





Published: August 31, 2023

Citation: Cintra Rodrigues TML, Barcellos Dalri Rdd, et al., 2023. Legal and Normative Aspects Applicable to Workers' Mental Health: Bill to Regulate Psychosocial Risks in Brazil, Medical Research Archives, [online] 11(8). https://doi.org/10.18103/mra. v11i8.4209

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DOI

https://doi.org/10.18103/mra. v11i8.4209

ISSN: 2375-1924

### **RESEARCH ARTICLE**

Legal and Normative Aspects Applicable to Workers' Mental Health: Bill to Regulate Psychosocial Risks in Brazil

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#### ABSTRACT

**Background:** The post-pandemic historical moment of COVID-19 has had consequences on the mental health of workers, evidenced by the growing statistics of depression, anxiety, suicidal ideation, panic syndrome, burnout syndrome, psychotic episodes, alcohol and drug addiction, stress, fatigue, and professional exhaustion.

Aims: Analyse the recommendations of the International Labour Organization and the Brazilian laws applicable to occupational mental health to identify documents that address intervening laws in workers' mental health in the international scientific literature and introduce Bill 3,588/2020, which aims to regulate occupational psychosocial risks.

**Methods:** Narrative review of the scientific literature in the databases Scopus, Lilacs BVS, PubMed, Cinhal, and Ebesco and document analysis of Brazilian legislation and international recommendations on workers' mental health and norms related to exposure to occupational psychosocial risks and measures of intervention in mental health.

**Results:** The International Labour Organization established three Conventions to protect workers' health. In the Brazilian legal system, six broad and general norms were identified. The narrative prediction resulted in nine intervening laws that address the worker's mental health. **Conclusion:** In Brazil, there is no specific legislation regarding the worker's right to mental health, nor any regulation through Regulatory Norms, which demonstrates the need for the approval of Bill 3,588/2020, pending in the National Congress, which aims at regulating psychosocial risks, such as intervention, management, and prevention measures capable of minimizing mental illness at work.

**Keywords:** work; occupational health; occupational risks; mental health; labour legislation.



### INTRODUCTION

The concept of protecting decent and humanized work is guided by the principle of human dignity provided for in the Federal Constitution<sup>1</sup>. In its historic mission, it must promote productive, quality work, in conditions of freedom, equity, health, and safety, in line with the four strategic objectives of the International Labour Organization (ILO): (i) respect for rights at work, especially those defined as fundamental (freedom of association, right to collective bargaining, elimination of all forms of discrimination in terms of employment and occupation, and eradication of all forms of forced labour and child labour); (ii) promotion of productive and quality employment; (iii) expansion of social protection; (iv) and strengthening of social dialoque<sup>2</sup>.

One of the essential aspects to achieve this objective is inserted in the health and physical and mental integrity of the worker through a humanized, safe, and healthy work environment, capable of mitigating the potential risks that result in accidents at work and occupational diseases<sup>3,4,5</sup>. In this sense, the knowledge of Occupational Health (OH), as an integral part of Collective Health, constitutes an interdisciplinary and pluri-institutional field of work as one of the leading social determinants of health. Considering the complexity of its object, it recommends an integrative way of acting that includes promotion, prevention, and assistance<sup>6,7</sup>.

Prevention actions employ different approaches from a theoretical and methodological point of view, with a greater or lesser impact on the determinants of the problems present in work situations. In this way, the actors in the OH area act collectively in the search for changes in work processes to improve working conditions and environments. They support an inter(trans)disciplinary and intersectoral approach in the perspective of the totality, with the participation of workers as subjects and partners capable of contributing with their knowledge to the advancement of the understanding of the impact of work on the health-disease process in the effective intervention to transform reality<sup>4,8</sup>.

The right to protect the whole health of workers is based on the social value of work, human dignity, and the environment. It is considered a fundamental right1 so that the person can develop their work and, through it, constitute an achievement and build their identity since the pleasant experiences are manifested through satisfaction, fulfilment, knowledge, freedom, and appreciation at work. Such experiences constitute health indicators at work, as they enable psychic structuring, identity, and expression of subjectivity to facilitate negotiations, commitment, and

resonance between the subjective and the concrete reality of work $^{9,10}$ .

