ANAMATRA
ASSOCIAÇÃO NACIONAL DOS MAGISTRADOS DA JUSTIÇA DO TRABALHO

Brasília, May 18th, 2018.

Letter N.285

Ms. Corinne Vargha, Director of STANDARDS
International Labour Organization (ILO)
Department of Standards
Geneva, Switzerland

Dear Ms. Corinne Vargha,

Considering the Letter of Intent entered by the National Association of Labor Magistrates (ANAMATRA) and the International Labour Standards Department of the International Labour Organization (ILO) on April 26th, 2012, as well as the common objectives and priorities for the promotion of a Decent Work Agenda for men and women, through social dialogue and respect for fundamental principles and rights at work, we present, for your information, the theses adopted by the 19th National Congress of Labor Magistrates (CONAMAT), acknowledging the violations to International Labor Conventions promoted by the Labor Reform (Law 13467, 13 July 2017), according to the enclosed document.

In accordance with the provisions of the Letter of Intent, the parties have agreed to establish cooperative and informational relations on international labor standards and in particular on International Labor Law; Mechanisms for Controlling the Application of International Labor Standards and the relationships between Domestic Law and International Labor Law.

In view of this, and in view of the comments brought by the Report of the ILO Committee of Experts for the 107th International Labor Conference regarding the provisions of the

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new Brazilian labor law that violate the OIT Convention N. 98, this information is a contribution to the debates to be held on the subject.

Should you require any further clarification on the matter, please do not hesitate to contact ANAMATRA.

Sincerely,

Guilherme Guimarães Feliciano
President of ANAMATRA

Noemia Aparecida Garcia Porto
Vice-President of ANAMATRA

Luciana Paula Conforti
Director of Citizenship and Human Rights of ANAMATRA

THESES APPROVED BY THE 19th NATIONAL CONFERENCE OF LABOR MAGISTRATES (CONAMAT) ON THE VIOLATIONS TO INTERNATIONAL LABOR CONVENTIONS PROMOTED BY THE BRAZILIAN LABOR REFORM

LABOR REFORM: CONVENTIONALITY CONTROL AND VIOLATION OF INTERNATIONAL STANDARDS.

LABOR REFORM. LAW 13467/2017. VERTICAL INCOMPATIBILITY WITH ILO CONVENTIONS. ABSENCE OF TRIPARTITE CONSULTATION. OFFENSE TO ILO CONVENTIONS 122, 144 AND 154, AS WELL AS THE PROVISIONS 1075, 1081 AND 1082 OF COMMITTEE ON FREEDOM OF ASSOCIATION OF THE ILO GOVERNING BODY. ABSENCE OF PRIOR CONSULTATION OF WORKERS' ORGANIZATIONS. CONTROL OF CONVENTIONALITY IN THE LABOR REFORM. POSSIBILITY. LEGAL NATURE OF INTERNATIONAL LABOR STANDARDS. SUPRALEGALITY. EVEN IF THE INCONVENTIONALITY OF ALL REFORM IS NOT RECOGNIZED, THE SPECIFIC CONTROL OF CONVENTIONALITY OF THE CHANGED PROVISIONS SHOULD BE PERFORMED. THE SUPREME FEDERAL COURT RECOGNIZED THE SUPRALEGAL CHARACTER OF THE INTERNATIONAL CONVENTIONS, AND STATUTORY LAWS ARE REQUIRED TO BE CONSISTENT WITH INTERNATIONAL STANDARDS, SPECIALLY THE PROVISIONS REGARDING HUMAN RIGHTS.

CONVENTIONALITY AND CONSTITUTIONALITY CONTROL OF THE SOLE PARAGRAPH, ART. 611-B, OF THE CLT.

CONVENTIONALITY AND CONSTITUTIONALITY CONTROL OF THE SOLE PARAGRAPH, ART. 611-B, OF THE CLT. PROTECTION OF THE WORK AS ELEMENT OF SOCIAL EMANCIPATION AND SOURCE OF DIGNITY. DEFENSE OF WORKER'S HEALTH PROTECTION. RULES ON THE DURATION OF WORK AND PAUSES ARE CONSIDERED STANDARDS OF HEALTH, HYGIENE AND OCCUPATIONAL SAFETY, IN TERMS OF ARTS. 1.III and IV, 3.IV, 7.CAPUT, XIII, XIV AND XXII, 170, 196, 200.VIII AND 225.CAPUT, OF THE FEDERAL CONSTITUTION, ARTS. 3.E, 4, and 5, OF ILO CONVENTION 155.

INTERMITTENT WORK. VIOLATION OF THE ILO CONVENTION 95 ON PROTECTION OF WAGES. NULITY.

VIOLATION OF ART. 4.B OF ILO CONVENTION 95 ON THE PROTECTION OF WAGES (FAIR AND REASONABLE), THE CONTRACT FOR INTERMITTENT WORK, WHILE NOT OBSERVING THE CURRENT MINIMUM WAGE, THE MINIMUM PROFESSIONAL WAGE OR THE WAGE ESTABLISHED IN COLLECTIVE BARGAINING MUST BE CONSIDERED WITHIN THE MONTH, WITH PROPORTIONAL PAYMENT OF VACATIONS, CHRISTMAS BONUS SALARY AND FGTS. THE ESTIMATION OF WAGE PER HOUR BELOW THE MINIMUM WAGE AND THE PROFESSIONAL WAGE OR THE SALARY DEFINED THROUGH COLLECTIVE BARGAINING SHOULD BE CONSIDERED NULL, OBSERVING THE MONTHLY MINIMUM WAGE, FAIR AND REASONABLE, ACCORDING TO THE CONSTITUTION (ART. 7.IV, V and VII) AND ILO CONVENTION 95.

EXCLUSIVE SELF-EMPLOYED WORKER. DESPROFISSIONALIZATION. IMPEDIMENT TO ORGANIZE AND COLLECTIVE BARGAINING. VIOLATION OF ILO CONVENTION 98.

THE LABOR REFORM CHANGES THE WORDING OF ART. 442-B OF THE CLT, CREATING THE EXCLUSIVE SELF-EMPLOYED WORKER, CONTINUOUSLY OR NOT, PRIORITIZES THE EMPLOYMENT AS A LEGAL ENTITY AND GENERATES THE DESPROFISSIONALIZATION OF

THE PROFESSIONAL GROUP, WHICH IS AN INDIRECT VIOLATION TO THE ILO CONVENTION 98, ART. 1.II.A, SINCE IT SUBJECTS THE WORKER TO THE CONDITION OF NOT ORGANIZING OR BEING PART OF A UNION. IN THIS CONTEXT, ART. 442-B OF THE CLT SHOULD BE INTERPRETED IN THE SENSE OF THE EXISTENCE OF AN EMPLOYMENT AGREEMENT, WHEN THE SERVICES ARE PROVIDED ON AN EXCLUSIVE BASIS OR NOT, WITH THE ABSENCE OF AUTONOMY AND PRESENCE OF THE REQUIREMENTS TO FORM AN EMPLOYMENT AGREEMENT (ART. 9.2 and 3, OF THE CLT), REJECTING THE POSSIBILITY TO EMPLOY AS A LEGAL ENTITY AND CONSIDERING THE EMPLOYEE IS ENTITLE TO THE BENEFITS OF THE PROFESSIONAL GROUP TO WHICH HE OR SHE BELONGS, PROMOTING THEIR ORGANIZATION.