



## CIVIL, ADMINISTRATIVE, CRIMINAL RESPONSIBILITY, ETHICS AND POLITICS OF THE ERGONOMIST

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### Summary

**Introduction:** This article analyzes the responsibility of the ergonomist in his professional performance, with repercussions in the civil, administrative, criminal, ethical and political spheres. **Objectives:** The general objective of the study is to analyze the aspects and contours of the responsibility of professional ergonomists in their professional activities. **Theoretical Reference:** Civil liability is based on the commandment that determines compensation for damage caused to someone, whether through omission or action. In the administrative field, the ergonomist is in demand when working in an environment that is linked to public or private service. In the criminal context, the ergonomist may suffer sanctions of deprivation of liberty for acts he has committed that constitute criminal types provided for in the Penal Code or extravagant law. In the ethical sphere, each professional will be penalized before their professional council. Political responsibility arises from the Clean Record Law, which makes professionals who suffer exclusion from the profession in an ethical-disciplinary process ineligible. **Methodology:** To better understand the study's questions, the legal-dogmatic aspect was identified as the most appropriate, with a deductive-inductive reasoning structure. **Results:** Violation of the ergonomist's behavioral expectations occurs when a technical or legal standard is not respected, which is a breach of the workers' normative expectations of being recognized, which leads to the ergonomist being questioned in their conduct. **Conclusion:** Civil, administrative, criminal, ethical and political liability is a reality that can affect any professionals who work in the capital-labor relationship, which is conflictual by its nature, as it is an ambivalent relationship, since while the worker sells the only thing he has, which is his workforce, the entrepreneur is more than just seeking his survival, he is accumulating wealth.

**Key words:** Ergonomics. Professional responsibility. Indemnity.

## 1 INTRODUCTION

The professional ergonomist has an important role in ensuring the promotion of a healthy and safe working environment for workers, developing their skills in compliance with professional technical standards and legal provisions that establish the parameters that allow the adaptation of working conditions to psychophysiological peculiarities of the workers.

The ergonomist's basic skills are to promote the assessment of the demands of an ergonomic project, interpret and regularly document the findings, develop an ergonomic intervention, implement recommendations to improve the quality of life of workers, evaluate the results of suggested implementations, among others.

In this context, the ergonomist can be questioned in his performance, in view of his conduct and obligations, by workers, employers, unions and members of the Public Ministry of Labor, covering the spheres of ethical, civil, administrative, criminal and political responsibility.

This article is justified as it is a current topic, of great relevance for the whole of society and for the professional development of ergonomists, who must be aware of the ethical, legal and political repercussions of their actions.

## 2 OBJECTIVE

Analyze the aspects and contours of the professional ergonomist's responsibility in their professional performance, in five spheres.

## 3 THEORETICAL FRAMEWORK

In professional practice, the ergonomist is susceptible to five spheres of responsibility: ethical, civil, administrative, criminal and political.

Civil liability is based on the commandment that determines compensation for damage caused to someone, whether through omission or action, according to arts. 186 and 927 of the Civil Code. The civil liability of the ergonomist, as a self-employed professional, is arranged in accordance with art. 14, §4° of the Consumer Protection Code (CDC), that is, it operates through verification of guilt. Compensation can affect material, moral, existential, aesthetic aspects, etc.

Soares and Soares (2014a) assert that civil liability

expresses the perception of compensation for damage, when a legal norm is violated, of an obligation, that is, a legal link that allows the active subject of a relationship to demand from the passive subject the fulfillment of an established performance. (SOARES E SOARES, 2014a, p. 436).

In the administrative field, the ergonomist is required when working in an environment that is linked to a public or private service, in which the complaint can be filed, with the director of the institution and in this case, public service, the linked Department of Health, depending on the provisions of the law that applies within the scope of the ergonomist's employment relationship.

In the criminal context, the ergonomist may suffer sanctions of deprivation of liberty for acts he has committed that constitute criminal types provided for in the Penal Code or extravagant law (e.g.: forgery of a private document - art. 298, ideological falsehood - art. 299, false medical certificate - art. 302, use of a false document - art. 304, suppression of document - art. 305, procedural fraud - art. 307, etc.).

In this criminal aspect, a professional commits ideological falsehood who, in response to shady business requirements, omits information in an ergonomic analysis that alters the truth about a relevant fact, such as, for example, not revealing that certain machinery is out of date with maintenance and could cause serious bodily harm to a worker, even fatal, resulting in the application of a criminal sanction of imprisonment from one to five years.

In the ethical sphere, each professional will be penalized by their respective council, be it a doctor, physiotherapist, nurse, physical educator, occupational therapist, engineer, etc.

As an example, physiotherapists are responsible to the Federal Council of Physiotherapy and Occupational Therapy (COFFITO) which established, through Resolution No. 424/2013, the Physiotherapy Code of Ethics and Deontology.

The disciplinary sphere for the doctor is based on an infra-legal administrative act that is the CEM (CFM Resolution No. 1,931/2009), which does not meet the requirements of the typicality of facts and sanctions, a situation that leads to doubt as to its constitutionality.

