

## **Gender discrimination in multinational corporations and the labour law in Brazil**

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### **Introduction**

The labour market in Brazil in recent decades, showed an increase in the female participation rate, increasing the proportion of women with formal employment. Currently, women are present in almost all occupations, including activities before intended exclusively for men, such as in mechanical engineering, public transport, military career, among others. Thus, in general, the role of women in Brazilian society has been extended as it is being reinvented his way of being in the workplace, with impacts on family life (Hirata and Kergoat, 2007). However, despite having overcome occupational segregation, it is still small the share of women who conquers management positions before entrusted only to men (eg, the executive direction of companies and managerial positions in the public sector).

Despite the labour legislation, women continue to suffer gender discrimination in the Brazilian labour market, often due to the existence of a professional culture sexist, typical of a still markedly patriarchal society (Machado, 2000), in other cases because the need to move away temporarily from professional activity due to maternity (Proni, 2013).

Since the 1988 Federal Constitution, equal rights for men and women were assured, with particular emphasis on the labour market. Public policies to combat discrimination and prevent the deliberate devaluation of the female labor force were adopted. However, most women remain subject to a double shift – due to being socially perceived as responsible for the care of children and elderly – which has motivated campaigns of feminist movements. That is, despite the achievements in the legal and normative level, the dilemma of gender discrimination has not yet been solved in Brazil (Hirata, 2007).

Today, despite the technological revolution and changes occurring in the national labour market, many women continue to be pushed into the most precarious jobs, informal and less remuneration, including outsourced functions. In addition, they face greater

difficulties than men to succeed in a professional career, even when they have the same degree of school education.

There is also a discriminatory culture effect for women entering the corporate world: hardly reach the most senior positions in a large company, as these positions are usually reserved for men (setting what the literature calls 'glass ceiling'). This has in fact been an important issue for the people management policy in large companies, who need to demonstrate a politically correct stance and a leading role.

This article aims to: i) discuss how labour law in Brazil sought to combat gender discrimination in the context of broader economic transformation in recent decades; and ii) to point out the limits and possibilities for the application and effectiveness of legislation regarding gender equity issues in the corporate world. In particular, it aims to show how some multinational companies have dealt with the topic in their social responsibility programs.

## **1. The women and the labour law in Brazil**

A retrospective of the struggles to value and protect women's labor in Brazil may not differ substantively from other international experiences, but it is certainly marked by specific cuts, corresponding to the recent history of the country.

The relevant legislation to the women's labour is harmonized, in part, with the changes that the subject has suffered in the last quarter of the twentieth century<sup>1</sup>. From the perspective of sociology of law, observe paradigm shifts in the way of organizing industrial work, first settled in the mainly male labour. But surely, political disputes have also played an important weight in this trajectory.

The protection of motherhood is the main theme that distinguishes women from men in regard to labour law. Protecting the woman who becomes a mother (or rather the woman who breastfeeds and indirectly the newborns) became part of social rights in the Constitution since the 'Vargas era'. However, those rights were not, in fact, hired and

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<sup>1</sup> The history of women's work in Brazil can be divided into 'eras' (or seasons), defined by legal frameworks (Calil, 2000). Initially, the woman was excluded from the work world and confined at home under male domination, or had a subordinate economic participation - this period is from the land of the Old Republic (1891) until the Revolution of 1930. In the second phase, it can talk that starts the legal empowerment and protection of women's work - this period is inaugurated with the 1934 Constitution and in particular the enactment of the CLT (1943), going so far open transition by the New Republic (1985). The third wave corresponding to the consolidation of social rights, the emphasis on equality at work and the greater effectiveness of the performance of women as social actors - this time of the promulgation of the Citizen Constitution of 1988 and continue until today.

respected with the Constitutional Charter of 1988, at which time the democratic rule of law has solidified the country.

