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# The construction of Worker's Health and the necessary interinstitutional articulation: from occupational medicine to the desired social participation

*A construção da Saúde do Trabalhador e a necessária articulação interinstitucional: da medicina do trabalho à almejada participação social*

*La construcción de la Salud del Trabajador y la necesaria articulación interinstitucional: de la medicina del trabajo a la deseada participación social*

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## ABSTRACT

The historical process of maturation of the treatment for Occupational Safety and Health (OSH) demonstrates, at least in the conceptual scope, an evolution towards the empowerment of the worker. In Brazil, "Worker's Health" (WH) has emerged as a criticism of the 'single cause' view between disease and specific agent currently held in the field of Occupational Health and Occupational Medicine and has placed health as a fundamental right and sickness at work as a complex issue. In this new institutional and normative structure, workers became bearers of knowledge emanating from their experience and essential agents of transformative actions. However, there are several challenges for implementing such promises, such as: the legislation delegates to private management core issues of WH protection and of accident prevention; the dispersion of responsibility for the protection of OSH by an excessive number of state organs and the lack of unity in their actions; the creation of applications and websites to facilitate and encourage the workers themselves to exploit rights to insecure work environments is welcome but insufficient because it will make little difference if there is no fiscal structure to handle demand. The improvement of social control must include the intensification of the leading role of unions and the coordinated and collaborative action of the state organs responsible for OSH protection. It is therefore urgent to think of ways for the active participation of workers in OSH, the action on the determinants of accidents and the prioritization of preventive measures to become part of the reality of WH in Brazil.

**KEYWORDS:** Worker's health, Occupational safety and health, Public health, Legislation, Public Policy

## RESUMO

O processo histórico de maturação do tratamento destinado à saúde e segurança do trabalho (SST) demonstra evolução, pelo menos no âmbito conceitual, em direção ao empoderamento do trabalhador. No Brasil, a Saúde do Trabalhador (ST) surgiu como crítica à visão unicausal entre doença e agente específico vigente na Medicina do Trabalho e Saúde Ocupacional, passando a situar a saúde como direito fundamental e o adoecimento no trabalho como assunto complexo. Na nova estrutura institucional e normativa, os trabalhadores passaram a sujeitos depositários de saber emanado da experiência e agentes essenciais de ações transformadoras. Contudo, há diversos desafios para efetivar tais promessas, dentre elas: a legislação delega para a gestão privada pontos centrais da proteção da ST e da prevenção de acidentes; a dispersão da responsabilidade pela proteção da SST por um excessivo número de órgãos estatais e a falta de unidade na atuação dos mesmos; a criação de aplicativos e sites para facilitar e estimular a denúncia, pelos próprios trabalhadores, de exploração de direitos a ambientes de trabalho inseguros, é bem vinda mas insuficiente, pois fará pouca diferença se não houver estrutura fiscal para cuidar da demanda. A melhoria do controle social deve passar pela intensificação do protagonismo dos sindicatos e pela atuação coordenada e colaborativa dos órgãos estatais responsáveis pela proteção da SST. Urgente pensar caminhos para que a participação ativa do trabalhador na SST, a ação sobre os determinantes dos acidentes e a priorização de medidas preventivas passem a fazer parte da realidade da ST no Brasil.

**PALAVRAS-CHAVE:** Saúde do Trabalhador, Saúde e Segurança do Trabalho, Saúde Pública, Legislação, Política Pública

### RESUMEN

El proceso histórico de maduración del tratamiento destinado a la salud y seguridad del trabajo (SST) demuestra evolución, al menos en el ámbito conceptual, hacia el empoderamiento del trabajador. En Brasil, la Salud del Trabajador (ST) surgió como crítica a la visión únicamente casual entre enfermedad y agente específico vigente en la Medicina del Trabajo y Salud Ocupacional, pasando a situar la salud como derecho fundamental y la enfermedad en el trabajo como asunto complejo. En la nueva estructura institucional y normativa, los trabajadores pasaron a ser sujetos depositarios de saber emanados de la experiencia y agentes esenciales de acciones transformadoras. Sin embargo, hay varios desafíos para hacer efectivas tales promesas, entre ellas: la legislación delega para la gestión privada puntos centrales de la protección de la ST y de la prevención de accidentes; la dispersión de la responsabilidad por la protección de la SST por un excesivo número de órganos estatales y la falta de unidad en la actuación de los mismos; la creación de aplicaciones y sitios para facilitar y estimular la denuncia, por los propios trabajadores, de explotación de derechos a ambientes de trabajo inseguros, es bienvenida pero insuficiente, pues hará poca diferencia si no hay estructura fiscal para atender la demanda. La mejora del control social debe pasar por la intensificación del protagonismo de los sindicatos y por la actuación coordinada y colaborativa de los órganos estatales responsables de la protección de la SST. Urgente pensar caminos para que la participación activa del trabajador en la SST, la acción sobre los determinantes de los accidentes y la priorización de medidas preventivas pasen a formar parte de la realidad de la ST en Brasil.