With regard to doctors, it is up to the Regional Councils of Medicine and the Federal Council of Medicine to apply the disciplinary penalties provided for in art. 22 of Law No. 3,268/57, which are: confidential warning, confidential censure, public censure, suspension of professional practice for up to 30 days and revocation of professional practice, ad referendum of the Federal Council.

Furthermore, the resolution of the Federal Council of Medicine (CFM) No. 1,488/1998, which provides for specific standards for doctors who care for workers, provides in art. 5° that

Art. 5 - Occupational doctors (as such recognized by law), especially those who work in a company as contractors, advisors or consultants in occupational health, will be held responsible for acts that contribute to harming the health of this clientele together with others doctors who work in the company and who are under their supervision in procedures involving worker health, especially in relation to collective action to promote and protect their health. (BRAZIL, CFM, 1998).

From what we can extract, an occupational medical ergonomist, even if not employed by a company, being solely a consultant, can be held responsible for acts that cause harm to the health of workers, such as in the situation of using indices and checklists without serviceability, which do not allow the effective improvement of ergonomic working conditions, which do not prevent an illicit act from occurring.

Regarding the doctor's disciplinary sanction, Lima (2012) shows that

holding doctors responsible for violating fundamental rules of their profession is a right of society and a duty of the State. It is up to the medical councils to investigate, with impartiality, independence and severity, any ethical infractions by their professionals. When these infractions transcend the strictly ethical scope and enter the sphere of legal illegality, it is up to the State to activate its control and repression mechanisms so that order, collective security and the ideal of justice are maintained and achieved. (LIMA, 2012, p. 41).

Finally, political responsibility comes from the Clean Record Law (Complementary Law No. 135/2010), which amended Complementary Law No. 64/1994, determining in art. 1st, I, "m" who are ineligible for any position

those who are excluded from exercising the profession, by sanctioning decision of the competent professional body, as a result of an ethical-professional infraction, for a period of 8 (eight) years, unless the act has been annulled or suspended by the Judiciary". (emphasis added). (BRAZIL, Complementary Law no. 64/1994).

As in the aforementioned law, expressed in paragraph "o", they are also ineligible for any position

those who are dismissed from public service as a result of administrative or judicial proceedings, for a period of 8 (eight) years, counting from the decision, unless the act has been suspended or annulled by the Judiciary. (BRAZIL, Complementary Law no. 64/1994).

It appears that the Clean Record Law determined the ineligibility of those revoked from the profession as a result of ethical-professional infractions. It is up to each Federal Class Council to communicate to the Regional Electoral Court of each State the updated list of these punished professionals.

Asserted by Soares and Soares (2014b), regarding the professional in the area of worker health and safety, they must “[...] be vigilant regarding the quality of their decision-making, and must have as a compass to maintain and promote the health of workers, improving working conditions.”

#### **4 METHODOLOGY**

To better understand the questions surrounding the study, the legal-dogmatic aspect was identified as the most appropriate, with a deductive-inductive reasoning structure. The investigation has propositional characteristics, with a view to proposing changes aimed at improving a current condition that is considered inadequate.

In order for there to be a better assimilation of the study phenomenon with the desired objectives, the best form of approach was studied, and attributed to theoretical/bibliographical research as the most appropriate.

#### **5 RESULTS**

Violation of the ergonomist's behavioral expectations occurs when a technical or legal standard is not respected, which is a fracture in the workers' normative expectations of being recognized that leads to the ergonomist being questioned in their conduct.

Accountability in the civil, administrative, criminal, ethical and political spheres has been increasingly demanded today, given the greater knowledge of workers about their rights, entering judicially and extrajudicially in search of repairing a damage suffered, guaranteeing the social function of work, which It is not about materially protecting the individual to guarantee their own survival, but rather about creating social citizenship, political participation, service to others, which goes beyond the individual and is valuable for society itself.

In this conjecture, unions have a fundamental role in fighting to improve the working environment of their representatives, as does the Public Ministry of Labor, which can raise any of these responsibilities, with a view to ensuring the fundamental rights of workers are enforced.

#### **6 CONCLUSION**

Workers wage a struggle for recognition, and the violation of an expectation of rights affects the person's individual self-realization, which leads to conflicts that generate the search for professionals, including ergonomists, to be held accountable for an obligation improperly fulfilled.

In view of this, the ergonomist must be careful to carry out all of his competencies within legal standards, correctly documenting all his ergonomic documents, reporting illegal acts, and not giving in to business pressures that seek to increase productivity at the expense of the health and lives of working people.

Civil, administrative, criminal, ethical and political liability is a reality that can affect any professionals who work in the capital-labor relationship, which is conflictual by its nature, as it is an ambivalent relationship, since while the worker sells the only The thing he has, which is his workforce, to guarantee survival, the entrepreneur is more than seeking his

survival, he is accumulating wealth. And, this profit can never be sustained through non-compliance with a legal and moral obligation, which is to guarantee the best ergonomic conditions in the work environment.

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