The recognition of maternity protection in the Brazilian constitution as a social right also expressed the strong influence of international movements for human rights in national law. It can be said that the inclusion of social rights (called later 'second generation rights') in the Federal Constitution pointed civilizing advance<sup>2</sup>.

The labor laws currently brings a series of commands related primarily to gender equality and then to the labor protection of women. These commands have been extended to the protection of pregnant and lactating women, aiming at the health of the worker and the newborn. Thus, the 1988 Constitution provides, in Article 5, I, equal rights and obligations between men and women, prohibiting wage gap in performance of duties and in hiring criteria by reason of sex, marital status, age and color. In addition, lengthened maternity leave to 84 to 120 days, without loss of job and salary, including for domestic and rural workers.

Another important advancement, achievement in the field of social rights, was the employment guarantee for the mother, from confirmation of pregnancy until five months after childbirth, prohibiting dismissal during this period.

It is also worth mentioning that the Federal Constitution extended paid maternity leave to the domestic worker and independent worker, pursuant to Article 7, sole paragraph, with the cost source of Social Security.

In 1994, the working insured in special mode became entitled to maternity pay (an amount equivalent to one minimum wage), provided that proves the rural activity, albeit discontinuously, in the twelve months prior to the beginning of the benefit, according to article 39 of Law no. 8213, with current wording of Law 8861 of 1994. The trainees and autonomous are excluded although they are mandatory insured Social Security (Proni, 2013).

It is important to emphasize that Brazil, like many other countries, has suffered strong pressure from international organizations to create a protective regulations for women, although this influence does not explain the jump in the constitutional protection offered specifically in the case of maternity leave.

Indeed, economic development and consolidation of democracy can help enable significant advances in the area of social protection, but do not explain the stage reached in

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<sup>2</sup> From the perspective of Norberto Bobbio (2004), first-generation rights include individual, public and political rights; the second-generation rights include social, cultural and economic rights; the rights of third generation include environmental protection and consumer rights; and the fourth generation of rights refer to those linked to the human genetic heritage.

each country. It required the presence of favorable political forces to corporate resistance was overcome and there was significant progress in that direction.

The regulation of female work force in the country is suitable, since it eliminates (under the law) discriminatory or restrictive practice in labor market, bringing the spirit of universal norms, revoking in CLT – Consolidation of Labour Law, anything against it (through ordinary laws ‘harmonizing’). Thus, among many others, articles authorizing the interference of the husband in the woman employment contract have been revoked (Law no. 7855/89).

Over time, a series of repeals laws and harmonizing measures to the constitutional text were integrating the labor legislation, improving the protection of women's work and promoting equal treatment. For instance, Law no. 9263/96 aggravated cases of intentional induction to the practice of surgical sterilization, Law no. 9799/99 prohibited body searches and the use of references or criteria based on sex and Law no. 10244/01 repealed article 376 of the Labor Code to allow for overtime by women. Also eliminated differences in maternity leave for the adopting mother and extended maternity leave for 180 days, on a voluntary basis.

Recently, important jurisprudential understanding of TST – Labour Superior Court, modified Precedent 244, item III, which now has the following wording: “III - A pregnant employee is entitled to temporary stability provided for in art. 10, item II, letter ‘b’, the Constitutional Provisions Act, even in the event of admission by fixed-term contract.”

The harmonization of internal rights to the ILO International Conventions also meant a way of confronting the problems in debate, since Brazil integrated the Conventions 100 and 111, dealing with equal pay for men and women workers and equal treatment in employment, respectively.

Generally and quite succinctly, these were the answers and confrontations produced by the labour law in this arena of political conflict in the recent period.

## **2. The unequal status of Brazilian women in formal employment**

The 1990s was marked by the adoption of neoliberal policies in Brazil, greatly impacting the dynamics of the economy, the labour market, employment relations and the Labour Law itself (Krein, 2013). There was disruption of the labour market, with rising unemployment, informality growth and decline in real average wage. In parallel, there was a

deregulation of employment with flexible working hours and the hiring and remuneration standards.

