

BURNOUT AS AN OCCUPATIONAL DISEASE AND CORPORATE OMISSION: ANALYSIS IN LIGHT OF ILO CONVENTION 190

O BURNOUT COMO DOENÇA OCUPACIONAL E A OMISSÃO EMPRESARIAL: ANÁLISE À LUZ DA CONVENÇÃO 190 DA OIT

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RESUMO

O presente artigo analisa a responsabilidade jurídica do empregador ante a síndrome de burnout, compreendida como doença ocupacional relacionada a práticas organizacionais adoecedoras. A pesquisa parte da premissa de que o burnout resulta de um ambiente de trabalho marcado por metas abusivas, jornadas extenuantes e negligência quanto à saúde mental dos trabalhadores. Com abordagem interdisciplinar e fundamentação jurídica, o estudo examina os dispositivos constitucionais, infraconstitucionais e internacionais que impõem ao empregador o dever de prevenção dos riscos psicossociais. Destaca-se a importância da Convenção nº 190 da OIT, que, mesmo ainda não ratificada pelo Brasil, apresenta conceitos amplos de violência e assédio no trabalho e reforça a proteção à saúde mental como dimensão essencial do trabalho decente. O artigo conclui que a omissão patronal em adotar medidas preventivas ante o burnout configura violação de direitos fundamentais do trabalhador e enseja responsabilização trabalhista, civil e previdenciária. Além disso, defende-se que os princípios da Convenção nº 190, em harmonia com o ordenamento jurídico nacional, podem ser utilizados como fonte interpretativa para decisões judiciais e políticas públicas voltadas à promoção de ambientes laborais saudáveis.

Palavras-Chave: Doença Ocupacional. Burnout. Convenção nº 190 OIT.

ABSTRACT

This article analyzes the employer's legal responsibility in relation to burnout syndrome, understood as an occupational disease linked to harmful organizational practices. The research is based on the premise that burnout results from a work environment characterized by abusive targets, exhausting workloads, and neglect of workers' mental health. Through an interdisciplinary approach and legal foundation, the study examines constitutional, infraconstitutional, and international provisions that impose on employers the duty to prevent psychosocial risks. The article highlights the relevance of ILO Convention nº 190, which, although not yet ratified by Brazil, introduces broad definitions of violence and harassment in the workplace and reinforces mental health protection as a core dimension of decent work. It concludes that the employer's omission in adopting preventive measures against burnout constitutes a violation of the worker's fundamental rights and gives rise to labor, civil, and social security liability. Furthermore, it argues that the principles of Convention 190, in harmony with the national legal system, may be used as an interpretative source for judicial decisions and public policies aimed at promoting healthy work environments.

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INTRODUCTION

Burnout syndrome - or burnout - has been recognized by the World Health Organization as an occupational phenomenon related to chronic work stress that was not adequately managed, as included in the International Classification of Diseases (ICD-11) (The Globe, 2023). According to the USP Journal (2023), the syndrome affects 30% of Brazilian workers, with Brazil being the second country in the ranking of cases diagnosed in the world, which demonstrates a worrying scenario in the social, labor and legal aspects.

The labor context marked by exhausting workdays, pressure from abusive goals, absence of psychosocial support, culture of hyper productivity, causes the occupational condition of exhaustion of the worker, generating several physical and psychological consequences.

In the legal field, especially within the scope of labor law, there is a discussion about burnout as a condition that directly impacts not only the worker, but also the company. The illness often leads to the removal of the employee from his duties by medical certificate, generating legal and economic consequences for the employer, who assumes responsibility for the payment of remuneration during the first fifteen days of absence, in accordance with the Article 60, paragraph 3, of the Law no 8.213 of 1991. It is, therefore, a phenomenon that demands analysis in the light of employers' duties of prevention and health promotion in the workplace, placing the legal responsibility of the employer as a central element of reflection in the field under analysis.

In this sense, the Convention 190 of the International Labor Organization, approved in 2019, represents an international normative framework by recognizing the right of all individuals to a working environment free from harassment and any form of violence (Brazil, 2023a). Although the text does not expressly mention burnout, its conceptual scope reaches situations of mental distress resulting from prolonged exposure to abusive labor practices, organizational moral harassment, inhumane goals and lack of protection for mental health in the work environment, what meets the theme of this article.

Given this scenario, the present research starts from the following problem: To what extent the omission of the employer in the prevention of burnout can constitute a violation of international standards for the protection of decent work, and bring legal responsibility

in the light of the Brazilian legal system? To face it, a critical and interdisciplinary perspective is adopted, articulating the foundations of labor law, constitutional law and human rights.

To achieve the research objective, the article is structured in four sections. The first section addresses the conceptual aspects of burnout as an occupational disease. The second examines the legal and constitutional duties of the employer in the face of psychosocial risks. The third presents the ILO Convention 190 and its relationship with the Brazilian law, analyzing also how the omission of the employer in the prevention of burnout can ensear responsibility.

1 BURNOUT AS AN OCCUPATIONAL DISEASE AND ITS LEGAL FRAMEWORK

Burnout has been increasingly recognized as a public health problem, given its association not only with relevant psychological impacts - such as depressive conditions -, but also with significant socioeconomic effects, such as increased absenteeism, of turnover and social security costs (Russo, Vieira, 2019).