**PALABRAS-CLAVE:** Salud del Trabajador, Salud y Seguridad del Trabajo, Salud Pública, Legislación, Política Pública

### INTRODUCTION

The year 2018 marks the 100 years of creation of the School of Public Health of the University of São Paulo and the 30 years of validity of the Constitution of the Federative Republic of Brazil (CRFB), known as the citizens' constitution. At the same time, the country is experiencing a time of concern with normative changes that withdraw social rights and directly affect the area of Worker's Health (WH). It is therefore relevant to know and disseminate the path outlined so far, as well as the legal and institutional structure built, so that the approximation of Public Health and Law knowledge enrich the discourse of resistance to defend the achievements and protection obtained for the health and safety of the worker. In addition, it is time to consider limitations and think about solutions.

This essay, written for those interested in Public Health, whatever their area of education, aims to recover fundamental ideological aspects of Worker's Health and present the complex institutional structure that needs to be articulated to comply with the public policies of the sector in Brazil. It also discusses the challenges surrounding the existing normative forecast for the active participation of workers in prevention, as well as



verifies some limits of the initiatives created to strengthen such prominence, taking as reference the feasibility of a safe and healthy working environment.

### THE CONSTRUCTION OF WORKER'S HEALTH: SYNOPSIS IN FOUR PHASES

The historical process of maturation of treatment for health and safety at work, well portrayed by Workers' Health scholars like Mendes and Dias<sup>1</sup>, Vilela<sup>2</sup>, Lacz<sup>3</sup>, Oliveira<sup>4</sup> and Vasconcellos<sup>5</sup>, demonstrates an evolution, at least in the conceptual scope, towards the empowerment of the worker. It should be noted that with the industrial revolution came the medicine of work, which attributed to physicians the function of treating the physical wounds and injuries caused by the machinery environment, to cure the physiological affectations caused by chemical, thermal and physical contamination. Nothing was done to avoid them. In this first phase, the work of the company's doctor was focused on the proper functioning of the work processes, and for this the selection of personnel was done with the interest of avoiding those who might become ill or be injured.

At the second moment of the industrial revolution, Occupational Health emerges from Taylorism, which seeks, in some way, to prevent labor aggression, aiming, however, to provide a rational increase of productivity. At this stage, the medical department is created in the company with the prevention being thought out to minimize the damages caused by the absences and absenteeism.

When discussing the intense social process of change that revealed the inadequacies

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<sup>1</sup> MENDES, René; DIAS, Elizabeth Costa. Da medicina do trabalho à saúde do trabalhador. **Revista de Saúde Pública**, São Paulo, v.25, n.5, p.341-349, 1991.

<sup>2</sup> VILELA, Rodolfo Andrade de Gouveia. **Desafios da Vigilância e da Prevenção de Acidentes do Trabalho**. São Paulo: LTr, 2003.

<sup>3</sup> LACAZ, Francisco Antonio de Castro. O campo Saúde do Trabalhador: resgatando conhecimentos e práticas sobre as relações trabalho-saúde. **Cad. Saúde Pública**, Rio de Janeiro, v.23, n.4, p.757-766, 2007. Available at: <<http://www.scielo.br/pdf/csp/v23n4/02.pdf>>. Accessed on: 29 Nov. 2017.

<sup>4</sup> OLIVEIRA, Sebastião Geraldo. **Proteção Jurídica à Saúde do Trabalhador**, 5ª ed. São Paulo: LTr, 2010.

<sup>5</sup> VASCONCELLOS, Luiz Carlos Fadel. Entre a Saúde Ocupacional e a Saúde do Trabalhador: as coisas nos seus lugares. In: VASCONCELLOS, Luiz Carlos Fadel; OLIVEIRA, Maria Helena Barros de. **Saúde, Trabalho e Direito: uma trajetória crítica e a crítica de uma trajetória**. Rio de Janeiro: Educam, 2011. p. 401-422.



of this model and gave rise to Occupational Health, René Mendes and Elizabeth Dias highlight the collapse of the myth of 'limits of tolerance' that underpinned the logic of occupational health (mainly hygiene and toxicology) for more than 50 years:

The scientific foundation is questioned (not to say demoralized); the concept of 'safe exposure' is shaken; and studies of behavioral effects from exposure to low doses of lead and organic solvents call into question the 'health protection' criteria that have been in place in industrialized Western countries until recently<sup>6</sup>.

Then, in the middle of the 20th century, the concept of Worker's Health arises, according to which the work environment must provide the worker with physical, mental, and moral integrity, ensuring, above all, his human dignity. The Worker's Health proposes to investigate the work process with systemic vision, not with risk factors. This new phase comes precisely from the joint action of trade unions, governments, and the International Labor Organization (ILO), which brings together member states, employers, and workers in their tripartite deliberations. Among the various ILO Conventions ratified by Brazil, the Convention on Occupational Safety and Health no. 155, and Convention No. 161 on Occupational Health Services are highlighted. Convention No. 187 of 2006, which deals with the Promotional Framework for Health and Safety, has the ratification of 45 countries and is still awaiting the Brazilian<sup>7</sup>.

The work of the trade union movement and the registration of new rights in the 1988 CRFB put another State-Society relationship on the agenda, about social policies, particularly Public Health, and as part of this policy, the Worker's Health policy is inserted. Proposals for the development of actions in Worker's Health in the Public Health network, the so-called Worker's Health Programs (WHPs), are emerging. Such instances integrate actions of assistance, promotion, and prevention, through the participation of multiprofessional teams (doctors, nurses, engineers, psychologists, speech therapists, etc.) with important participation of the workers' unions in the control and evaluation, as it would later be

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<sup>6</sup> MENDES, René; DIAS, Elizabeth Costa. Da medicina do trabalho à saúde do trabalhador. **Revista de Saúde Pública**, São Paulo, v.25, n.5, 1991, p. 346.