However, this situation began to change after 2003, in a scenario of economic recovery and restructuring of the labour market (Baltar; Krein and Leone, 2009). There was a gradual reduction in the unemployment rate, increased weight of formal employment and elevation of the real minimum wage. Advances observed were related to macroeconomic dynamics, the lower demographic pressure, government policies for the labour market as well as to the most appropriate performance of public institutions focused to social and labour issues. The new context allowed a major role of trade unions through collective bargaining, which resulted in increase in minimum wages of occupational categories and overall elevation of rights dealt in conventions and collective agreements, thereby contributing to the reduction of inequalities in employment, including with respect to women.

At the beginning of the current decade, the scenario changed again. But despite the poor performance of the national economy, the unemployment rate remained low and the level of formal employment continued to increase. The crisis in the Brazilian labour market came only in 2015, but is still very early point trends for the coming years.

**Table 1 – Relative distribution of formal jobs by gender.**

**Brazil: 1988-2013.**

(%)

Year	Men	Women	Total
1988	66.1	33.9	100.0
1999	60.9	39.1	100.0
2004	60.0	40.0	100.0
2009	58.6	41.4	100.0
2013	57.2	42.8	100.0

Source: Ministry of Labour and Employment - Annual Report of Social Information (RAIS).

It should be emphasized that, historically, the percentage of women with a formal contract was much lower than that of men. Moreover, the form of female occupational insertion was generally less secure than the male. However, this is changing, albeit slowly. In the period 1988-2013, it increased the relative share of women in institutionalized labour market. Considering the formal employment (ie, when the employment relationship is regulated), female participation increased from 33.9% to 42.8% (Table 1). Indeed, the formalization of employment (or reduction of informal employment) benefited proportionately more female workforce.

Despite the employer's campaign against the expansion of maternity leave in the Federal Constitution of 1988 and the fear that the expansion of this right could cause disincentive to hiring women, it is clear that the proportion of women in formal employment increased significantly over the decade 1990. And in the next decade, continued to increase gradually.

There was a real growth of wages paid for formal employees in the period 2003-2013 (Table 2). The difference between the average pay received by men and women decreased slightly during this period: in December 2003, the average salary for women corresponded to 80.3% of the average salary for men, while in December 2013 this ratio amounted to 82.3%.

**Table 2 - Real average earnings in formal employment by gender.**

**Brazil: 2013.**

(R\$)

Year	Men (A)	Women (B)	Total	Ratio (B/A)
2003	1,861.79	1,494.57	1,715.07	0.803
2006	2,031.15	1,685.18	1,890.34	0.830
2009	2,174.73	1,801.65	2,019.71	0.828
2011	2,298.55	1,903.26	2,132.39	0.828
2013	2,451.20	2,018.48	2,265.71	0.823

Source: Ministry of Labour and Employment - Annual Report of Social Information (RAIS).

Nevertheless, gender discrimination continued translating into high inequality of pay between men and women. It should be noted that disparities in higher education are higher, precisely the group in which women have greater participation, surpassing men in absolute numbers (Leone and Baltar, 2006). In any case, the differences in performance by gender are great for all kinds of jobs: management positions, top-level professional occupations, technical and administrative services, sales staff, manual labour in the production of goods etc. (Leone and Teixeira, 2013).

Thus, although women occupy highly qualified professions and social status, segregation continues. Women face invisible barriers in the labour market, such as the so-called 'glass ceiling', which expresses the great difficulty of the woman to be promoted to prominent positions (with high responsibility), despite recent achievements. This difficulty may be related to the double workday and the need to reconcile work and family life.

It is important to mention that, according to Ministry of Labour and Employment's report (2014), women are the majority among registered employees who have higher level of education: 58.9% in 2013. However, among these employees with educational level

higher, the average salary paid to women still well below that of men: R\$ 3,980.70 vs. R\$ 6,533.60. In the segment with higher levels of education, women's average pay amounted to only 60.9% of average male earnings. It appears, therefore, a pronounced gender discrimination among the professionals who compete for better jobs in Brazil.

