made until 2022.

With PD 905/2019, the Executive branch of the government, besides changing the specific situation of the citizens targeted by the new form of contract, also promoted a series of alterations in the labor and social security laws. These changes represent a new stage of the labor reform that began in 2017, and, among them, we can highlight especially the incidence of social security taxes on unemployment relief, as well as the establishment of Saturdays as workdays for bank employees and of Sundays for all categories of workers, and objective and procedural limitations to the work of the labor inspectorate and the Public Ministry of Labor.

EDITORIAL

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¹ Universidade Federal da Bahia, Faculdade de Direito, Salvador, Brasil. [<renataqdutra@gmail.com>](mailto:renataqdutra@gmail.com)

² Universidade Federal da Bahia, Faculdade de Educação, Salvador, Brasil. [<selmacsj@gmail.com>](mailto:selmacsj@gmail.com)



Labor reform and its developments

It is important to place PD 905/2019 within a broader context of a rise of neoliberalism in Brazil, which since 2016 has involved the cessation of public spending for 20 years (constitutional amendment, CA n. 95/2016); laws n. 13429/2017 and 13467/2017 (respectively the Outsourcing and Labor Reform laws); and, after the far-right President, Jair Bolsonaro, took office, the extinction of the Ministry of Labor and Employment; the issue of the Provisional Decree of Economic Freedom (which was converted into law no. 13874/2019); the issue of provisional decree n. 873/2019 (which made the procedure to collect the union taxes more difficult, and, by the end of its deadline, it expired without being converted into a law); and the approval of the Social Security Reform (CA no. 103/2019), with the loss of social security benefits and expansion of the requirements to apply for retirement due to old age.

The guidelines contained in the 2017 labor reform, which projected a neoliberal perspective, are radicalized in 2019 with the new government, when the symbolic and material dismantlement of the public protection to work established by the 1988 Brazilian Constitution took place through the extinction of the Ministry of Labor and a policy that is offensive to unions and to the participation of civil society in the political decisions, as well as through a public discourse, shared by the President and his Ministers and Congressmen of the parties that support the government, in favor of the extinction of the 'paternalistic excesses' supposedly present in the Brazilian labor legislation, according to the aforementioned government officials.

The government issued, in the first half of 2018, the Economic Freedom PD (which later became law n. 13874/2019), which intensifies the content of the labor reform, establishing, among other measures, the possibility of controlling timesheets by exception, creating the electronic work card and changing the recording procedure, to the detriment of the symbolic instrument that was in effect since the enactment of the Consolidated Labor Laws (Consolidação das Leis do Trabalho, CLT, in the Portuguese acronym). However, many measures regarding the working hours and rest days that were part of the provisional decree were not approved by the Brazilian Congress (such as the unrestricted authorization to work on Sundays, which will be cited subsequently).

Despite the partial defeat and the worsening of the political situation in Latin America regarding neoliberal policies, the Jair Bolsonaro administration gave continuity to two of its campaign promises: the social security reform and the green and yellow work card.

The latter was implemented through provisional decree n. 905, which created the promised "green and yellow" contractual figure, once more based on the premise that fewer rights will ensure more jobs, and doubled the bet regarding the dismantlement of the labor laws. This PD even brings back constant changes in the Economic Freedom PD that had already been disapproved by Congress when it was converted into law n. 13874/2019. This is the case of the current legal provision that allows work on Sundays and Holidays without restriction (article 68, paragraphs 1 and 2 of the CLT, with the text provided by PD 905): the Executive branch has already proposed a PD regarding that, which was rejected, but the same content was reedited by the government through PD 905.

PD 905/2019

The core concept of the PD – the green and yellow work contract – is merely the creation of a precarious contractual figure as a way of providing jobs, as it occurred in the 1990s with the temporary work contract (law n. 9601). The promise is that the youths on their first jobs may be absorbed by the employers through these contracts, as long as the employers prove that they have exceeded the number of employees checked between January and October 2019.

The workers subjected to this regime cannot form more than 20% of the total employees of each company, and will have 24-month contracts (regardless of the objective of the hiring), with fractions of their wages directed to the Government Severance Indemnity Fund for Employees (Fundo de Garantia por Tempo de Serviço, FGTS, in the Portuguese acronym) in a lower rate (2%, not 8%), a fine for the termination of contracts equivalent to half of the fee paid to the other employees (20% of the FGTS deposits, not 40%), and an emptying of the social importance of the right to vacations and year-end bonuses, which will be paid in quotas, after each month worked.

The provisional decree also provides the possibility of hiring insurance in favor of these employees, a hypothesis in which the hazard pay, if it is incident, would be paid at a fraction of 5% of the wage floor, limiting this incidence to those situations in which the workers are exposed to risk for more than 50% of their workdays, which does not take place regarding the other workers. One aspect that is even graver is that the employers who hire workers through these contracts will be fully exempted from paying social security taxes, which is highly contradictory with the crisis scenario regarding the collection of social security taxes alleged by the government.

Finally, it is important to point out that, after the end of the regimental deadline for the congressmen to present amendments, 1,930 amendments were presented to PD 905/2019, which was the object of a writ of mandamus requested by the Rede Sustentabilidade party. The congressmen from said party considered that the PD violated the due legislative process, since it deals with issues that, strictly speaking, should be dealt with through a complementary law. The PD was also the object of a Direct Action of Unconstitutionality filed by the Solidariedade party, which challenged the constitutionality of many different provisions of the legal instrument.

A few notes on neoliberalism, the democracy crisis, and the institutionalization of precariousness

According to what has already been stated, PD 905/2019 is one of the expressions of the rise of neoliberalism in Brazil, which, in its current stage, has tried to deprive democracy of its political and social contents. Therefore, the neoliberal policies are guided by a 'de-democratization' strategy, whose result has been the challenge of popular sovereignty in favor of the market, as approached by Dardot and Laval (2016b).

In this scenario, one can see that the labor law innovations, such as the PD in question, are indicators of a new Government policy that, under neoliberalism, has instituted, on the one hand, the dismantlement of the system of social protection, and, on the other hand, promotes the issue of legal norms and norms of conduct that disseminate competition and pass on to the workers the risks inherent to work. In this process there is an emptying of traditional conceptions of citizenship; the workers start being treated as entrepreneurs and providers of the means needed in order to maximize their results (Dardot and Laval, 2016a).

We would also like to point out that PD 905/2019 deepens and institutionalizes the precarization of labor for a segment that traditionally experiences unemployment or the precarious insertion into the labor market on a more vulnerable manner. As an example, in the case of unemployment, the Continuous National Household Sample Survey (Pesquisa Nacional por Amostra de Domicílios – Contínua, PNADC, in the Portuguese acronym) reports that, in the second quarter of 2019, the rate of unemployment was of 12%. Among those aged between 18 and 24 years, this rate was of 31.6%. Therefore, the rate of unemployment among this age group more than doubles when compared with that of the general population, affecting 4.1 million youths aged between 18 and 24 years old (Instituto Brasileiro de Geografia e Estatística, 2019).

Lastly, we inquire: will the creation of a more precarious contractual figure (with a fixed deadline and with severe restrictions regarding rights) in fact be able to boost employment among youths? The

recent Brazilian experience with the 2017 labor reform (law n. 13467/2017) makes us suspicious of that sort of initiative. The extinction of rights and the institutionalization of precarization promoted by said reform did not create the amount of jobs expected or promised. One year after the enactment of the aforementioned Law, the country still had an expressive contingent of 12 million unemployed citizens (Druck, Dutra and Silva, 2019).

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