The historical-sanitary moment of the COVID-19 pandemic brought consequences on workers' mental health, especially those who work and deal directly with human life and health<sup>11</sup>. The statistics of depression, anxiety syndromes, suicidal behavior, burnout syndrome, psychotic episodes, problematic use of alcohol and other drugs, stress, fatique, and professional exhaustion have been growing among workers<sup>11,12</sup>. These conditions demonstrate the processes of suffering and mental illness that broaden the understanding of potential causes, whose conceptions about the relationship between work and mental health should focus on the primary practices of care and an integral promotion of workers' health (physical and mental)13,14.

There is no human being without the collective and the relational. Unfortunately, the spread of desolation in organizational settings is a fact that has been intensified in the pandemic precisely because the processes of individualization of work, demobilization of collectives, and pursuit of overcoming others and oneself have given rise to new organizational models. Such models are based on subjectivation processes, practices for preventing sociopsychological pathologies, and on guidelines aimed at the mental health of workers, specifically on collective defences and cooperation, aligned with the effects of work in the adversities of the post-COVID-19 context<sup>5,8</sup>.

Concerning the increase in sick leave and leave due to work-related illnesses, mental disorders were already a reality. However, in the pandemic period, their consequences were undeniable, especially considering the negative impact generated, since nothing is neutral in the world of work - the central "engine" in the lives of workers, through which it could offer conditions for the development of subjectivity, professional growth, and construction of health and self-fulfilment<sup>15,16,17,18</sup>.

In this context, two groups of suffering, illness, disability, or death of male and female workers are highlighted today: (i) the group of "overload and strain pathologies" (physical and mental fatigue; repetitive strain injuries/work-related musculoskeletal disorders - RSI/DORT); Burnout Syndrome, and deaths from exhaustion and overwork, among others; and the group of (ii) "pathologies of loneliness or silence" (depressive mental disorders and work-related suicide, among others)<sup>15,18</sup>.

In Brazil, from 2012 to 2017, 10 billion reais were spent on aid related to occupational diseases, of which R\$ 8.5 billion was spent on aid



for work-related accidents. From 2012 to 2018, R\$ 23.9 billion represented expenses with disability pensions due to accidents at work. From 2016 to 2018, R\$ 6.5 billion was spent on pensions for death due to an accident at work. Concerning absences due to common illnesses, expenses in 2018 represented R\$ 2.4 billion reais, with a total of R\$ 239.9 billion reais, expenses with disability pensions resulting from common illnesses from 2012 to 2017<sup>19</sup>.

Depression and anxiety increased by more than 25% in the first year of the pandemic. The Comprehensive Mental Health Action Plan 2013–2030, published by the World Health Organization (WHO), provides for global goals to transform mental health<sup>11,12</sup>.

According to the WHO, in 2019, nearly one billion people – including 14% of the world's adolescents – were living with a mental disorder. Suicide accounted for more than one in every 100 deaths, and 58% of suicides occurred before age 50. Mental disorders are the leading cause of disability, causing one in every six years to live with disability<sup>11,12</sup>.

Therefore, the collective and effective participation of all actors involved in this context (employers, employees, and society) is relevant to increase engagement in the respective class entities and social control, considering the process of mental illness so recurrent in work relationships. Such positioning is based on the perspective of a more humanized work, as the essential elements are achieved in the implementation of policies and programs of effective interventions in the work environment in order to develop promotional and preventive attitudes in the organization of work, capable of providing better working conditions, in with constitutional compliance and infraconstitutional laws for the protection and integrity of the worker's physical and mental health<sup>20,14</sup>.

The present study describes the legal aspects of the Brazilian legal system and normative aspects of the ILO, applicable to workers' mental health, and analyses possible labour laws in the international scientific literature that provide intervention measures for workers' mental health.

In Brazil, there is no specific regulation of occupational psychosocial risks as a form of management, prevention, promotion, and intervention. The intervention measure, proposed as Bill  $3,588/2020^{21}$ , pending in the National Congress, is the result of Doctorate research and aims at standardizing psychosocial risks at work to minimize the worker's mental illness.

This study aimed to analyse the recommendations of the International Labor Organization and the Brazilian laws applicable to

occupational mental health to identify, in the international scientific literature, documents that address intervening laws in the mental health of the worker and present Bill 3,588/2020, which aims to standardize occupational psychosocial risks.

### **METHODS**

The study consists of a document analysis of the ILO norms and the Brazilian legislation about the right to occupational mental health, as well as bibliographical research of the international scientific literature that addresses the mental health of the worker and the possible applicable intervention measures.