**Table 3 - Proportion of women among formal employees in large establishments according to occupational subgroup. Brazil: 2013.** (%)

Occupational Subgroup	from 500 to 999 employees	1000 or more employees	Total large companies
Senior officers and directors of public institution	51,3	53,5	53,1
Company directors (other than public interest)	33,5	47,3	43,3
Directors and managers in healthcare, education or culture business	71,4	75,7	74,9
Managers	34,6	38,7	37,2
Other top-level professionals	59,8	66,2	65,0
Subtotal	56,0	62,9	61,6
Other occupational subgroups	39,6	45,6	44,1
<b>Total</b>	42,4	49,7	47,9

Source: Ministry of Labour and Employment - Annual Report of Social Information (RAIS).

Considering the formal employment in large institutions (those with 500 or more employees) in 2013, there is certain balance in the distribution of men and women: 52.1% vs. 47.9% (Table 3). However, it is clear that women are the majority among higher education professionals (65.0%), but are a minority among managers (37.2%) and among company directors (43.3%). With regard to leadership positions, women's participation is only majority in companies in the field of healthcare, education or culture (74.9%).

**Table 4 - Proportion of average earnings of women relative to men among formal employees in large institutions for occupational subgroup. Brazil: 2013.** (%)

Occupational Subgroup	from 500 to 999 employees	1000 or more employees	Total large companies
Senior officers and directors of public institution	72,7	74,9	74,8
Company directors (other than public interest)	38,6	40,4	39,0
Directors and managers in healthcare, education or culture business	56,8	84,0	78,2
Managers	69,5	66,3	67,7
<b>Total</b>	67,2	69,4	68,9

Source: Ministry of Labour and Employment - Annual Report of Social Information (RAIS).

The pay gap between men and women in large institutions is significant, especially in positions of command in the private sector (Table 4). In 2013, among the managers, the average salary for women corresponded to 67.7% of the average salary for men, but among the company directors women received, on average, only 39% of the wages paid to men. In turn, between senior officers and directors of public institutions the proportion was 74.8%.

Therefore, the problem of gender discrimination associated with the so-called 'glass ceiling' is quite common in large companies operating in Brazil.

### **3. Multinationals and the gender issue: some examples**

While the labor law has evolved to confront the gender issue and equal conditions in the workplace, simultaneously, public institutions of advocacy, such as the Labour Court and the Labour Public Ministry have implemented more rigorous investigation and prosecution of cases concerning the matter. Thus, special focus was placed on large corporations, whether national and international property to see if there were any recurrent problem of discrimination related to the sex of the employees.

On the legal and social consequences of the matter 'equality between men and women', the significant increase in lawsuits denouncing abuses, harassment and equal pay, the constant airing of the topic in the media, the militancy of social entities and trade union movements, yet, the call 'politically correct', large corporations included the issue in Social Responsibility programs.

The purpose of this section is to map the positions of three multinational companies operating in Brazil for a long time, based on the Social Responsibility Program of Big Business. But first, a quick clarification is necessary.

In general, social responsibility is a topic that has been widely discussed in recent decades in Brazil. It is understood that the company, in addition to producing wealth (goods and services), is also a social worker, therefore, as part of the capitalist society, has also the duty to be accountable to other components.

Nowadays there is a social pressure for companies not only pursue profits. In his role, responsibilities are involved such as the preservation of the environment, investment in safe production processes, creating and maintaining jobs, contribution to vocational training aimed at qualifying the quality of products and services it offers to the market, and others that are not required by law but that are expected of a socially responsible company (Pinto and Ribeiro, 2004).



Among the many multinational companies that have to deal with the theme in their annual reports with the creation of specific programs aimed at female labor, are Volkswagen, Unilever and Nestlé. We selected these cases for a brief analysis.