<sup>7</sup> Available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312332:](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312332:)  
>. Access on 26th Jun, 2018.



foreseen in the SUS law: social control<sup>8</sup>.

Thus, the change to Worker's Health (WH) became effective in Brazil with the creation of SUS in 1990. According to Vasconcellos<sup>9</sup>, the difference between Worker's Health and Occupational Health is present in the ideology and cultural, normative, socio-political, economic, and institutional aspects. The logic of Public Health, with risk prevention, health promotion and worker participation in a collective perspective is incorporated into Worker's Health. It emerged as a critique of the labor-pension model linked to Labor Medicine and Occupational Health, to overcome the reductionist views of cause and effect of both conceptions, supported by the single-causal view between disease and specific agent<sup>10</sup>. The WH is based on the perspective of health as a right, according to the international trend of universalization of fundamental rights and adopted in Brazil with SUS; as is typical of collective health, WH adds a wide range of disciplines, including sociology, epidemiology, ergonomics, ecology, statistics, toxicology, production engineering, political science, history, and law.

Mendes and Dias<sup>11</sup> point out that WH breaks with the hegemonic conception that establishes a causal link between the disease and a specific agent or a group of risk factors present in the work environment and tries to overcome the focus that places its determination on social, reduced to the productive process, disregarding subjectivity. In the same sense, Minayo-Gomes<sup>12</sup> points out that, contrary to the occupational health milestones,

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<sup>8</sup> SATO, Leny; LACAZ, Francisco Antonio de Castro; BERNARDO, Márcia Hespanhol. Psicologia e saúde do trabalhador: práticas e investigações na Saúde Pública de São Paulo. **Estud. Psicol.**, Natal, v.11, n.3, p.281-288, 2006. Available at: <[http://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S1413-294X2006000300005&lng=en&nrm=iso](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S1413-294X2006000300005&lng=en&nrm=iso)>. Accessed on: 01 Jun. 2018.

<sup>9</sup> VASCONCELLOS, Luiz Carlos Fadel. Entre a Saúde Ocupacional e a Saúde do Trabalhador: as coisas nos seus lugares. In: VASCONCELLOS, Luiz Carlos Fadel; OLIVEIRA, Maria Helena Barros de. **Saúde, Trabalho e Direito: uma trajetória crítica e a crítica de uma trajetória**. Rio de Janeiro: Educam, 2011.

<sup>10</sup> MENDES, René; DIAS, Elizabeth Costa. Da medicina do trabalho à saúde do trabalhador. **Revista de Saúde Pública**, São Paulo, v.25, n.5, p.341-349, 1991; LACAZ, Francisco Antonio de Castro. O campo Saúde do Trabalhador: resgatando conhecimentos e práticas sobre as relações trabalho-saúde. **Cad. Saúde Pública**, Rio de Janeiro, v.23, n.4, p.757-766, 2007. Available at: <<http://www.scielo.br/pdf/csp/v23n4/02.pdf>>. Accessed on 29 Nov. 2017.

<sup>11</sup> MENDES, René; DIAS, Elizabeth Costa. Da medicina do trabalho à saúde do trabalhador. **Revista de Saúde Pública**, São Paulo, v.25, n.5, p.341-349, 1991.

<sup>12</sup> MINAYO-GOMEZ, Carlos. Avanços e entraves na implementação da Política Nacional de Saúde do Trabalhador. **Rev. Bras. Saúde Ocup.**, São Paulo, v.38, n.127, p.21-25, 2013.



in which workers are seen as patients and therefore objects of professional intervention, in Worker's Health they constitute collective political subjects, custodians of knowledge emanating from experience and essential agents of transformative actions.

In fact, the incorporation of this knowledge in the WH view is decisive, both in the production of knowledge and in the development of health care practices. In WH, the worker is seen as a person capable of transforming and interfering in his work reality, by claiming rights and participating in the control of the harmfulness of work, as well as in the consensual definition of intervention priorities and in the construction of intervention methodologies about the reality lived; that is, the experience and the operation knowledge play an important role in the strategy of knowing to transform reality, in the way of interpreting illness and organizing health services to operate on this reality<sup>13</sup>.

In the 21st century, a fourth stage can be identified in Brazil from 2002, when the Ministry of Health established the National Network of Integral Attention to Worker's Health (RENAST) to carry out health practices involving dealing with work-related accidents, sick workers, urgencies and emergencies to the promotion and protection of health and surveillance, guided by epidemiological criteria. The objective of this network is to articulate actions of prevention, promotion, and recovery of the health of urban and rural workers, regardless of the employment relationship and type of insertion in the job market. The Specialized Reference Centers for Worker's Health (CERESTs) were created to work within the structure of the Unified Health System (SUS), as the radiating pole of the relationship in each territory between work and health processes, it should assume the function of technical and scientific support in WH, facilitate permanent education for professionals and technicians of SUS and social control<sup>14</sup>.