According to the International Classification of Diseases (ICD-11), burnout is conceptualized as a syndrome resulting from a chronic stress in the work environment that was not well managed, having as symptoms: the feeling of lack of energy, exhaustion; increased mental distance from work or negative feelings related to it; feeling of ineffectiveness and lack of achievement. This is an occupational phenomenon, since it relates to the work environment and should not be used to refer to experiences in other areas of life (CID-11, 2025).

Burnout syndrome is manifested by a set of physical, emotional and behavioral symptoms, which include body aches, gastrointestinal and cardiovascular disorders, extreme tiredness, insomnia, change in appetite, irritability, discouragement, deep sadness, emotional exhaustion, distance from personal relationships and decreased sense of professional accomplishment. These signs, in general, result from the accumulation of tasks, the overload of responsibility and the constant pressure on the work environment. The diagnosis, in turn, is complex and requires careful clinical evaluation by mental health professionals, and its early recognition is essential for the adoption of effective therapeutic measures and prevention strategies (Glossary of Health of Einstein).

Although it can affect any profession, certain professional categories that are subject to high levels of demand, collection and overload are significantly affected, such as health professionals and professions related to care and essential services. Recent research indicates that there is a predominance of academic studies about the health worker, because hospital environments are considered the places with greater occupational risk of causing mental illness among these workers, especially in nursing and medicine, due to the overload, the multiplicity of functions and the precariousness of working conditions (Jarruche, Mucci, 2021).

Some countries, such as Sweden, already classify the syndrome as a psychiatric disorder, while in France its acceptance is restricted to certain professional categories (Russo, Vieira, 2019). In Brazil, the Ordinance no 1339 of 1999 formally recognized burnout as a work-related illness, classifying it within group V of the ICD-10 "mental disorders and work-related behavior" (Brazil, 1999).

In view of this, understanding the burnout syndrome implies recognizing the impacts of organizational risks and interpersonal interactions in the work environment on the mental health of the worker. It is a phenomenon directly linked to the logic of overvaluing productivity to the detriment of the human factor, supported by practices of symbolic, verbal, psychological and even remunerative violence that operate as forms of oppression and contribute to the mental illness of workers (Silva, 2024).

It is evident that the health of the worker is interlinked to labor-environmental factors; however, this is not influenced only by physical aspects of the working environment - it should be considered with emphasis the health of the worker, especially when analyzing the complex dynamics of the environmental manifestation of work (Silva, 2024).

The observations of the author show the necessary extended understanding of the health of the worker, highlighting that mental illness does not result only from physical or ergonomic factors of the work environment, but above all from social relations and organizational structure that permeate it. The burnout syndrome, in this context, emerges as a concrete expression of a management model that favors goals and productivity to the detriment of the worker's subjectivity and dignity. The subtle - and not always visible - forms of symbolic violence, associated with constant pressure, moral harassment and precarious working conditions, become catalysts of mental suffering. Therefore, burnout

cannot be understood in isolation as an individual clinical condition, but as a reflection of the institutional logics of working.

Thus, understanding burnout from its organizational and relational causes allows to overcome the individualizing vision of illness and recognize it as a structural phenomenon, directly linked to the conditions in which work is performed. Therefore, it is essential to examine how the Brazilian legal system has treated burnout syndrome, especially with regard to its recognition as a disease of work and the legal implications arising from this qualification, with a view to the responsibility of employers and the guarantee of social rights guaranteed to workers by Brazilian legislation.

The syndrome can be legally framed within the concept of work accident, as established by the articles 19 and 20 of the Law no 8.213, 1991. Article 19 defines an accident at work as one that occurs through the performance of work in the service of the company and that causes bodily injury or functional disturbance that causes death, loss or reduction - permanent or temporary - of capacity for work (Brazil, 1991).

Article 20, in its paragraphs I and II, expressly equates occupational and work-related diseases to accidents at work, provided that they are directly related to the conditions under which the labor is performed².

In other words, the presence of a causal link and injury are indispensable elements for the legal recognition of an accident at work. The causal link establishes the necessary link between the activity performed and the emergence of the disease, whereas the injury reflects the existence of physical or mental damage that compromises the health and the working capacity of the worker. The demonstration of these requirements is essential for the burnout syndrome to be legally recognized as an occupational disease, enabling the worker to the resulting labor and social security rights. In other words,

As doenças profissionais, também conhecidas por doenças profissionais típicas, são as desencadeadas pelo exercício da atividade desempenhada pelo trabalhador ou pelas condições de trabalho às quais ele está submetido. Nessa hipótese, o nexo causal entre doença e a atividade é presumido, bastando comprovar o adoecimento e a prestação de serviço na atividade (Franco *et. al.*, 2019, p. 5).

²“Art. 20. Consideram-se acidente do trabalho, nos termos do artigo anterior, as seguintes entidades mórbidas:

I - doença profissional, assim entendida a produzida ou desencadeada pelo exercício do trabalho peculiar a determinada atividade e constante da respectiva relação elaborada pelo Ministério do Trabalho e da Previdência Social;

II - doença do trabalho, assim entendida a adquirida ou desencadeada em função de condições especiais em que o trabalho é realizado e com ele se relacione diretamente, constante da relação mencionada no inciso I.” (Brasil, 1991).

Thus, when demonstrated the link between the organizational environment and the development of the syndrome, it is fully possible to recognize the burnout as a work-related disease, with the same legal effects as the typical accident, such as the granting of benefit for the guarantee of provisional stability and the obligation to issue the Work Accident Report (CAT), as provided for in the article 22 of the Law 8.213 of 1991.

