

# Companies Must be Aware of Health Security Measures in order to Proceed with the Return to Their Offices

By: Vinícius Singnoreti Panuci  
Gustavo Centeno Biglia  
Felipe Lourenço Moura Lima

Wongtschowski & Zanotta Advogados (Brazil)

Brazil is one of the countries with the largest number of confirmed Covid-19 cases around the world. Given this scenario, the country is going through an extremely delicate moment to return to presential business activities.

The fast spread of the virus combined with urban agglomerations caused an exponential increase of new cases, which required public interventions to flatten the curve of new infections and triggered social isolation decisions. After more than six (6) months of isolation, Brazil started to return to almost all its activities, even without a significative decrease of new cases. However, and not without reason, companies remain afraid to return to work in their offices. After all, no one knows yet what legal implications this decision may cause.

For that reason, a central question arises from the uncertainties about the model that should be followed for a flexibilization strategy: what steps should be taken in order to return to face to face activities? This article briefly analyzes civil implications under Brazilian law.

Brazilian authorities have issued several regulations about Covid-19. For instance, the Ordinance of the Ministry of Health no. 188/2020 declared a national public health emergency due to the increase number of people infected with Covid-19. Law no. 13,979/2020 provides coping measures at federal level. Both regulations indicate the possibility to adopt isolation measures, quarantine, compulsory examinations, vaccination and other prophylactic measures.

The Ministry of Health has also defined some specifics measures in order to conciliate the return of face-to-face activities with the reduction of newly infected people. The Ministerial Ordinance no. 1,565/20<sup>1</sup> defines that face-to-face activities must respect all best sanitary practices, providing a minimum physical distance and the use of individual protection mask, makes it essential to establish and disseminate an action plan with activities orientations, prevention, control, and mitigation of the virus transmission.

Analyzing the global scenario, the World Health Organization (“WHO”) published an informative called “*Getting Your Workplace Ready for COVID-19*”<sup>2</sup>, with specific guidelines regarding the return to the offices. The main concern of the international entity is that surfaces touched by employees and/or customers are a source of contamination of the virus. WHO also recommends that companies should install dispensers with hand sanitizing solutions and indicate, through banners and other medias, the importance of periodic cleaning of the workstations.

Besides the rules mentioned above, the Brazilian Civil Code states that any voluntary action, omission, negligence or recklessness that violates the right and causes damage to another person is an unlawful act and its agent has a duty to repair it<sup>3</sup>.

---

<sup>1</sup> Ministerial Ordinance no. 1,565/20 <<https://www.in.gov.br/en/web/dou/-/portaria-n-1.565-de-18-de-junho-de-2020-262408151>>

<sup>2</sup> World Health Organization (WHO). *Getting your workplace ready for COVID-19*. <<https://www.who.int/docs/default-source/coronavirus/getting-workplace-ready-for-covid-19.pdf>>

<sup>3</sup> Brazilian Civil Code, Law no. 10.406, articles 186-188. <[http://www.planalto.gov.br/ccivil\\_03/leis/2002/l10406compilada.htm](http://www.planalto.gov.br/ccivil_03/leis/2002/l10406compilada.htm)>

Therefore, could a company be considered responsible if an employee gets infected with the virus during her/his professional practice?

To consider anyone responsible for an infection it is necessary to prove that there were facts that contributed to the contamination of this person. In this case, the adoption of safety measures, clear instructions to employees and third parties demonstrate that the company has spared no efforts to avoid any damage to the health of these people. These actions may rule out the interpretation that creates a causal link between the damage suffered by the individual and the company's activities, which is essential to demonstrate liability in Brazil.

It is important to say that this discussion cannot be summarized with sparse legal provisions, as each case will present its nuances in the most diverse areas of the law. However, if there is any action to be taken to return to regular activities in the offices is that companies should follow the protocols and hold an strategic plan for this, in order to remove or mitigate any causal link of liability for the contamination of an employee or third party by the virus.

Considering that preventive measures have been adopted in accordance with government and health guidelines, as well as the company's indisputable intention to preserve people's health and reduce the transmissibility of the virus, the causal requirement to claim some type of liability for the transmission of the disease tends to be weakened.

Otherwise, the role of each employee is still important, so companies must be clear about the conditions to share the workplace and materials, as well as hygiene requirements and information related to the health of each people.

In times of difficulty it is important to note that people's health is more important than any economic activity. In any case, with the return to face-to-face business activities, it is essential to monitor each case, specially by analyzing technical opinions, including possible legal developments.