**Table 5 - Profile of the selected multinationals operating in Brazil.**

Company	In Brazil since	Number of Employees	Net Annual Revenue US\$ billion (2013)
Volkswagen	1953	22 mil	11,037
Unilever	1929	13 mil	3,046
Nestlé	1921	20 mil	2,060

Source: companies themselves for the number of employees and operating data in Brazil. Revenue data: Exame - Annual Best and Biggest 2014.

### 3.1. *The gender issue in the reporting of Volkswagen*

The Volkswagen Social Responsibility Report in Brazil (2013) presents a range of information of the company's operations, since the number of cars sold, up to the partners programs it supports in communities near its plants.

Information relating to diversity, including gender, occupy important part of the document, its own chapter, seeking to legitimize 'speaks' of concern and interest in gender diversity and inclusion of women, especially in the production area, notably heavy and rustic. The modernization of production lines allowed, however, that more women could compose the hourly workforce (factory).

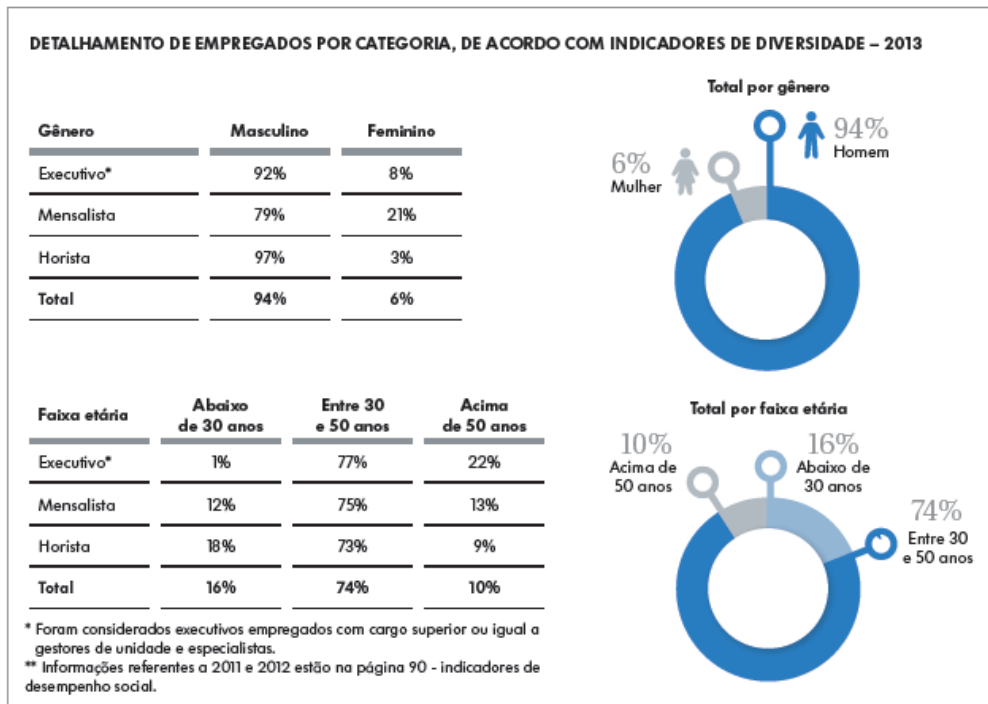
According to the report, regarding the difference between gender, the company emphasizes that diversity is a historically sensitive issue for the automotive industry, given the very nature of the activity<sup>3</sup>. Informs that the issue is a major challenge, since it currently has in general about 94% of male employees and 6% of women. This average is lower in the subcategory called hourly (production) and has 3% of its effective formed by women. Already the salaried class, more closely linked to administrative processes, has about 21% women, while female representation on the company's executive body is equivalent to 8%<sup>4</sup>. Among the learners, women are 27%.