According to Franco et. al. (2019), given that it is impossible to create an exhaustive list covering all the hypotheses of occupational and work diseases, the §2 of the article 20 of the mentioned Law provides that in case of a disease not included in that has resulted from the conditions in which the work is performed and directly related to it, shall be considered as an accident at work. It means, therefore, that if the work in some way contribute to the emergence or worsening of the pathology (hypothesis of the so-called concause theory), the occupational disease and the work or the also that the condition of the worker derives from degenerative causes not related to the work environment itself.

Specifically in relation to the burnout syndrome, the characterization of the causal link requires differentiated attention, since the diagnosis alone does not conclude the legal analysis. As noted by Silva (2024), the correct assessment of the syndrome in judicial context, especially when challenged by the employer, requires multi professional expertise, with the participation of specialists in psychiatry, psychology and also a professional with technical knowledge in the organization of the economic activity carried out by the company, in order to enable evaluation of both the organizational structure and the activities concretely performed by the worker. The expertise restricted to the person of the worker, lacking this contextual analysis, can lead to inaccurate conclusions, either in the recognition of the existence of the syndrome or in the improper rejection of its legal framework.

In fact, the difficulty in configuring the causal link in burnout cases stems largely from the very complexity of the diagnosis. As exposed by Teixeira and Fonseca (2022), in addition to the recurrent underreporting of occupational mental illnesses, there are objective difficulties in attributing exclusively to work the etiology of psychic disorders, since many of the symptoms are common to several psychiatric pathologies. They also add that

Na atuação prática é muito difícil que o médico do trabalho ou perito vinculado à Previdência Social consiga analisar adequadamente a relação do trabalho com o transtorno mental diagnosticado, o que nos faz crer que há um número muito maior de afastamentos do trabalho que possuem como causa a organização do trabalho (Teixeira, Fonseca, 2022, p. 53).

Another challenge for the correct diagnosis of burnout stems from the similarity of its symptoms with classical depressive conditions, which complicates both the clinical identification and the appropriate legal framework of the disease as occupational. In this sense, Teixeira and Fonseca (2022) highlight that, in many cases, depression can be presented as a stage of burnout, making it difficult to recognize it as a disease of work and, consequently, access to the recurring rights.

It should be noted that, pursuant to the Decree-Law no 6,042 of 2007, the burnout syndrome has been treated as an occupational disease equivalent to a work accident, making it possible to leave the worker by granting the benefit for temporary disability due to accident. The recognition of the occupational nature of the removal guarantees to the worker not only the temporary stability in employment, provided for in the article 118 of the Law no 8.213, of 1991, but also possible compensation for moral and material damages in the labor sphere, according to the understanding of the Superior Labor Court (TST), which makes the employer responsible for the physical, mental and emotional damages resulting from labor, with focus on articles 5, V and X, and 7, XXVIII, of the Federal Constitution (Franco *et al.*, 2019).

However, among the main obstacles to the effective achievement of these rights are the corporate resistance in admitting the occupational origin of illness, often linked to the attempt to avoid responsibilities and labor and social security burdens; medical that may be manifested both in underreporting and inadequate characterization of the clinical picture as a result of the work environment; and the absence of clear and standardized protocols by INSS and other competent bodies, which generates legal uncertainty and makes it difficult to recognize the causal link between the activity performed and the development of the syndrome. These factors, combined, end up invisibilizing the condition of affected workers and making it difficult to access rights such as temporary disability benefit, temporary stability and professional rehabilitation.

2 CORPORATE OMISSION AND LEGAL DUTY OF PREVENTION

The health of the worker, inserted in the list of fundamental human rights, integrates the set of basic needs inherent to the dignity of the human person, constituting concrete expression of the existential minimum. For this reason, it must be strictly protected both by the employer, in the context of labor relations, and by the State, through

its regulatory and supervisory function. The failure to comply with this fundamental right, especially in situations configured as accidents at work, requires an effective and adequate response from the legal system (Almeida, Oliveira, 2024).

The Brazilian legal system establishes, at a constitutional level, the employer's duty to ensure a safe and healthy working environment, imposing on it the obligation to adopt effective measures to reduce the risks inherent in work. Article 7, paragraph XXII, of the Federal Constitution, when listing the social rights of workers, expressly ensures the "reduction of risks inherent to work through health, hygiene and safety standards" (Brazil, 1988). This normative command translates the consecration of the so-called general duty of protection, which is not limited to the prevention of physical accidents, but also covers risks of a psychosocial nature, such as those that lead to mental illness of the worker, like burnout.

On the sub-constitutional level, the Consolidation of Labor Laws (CLT) reinforces this protective obligation by establishing specific duties to the employer regarding health and safety at work. According to the article 157 of the CLT, it is the responsibility of the company to comply with and enforce safety and occupational health regulations, as well as to instruct its employees on the precautions to be taken to avoid occupational diseases and accidents at work (Brazil, 1943). In addition, article 158 regulates the responsibilities of the employee, demonstrating that risk prevention is a shared duty, but whose structural management falls primarily on the employer, due to its command position in the business organization.