The RENAST care model, operated by CERESTs, is divided into two parts: the first one

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<sup>13</sup> LACAZ, Francisco Antonio de Castro. Saúde do trabalhador: um estudo sobre as formações discursivas da academia, dos serviços e do movimento sindical. 1996. 456f. **Thesis** (PhD in Medicine) - Faculdade de Ciências Médicas, Universidade Estadual de Campinas, Campinas, 1996; SATO, Leny; LACAZ, Francisco Antonio de Castro; BERNARDO, Márcia Hespanhol. Psicologia e saúde do trabalhador: práticas e investigações na Saúde Pública de São Paulo. **Estud. Psicol.**, Natal, v.11, v.3, p.281-288, 2006. Available at: <[http://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S1413-294X2006000300005&lng=en&nrm=iso](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S1413-294X2006000300005&lng=en&nrm=iso)>. Accessed on: 01 Jun. 2018.

<sup>14</sup> DIAS, Elizabeth Costa; HOEFEL, Maria da Graça. O desafio de implementar as ações de Saúde do Trabalhador no SUS: a estratégia da RENAST. **Ciência & Saúde Coletiva**, Rio de Janeiro, v.10, n.4, p.817-828, 2005.



focused on primary care, urgency and emergency, and medium and high complexity in relation to work-related health problems through sentinel network<sup>15</sup>; the other part seeks action in environments and work situations that generate diseases, through sanitary, epidemiological, environmental and health surveillance of the worker<sup>16</sup>. In CERESTs, worker's health is understood as a practice for which the agents are multiprofessional teams and workers, who seek to put the technique in their service, having as interlocutor the class fractions of industrial, rural, and service workers, organized politically. It uses a clinical-epidemiological and planning approach in the search for care at all levels of prevention, aiming to know the determinants of health in society, with the participation of organized workers in the defense of their health, by producing a more integrated knowledge of reality<sup>17</sup>.

In accordance with its commitments to the international community, in ratifying Convention No. 155, in 2011 Brazil established its National Occupational Health and Safety Policy (PNSST), with the objective of promoting health and preventing accidents and health damages related to work through the elimination or reduction of risks in work environments (Decree 7602/2011). Due to the interdisciplinarity of the area and the wide range of actions, there is a need for the intervention of distinct public sectors, represented by Labor, Health

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<sup>15</sup> Sentinel is the surveillance model carried out from strategic health institutions for the care of morbidity, mortality, or etiological agents of interest to Public Health (art 2, X of Ordinance MS no. 1.271/2014). All health professionals, including doctors, nurses, and pharmacists to those responsible for the health facility, whether public or private, are obliged to notify the health authority about the occurrence or confirmation of illness, injury or event described in the attachment to the ordinance. The purpose of the notification, made in the Notification of Injury Information System (SINAN), is to collect, transmit and disseminate data generated by the Epidemiological Surveillance System of the three spheres of government through a computerized network to support the investigation process and subsidize analysis of information on epidemiological surveillance of diseases. Strategies for action to promote, prevent and monitor SST are drawn from these data. The national manager of SINAN is the Health Surveillance Secretariat (SVS) of the Ministry of Health. This system is mainly aided by reporting and investigating cases of diseases and injuries on the national list of compulsorily notifiable diseases, but it is optional for states and municipalities to include other health problems considered important in their region. The work accident with exposure to biological material has a weekly notification period. The serious and fatal work accident in children and adolescents should be notified immediately (less than 24 hours) to the municipal health department (Attachment to Ordinance MS 1271/2011).

<sup>16</sup> LACAZ, Francisco Antonio de Castro. *Vigilância em saúde do trabalhador como elemento constitutivo da saúde do trabalhador no Sistema Único de Saúde: aspectos históricos e conceituais*. In: CORRÊA, Maria Juliana Moura; PINHEIRO, Tarcísio M. Magalhães; MERLO, Álvaro R. Crespo (orgs). **Vigilância em Saúde do Trabalhador no Sistema Único de Saúde: teorias e práticas**. Belo Horizonte: Coopmed, 2013. p. 35-60.

<sup>17</sup> LACAZ, Francisco Antonio de Castro. *Saúde do trabalhador: um estudo sobre as formações discursivas da academia, dos serviços e do movimento sindical*. 1996. 456f. **Thesis** (PhD in Medicine) - Faculdade de Ciências Médicas, Universidade Estadual de Campinas, Campinas, 1996.



and Social Security, which need to act together and complement each other<sup>18</sup>. It was expected that the PNSST would bring this integration and articulation of inter-ministerial actions, however Costa *et al.*<sup>19</sup> analyzed that it had practically reaffirmed the current responsibilities of ministries and institutions, missing important points such as the provision of epidemiological data from Social Security and failed to provide the timid position of strengthening surveillance actions for the health sector.

### THE INTERINSTITUTIONAL STRUCTURE OF WORKER'S HEALTH AND SOME CHALLENGES

According to Lacaz<sup>20</sup>, the great challenge for structuring RENAST in the health care of workers is still to break the doctor-centered logic of care. Collective actions, in the scope of surveillance, promotion and protection of health, even if more effective, are in second place, due to the model centered on the medical consultation and individual approach of the worker. For this author, the difficulty of constructing and practicing PNSST stems from "differentiated interests, power disputes and different ways of acting by the ministries most directly related to the issue are obstacles that have hitherto impeded its implantation and implementation"<sup>21</sup>.

In fact, one of the major problems of the struggle for the protection of worker's health and safety in Brazil is the dispersion of responsibility for the protection of health and safety at work by an excessive number of state organs and the lack of unity in their work<sup>22</sup>. The Ministry of Social Security is responsible for the accidental benefits (sickness benefits, accident aid, disability pension, death pension) and the professional rehabilitation service.