For the elaborated narrative review, the elaborated question was: What are the norms that address the worker's mental health in the international scientific literature? The searches were carried out in five databases, namely: CINAHL, SCOPUS, LILACS BVS, PUBMED, and EBESCO, from the descriptors: (Legislação OR Legislações OR Direito\* OR Norma\* OR Legislación OR Legislation\* OR Right\* OR Normalization\*) ("Saude mental" OR "Mental Health" OR "Salud Mental" OR mh: OR "Transtornos Mentais" OR "Mental Disorder\*") #3 (Trabalhador\* OR Trabajador\* OR Employee OR "Saúde Ocupacional" OR "Salud Ocupacional" OR "Occupational Health" OR "Riscos Ocupacionais" OR "Risco Ocupacional" OR "Risco Profissional" OR "Riesgos Laborales" OR "Riesgo Laboral" OR "Riesgo Profesional\*" OR "Occupational Risk\*").

The review was carried out in September 2022, and the searches were limited to selecting articles by reading the titles and abstracts and choosing the studies that addressed the evidence of the legal aspects of workers' mental health in the international scientific literature, including written texts in English, Portuguese, and Spanish, from 2016 to 2022.

The research was submitted to the National Research Ethics Committee – CONEP. It was approved by the Research Ethics Committee of the School of Nursing of Ribeirão Preto, University of São Paulo, whose Opinion number is 4,859,650.

## **RESULTS**

The result of the first stage of the research objectively demonstrates the ILO standards: (i) Convention 155 requires Member States to design a Policy in terms of Health, Safety, and the Work Environment<sup>22</sup>; (ii) Convention 161, which presents a normative set of preventive nature concerning Occupational Health Services<sup>23(p161)</sup>; (iii) Convention 190, enacted in 2019, consolidates the effectiveness of human rights in the world of work<sup>24(p190)</sup>.



Then, the Brazilian norms, applicable to the right to health and safety of workers were analysed, set out in (i) the Federal Constitution in Articles 1, items III and IV, 7, XXII, 170 and 2251; (ii) Consolidation of Labour Laws, the devices provided for in Chapter V and Article 20025, (iii) Law 8080/1990 which provides the conditions for the promotion, protection, and recovery of health6, (iv) Law 11,430 /2006, which established the causal epidemiological link between work and health problems26; (v) Ordinance No. 1823/2012 of the Ministry of Health, establishing the National Policy on Workers' Health27; (vi) Decree-Law No. 9,571/2018, establishing National Guidelines on Business and Human Rights28.

Consequently, the result of the bibliographical research allowed the recovery of 969 references of scientific materials, scientific articles, and informative documents, 221 of which were duplicates. The first stage consisted of reading the titles and abstracts, which resulted in maintaining 33 documents for reading in full. In this stage, informative materials of legislation and articles were included, whose selection directed the materials that addressed the general legislation that dealt with the worker's mental health. Therefore, nine articles did not address the scope of the research, and 15 (fifteen) of them were inaccessible for reading in full. Thus, the eligibility of nine documents available for reading was confirmed.



Table 1: Summary of rules applicable to workers' health

International Labor Organization (ILO) conventions	Federal Constitution	Consolidation of Labour Laws (CLT)	Law 8,080/1990	Law No. 11,430/2006	Ordinance No. 1,823/ 2012 Ministry of Health	Decree-Law No. 9,571/2018
Convention 155 determines that Member States design a Policy in terms of Health, Safety, and the Work Environment, aimed at workers, reducing the causes of risks inherent in the work environment.	Articles 1, items III and IV and 170 provide for the dignity of the human person and the social valuation of human work.	Chapter V — Provides for occupational health and safety standards.	Provides for the conditions for the promotion, protection, and recovery of health, the organization and operation of the corresponding services, and makes other arrangements.	Provides for the epidemiological causal link between work and health problems.	Establishes the National Policy on Workers' Health, the purpose of which defines the principles, guidelines and strategies to be observed in the three spheres of SUS management – Federal, State and Municipal.	Establishes National Guidelines on companies and Human Rights, for medium and large enterprises, including multinational companies with activities in the country.
Convention 161 presents a normative set of preventive nature, especially concerning "Health Services at Work", whose awareness of workers is based on knowledge of risk exposure and the necessary adjustments in a safe and healthy work environment.	Art. 7, item XXII - Provides for the reduction of risks inherent to work through health, hygiene, and safety standards.	Prescribe preventive measures against agents that attack health, related to the work environment,	Art. 6 - The following are also included in the scope of action of the Unified Health System (SUS): () c) for worker health: item 3 Worker health is understood as a set of activities that it is intended, through epidemiological surveillance and health surveillance actions, to promote and protect the health of workers, and to recover and rehabilitate the health of workers subjected to risks and injuries arising from working conditions.	Article 21 A - The medical expertise will consider the accidental nature of the incapacity to be characterized when it finds the occurrence of a technical epidemiological link between work and the disease.	Provides for norms for the development of comprehensive care actions for workers' health, with emphasis on surveillance, aimed at promoting and protecting workers' health and reducing morbidity and mortality resulting from development models and production processes.	It provides for norms, whose theme gives the State and companies the responsibility for the human rights of the worker, the social and environmental impacts and the damage caused when violations occur in the work environment.