Still from a constitutional perspective, the employer's responsibility for preserving the mental health of workers is connected to the principle of the company's social function, provided for in the article 170, paragraph III, of the Federal Constitution. By recognizing the company as an economic agent that must respect, in addition to free initiative, social values of work and human dignity, and the constitutional text reaffirms the centrality of the human being in economic development. In this line, Diniz (2018) clarifies that the exercise of business activity is not limited to obtaining profit, but must meet its social function, promoting collective welfare, generating jobs, improving the qualification of labor, respecting the environment and ensuring decent working conditions, compatible with the protection of the physical and mental health of the worker.

In addition, Article 225 of the Constitution enshrines the right of everyone to an ecologically balanced environment, which, in a broader interpretation, also covers the work environment in its physical and psychosocial dimension. How Leite explains:

A concepção moderna de meio ambiente do trabalho, portanto, está relacionada com os direitos humanos, notadamente o direito à vida, à segurança e à saúde. Esses direitos, na verdade, constituem corolários dos princípios fundamentais da dignidade da pessoa humana e da cidadania. Supera-se, assim, a concepção tradicional da doutrina juslaboralista pátria, calcada apenas nas normas técnicas da CLT e das Normas Regulamentadoras do Ministério do Trabalho e Previdência, que preconizam o meio ambiente do trabalho tão somente sob a perspectiva da medicina, higiene e segurança do trabalho (Leite, 2022, p. 1.318).

This concept must be interpreted in a systematic way, including the rules provided for in the articles 200, VII, 7, XXII and XXVIII of the Federal Constitution, in order to ensure an integral protection to the health of the worker, not only under the physical or technical bias, but also considering the psychosocial aspects of the work environment. This extended reading reinforces the understanding that the right to decent and healthy work is intrinsically linked to the promotion of mental health, the prevention of organizational risks and the preservation of human dignity in the productive context.

In this sense, Almeida and Oliveira (2024) clarify that, by guaranteeing protection to the environment, the Constitution covers all environmental aspects necessary for a healthy quality of human life, including the working environment, space in which the worker spends most of his productive life. The protection of the work environment, therefore, aims to ensure the employee the exercise of their duties in dignified conditions, free from factors that compromise their physical and mental health, being care for a healthy working environment recognized as a true fundamental right. In addition, as the authors point out, failure to respect these conditions may constitute degrading work by exposing workers to risks and hardships incompatible with their dignity (Almeida, Oliveira, 2024).

The violation of the work environment, therefore, does not only entail consequences in the field of physical and mental health of the worker, but also represents a direct offense to his dignity as a subject of rights. The degraded work environment, marked by excessive pressures and disregard for the human condition, transforms the worker into a mere instrument of the business productivist logic. In this context, aggressions to mental health, promoted by unhealthy organizational environments, translate into a serious affront to the constitutional principles that underlie the economic and social order. As explained by Almeida and Oliveira,

As agressões à saúde mental no meio ambiente do trabalho atentam contra a dignidade da pessoa humana na medida em que a busca por produtividade, metas e resultados se sobrepõem ao meio ambiente de trabalho sadio e equilibrado, tratando o trabalhador como instrumentos dos fins empresariais. A extrapolação do poder de direção da empresa torna a relação de trabalho indigna, coisificando o trabalhador e atentando contra a dignidade da pessoa humana (Almeida, Oliveira, 2024, p. 7-8)

In this context, the responsibility of the employer for protecting the health of workers covers both duties of abstention and positive performance. In the first aspect, the company is required to refrain from practices that violate the right of the employee to rest and expose his mental health to psychological risks arising from the organization of work (Silva, 2024).

In the service aspect, it is responsible for strict compliance with health and safety standards set out in the Constitution, in the sub-constitutional legislation, in the regulatory rules and in the international instruments ratified by Brazil, such as ILO treaties and conventions, in addition to the set of Regulatory Standards (NRs), with special emphasis on the duty to prevent damage to the physical and mental integrity of the worker (Silva, 2024).

At this juncture, the Regulatory Standards (NRs) play a central role in the implementation of occupational safety and health duties. The NR-1, especially after the update promoted by the SEPRT Ordinance no 6.730, of 2020, when instituting the Risk Management Program (PGR) within the Occupational Risk Management (GRO), establishes that the employer must identify, investigate and control all occupational risks, explicitly including the psychosocial risks related to work organization (Brazil, 2025).

The Regulatory Standard no 5 (NR-5), which deals with the Internal Commission for the Prevention of Accidents and Harassment (CIPA), reinforces the importance of institutional action in protecting the overall health of workers, even with regard to psychosocial factors. According to the standard, CIPA aims at preventing accidents and work-related diseases, as well as monitoring actions that ensure adequate conditions of health, safety and well-being in the working environment (Brazil, 2022). Considering that the burnout syndrome can be legally assimilated to an accident at work, in accordance with the article 20 of the Law no 8.213, of 1991, the CIPA reveals as a strategic instrument for the identification of risk factors within the work environment to the implementation of preventive measures. Actions such as listening wheels, internal mental health campaigns, referrals to the psychosocial support sector and periodic meetings on psychological

well-being can - and should - be incorporated into practices of the CIPA, as a reflection of the general duty of protection that falls on the employer.

Additionally, the NR-17, which disciplines ergonomics, although historically focused on physical aspects of labor activity, has been interpreted in an expansive way to include psychosocial factors (Brazil, 2023c), considering that the organization of work, emotional demands, the pressure for goals and excessive pace can trigger mental illness, as occurs in burnout frames. Failure to comply with these regulatory obligations not only compromises the working environment, but also represents a direct affront to fundamental rights of the workers.