<sup>18</sup> CHIAVEGATTO, Claudia Vasques; ALGRANTI, Eduardo. Políticas públicas de saúde do trabalhador no Brasil: oportunidades e desafios. **Rev. Bras. Saúde Ocup.**, São Paulo, v. 38, n. 127, p. 25-27, 2013.

<sup>19</sup> COSTA, Danilo *et al.* Saúde do Trabalhador no SUS: desafios para uma política pública. **Rev. Bras. Saúde Ocup.**, São Paulo, v. 38, n. 127, p. 11-30, 2013.

<sup>20</sup> LACAZ, Francisco Antonio de Castro. Política Nacional de Saúde do Trabalhador: desafios e dificuldades. In: LOURENÇO, Edvânia *et al.* (orgs). **O avesso do trabalho II: trabalho, precarização e saúde do trabalhador**. São Paulo: Expressão Popular, 2010. p. 199-230.

<sup>21</sup> LACAZ, Francisco Antonio de Castro. Política Nacional de Saúde do Trabalhador: desafios e dificuldades. In: LOURENÇO, Edvânia *et al.* (orgs). **O avesso do trabalho II: trabalho, precarização e saúde do trabalhador**. São Paulo: Expressão Popular, 2010. p. 201.

<sup>22</sup> BOUCINHAS FILHO, Jorge Cavalcanti. Reflexões sobre as normas da OIT e o modelo brasileiro de proteção à saúde e à integridade física do trabalhador. **Revista LTr**, São Paulo, v. 76, n. 11, p. 1355-1364, nov. 2012. Available at: <<https://goo.gl/sRTHNn>>. Accessed on: 06 Apr. 2018.





The Ministry of Labor and Employment (MTE) is responsible for the elaboration of the Regulatory Norms and the inspection of the compliance with Occupational Health and Safety (SST) regulations. While this last activity is carried out by labor auditors, the first is coordinated by the ministry, but is carried out by a tripartite commission made up of representatives of government, workers, and companies. The Permanent Joint Tripartite Commission (CTPP), responsible for the creation and revision of the NRs, was replaced by the National Tripartite Commission (CNT) with Ordinance 59/2008 of MTE. In addition to integrating the CNT as a government representative, Fundacentro is the arm of the MTE that takes care of research development and provides training in SST. The Ministry of Health, in turn, coordinates the SUS, which also acts in the area of worker's health (CERESTs).

In 2012, the Ministry of Health established the National Worker's Health Policy (PNSTT), which establishes the participation of the SUS in the context of the National Occupational Health and Safety Policy, defines the guidelines and strategy for the performance of the various levels (Ordinance MS no. 1823/2012). Minayo-Gomez (2013) underlines the importance of the promulgation of both policies, both the PNSST and PNSTT, which, according to the author, contemplates the transversality of health actions and work as one of the determinants of the health-disease process, but whose implementation remains the great challenge for professionals and managers of CERESTs, particularly regarding the strengthening of Worker's Health Surveillance. The author also talks about the low mobilization of class organizations, whose role is fundamental to improve the operation of social control instances. When analyzing the intersectoral articulation, it highlights the importance of the role of the Public Labor Ministry (MPT) in face of the limitations of the supervisory bodies for the improvement of working conditions, as well as points to the advances in the interactions between academia and services.

The Public Labor Ministry (MPT), one of the branches of the Public Union Ministry, has functional and administrative autonomy and, as such, acts as an independent body of the legislative, executive and judiciary branches. The Attorneys of Labor are responsible for protecting the constitutionally guaranteed social rights, covering the work environment<sup>23</sup>. The MPT acts judicially proposing Public Civil Actions (PCA) in the Labor Court, but it is the

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<sup>23</sup> Art. 83, item III, of Complementary Law no. 75/93(Statute of the Public Union Ministry).



extrajudicial action that has been outstanding in the prevention of work accidents. Conduct Adjustment Terms (TACs) are out-of-court settlements with companies primarily for SST that, if not met, are executed. Also worthy of note are the Promotional Procedures, known as "Promo", whose purpose is to enable the MPT's social articulation with other social actors.

Although the advantages of preventive action are unanimous, since the desired goal is the non-occurrence of accidents, supervision with guidance and, if appropriate, exemplary administrative and/or judicial punishment, even if reparatory - because it occurs when the damage to the worker's health has already occurred - are also of great relevance in reducing the number of accidents. In this sense, the OIT emphasizes that compliance and enforcement strategies should be seen as an integral part of the workers' protection policies.

Investigation and recent political debates have emphasized the importance of awareness-raising, legal literacy [sic], persuasion, prevention, and incentives, as well as effective procedures for imposing appropriate sanctions<sup>24</sup>.

In Brazil there is more than one body legitimized to inspect health and safety conditions in the workplace<sup>25</sup>: Public Labor Ministry, in the person of its labor attorneys; Ministry of Labor, through its labor tax auditors; and more recently CEREST professionals,

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<sup>24</sup> ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. **Proteção dos trabalhadores num mundo do trabalho em transformação**. Geneva, 2015, p. 6. Available at: [http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/relatorio104\\_vi\\_pt.pdf](http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/relatorio104_vi_pt.pdf). Accessed on: 01 May 2018.

