

Compliance in the protection of workers' human rights: a strategy to mitigate labor-environmental pollution

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SUMMARY

This article investigates the role of *compliance* in companies regarding workers' human rights, aiming to identify possibilities for mitigating labor-environmental pollution, particularly within the framework of labor relations in the new century. Using a methodological approach based on bibliographical and theoretical analyses, the research is grounded in the teachings of critical human rights theory and analyzes what is understood by labor-environmental pollution, aiming to understand the consequences of labor *compliance* practices for protecting the human rights of the working class.

Initially, the article discusses these rights, frequently encountered violations, and the relationship between workplaces and potential workplace pollution. The article then addresses the role and importance of *compliance* in protecting these fundamental human rights. The article concludes with a view to the possibility and necessity of addressing new forms of workplace-environmental pollution through the implementation of workplace *compliance* in organizations.

Keywords: human rights; compliance; labor-environmental pollution; ILO.

ABSTRACT

This article investigates the role of compliance in companies in relation to workers' human rights, aiming to find possibilities for mitigating labor-environmental pollution, especially based on labor relations in the new century. Using a methodological approach based on bibliographic and theoretical analyses, the research is based on the teachings of the critical theory of human rights, in addition to analyzing what is understood by labor-environmental pollution, with the aim of understanding the consequences of the practice of labor compliance regarding the protection of the human rights of the working class. Initially, a reflection is made on these rights, the violations frequently found and the relationship between work environments and potential workplace pollution. Next, the role and importance of compliance in protecting these fundamental human rights is discussed. It is concluded regarding the possibility and necessity of confronting new forms of labor-environmental pollution through the implementation of labor compliance in organizations.

Keywords: human rights; compliance; labor-environmental pollution

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1. INTRODUCTION

Over the last century, the world of work has witnessed numerous changes in modes of service provision, driven, above all, by technological innovations, which redefined not only how tasks are performed, but also where and by whom. introduction of technologies such as the Internet of Things, automation and artificial intelligence have led to the creation of new professions while modifying or extinguishing others.

Thus, technological innovations have not only reshaped work structures existing ones, but also imposed the need for new regulatory and management approaches. In this context, organizations are faced with a significant challenge: what way to ensure and promote human labor rights in a work environment marked by for so many new things?

Despite legislative efforts and the mobilization of the working class to ensure such rights, the persistence of violations reveals a gap in the effectiveness of these measures, which indicates the urgent need to review and improve strategies for protection and promotion of human rights in the workplace.

Thus, in order to offer new and efficient support for this purpose, the *compliance* is shown as a possible tool to establish standards of ethical conduct and responsible governance practices, indicating possibilities to assist in the prevention of rights violations and creating a fair and safe working environment.

This article aims to analyze the role of *compliance* in the protection of human rights. of workers, examining their importance and challenges in a work environment dynamic and complex, from the perspective of labor-environmental pollution. Through bibliographic review and critical analysis, the study seeks to identify strategies and solutions for overcome current labor challenges regarding the protection of human rights in organizations, in an attempt to contribute to the creation of more positive work environments dignified and inclusive.

2. LABOR-ENVIRONMENTAL POLLUTION FROM THE PERSPECTIVE OF HUMAN RIGHTS OF WORKERS

By 2022, the International Labour Organization (ILO), through the Declaration on Fundamental Principles and Rights at Work, recognized four essential rights

for the dignity of any work activity². From the 110th International Conference of Labour, presented the historic decision that all ILO member States must, also, commit to respecting and promoting the fundamental right to an environment of safe and healthy work (ILO, 2022), thus enshrining a fifth right to the Declaration.

From then on, the right to a healthy work environment gained great importance. repercussion, reflecting its growing relevance in the practice and discourse of labor rights. This inclusion highlights the understanding that a protected work environment is essential for the full realization of workers' rights, serving as a foundation for dignity, safety and well-being in the workplace.

For Stephan Kirste (2018), human dignity acts:

[...] as a criterion for determining the proportion of freedom and equality. No use of freedom can go so far as to violate the fundamental right of all human beings to equal consideration; no demand for equality can exclude the possibility of free self-determination of the human being [...]