In addition to the currently applicable standards, the National Congress is considering the Bill 3.588 of 2020, which proposes the creation of a specific Regulatory Standard focused on the management of the mental health of the workers. The proposal recognizes the existing gap in the infra-constitutional legislation and seeks to establish objective guidelines for prevention, early diagnosis and treatment of mental disorders arising from the work environment (Brazil, 2020). This initiative shows the recognition, in the legislative framework, of the need for more robust regulation on psychosocial risks, especially given the significant increase in cases of burnout and other syndromes related to work organization. If approved, the project could represent an important advance in the normative protection of mental health in the workplace and in strengthening the legal duty of prevention imposed on the employer.

In this sense, the fulfillment of preventive obligations in this field does not constitute a mere entrepreneurial ability, but a concrete expression of the social function of economic activity. When developing its productive activity, the entrepreneur does not aim exclusively at profit, but assumes, in constitutional terms, commitments that involve the protection of workers under his direction, the reduction of social inequalities and the observance of dignified and safe working conditions. As highlighted by Diniz (2018), business ownership should be exercised in order to meet the social function, which includes, among other aspects, the adoption of welfare and protective practices in favor of its employees, in accordance with the constitutional values of human dignity and social justice:

A propriedade empresarial deverá atender à função social, exigida pela Carta Magna (arts. 5º, XXII, 182, §2º, e 186); por isso o empresário exercerá sua atividade econômica organizada de produção e circulação de bens e serviços no mercado de consumo, de forma a prevalecer a livre concorrência sem que haja abuso de posição mercadológica dominante, procurando proporcionar meios para

a efetiva defesa dos interesses do consumidor e a redução de desigualdades sociais, assumir funções assistenciais para seus empregados [...] (Diniz, 2018, p. 395).

Thus, the omission of the employer to adopt effective burnout prevention policies represents a violation of individual rights of the workers and also an affront to the social function of entrepreneurial activity.

The protection of the mental health of the worker is an inexpressible legal duty of the employer, inserted in the set of constitutional and infra-constitutional obligations that guide the exercise of economic activity from the perspective of the social function of the company. Failure to comply with this preventive duty, especially as regards the adoption of effective measures for the identification and control of psychosocial risks - as determined by national legislation and the Regulatory Standards -, compromises both the physical and mental integrity of workers as it damages the foundations of the Democratic State of Law.

Thus, the necessary promotion of a healthy working environment, in its physical and psychosocial dimension, cannot be dissociated from respect for human dignity and the valorization of work, essential pillars of the Brazilian constitutional legal order. From this perspective, the international approach developed by the International Labor Organization, especially through the Convention 190, assumes a relevant complementary role in strengthening and updating the normative parameters aimed at preventing violence and mental illness in the labor context.

3 ILO CONVENTION 190 AND PROTECTION AGAINST VIOLENCE AND HARASSMENT AT WORK

International Labor Organization Convention 190, adopted in 2019, represents an international normative framework by comprehensively recognizing violence and harassment in the world of work as violations of human rights and as practices incompatible with decent work. The text of the Convention states that all individuals have the right to a working environment free from any form of violence and harassment, including psychological, sexual, physical and economic, adopting an inclusive and gender-sensitive approach - including but not limited to gender-based violence and harassment. The instrument highlights the need to promote a work culture based on mutual respect, human dignity and security for all those involved in labor relations (ILO, 2019).

The text adopts an expanded and innovative concept of violence and harassment in the world of work, defining them in its article 1 as

Um conjunto de comportamentos e práticas inaceitáveis, ou de suas ameaças, de ocorrência única ou repetida, que visem, causem, ou sejam susceptíveis de causar dano físico, psicológico, sexual ou económico, e inclui a violência e o assédio com base no gênero (OIT, 2019, p. 2).

The standard broadens the traditional understanding of labor violence by predicting that abusive practices can result not only from direct interpersonal interactions, but also from structural conditions related to work organization. Thus, it recognizes that unhealthy work environments, marked by systematic harassment, overload, abusive goals and continuous pressure, constitute forms of institutional or organizational violence. In addition, the Convention establishes that such practices impact the mental and physical health of workers, compromise their dignity and generate negative consequences not only for the person, but also for productivity, institutional reputation and corporate sustainability itself (OIT, 2019).

Environments marked by inhuman goals, exhausting rhythms, prolonged working hours, pressure for performance and authoritarian management practices are included in this concept as forms of organizational violence, because they provoke continuous emotional wear, undermine the self-esteem of the worker and generate psychological suffering. In this context, the burnout syndrome should not be understood as an isolated or exclusively clinical phenomenon, but as a direct and predictable consequence of which operates systematically in an affront to the dignity of the human person and the principles of decent work, as enshrined in the Convention 190.

The document also sets out concrete obligations for ratifying states and employers, imposing effective preventive measures. Among them, we highlight: the legal prohibition of violence and harassment, the formulation of specific policies, the implementation of prevention strategies, the strengthening of surveillance and the inclusion of psychosocial risks in occupational health and safety management (ILO, 2019). By providing that the employer must consider psychosocial risks in its internal policies and in the process of identification and control of occupational hazards, the Convention approaches directly the problem of burnout syndrome, whose origin is linked precisely to structural organizational factors, as said.