The Volkswagen Group also states in his report that the company in Brazil will seek to increase the participation of women in its staff and emphasizes the number of

<sup>3</sup> Highlighting the report expression that refers to activities divided by sex: heavy, productive activities must be carried out by lighter men and activities and less robust for women.

<sup>4</sup> The extremely low percentage of executive denounce and show the 'glass ceiling' as theoretical discussions on the theme of women's work.

recent hires: between 2011 and 2013, 382 women were hired by the company. In 2013, they accounted for 11% of total contracts, surpassing the overall average current distribution.



### 3.2. The gender issue in the reporting of Unilever

The reporting of Unilever was renamed a few years ago, Progress Report and Sustainability Plan. Sustainability being understood in general, applied to the environment, productive issues, people management and care with brands that produces and sells. Over 400 brand worldwide.

The reporting of Brazil (2014), the company reserves a discrete space to address the issue of gender inclusion and retention of labor, women workers, through the disclosure of their actions on the environment and support to where communities are removed from the raw material used in the manufacture of its various products.

According to the report, over the three previous years (2011, 2012 and 2013), the company increased by 15% in the number of women in leadership positions, closing the year 2014 with almost 50% of women in leadership positions.

Unilever, for reporting purposes, women with charge of coordination (production, quality, safety) are already considered in the position of leadership position, however, the executive themselves, with decision-making power and a certain autonomy, are only the directors or offices above. However, the company does not disclose how many directors

are part of its operation in Brazil. Thus, this number reported, 50% of women in positions of leadership, is subject to interpretation and is subject to doubt.

According to a survey held by the McKinsey consultancy, at the request of the very Unilever, women hold only 5% of management positions in major Latin American companies, report presented by Unilever, during the Forum 'Moment Women' organized in Sao Paulo in 2013. In addition, the wages between women and men executives continues to contain differences.

In his own 2012 Sustainability Report, the raw data refute the idea that 50% of leadership positions are held by women. Let's look at the discrepancy in numbers when it comes to specifically governing office (directors):

**Table 6 - Unilever worker's profile in Brazil.**

Numbers of workers by position	2011		2012	
	Male	Female	Male	Female
Director	75	48	72	49
Manager	276	245	277	255
Administration	4,948	1,912	4,915	2,003
Factory	4,444	1,266	3,999	1,179
Learners	41	28	109	35
Trainees	31	29	29	36
Intern	124	172	119	196
All by gender	9,939	3,700	9,520	3,753
All	13,639		13,273	
Outsourced workers	4,713		3,000	
All with outsourced workers	18,352		16,273	

### 3.3. *The gender issue in the reporting of Nestlé*

The multinational Nestlé presents its reporting of social responsibility under the name 'Nestlé Brazil Report Creating Shared Value'. According to its 2014 report, published on the company's site in Brazil only in English, the large shared belief in the Nestlé operation is that diversity should be encouraged and naturalized. In a separate chapter, entitled 'Enhancing the Gender Balance in Our Workforce', Nestlé says its commitment by 2018, is to be a model company in gender balance, annually increasing percentage of women in management and board (senior leaders).

In terms of progress, the company presents the following numbers: in 2014, 25% of senior leaders and 34% of managers were women, against 31% in 2013. They argue that this annual growth goes for support for the achievement of the goal and 2018.

For this, the company also discloses that launched in 2012 the Flexible Work Environment at Nestlé Guidelines program, promoting all employees, but especially women, the flexibility so that there is a balance between work and family, generating well-being and ecosystem in which men and women can progress also. Among these policies are applied breastfeeding room inside the offices and plants, parental leave and flexible working arrangements.

#### **4. Concluding remarks**

In recent decades, the women's participation in formal employment increased and the number of women working in prominent professions rose, but despite all the achievements under the legal framework, there is still significant discrimination in terms of gender. This problem seems to be far from being solved in Brazil.