In this sense, bringing the understanding that human rights must be viewed under a rationality of resistance, according to the teachings of Herrera Flores (2009), this is how workers' social rights should also be viewed. Under this perspective, the fight for labor rights is inseparable from the larger fight for human rights, emphasizing the need to combat exploitative practices, discrimination and any form of devaluation of human labor.

The defense of workers' human rights must be seen as a active resistance against injustices and inequalities, promoting not only legal protection, but also the recognition of the intrinsic value of work and the full realization of rights human rights inside and outside the workplace. This expanded approach to human rights workers as fundamental human rights reinforces the importance of policies and practices that aim at emancipation and equality, fundamental for the construction of a more fair and supportive.

Therefore, due to the fact that the global expansion of capitalism promotes a dominant ideology marked by individualism, competition and exploitation, the challenge arises to promote an alternative rationality. Such an approach should emphasize the importance of

² Namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labor; (c) the effective abolition of child labor; and (d) the elimination of discrimination in employment and occupation. Available at: <https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_848632.pdf>. Accessed on March 11, 2024.

collective values and solidarity, opposing the mercantilist logic that often marginalizes social well-being and sustainable human development (HERRERA, 2009).

Bringing this perspective to the notion of labor-environmental health, as the legislation and society recognize several environmental dimensions, namely, natural, artificial, cultural and labor (BRASIL, 1981), the legal understanding of what constitutes environmental degradation, including working conditions that affect physical and mental health of workers.

In this sense, the conceptualization of labor-environmental pollution proposed by Ney Maranhão (2018) highlights the importance of considering not only the physical elements, chemical and biological factors traditionally associated with pollution, but also the factors sociocultural and labor factors that impact human well-being. Maranhão uses this perspective expanded to define labor-environmental pollution as any imbalance in the work environment work, caused by human action, which results in intolerable risks to safety and health of the workers.

This perspective therefore requires organizations to deeply review their management practices for its workers and occupational health, encouraging the adoption of a culture of prevention and comprehensive care that goes beyond mere compliance with standards physical safety. Therefore, the implementation of work environments that promote well-being mental and physical becomes an objective, besides legal, also ethical, reflecting a broader commitment to human rights and social sustainability.

In this context, the implementation of labor *compliance* emerges as a strategy to ensure compliance with labor laws, in an attempt to promoting a safe, healthy, and fair work environment. However, for its true effectiveness in promoting human rights at work, *compliance* must transcend mere formal adherence to external standards. It must be incorporated into the organizational culture of companies, reflecting an ethical commitment to the well-being of workers and justice social, not just as a risk management tool.

We therefore move on to the analysis of *compliance* in the implementation of human rights. workers, in order to investigate its potential as a mechanism for transforming places work, emphasizing the importance of adopting a deeply organizational culture committed to human rights values. The analysis will also address the challenges and opportunities associated with the implementation of effective *compliance* programs , considering the globalized and technologically advanced context in which organizations operate today.

3. LABOR COMPLIANCE: CONCEPT AND ELEMENTS OF THE PROGRAM OF INTEGRITY

Compliance programs represent the legal instrument, resulting from the self-regulation of companies, where ethical and conduct standards are established business society.

For Ana Frazão, compliance programs are “excellent alternatives for creation of a corporate culture based on ethics and compliance with legal standards” (Frazão, 2015)

According to Alessandro Cardoso and Anthéia Mendes (2020, p. 46):

Compliance practices are mechanisms used by companies to reduce risks and adapt their conduct to the legislation relevant to their activity.

Currently, compliance represents an important mechanism for transparency and management of companies, having a direct impact on their relationships with shareholders, clients, employees, government authorities and other areas of society.

The doctrine is divided regarding the terminology “compliance”, with the majority defends the words compliance and integrity as synonyms and, the minority, as being the same first covering “all legal aspects of compliance applicable to the activity business and, in turn, the integrity program would be restricted to combating corruption” (Lima; Pinheiro, 2020, p. 46)

However, for the purposes of this article, the term compliance will be adopted in its full sense. broad, as a synonym for the terms “compliance” and “integrity”.