<sup>25</sup> The supervision of the faithful fulfillment of the norms of labor protection is incumbent upon the competent authorities of the Ministry of Labor, according to art. 626 of CLT. On the other hand, public health actions and services, under the terms of art. 198 of the CRFB are part of a regionalized and hierarchical network and constitute a single, decentralized health system with a single direction in each sphere of government. Art. 200 of the Constitution provides that it is the responsibility of SUS to: "to carry out the actions of sanitary and epidemiological surveillance, as well as the worker's health." Law 8.080/89, which regulates, in the whole national territory, all public health actions and services, which constitutes the SUS, defines in §3 of art. 6 the set of activities that involves worker's health, among which is the participation in the regulation, supervision and control of the worker's health services in public and private institutions and enterprises (section VI). In turn, art. 159 of the CLT provides for the possibility of delegating to other federal, state, or municipal bodies, by means of an agreement authorized by the Ministry of Labor, powers of supervision or guidance to companies regarding compliance with the provisions of the Chapter on Occupational Medicine and Safety. Art. 154 of the CLT also establishes that compliance in all workplaces with the provisions of this chapter does not relieve companies from complying with other provisions that, in this regard, are included in codes of works or health regulations of States or Municipalities in which the respective establishments are located, as well as those resulting from collective bargaining agreements. In the state of São Paulo, the State Constitution determines that the SUS must adopt preventive measures of occupational accidents and diseases (art. 223, VI, b). The São Paulo Health Code, for its part, stipulates that it is the duty of the health authority to indicate and the obligation of the employer to take all necessary measures for the full correction of irregularities in the work environment, observing the following levels of priorities: I- elimination of risk sources; II - control measures directly at the source; III - control measures in the work environment; and IV - use of personal protective equipment, which should only be allowed in emergency situations or in specific cases where it is the only possibility of protection, and within the deadline established in the implementation schedule of collective protection measures.



including the legitimacy to fine confirmed by some regional courts and by the Superior Labor Court (TST)<sup>26</sup>.

In the Judiciary, in turn, there are different bodies to appreciate the different types of requests. While the Labor Court judges the claims of additional health and/or safety matters and the actions to repair the damages resulting from occupational accidents, the State Court handles the controversies about accidental benefits because of Social Security and criminal cases. In turn, it is the Federal Court that is competent for the regressive actions filed by the Social Security against the employer guilty of the accident, as well as the discussions about the values and corrections of the social security benefits.

Although the situation of structural insufficiency and the need for prevention indicate a positive evaluation for this accumulation of organs in the audit function, the warning exists in the sense that "the division of these competencies causes the great problem of worker's health to be transformed into a secondary issue, diluted within the scope of the attributions of each of these organs"<sup>27</sup>.

### 3 THE BRAZILIAN SST REGULATORY MODEL AND ITS LIMITATIONS

Over the past 30 years there have been important advances in the regulation of worker protection, particularly regarding SST aspects around the world<sup>28</sup>. Brazil currently has a wide set of regulations applicable to the protection of workers' health and safety, which includes international treaties, constitutional guarantees, regulatory norms and other provisions in environmental, social security, labor, and civil laws.

One of the problems, however, involving the Brazilian normative model of SST is that the legislation delegates to private management central points of protection of workers' health and the prevention of accidents. The worker is vulnerable inside and outside the walls

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<sup>26</sup> Process: ARR - 389-35.2012.5.15.0094, Date of Trial: 02/03/2016, Minister Reporting: Maria de Assis Calsing, 4th Class, Publication Date: DEJT 02/12/2016.

<sup>27</sup> OLIVEIRA, Sebastião Geraldo. **Proteção Jurídica à Saúde do Trabalhador**, 5ª ed. São Paulo: LTr, 2010, p. 161.

<sup>28</sup> ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. **Proteção dos trabalhadores num mundo do trabalho em transformação**. Geneva, 2015. Available at: <[http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/relatorio104\\_vi\\_pt.pdf](http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/relatorio104_vi_pt.pdf)>. Accessed on: 01 May 2018.



of the company. From the inside, the Brazilian legal model gave the company the mission to establish the methods of prevention against occupational accident and disease, from the exercise of the directive power of the employer. The internal departments SESMT (Specialized Service in Occupational Health and Safety) and CIPA (Internal Commission for the Prevention of Accidents), respectively responsible for health protection and the prevention of occupational accidents are subject to bias, after all they are hired by the company. As the law did not guarantee autonomy space for independent action of these professionals, in practice it was reversed into bureaucratic and office action of legal defense of the company in case of accidents<sup>29</sup>. In this sense Homero B. M. da Silva also manifested himself by pointing out as a dilemma of SESMT the fact that the service does not always achieve the desired results because:

their occupants being bound by a contract of employment with the employer, are unlikely to be involved in any controversy over the form of work, nor should it be supposed that, in case of litigation, they will turn to the employee side. Also, the tendency is to naturally prioritize the clinical treatment of the employee who presents some disorder or symptoms of illnesses, instead of attacking the causes of the disease, that reside in the working environment<sup>30</sup>.

