The incidence of the worker's conduct in the occurrence of industrial accidents

(consumption of alcohol, medications and drugs)

In accordance with the fifth section of art. 156 LGSS, the concurrence of civil or criminal guilt of the employer, a co-worker of the injured party or a third party will not prevent the classification of a work related accident, unless it has no relationship with the work. In this way, both accidental events and accidents caused by third parties are included, even when they are intentional or involve reckless negligence, which will continue to be classified as a work accident. This is the case of accidents caused in the workplace, due to the negligence of colleagues, or accidents caused by third parties, on the way to or from work. Likewise, accidental events are included, for example, accidents, collisions; but also, if there is fraud or negligence on the part of the third party that caused the accident, such as in terrorist acts, murders or robberies, carried out while commuting to work.

Of course, as long as there were no personal reasons involved. That is, as long as the aggressor and the worker did not know each other for reasons unrelated to work and that the attack had not been carried out, precisely, for personal reasons related to that relationship outside the employment relationship. Since if the worker and the aggressor do not know each other, the attack on the worker occurs accidentally, the victim is causal, precisely because he was at the scene of the incident, which is due to the forced displacement and would not have been suffered if he would not have been on the way to or from work. Thus, being on the journey, in that specific place and at that time, is decisive for the aggression to occur. Otherwise, when personal reasons are involved, the attack is sought and the victim is chosen consciously, the place of the attack being secondary and could be any place. For example, due to gender-based violence attacks, even when they occur on the way to or from work.

Due to acts of the injured party himself. According to art. 156.5ª) of the LGSS, professional negligence that is a consequence of the habitual exercise of a job and derives from the confidence it inspires in the worker does not prevent the classification of a work related accident. On the contrary, number four of the same article establishes that it does break the causal link with work and, consequently, those that occur or are due to intent or reckless negligence of the injured worker are not considered work related accidents. Fraud implies that the worker, through his conduct at work, deliberately seeks the result, that is, bodily injury. Obviously these would be rather extreme cases of self-harm carried out by the worker, with the aim of obtaining a financial benefit from Social Security. Within this context, the most conflictive assumption, without a doubt, is that of the worker's suicide. Obviously, ultimately it is self-injury par excellence, with the worker causing his own death, in principle, voluntarily. Now, the Courts accept the classification of death by suicide as a work related accident, as long as it is not caused consciously and voluntarily, but rather as a consequence of mental disorders caused by or connected to the performance of work, so that you have to pay attention to the specific circumstances of

each case. For example, severe depression caused by alleged psychological or sexual harassment at work, which leads to the worker's suicide.

We all remember the “France Telecom” case a few years ago, where a large number of the company's workers committed suicide. Furthermore, if it occurs during the time and place of work, the work nature is covered, in principle, by the presumption of art. 156.3 LGSS, whoever is interested must prove the real causes are not related to the performance of the work, if applicable. In reckless negligence, on the contrary, the worker does not directly seek the result with his conduct, that is, the accident, as occurs in the case of fraud. However, he assumes and is aware that with his behaviour there is a very high probability that an accident will occur. He reveals the absence of the most basic precaution, with the worker consciously and capriciously subjecting himself to certain danger. Thus, the patent and clearest disregard for risk and the most basic prudence required is revealed. The mere violation of regulations, “per se”, does not automatically imply the assessment of reckless negligence. Thus, the mere violation of occupational risk prevention regulations, for example, removing protective glasses for a few minutes or violating the highway code, jumping a traffic light or a “Stop”, do not represent reckless negligence, without weighing all the circumstances involved in the specific case. Likewise, working with very high levels of alcohol that visibly affect the worker's capacity, jumping a traffic light on a main avenue of a city during rush hour and at a very high speed, voluntarily participating in fights with colleagues, the death of a drug-dependent worker, in work, overdose or adulteration, etc.

Also, in my opinion, repeated non-compliance with regulations, such as habitually working without a helmet, despite repeated sanctions from the company or habitually driving without a seat belt. Likewise, the existence of reckless negligence on the part of the person who alleges it must be proven.

For its part, simple negligence is due to the monotony of work and the worker's overconfidence and can lead to the violation of health and safety regulations or standards. We must not forget that the regulations for the prevention of occupational risks establish that the effectiveness of preventive measures must provide for non-reckless distractions or simple negligence that the worker could commit, as stated in art. 156.4 LPRL. In this way, the employer must prevent accidents due to simple negligence. For example, not wearing the mandatory means of individual protection (helmets, boots, gloves, glasses, etc.). In the case of traffic accidents, the simple violation of the regulations of the highway code, in principle, is still simple and non-reckless negligence, including driving without the corresponding driving license or without the mandatory insurance. In the case of working under the influence of alcohol or other psychotropic substances, an amount cannot be set in general or in abstract that determines breaking the causal link with the work and ceases to be mere simple negligence. Not even when driving with alcohol levels higher than those established in the highway regulation. In effect, the General Traffic Regulations, when referring to the rules on alcoholic beverages and drugs, tell us that

vehicle drivers may not circulate on the roads covered by the legislation on traffic, movement of motor vehicles and road safety.

They are also applicable, curiously, to bicycle drivers with a blood alcohol level greater than 0.5 grams per litre, (or alcohol in exhaled air greater than 0.25 milligrams per litre) to refer to the consumption of alcoholic beverages, as well as have ingested or incorporated other drugs or psychoactive substances into their body.

However, some Curt Rullings do not understand that there is reckless negligence with double or even triple the amount of alcohol in the blood legally permitted and only when levels are reached that multiply by 5 or 6 the permitted level does reckless negligence begin to be considered or when the alcohol consumption would have been mixed with other psychotropic substances or due to the nature of the activity, where it is likely to produce a greater risk, articulated truck, school bus, etc. Especially when, in addition to the high level of alcohol in the blood, the driver commits other serious violations, such as speeding and dangerous maneuvers or overtaking. Not, however, when the consumption of narcotics (methadone and morphine) is by medical prescription and is within the therapeutically permitted limits. In short, it is necessary to look at the circumstances of each specific case to appreciate fraud and, especially, the difference between recklessness and merely professional or simple imprudence, which is the true border between work accident and common accident. For example, as we have highlighted before, if the worker jumps a traffic light on a main avenue in a city at rush hour and at a very high speed and suffers an accident, it cannot be said that he deliberately sought the injuries he has suffered, but he assumed that it could happen and, despite this, he carried out the reckless behaviour. However, if that same worker skips a stop on a county road at four in the morning, with little traffic, no pedestrians and good visibility in both directions, even though he violates the traffic code regulations, precisely It is because he thinks that in those conditions there is no probability of an accident occurring.