In Brazil, there is no standard regulating how a business should be structured. corporate regulation. However, integrity programs are strongly influenced by procedure established by Law No. 12,846/2013, the so-called Anti-Corruption Law, which deals on the administrative and civil liability of legal entities for the practice of acts against the public administration, national or foreign, as well as by Decree No. 11,129/2022, the which regulates the Law.

Thus, although the regulation originated to combat corruption in the country, when dealing with the integrity program, the aforementioned Decree defines, in its article 56, the legal concept and its essential elements as being a “set of mechanisms and internal procedures for integrity, auditing and encouraging the reporting of irregularities and in effective application of codes of ethics and conduct, policies and guidelines [...]”. (Brazil, 2024)

The sole paragraph of the same article mentioned above establishes the duty of companies in structuring, applying and updating the program according to the current risks of

business activity, as well as ensuring its improvement and adaptation of its rules, with given its effectiveness.

Thus, based on the structuring of the elements imposed by the Law, the companies were able to adapt to compliance programs, especially to ensure the compliance with labor legislation.

Thus, as an expression of inter-business power, it is possible to conceive that, From the compliance program, employers will be able to discipline the rules of conduct to be observed within companies and the application of sanctions, once the occurrence of irregularities. In any case, it is essential to assess the legality of the standard established in the respective program.

Integrity programs, therefore, are intrinsically related to the directive power of the employer, and for Carlos Henrique da Silva Ayres, they constitute “elements of policies and procedures designed to prevent, detect, and correct irregularities occurred in the business environment.” (Ayres, 2014, p. 42)

As mentioned previously, there is no specific law that addresses the program. compliance in the labor field, however, Law No. 13,467/2017, which instituted the so-called Labor Reform, added article 223-G to the Consolidation of Labor Laws (CLT), which, in its section IX, allows for the mitigation of the sentence relating to damages off-balance sheet when there is an effective effort by the employer to minimize the offense.

Such a device is directly related to the effective integrity program, despite not to mention the expression “compliance” and/or “integrity”, however, due to the very objective of the program, which is prevention, this would be a means to minimize the effects of possible damage off-balance sheet and, therefore, encourage the implementation of an Integrity Program labor in companies.

Carla Veríssimo (2017, p. 91), regarding the compliance program, complements:

[...] has both preventive and reactive objectives. It aims to prevent legal violations in general, as well as to prevent the legal and reputational risks to which the company is exposed, should such violations occur. Furthermore, it imposes on the company the duty to investigate illegal behavior in general, as well as those that violate company standards, in addition to adopting corrective measures and reporting the results of internal investigations to the authorities, where applicable.

Therefore, for compliance to be effective, “the company must initially prepare a program based on your reality” (Ribeiro; Diniz, 2015, p. 89), observing the different

internal control instruments that can be adopted daily in the management of a enterprise.

Regarding the essential elements of the compliance program, Cláudio Carneiro (2018, p. 55) asserts that "the pillars are the foundations that support the entire Program and, therefore, it must be simple and objective, that is, it must be easy to understand by everyone interested in the process, especially employees."

Therefore, some elements are considered indispensable to the program. compliance and must be used for effective implementation, including the following: senior management commitment; risk assessment; an accessible code of ethics and conduct and easy to understand; internal controls; reporting and investigation channels; training, monitoring and auditing, third-party due diligence.

Some elements mentioned above will be highlighted below.

The effectiveness of the compliance program starts with commitment and participation of a company's senior management.

Regarding the understanding of the importance of senior management involvement, Claudio Carneiro and Milton Jr. (2018, p. 87) conceptualize:

Top management can be defined as the person or group of people who direct and control an organization at the highest level. If the scope of the Management System covers only part of an organization, then top management refers to those who direct and control that part of the organization. It is worth noting that top management has the power to delegate authority and provide resources within the organization.

Based on the decision by senior management that a Program will be implemented, Integrity, the next procedure is to indicate who will be responsible for its execution.