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ILO convention 190, edited in 2019, to observe the quidelines on prevention and elimination of violent and harassing behaviour in the work environment, capable of generating physical. psychological, sexual or economic suffering. including due to gender organizational issues, harassment, mansplaining, gaslighting and cyberbullying.

225 Art. Provides for an ecologically balanced environment, asset for common use by the people and essential to a healthy quality of life, imposing on the Government and the community the duty to defend and preserve it for present and future generations.

200 Art. **Provides** for creating norms related to occupational safety and medicine, the socalled Regulatory Norms, instrumentalized by Ordinance 3,214/78, which regulate physical, chemical. biological, ergonomic, and accident risks.

Art. 15. The Government, the States, the Federal District and the Municipalities will exercise, within their administrative scope, the following attributions: VI - elaboration of technical norms and establishment of auality standards for the promotion of workers' health;

Attest the relationship between the company's activity and the morbid entity that motivated the disability listed in the International Classification of Diseases - ICD.

For the purposes implementing the National Occupational Health Policy, the articulation between: I individual actions, assistance and recovery from injuries, with collective actions, promotion. prevention, surveillance of environments, work processes and activities. and intervention on the determinants of workers' health; II - planning and evaluation actions with health practices; and III - the technical knowledge. experiences and subjectivity of the workers and those with the respective institutional

practices.

It will be up to companies to monitor respect for human rights in the linked production chain through quidance, prevention, intervention, and repair and remedy mechanisms those whose rights are affected.

Elaborated by the author



Table 2 - Description of results and analysis of selected studies

Article	Law / Bill / Regulations	Year	Country	Scope
Purtle J. "Heroes' invisible wounds of war:" constructions of posttraumatic stress disorder in the text of US federal legislation. Soc Sci Med. 2016 Jan;149:9-16. doi: 10.1016/j.socscimed.2015.11.039. Epub 2015 Dec 2. PMID: 26689630.	Federal statutes that were enacted through the Veterans' Health Care Act of 1984 (Public Law 98 e 528)	1984- 2009	USA	Section 101 of the Act titled "Post-Traumatic Stress Disorder" (PTSD) but built into the text of federal legislation as specific to military personnel in combating traumatic exposures. The National Center for PTSD, established to promote health care, research into the causes and diagnosis of PTSD, and treatment of military veterans for PTSD.
Canady, V.A. (2021), Social workers support bill to curb violence against workers. Mental Health Weekly, 31: 7-8. https://doi.org/10.1002/mhw.32704	Bill proposed by Representative Joe Courtney (D-Conn.), senior member of the House Education and Labor Committee.	2021	USA	The bill curbs violence against workers, noting that violence against healthcare facilities and service workers is rising and worsened by the COVID-19 Pandemic. The Prevention of physical and psychological violence in health services was suggested by the Care and Social Service Workers Act directed by OSHA - Occupational Safety and Health Management to issue norms that require employers of care and social services to implement a violence prevention plan to prevent and protect employees from assaults at work.
Canady, V.A. (2022), Legislation to expand Illinois MH workforce signed into law. Mental Health Weekly, 32: 6-6. https://doi.org/10.1002/mhw.33268	Act proposed by Illinois Governor J.B. Pritzker on June 10, 2022	2022	USA	Reinsert mental health into the workforce and encourage employers to hire people recovering from mental health issues or substance use disorders. It aims to expand behavioural health training to empower nursing professionals in advanced practices and improve access to critical behavioural health, encompassing mental health services in Illinois, including expanding emergency telehealth.
Farrell AM, Hann P. Mental health and capacity laws in Northern Ireland and the COVID-19 pandemic: Examining powers, procedures and protections under emergency legislation. Int J Law Psychiatry. 2020 Jul-Aug;71:101602. doi: 10.1016/j.ijlp.2020.101602. Epub 2020 Jun 22. PMID: 32768125; PMCID: PMC7306743.	"The Health Protection (Coronavirus) Regulations 2020, UK SI 2020 No. 129	2020	Ireland	The legislation aimed to respond to the emergency created by the COVID-19 pandemic, particularly the increased pressure on healthcare services in the UK, as well as explore how these are likely to be operationalized in practice. It also considers how such changes might impact existing human rights protections to assess whether they remain necessary considering challenges faced in mental health management and capacity issues in Northern Ireland during COVID-19.
Anand, Meenu. "Mental health and human rights: An Indian inquiry." Indian Journal of Social Psychiatry 37.2 (2021): 235-241.	District Mental Health Program established in	1996	India	In addition to early identification and treatment of mental illnesses, it also incorporates promotional and preventive activities for positive mental health, which