In turn, outside the walls of the company, if the employee's option is to trigger his (former) employer in the Labor Court, claiming compensation for the damage suffered, it will be a private expert who will issue the report defining his illness as occupational or not, since the labor justice has no permanent experts. Technical expertise is an important tool in accident actions and, in certain cases, decisive, not only to establish the degree of incapacity of the victim, but also the causal or concausal nexus of the accident with the work, so that,

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<sup>29</sup> INOUE, Karina Sami Yamamoto; VILELA, Rodrigo Andrade Gouveia. O poder de agir dos Técnicos de Segurança do Trabalho: conflitos e limitações. **Rev. Bras. Saúde Ocup**, São Paulo, v.39, n.130, p.136-149, dez 2014. Available at: <<http://www.scielo.br/pdf/rbso/v39n130/0303-7657-rbso-39-130-136.pdf>>. Accessed on: 20 Jan. 2018; JACKSON FILHO, José Marçal *et al.* Sobre a aceitabilidade social dos acidentes do trabalho e o inaceitável conceito de ato inseguro. **Rev. Bras. Saúde Ocup**, São Paulo, v.38, n.127, p.6-8, 2013. Available at: <[http://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S0303-76572013000100001](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0303-76572013000100001)>. Accessed on: 24 Mar. 2018; JACKSON FILHO, José Marçal *et al.* Sobre a aceitabilidade social dos acidentes do trabalho e o inaceitável conceito de ato inseguro. **Rev. Bras. Saúde Ocup**, São Paulo, v.38, n.127, p.6-8, 2013. Available at: <[http://www.scielo.br/scielo.php?script=sci\\_arttext&pid=S0303-76572013000100001](http://www.scielo.br/scielo.php?script=sci_arttext&pid=S0303-76572013000100001)>. Accessed on 24 Mar. 2018.

<sup>30</sup> SILVA, Homero Batista Matheus da. **Curso de direito do trabalho aplicado: Segurança e Medicina do Trabalho**, v.3. Rio de Janeiro: Campus, 2015, p. 42.



with the technical and scientific subsidies, the judge can decide the matter with more tranquility and security. The lack of a proper set of experts adds vulnerability<sup>31</sup> to the process (and to the entire system), a fragility that is not always possible to be remedied, because when faced with biased or weak reports<sup>32</sup> it would be necessary to ask for new expertise or to base the decision on other elements of the case (and in disagreement with the expert's report).

In this sense, Vasconcellos<sup>33</sup> notes that the unethical posture of some intervening agents in the health-disease process at work, whether in the private or public sphere, is well documented; and emphasizes that the Worker's Health Surveillance has not yet mobilized to convene "instances of supervision of the professional exercise for a more effective position regarding the violation of the right to health at work"<sup>34</sup>.

## **PARTICIPATION OF THE WORKERS: NEW PATHS, OLD BARRIERS**

<sup>31</sup> In May 2016, the Federal Public Ministry launched an investigation (Operation Hypocrites), which concluded that judicial experts, in collusion with technical assistants and lawyers, defrauded, by paying bribes, reports filed in Labor Justice proceedings in several cities of the state of São Paulo, causing the companies claimed to be "free" from the payment of indemnities arising from an accident at work. The corruption network would involve, in addition to the judicial experts themselves (professionals appointed by the court to make an independent analysis of the case at trial), technical assistants (assistant doctors hired by the parties), lawyers and company representatives. The operation has already detected at least four crimes: false proficiency, judicial expert corruption, passive and active corruption and money laundering; the fraud involved the co-optation of judicial medical experts by medical technical assistants, employed by law firms hired from large companies, resulting in losses for workers and for the judiciary, which bears the expert fees of most workers who lose shares in the Labor Court based on fraudulent reports. As a result of the breach of telematic confidentiality, the previous accuracy of the conclusions of the expert reports and payment of bribes was verified. Information available on various websites, such as [http://www.prsp.mpf.mp.br/sala-de-imprensa/noticias\\_prsp/31-05-16-operacao-hipocritas-mpf-revela-fraudes-em-pericias-medicas-em-campinas-e-sao-paulo](http://www.prsp.mpf.mp.br/sala-de-imprensa/noticias_prsp/31-05-16-operacao-hipocritas-mpf-revela-fraudes-em-pericias-medicas-em-campinas-e-sao-paulo) and <https://g1.globo.com/sp/campinas-regiao/noticia/operacao-da-pf-e-mpf-combate-fraudes-de-pericias-nas-regioes-de-campinas-sorocaba-e-capital.ghtml>. Access on 06.26.2018.

<sup>32</sup> Research concluded that most of these expert reports are lacking in conceptual, methodological, and reasoned arguments, leaving gaps in the clinical area, in the analysis of work activity and in the assessment of disability (MAENO, Maria. *Perícia ou imperícia: laudos da justiça do trabalho sobre LER/DORT*. 2018. 400f. **Thesis** (PhD in Public Health) - Faculdade de Saúde Pública, Universidade de São Paulo, São Paulo, 2018).

<sup>33</sup> VASCONCELLOS, Luiz Carlos Fadel. *Vigilância em Saúde do Trabalhador: decálogo para uma tomada de posição*. **Rev. Bras. Saúde Ocup.** São Paulo, v.43, supl1, 2018. Available at: <http://www.scielo.br/pdf/rbso/v43s1/2317-6369-rbso-43-s01-e1s.pdf>. Accessed on 12 Oct. 2018.