Once the person responsible for the program has been defined, the rules have been created and Procedures must be immediately established, with the implementation of the Code of Conduct and the Code of Ethics, or even just one Code encompassing both.

Anaruez Mathies (2018, p. 149-150) analyzes the differentiation between a code of ethics of a code of conduct:

[...] the term "code of ethics" is used synonymously with "code of conduct," but this is not correct. Although an employee's employment contract may be bound by both the code of conduct and the code of ethics of their profession, the two institutions differ. While the Code of Ethics is drawn up by the professional association and contains a set of standards to be followed in the exercise of a given profession, the code of conduct refers to internal company regulations that, among other things, address the relationship between employee and employer.

Once those responsible, the rules and procedures have been established, one of the instruments essential elements of the program are internal communication about the program and, subsequently, the trainings.

Rosana Kim Jobim (2018, p. 54) highlights training as being one of the main focuses for companies:

[...] which aim to implement a compliance program and, just as programs cannot be fixed and must adapt to each type of company, training cannot either, as it will depend, to a large extent, on the type of work involved.

Furthermore, for risks to be minimized, the compliance department must develop strategies that enable investigations through reporting channels, or that is, “mechanisms will be adopted to investigate possible misconduct, ensuring if confidentiality, the correct forwarding of complaints and the preservation of the privacy of involved.” (Lima; Pinheiro, 2020, p. 59)

Anaruez Mathies (2018, p. 153) asserts that:

The existence of an open channel for reporting violations and disrespect for workers' rights and guarantees is an essential tool for the proper functioning of the compliance program, enabling the company to take corrective action to repair deviations during the term of the employment contract.

Communication channels – also known as reporting channels, hotlines or even whistleblowing hotlines – can be described as a mechanism or service receiving complaints, with the main function of connecting different actors within regulatory model (Williams, 2023), or even as a means of receiving communication of irregular act, which is the disclosure by members of the organization (former or current) of illegal, immoral or illegitimate practices, which operates under the control of their employers, persons or organizations that may be capable of having an effect on the object reported (Near; Miceli, 1995).

The use of reporting channels is, according to Saad-Diniz (2019), an instrument powerful to overcome the pachydermic side of institutions, especially in the public sphere, which has an asymmetry of resources and people when compared to the private sector. At this point, Rodrigues (2019) concludes that reporting channels give life to the trinomial detect, define and structure, which is expected of any compliance program.

Finally, disciplinary measures, or punishments/sanctions, must be previously established and proportional to the offense committed, always after investigations have been carried out, transparently, and through adversarial proceedings and broad defense.

Therefore, the compliance program is related not only to companies, but also to the social and personal development of everyone involved in this process compliance, collaborating to ensure adequate and correct compliance with the employment contractual obligations and respect for incidental/arising fundamental rights.

4 CONCLUSION

The applicability of labor compliance, in addition to mitigating labor actions, fines and administrative sanctions, protects the fundamental rights of workers.

Compliance programs have become fundamental elements within the scope business as an instrument to protect the company, its administrators and employees.

The exercise of directive power, otherwise, even if intended for implementation of integrity programs and ethical policies in the company, does not deprive the fundamental rights of workers and the guidelines set out in the Federal Constitution for the exercise of economic activity, although there are differences between the effects generated for the contractors.

The creation of a code of conduct alone is not sufficient for legislation labor law is observed, making it necessary to establish a system of inspection and sanctions effective, within the limits of the directive powers so that there is a healthy working environment.

And, communication channels come exactly to mediate the relationship of employee with the employer, with the use of an effective reporting channel, the company will be able to deal with internal problems related to unethical behavior more quickly and non-compliance, allowing the application of corrective measures, reducing risks and damages that may exist due to deviations in conduct in order to ensure a healthy work environment.

It is therefore urged that companies implement labor compliance, as this conduct, in the wake of the present research, appears to be a possible mechanism capable of promote and implement fundamental labor rights, contributing to the maintenance of a employment relationship that observes the social values of work and free enterprise, led for respect for the dignity of the human person.

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