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	1996 during the Ninth Five Year Plan based in Bengaluru			include school mental health services, university counselling services, workplace stress management, and suicide prevention services.
Anand, Meenu. "Mental health and human rights: An Indian inquiry." Indian Journal of Social Psychiatry 37.2 (2021): 235-241.	Mental Health Law, 2018 (MHCA)	2018	India	It also specifies government duties for promoting and preventing mental health programs, creating awareness, and reducing stigma for human resource development
Canady, V.A. (2018), N.M. legislation offers insight on workforce planning, licensure. Mental Health Weekly, 28: 4-5. https://doi.org/10.1002/mhw.31463	Health Care Work Force Data Collection, Analysis and Policy Act, Law	2012	USA	With the high rate of mental illness in the State of New Mexico, legislation was enacted to survey licensed health professionals to understand the reasons for the shortage of mental health care professionals.
Canady, V.A. (2016), Field: Passage of mental health reform legislation an important first step. Mental Health Weekly, 26: 1-3. https://doi.org/10.1002/mhw.30848	Mental Health Crisis Act and provisions in the Mental Health Reform Act of 2016.	2016	USA	It requires the employer/manager to maintain a system for disseminating research findings and evidence-based practices instituted at work to service providers to improve treatment and prevention.
Tanya Fairweather, MD, CCFP, FCFP. Presumptive legislation for work-related mental health injuries. BCMJ, Vol. 61, No. 6, July, August, 2019, Page(s) 245 - WorkSafeBC.	WorkSafeBC amended the Workers Compensation Act. Presumptive legislation for work-related mental health injuries, British Columbia	2018	Canada	For workers – firefighters, police, emergency medical assistants, police chief, correctional officers, nurses, health aides, and paramedics, who experience traumatic events caused by their work. The law introduced two services responsible for WorkSafeBC Occupational Trauma (OTR), intervention is an early response to occupational trauma exposure for those diagnosed with a trauma-related disorder such as PTSD or acute stress disorder.
Halonen JI, Solovieva S, Virta LJ, Laaksonen M, Martimo KP, Hiljanen I, Lallukka T, Autti-Rämö I, Viikari-Juntura E. Sustained return to work and work participation after a new legislation obligating employers to notify prolonged sickness absence. Scand J Public Health. 2018 Feb;46(19_suppl):65-73. doi: 10.1177/1403494817732445. PMID: 29471755.	Legislation aiming to improve (RTW) Return to work	2012	Finland	New Finnish legislation came into force on June 1, 2012 – a social "intervention" – with the aim of making the employer responsible for notifying prolonged absence due to occupational, physical, and mental illness for 30 calendar days. For the exam, five job statuses are used: full-time job; partial incapacity for work; incapacity for work, unemployment; absence from the labour force.
Flores Hernández, V. F., Narváez Montenegro, B. D., & Naranjo Luzuriaga, E. J. (2021). El teletrabajo y el derecho a la salud mental en el periodo de lactancia. Revista Universidad y Sociedad, 13(S2), 123-131.	Labour Code and Public Service Organization Law	2020	Equator	The law guarantees the right to breastfeeding and teleworking established both in the Labor Code and in the Public Service Organization Law, granting female workers the possibility of teleworking while breastfeeding to benefit the child's integral health and maintain the mother's physical and mental health.