In addition, Convention 190 articulates with the broader concept of decent work and with the fundamental rights at work defined by the ILO, by incorporating the

psychosocial and subjective dimension of worker dignity. This broadens the field of legal accountability of employers, especially when they maintain management practices that naturalize mental distress as an inevitable consequence of productivity. In this sense, Faria and Alvarenga (2021) emphasize that the trivialization of violence in the workplace, as well as its impacts on the mental health of workers, is associated with recent transformations in forms of work organization, which have favored the emergence of harmful practices and normalized their effects. The authors emphasize that the confrontation of these behaviors must be continuous and systematic, in order to avoid the repetition of sickening dynamics and prevent the escalation of psychological damages in the labor context, historically neglected.

Thus, the accession to the Convention 190 - still pending completion in Brazil - provides a solid normative basis for the consolidation of public policies and guidelines focused on mental health at work, providing objective parameters for the evaluation of business omissions. Even before formal ratification, its principles can already be used as an interpretative source in the application of constitutional and infra-constitutional rules and to reinforce judicial decisions (Melo; Matta, 2022), especially on issues related to human dignity, the social function of the company and the work environment in its psychosocial dimension.

It is stressed that the ratification of the Convention 190 by the Member States is considered essential to consolidate, on the domestic legal plane, the formal commitment to the prevention and elimination of violence and harassment at work. This involves not only the internalization of the guiding principles of the international standard, but also the adoption of specific legislation, the implementation of appropriate public policies and the creation of effective mechanisms for reporting, monitoring and conflict resolution, in accordance with the parameters of the International Labor Law (Faria; Alvarenga, 2021).

In this sense there have been some judged by the Superior Court of Labor, as in the following case:

[...] 4. INDENIZAÇÃO POR DANOS MORAIS. VALOR FIXADO. ASSÉDIO MORAL. CARÁTER CONSTANTE DA VIOLÊNCIA PRATICADA NO AMBIENTE DE TRABALHO. CONVENÇÃO 190 DA OIT. EFICÁCIA IRRADIANTE DO DIREITO FUNDAMENTAL AO RISCO MÍNIMO REGRESSIVO DE ACIDENTES E DOENÇAS DO TRABALHO. MÁXIMA EFETIVIDADE DOS DIREITOS FUNDAMENTAIS. QUESTÕES DE GÊNERO SUBJACENTES. (...) B) RECURSO DE REVISTA. PROCESSO SOB A ÉGIDE DA LEI 13.015/2014 E DA LEI 13.467/2017. INDENIZAÇÃO POR DANOS MORAIS. VALOR FIXADO. ASSÉDIO MORAL. CARÁTER CONSTANTE DA VIOLÊNCIA

PRATICADA NO AMBIENTE DE TRABALHO. CONVENÇÃO 190 DA OIT. EFICÁCIA IRRADIANTE DO DIREITO FUNDAMENTAL AO RISCO MÍNIMO REGRESSIVO DE ACIDENTES E DOENÇAS DO TRABALHO. MÁXIMA EFETIVIDADE DOS DIREITOS FUNDAMENTAIS. QUESTÕES DE GÊNERO SUBJACENTES. **A Convenção n. 190 da Organização Internacional do Trabalho (OIT)**, que dispõe sobre a eliminação da violência e do assédio no mundo do trabalho, apresenta em seu art. 1º conceito amplo de violência e assédio no trabalho, abrangendo não apenas a conduta reiterada, mas, também, a conduta unissubsistente. Independentemente da ratificação de Convenções da OIT que tratem de temas principais ou acessórios da temática "Saúde e Segurança do Trabalho", que foi erigida ao patamar de Princípios e Direitos Fundamentais da OIT a partir da 110ª Conferência Internacional do Trabalho, é indispensável que o direito fundamental ao risco mínimo regressivo (art. 7º, XXII, Constituição Federal) exteriorize, diante de interpretações sistemáticas das normas trabalhistas, sua **eficácia irradiante, ostentada por todo direito fundamental. A eficácia irradiante dos direitos fundamentais, inclusive do trabalho, orienta o intérprete do Direito a preencher o conteúdo normativo de princípios e regras jurídicas com o sentido e o alcance próprios dos direitos fundamentais que os impactem. No Direito do Trabalho, todo direito fundamental do trabalhador, inclusive os de ser protegido contra acidentes e doenças do trabalho (art. 7º, XXII, Constituição Federal) e ter um meio ambiente de trabalho ecologicamente equilibrado (arts. 200, VIII, e 225, caput, da Constituição Federal), deve ter seu núcleo essencial informado pelas normas internacionais que abordam com especialidade a respectiva matéria, como consequência do disposto no art. 5º, § 2º, da Constituição Federal.** Também ganha destaque, nessa função, o art. 5º, § 1º, da Constituição Federal, em que se insculpe o princípio da máxima efetividade dos direitos fundamentais. O vaso de comunicação entre as normas internacionais sobre direitos humanos (tais como a maior parte das Convenções da OIT) e os direitos fundamentais positivados na ordem interna, conforme o princípio pro homine (art. 19.8 da Constituição da OIT), deve ter por finalidade sempre o aprimoramento da proteção social que se pretende progressiva (art. 26 da Convenção Americana de Direitos Humanos). Por tais razões, a Convenção 190 da OIT deve ser observada como alicerce na interpretação jurídica de princípios e regras do direito interno que se apliquem, em abstrato, a situações de violência e assédio de qualquer natureza no mundo do trabalho. A subsistência material da conduta de violência ou de assédio, se única, continuada, divisível ou indivisível, é elemento secundário para a caracterização da violência ou do assédio nas relações de trabalho. O elemento principal para tal configuração consiste nas consequências previstas ou previsíveis da conduta praticada no ambiente de trabalho. Se a conduta, unissubsistente ou plurissubsistente, praticada uma ou mais vezes, visar, causar ou for capaz de causar danos físicos, psicológicos, sexuais ou econômicos, será ela configurada como ato de violência e assédio nas relações de trabalho. Observa-se, portanto, que o âmbito objetivo da configuração da violência e do assédio nas relações de trabalho tornou-se mais amplo que o tradicionalmente concebido. Afinal, majoritariamente, a doutrina atribui ao conceito de assédio moral a existência de condutas reiteradas, de modo a considerar a continuidade da lesão aos direitos da personalidade dos trabalhadores como um requisito essencial à caracterização do assédio. Como visto, à luz da Convenção n. 190 da OIT, a continuidade ou reiteração da conduta lesiva, no ambiente de trabalho, é dispensável para a configuração de violência e assédio no trabalho (grifo nosso) (Brasil, 2024).