From the point of view of labor law, equal rights between men and women and maternity protection are issues that have been recognized and positivized in the Federal Constitution of 1988. Since then, there has been a hard struggle for legislators, judges, prosecutors and lawyers in order to enhance the effectiveness of existing mechanisms to combat gender discrimination. But a right is not always effective. Its effectiveness requires much more than the formal recognition of the wording of the law. It is necessary to create public policies to adapt employment relations to existing juridical norms.

It should be emphasized that, the Brazilian federal government committed itself to the promotion of decent work (with an emphasis on combating all forms of discrimination in employment) since 2003; and the National Decent Work Agenda was adopted in 2006. It is also worth mentioning that in this period, the most progressive trade unions have come to recognize the importance of gender issues in building a more just and egalitarian society.

However, gender discrimination still present even in large institutions, which are generally more careful to comply with the legislation. Two evidence draw attention: women are more difficult to achieve command posts in the companies and the average wage received by women is usually lower than the average wage earned by men.

The three examined multinational corporations have slightly different situations: Volkswagen has a very small percentage of women in its workforce (especially in executive positions or between managers), Nestlé has a mostly male frame, while Unilever shows an opening the higher female participation. Although it is a very small sample of the multinationals operating in Brazil, it can say that this is the prevailing trend: a greater

number of men in leadership positions or more responsible roles. And a recent concern of these corporations to increase female participation, but with poor results. The social responsibility reports available show a still very unequal situation, but that is denied by the company or softened in communicating with the general public.

It is import to note: it is very good that large corporations have set up specific actions to address the problems related to gender equality at work. In the three cases analyzed, there are interesting initiatives that allow us to suppose the existence of a slow change in corporate culture. However, to date, the "textbook of good intentions" (a set of commitments and guidelines) is far from producing satisfactory results. One can not claim that such internal programs implemented by companies are totally inert or fallacious, but one can not conclude that these initiatives point to the solution of the problem of promoting gender equality in the corporate world.

To advance consistently in this field is necessary to expand the role of public institutions work (monitoring, assessment, condemnation) and broaden the scope of affirmative action for the promotion of gender equality, so as to correct this historical feature of the Brazilian labour market. The full effectiveness of the legal rule requires a discussion of the role and design of public policies.

The possibilities of advancing through legal instruments and policies are not previously defined, it depends on the economic context and the political arrangements in each country. In turn, the position of multinational companies can also vary from one country to another. And, similarly, the union mobilization for equality between men and women at work also differs when comparing nations.

In Brazil, a gap between theory and practice remains. Still observed an incipient stage of adoption of measures and affirmative actions that increase women's inclusion in the formal labor market and stimulate a professional progression similar to that of men. And there is much to advance the adoption of actions aimed at reconciling work and family, and strengthening policies to combat moral harassment and sexual harassment. All these actions could produce together a significant cultural change in the working world.

Affirmative actions of private nature, that appear in the social responsibility programs of large companies, have a limited reach. Try to indicate the existence of good intentions, but are examined in a very superficial way in reports to shareholders and the general public. From the point of view of trade unions, they are not taken seriously within large companies, because what really matters are the production targets, cost containment, and operational profitability.

Therefore, the State has a key role in promoting a significant change. Thus, public institutions working in this area (Ministry of Labour and Employment, the Public Ministry of Labour and the Labour Court) should have special attention, as they are crucial to ensure the protection of the weakest groups and the effectiveness of existing rules.

As a complement, a strong and committed union movement (able to mobilize the professional categories in the fight against various forms of discrimination at work) is essential. A union movement with a national basis, with national mobilization capacity. This mobilization should be one of the motivations of the unions.

Only the coercive power of the State and the daily presence of unions may bring significant advances in the fight against gender discrimination. To move forward there must be convergence of purpose between the various actors who share this ideal. The promotion of equal treatment within large corporations can have a demonstration effect and can contribute to social awareness about the new status achieved by women.

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