Elaborated by the authors



Even though the laws that deal with and regulate the protection of workers' health are relevant, Brazil has no legislative regulation to psychosocial risks. The relationship among man, work, and society, facing the worker's rights to physical and mental health, integrity and dignity, the process of mental illness, and the norms that ensure a dignified, healthy, and safe work environment are challenges faced in a reality that goes far beyond the capitalist and neoliberal world since this field of investigation goes beyond the limit of the individual as a worker and business strategies, reaching intrinsic, social, cultural, and human aspects<sup>1,24</sup>.

The analysis of documents found in the literature reinforces and suggests that measures to prevent and promote workers' mental health and psychosocial risks can be strategically managed through norms and guidelines that aim to maintain health and safety psychology in the workplace<sup>8</sup>.

The management of stressors is a moral obligation and a good investment for employers since these are related to low productivity and financial impact. It should be an established legal imperative, consequently reducing the excess of absenteeism, "presenteeism" (workers who show up for work sick and are unable to perform their activities effectively), turnover, and increased rates of accidents and injuries 10.

Given this scenario, this study proposes a bill<sup>21</sup> which, on April 3, 2023, is being processed by the Chamber of Deputies, aiming to include it in article 200 of the Consolidation of Labour Laws, which deals with the provisions of the Regulatory Norms, preventive measures, promotion, and management of psychosocial risks by the employer. It is suggested that psychosocial risks, despite subjectivity, should be systematically managed to maintain health and safety in the workplace, as with other risks (chemical, physical, biological, accidental, and ergonomic)3,29.

Considering that the risks foreseen by the Regulatory Norms correspond to physical, chemical, biological, ergonomic, and accident risks, there is no regulation of psychosocial risks since NR 17 is restricted only to "psychophysiological" ergonomics issues, not considering the other factors present in the work environment, which can trigger occupational psychopathologies<sup>29,24</sup>.

The bill's text forwarded to the Chamber of Deputies describes the rationale and the grounds for the proposed intervention measure. Regarding the Brazilian legislative process procedures, first, PL 3,588/202021 was approved by the Social Security and Family Committee (SSFC), in which five sessions, no amendments were presented. Currently,

it is awaiting approval by the Committee for Work, Administration, and Public Service (CWAPS).

The observation of countless workers who file claims in the Superior Labour Court to obtain "compensation of psychic damages", makes visible the behavior of the employer and civil society in verifying the efficiency and effectiveness of preventive measures already legally proposed and adopted by the legal system. Likewise, it demands inquiries, studies, and actions that reinforce the insufficiency of people management within organizations and resources from areas dedicated to Occupational Health to build processes and policies for health promotion, prevention, assistance, professional rehabilitation regarding psychological disorders at work<sup>4,7</sup>.

With the new labour relationships, structural and organizational changes are necessary. The pandemic has enhanced this reflection, perhaps raising awareness by those involved, workers, employers, and society, recognizing that factors related to work-related mental disorders are fundamental to formulating measures, fostering elements for elaborating policies in the public and private sector<sup>10,12,11</sup>.

Research limitations involve few scientific publications regarding the research object related to the worker's right to mental health and the lack of regulation of psychosocial risks in the work environment.

## CONCLUSION

In the international scientific literature, labour laws provide for measures of education, intervention, promotion, and prevention of workers' mental health in specific segments, which may be the object of analysis to establish effective practices and actions in the Brazilian legal system.

Moreover, bill No. 3588/202021 may regulate measures to raise awareness among those involved (worker, employer, and society) for a more humanized management through the investigation of measures based on scientific evidence applicable to the promotion of mental health and prevention of occupational epidemiology related to mental disorders, which would positively impact the worker's life, integrity, health, and physical and psychological safety, resulting in fewer leaves and early retirements.

### **Funding Statement**

I would like to thank the Coordination for the Improvement of Higher Education Personnel, CAPES, Brazil, for the Bolsa de Fomento during the study period.



### **Conflict of Interest Declaration**

The authors have no conflicts of interest to declare.

### **Acknowledgements**

I would like to thank the co-authors who present themselves here, who contributed substantially to the conception or design of the study; analysis and interpretation of data collected in the study; reviewed the text of the manuscript and approved the final version to be published.

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