This jurisprudential position reinforces the understanding that the Convention 190, even before its formal incorporation into the Brazilian legal system, already influences the interpretation of constitutional and infra-constitutional rules in the field of labor relations.

The systematic reading promoted by the TST shows that organizational practices that generate or intensify the psychological suffering of workers, such as those related to burnout, can be legally framed as forms of violence at work, subject to the civil liability of the employer. In this scenario, it is essential to examine how the omission of the employer in the prevention of mental illness, especially in exhausting organizational contexts, can lead to legal responsibility based on the principles already in force in the Brazilian law, and in dialogue with the parameters established by the Convention 190.

The corporate omission in preventing abusive organizational practices, such as those that culminate in burnout syndrome, may constitute a direct affront to the commitments made at the international level with the promotion of decent work. According to the Article 5 of the ILO Convention 190, it is the duty of the States to promote decent work by preventing and eliminating violence and harassment in the world of work (ILO, 2019). Burnout is often the result of organizational environments marked by abusive goals, constant pressure and degradation of working conditions, its occurrence is part of the logic of violation of the minimum standards of dignity, safety and health required for decent work.

It is possible to verify a normative and jurisprudential evolution consistent with the preventive function of the civil liability of the employer. This function is no longer limited to the repair of consummate damage, but is based on the obligation to anticipate and eliminate risk factors that compromise the physical and mental integrity of the worker. As Silva points out,

Como corolário contratual, ao se admitir um empregado, o empregador tem o dever de lhe conceder um ambiente laboral adequado à manutenção de uma sadia qualidade de vida e uma prestação de serviços segura e saudável. As consequências de sua omissão ou imprudência na implantação de medidas antecipatórias devem ser alicerçadas em uma nova teoria da responsabilidade civil, cujo fundamento esteja na sua função preventiva e não meramente reparadora (Silva, 2010, p. 9).

This conception of civil liability with preventive function is particularly relevant in the fight against occupational diseases such as burnout syndrome. The negligence of the employer in identifying and neutralizing such risks constitutes a violation of the general duty of security and close correspondence with the constitutional foundation of human dignity. When the employer is omitted before factors repeatedly recognized as generators of mental suffering, his conduct ceases to be only omissive to assume a malicious posture or, at least, qualified guilt. Thus, civil liability should be understood not as an exceptional

mechanism of reparation, but as an instrument for the effective protection of health at work, as Silva explains:

Floresce na proteção à saúde do trabalhador a importância da função preventiva da responsabilidade civil, cujo escopo maior é a integralidade física e mental do obreiro, como corolário do direito à vida, pois a lesão pode ser irreversível e nada é capaz de reparar eficazmente o dano sofrido (Silva, 2010, p. 80).

The liability of the employer for omission in the face of harmful organizational practices gains legal density when interpreted in the light of international standards for the protection of the working environment and decent work. Convention 155 of the International Labor Organization states that signatory countries must adopt a coherent national policy on the safety and health of workers, with emphasis on the prevention of accidents and work-related diseases. This policy, as described in the article 4, should cover not only the physical aspects of the work environment, but also organizational factors that may compromise the well-being of the worker. Within this logic, employers have a duty to ensure a safe and healthy work environment, which includes the identification and elimination of psychosocial risks arising from organizational structure and dynamics. Thus, negligence in relation to excessive working hours, inhumane goals and oppressive management environments constitutes not only a violation of domestic legislation, but also non-compliance with international obligations assumed within the framework of the ILO (OIT, 1981).

As explained by Feliciano and Ebert (2023), the preventive function of civil liability, inspired by the Conventions n. 155 and 187 of the ILO, requires entrepreneurs not only to repair damage already done, but above all to implement concrete measures aimed at anticipating and effectively controlling labor-environmental risks. The non-compliance with this duty characterizes, therefore, a risk prohibited by law, subject to legal liability.

In this sense, the responsibility of the employer in the context of burnout is not limited to the verification of guilt or damage actually produced, but covers the analysis of omission before the legal duty to prevent the risk factors that are known to generate illness. As the authors point out, this conception reinforces the objective nature of employer responsibility, whose purpose is not only compensatory but also dissuasive and pedagogical, in order to avoid the repetition of business practices harmful to the psycho-physical integrity of workers (Feliciano, Ebert, 2023).

