STF - LEVY OF SOCIAL SECURITY CONTRIBUTIONS ON PAID MATERNITY LEAVE IS UNCONSTITUTIONAL

The Plenary of the Supreme Federal Court concluded the judgment of Extraordinary Appeal No. 576.967 (with general repercussion of the matter – Theme No. 72), declaring that the levy of the social security contribution on the paid maternity leave is unconstitutional and proposing the establishment of the following legal argument: "The levy of the social security contribution borne by the employer on the paid maternity leave is unconstitutional".

The paid maternity leave is a social security benefit paid directly by the Social Security, and does not constitute a benefit paid, due or credited by the employer to repay the work done. Thus, the paid maternity leave should not be included in the calculation basis of the social security contribution, as it does typify as remuneration for work. In addition, and as Minister Rapporteur Roberto Barroso pondered in his vote: "(...) *to admit the levy of a tax only on the hiring of women and mothers is to make their biological condition, in itself, a factor of unequal treatment in relation to men, discouraging motherhood or, at least, instilling guilt, questions, reflections and fears in a large part of the population, due to the simple fact of being born a woman. A terrible burden is imposed on the female gender, discriminated against in the hiring, as well as on motherhood itself, which harms women's rights, an unequivocal dimension of human rights.* (...)". Thus, the taxation of paid maternity leave also violates the principles of equality and the prohibition of unequal treatment.

With the declaration of unconstitutionality promulgated by the Plenary of the Supreme Federal Court, companies may adopt measures aiming at the recovery of undue social security contribution payments made in the past five (5) years, duly updated by the Selic Rate; to date, there is no debate on the possible adjustment of the effects of the declaration of unconstitutionality.

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