<sup>34</sup> VASCONCELLOS, Luiz Carlos Fadel. *Vigilância em Saúde do Trabalhador: decálogo para uma tomada de posição*. **Rev. Bras. Saúde Ocup.** São Paulo, v. 43, supl1, 2018, p. 4. Available at: <http://www.scielo.br/pdf/rbso/v43s1/2317-6369-rbso-43-s01-e1s.pdf>. Accessed on 12 Oct. 2018.



When presenting the global trends that have succeeded in protecting workers, the OIT stresses the promotion of a culture of compliance, as well as clear laws and, above all, the importance of the worker's active role in SST<sup>35</sup>. In Brazil there are some initiatives in this direction, such as websites and applications to facilitate and encourage the denunciation of exploitation of rights, especially situations of insecure work environment by the workers themselves. Some of these examples are the SIMVIDA software, from the Regional Labor Court of Pará and Amapá (8th Region), the "Proteja Brasil" from the National Human Rights Ombudsman and the "Disque100" itself from the federal government. Also worthy of note is the website of the Public Labor Ministry, which receives denunciations involving workers' collective rights<sup>36</sup>, and the "MPT Pardal" application that made it possible to denounce dangerous work conditions and other abuses by mobile phone, including the sending of photographic evidence<sup>37</sup>.

The possibilities of this integration of society and workers, with the use of new technologies to communicate illegalities in the WH area, are numerous. However, the stimulus to new denunciations, which would seem to be an advance, may not have such meaning in the current Brazilian context. This is because the existing institutional structure, dispersed and pulverized, can barely meet the denunciations it receives. That is, with no fiscal structure to meet the demand the technological innovation is of no use. While it sounds like a great outlet for social control, applications will make little difference if denunciations are not accepted and can lead to attrition and depletion. In addition, providing an instrument for denunciation does not mean opening up space for social participation.

It should also be noted that institutions such as MPT, CEREST and the Ministry of Labor individualize their actions and do not carry them out with a broad and articulated look.

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<sup>35</sup> ORGANIZAÇÃO INTERNACIONAL DO TRABALHO. **Proteção dos trabalhadores num mundo do trabalho em transformação.** Geneva, 2015. Available at: <[http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/relatorio104\\_vi\\_pt.pdf](http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/relatorio104_vi_pt.pdf)>. Access on: 01 May 2018.

<sup>36</sup> Available at [http://portal.mpt.mp.br/wps/portal/portal\\_mpt/mpt/servicos/denuncias/](http://portal.mpt.mp.br/wps/portal/portal_mpt/mpt/servicos/denuncias/). Access on 05.07.2018.

<sup>37</sup> The "MPT Pardal" is an application for smartphones developed with the purpose of facilitating the production of evidence related to denunciations of serious violations of workers' rights and enhancing the performance of the Labor MP. Pictures and films can be sent by any citizen who understands if they encounter a violation of collective interest, such as accident risks or work-related illnesses, as well as child labor and slave labor, among others. According to MPT, in the first year of operation (2015 to 2016) 600 complaints were received (MPT, 2016).



The absence of systematic and in-depth analysis that could qualify and improve care to act in an organized sectorial way, for example, may explain the inefficiency of many interventions aimed at the prevention of occupational accidents and diseases. Therefore, it is urgent to join the various arms of the WH in an articulated network for joint support.

In this sense, the Ministry of Labor itself<sup>38</sup> admits that the large number of injuries to worker's health in Brazil points to the insufficiency of state action in this area, which defies public policies and State action, and a broader and more coordinated action is needed to reduce the damage to workers, the Social Security budget and the country's economy. Given the complexity of the rules and the fragile interinstitutional action, it is urgent to overcome obstacles and approach strategies, think joint actions and promote multidisciplinary debates, to improve knowledge and to qualify the institutional action.

## FINAL CONSIDERATIONS

The intramural SST model should change to provide more autonomy to the action and, consequently, prevention of accidents. It is necessary to create mechanisms that empower the SESMT member to act independently and effectively, so that being hired by the company does not mean partiality and bureaucratic activity. The stability along the lines of what happens with CIPA is not enough, since the performance of the commission is also usually partial, although bilateral. International models need to be sought and ratification of OIT Convention 187 is an important step because it places high priority on the principle of protection, active worker participation and a legal system with defined responsibilities and duties.

Besides the creation and strengthening of spaces in which the worker is heard, with the objective of detecting risk situations and thinking about accident prevention, the use of information technology to make complaints through websites and/or mobile applications is

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<sup>38</sup> BRASIL. Ministério do Trabalho e Emprego. Fundacentro. **Estratégia Nacional para Redução dos Acidentes do Trabalho 2015-2016**. Brasília, 2015. Available at: <http://acesso.mte.gov.br/data/files/FF8080814D5270F0014D71FF7438278E/Estrat%C3%A9gia%20Nacional%20de%20Redu%C3%A7%C3%A3o%20dos%20Acidentes%20do%20Trabalho%202015-2016.pdf>. Accessed on: 20 Mar. 2018.



already a reality and has its importance, after all detailed records of those who live directly with the danger can improve the performance of unions, public ministry and other bodies involved in ensuring the healthy working environment. However, the improvement of social control must first go through the intensification of the leading role of unions and the coordinated and collaborative action of the state bodies responsible for protecting worker's health and safety.

Therefore, it is urgent to think of ways for the active participation of workers in SST, action on the determinants of accidents, prioritization of preventive measures and social control to cease to be promises and normative intent and become part of the reality of the Worker's Health in Brazil.

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