Thus, the content of the Conventions, even if not fully incorporated into the Brazilian legal system, can - and should - be used as a hermeneutic criterion in the

interpretation of obligations already existing within the constitutional and infra-constitutional framework. This reading is in line with the article 5, § 2, of the Federal Constitution, which authorizes the incorporation of rights arising from international treaties and principles adopted by it. In view of it, the omission of the employer prevent burnout can be read as a violation of an international standard of health protection at work, bringing support to judicial decisions that recognize their civil and labor responsibility, Although outside the formal ratification of the ILO Convention 190.

The joint reading of the Convention 190 with the Federal Constitution and the infra-constitutional rules reveals a normative field already dense enough to impose on the employer the obligation to adopt effective measures for the prevention of psychosocial risks. The Constitution of 1988 enshrines the integral protection of workers, including the right to health (art. 6), the reduction of risks at work (art. 7, XXII), the dignity of the human person (art. 1, III), the social function of the company (art. 170, III) and the preservation of the environment, even the labor, in its physical and psychosocial dimension (art. 225). The norms of the CLT (arts. 157 and 158) and NRs, especially NR-1 and NR-17, give concreteness to this duty by requiring specific actions to identify, control and mitigate occupational risks, even those of an organizational order.

Convention 190, in this context, functions as an instrument of normative reinforcement, which adds density and specificity to the protection already guaranteed at the domestic level. As Feliciano and Ebert observe,

A internalização dos tratados internacionais voltados à promoção da saúde e segurança no trabalho não apenas reforça os deveres já presentes na legislação nacional, mas também transforma o grau de exigibilidade desses deveres, orientando a atuação dos atores jurídicos (Feliciano, Ebert, 2023, p. 48).

Thus, even before its formal ratification, the principles of the C190 can be used as a hermeneutic source to interpret, in a more effective way, the constitutional and infra-constitutional commands regarding the protection of the mental health of the workers.

The omission of the employer in the face of organizational practices known to be unhealthy - such as exhausting days, unattainable goals, constant psychological pressure and absence of emotional support - cannot be dissociated from the logic of labor, social security and, in certain cases, civil. This is conduct that violates the duty of protection and violates the international standard of decent work as outlined by the ILO. Liability, therefore, does not depend on the existence of direct fault, but on proof that the employer failed to act preventively in the face of foreseeable and avoidable risks. As highlighted by

Silva (2010, p. 80), "the importance of the preventive function of civil liability flourishes in worker health protection", whose greater scope is the safeguarding of the physical and mental integrity of the worker, and not only the subsequent compensation of damage.

Under this perspective, the corporate responsibility for burnout can occur both in the labor sphere, from the condemnation of the employer to the payment of compensation for moral and material damages, as in the social security field, with the issuance of the Communication of Occupational Accident (CAT), the granting of the benefit for temporary accidental disability and consequent temporary stability in employment, as provided for in the Articles 19, 20, 22 and 118 of the Law no 8.213 of 1991.

Therefore, the ILO Convention 190, even though it has not yet been formally ratified by Brazil, acts as a fundamental interpretative framework for understanding the duty of business prevention in the face of psychosocial risks. Its compatibility with the Brazilian constitutional principles and its harmony with the infra-constitutional norms reinforce the idea that the omission of the employer in the face of burnout goes beyond the sphere of mere managerial inadequacy, constituting true non-compliance with legal obligations. By neglecting policies to protect mental health in the workplace, the employer violates the international standard of decent work, as well as the national set of regulations that ensure a safe, healthy and dignified working environment.

Thus, Convention 190 not only qualifies the responsibility of the employer, but also contributes to consolidate a new legal rationality aimed at promoting the integral health of the worker, reparation of damages and, above all, prevention of their occurrence.

CONCLUSION

The present research aimed to analyze, from an interdisciplinary and legal perspective, the duties of the employer in the prevention of burnout syndrome, especially in light of the parameters established by the ILO Convention 190, still pending ratification in Brazil. It was based on the understanding that burnout is an occupational disease associated with psychosocial and organizational factors of work, whose worsening directly reflects the structures and logic of productivity management, focused on labor intensification and neglect as to the mental well-being state of the workers.

It was demonstrated that the Brazilian legal system covers a consistent normative basis on the duty to protect the health of the worker, with constitutional foundations, legal and regulatory that require the employer to adopt preventive measures to promote a healthy

working environment. From the analysis of the current legislation, doctrine and recent jurisprudence, it was found that the corporate omission in the face of unhealthy work environments can configure not only administrative and labor in the wake of the provisions of the Law no 8.213 of 1991, and the jurisprudence of the TST.

Convention 190, in this context, reinforces and qualifies the existing business duties by expanding the notion of violence and harassment to include structural and institutional practices related to work organization, legitimizing the inclusion of psychosocial risks in the occupational health and safety agenda. Although its ratification in Brazil is pending, the international instrument already presents itself as an important interpretative parameter - with potential to radiate hermeneutic effects on fundamental labor rights, as authorized by the articles 5, §§ 1st and 2nd, of the Federal Constitution.

Thus, it is concluded that the omission of the employer to prevent burnout constitutes a violation of the fundamental right to health, human dignity and work in decent conditions. In addition to individual legal responsibility, such conduct reveals the lack of commitment to the social function of the company and to the commitments assumed by the Brazilian State. It reinforces, therefore, the need for effective incorporation of the Convention 190 to the national legal system and public policies aimed at supervision, corporate education and strengthening the culture of prevention, with a view to building truly healthy, dignified and humanized working environments.

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