LABOR AND EMPLOYMENT

NEW LAW CHANGES THE RULE ON HAZARD PAY

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Published on December 22, Law 14,766/23 added another paragraph to article 193 of the Consolidated Labor Laws (CLT). This article deals with activities considered hazardous and provides for the granting of a 30% hazard premium to workers exposed to them.

The new provision mainly benefits employers in the road transport sector, as it rules out the payment of hazard pay to vehicle drivers under certain conditions.

The new provision states:

"Paragraph 5. The provisions of subsection I of the head paragraph of this article do not apply to the quantities of flammables contained in the original factory fuel tanks and supplementary fuel tanks, for the own consumption of cargo vehicles and public passenger transport vehicles, machinery and equipment, certified by the competent body, and in cargo refrigeration equipment."

With the inclusion of paragraph 5 in article 193 of the CLT, therefore, the hazardous nature of the activities and operations carried out by drivers of vehicles exposed to flammable fuels is expressly ruled out, provided that the requirements mentioned in the text are met.

The change in the CLT is relevant due to the divergent interpretations given by regional courts regarding the mandatory payment of the hazard premium to workers exposed to this situation. In addition, the Superior Labor Court (TST) has already established that the premium must be paid, even if the legislation in force states otherwise.

Decisions favoring payment of hazard pay are based on the text of Regulatory Standard 16 NR-16) created by the Ministry of Labor to regulate hazardous activities and operations established in articles 193 to 196 of the CLT.

This is because item 16.6 of NR-16 states that "transport operations of flammable liquids or liquefied gases, in any container and in bulk, are considered to be hazardous, with the exception of transport in small quantities, up to a limit of two hundred (200) liters for flammable liquids and one hundred and thirty-five (135) kilos for flammable liquefied gases."

However, when ordering employers to pay hazard pay, judges end up disregarding items 16.6.1 and 16.6.1.1, included in NR-16 in December of 2019.

These items exclude from the standard established by item 16.6 the quantities of flammables contained in vehicles' own consumption tanks, as well as those contained in original factory fuel tanks and supplementary tanks certified by the competent body.

It is therefore believed that the inclusion of paragraph 5 in article 193 of the CLT will guide the courts in their judgments and bring an end to discussions on the subject.

It is important, however, to keep a close eye on future decisions, as it is uncertain whether the change will affect current employment contracts or only those entered into after the law's publication.