

WHAT YOU NEED TO KNOW TODAY

Azevedo Sette
ADVOGADOS

Provisional Measure no. 936

NEW MEASURE ALLOWS THE SUSPENSION OF THE EMPLOYMENT CONTRACT AND THE REDUCTION OF WORKING HOURS AND WAGE WITH SUBSIDIES BY THE FEDERAL GOVERNMENT, BUT REQUIRES CAUTION

There is a great discussion on the topic and for this reason we call attention to alert that the measures proposed by PM 936/2020 should be thought out in a structured and strategic way, so that it can be an effective remedy that meets the needs of the company, especially considering the costs resulting from the eventual dismissal of employees in the course of temporary employment stability.

DIRECT ACTION OF UNCONSTITUTIONALITY

To update you, there is already a **Direct Action of Unconstitutionality**, proposed by Rede Party ([File no. 0089460-11.2020.1.00.0000](#)) and distributed to Min. Lewandowski

We present below the main aspects

THE PROPORTIONAL REDUCTION OF WORKING HOURS AND WAGE (ARTICLE 7 of the PM)

- Term of up to 90 days;
- Preservation of the amount of the work hourly wage;
- Agreement by individual contract or collective bargaining (*);
- Communication to the employee at least 2 calendar days in advance;
- Proportional reduction of working hours and wage. Therefore, only the reduction of wages, without the respective reduction of working hours, is prohibited in this modality;

Benefit Value will be based on the monthly amount of unemployment insurance in the following proportions:


- a) Reduction less than 25%:** Without benefit;
b) Reduction between 25% and 50%: 25% benefit on the calculation basis; **c) Reduction between 50% and 70%:** 50% benefit on the calculation basis; and; **d) Reduction higher than 70%:** 70% benefit on the calculation basis

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TEMPORARY SUSPENSION OF THE EMPLOYMENT CONTRACT (ARTICLE 8 of the PM)

- Term of up to 60 days;
- Agreement by individual contract or collective bargaining (*);
- Communication to the employee at least 2 calendar days in advance; and

Benefit value will depend on the Company's gross annual revenue of 2019, as follows:

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- a) **Companies with gross revenue less than BRL 4.8 MM:** 100% of the unemployment insurance amount to which the employee would be entitled to, or
 - b) **Companies with gross revenue higher than BRL 4.8 MM:** 70% of the unemployment insurance amount + Monthly compensatory aid paid by the employer in the amount of 30% of the employee's wage.

STRUCTURE OF THE NEGOTIATION (ARTICLES 7 AND 8 OF THE PM)

- Employees with a wage equal to or less than BRL 3,135.00: Individual agreement or collective bargaining.
- Employee with salary starting at BRL 3,135.00 and up to twice the maximum limit of the benefits under the General Regime of Social Security (BRL 12,202.12), or higher than the maximum limit, without a higher education diploma: Collective Bargaining, with the exception of a 25% reduction that may occur by individual agreement.
- Employees holding a higher education diploma and who receive a monthly wage equal to or higher than twice the maximum limit of the benefits under the General Regime of Social Security. Individual agreement or collective bargaining.

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Find out below the main aspects and explanations about the new measure

1 WHAT ARE THE DEADLINES THAT I MUST OBSERVE?

Once the agreement is signed, the employer has 10 days to notify the government. Within 30 days from the effective date of the agreement, the Government will credit the benefit to the workers.



2 WHAT HAPPENS IF YOU DO NOT MEET DEADLINES?

The employer will be responsible for paying the employee's full remuneration, including the respective social charges, until the information is provided (the benefit will be paid within 30 days from the communication).

CAUTION WITH THE MAXIMUM TERM OF THE BENEFIT!

3 CAN THE EMPLOYEE ACCUMULATE MORE THAN ONE EMERGENCY BENEFIT?

Yes, with the exception of the intermittent worker who will only be entitled to the monthly emergency benefit in the amount of BRL 600.00 (six hundred reais), for a period of three months.

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4 IS THE COMPENSATORY AID A WAGE?

No. The compensatory aid has an indemnity nature (not included in the calculation basis of income tax, social security contribution and FGTS payment), and the respective value of the individual agreement or collective bargaining must be specified.

It may be excluded from net income for the purposes of determining corporate income tax and Social Contribution on Net Income of corporate entities taxed by taxable income. And the compensatory aid may be combined with the emergency benefit, providing an opportunity for contractual balance, with payroll relief

HYPOTHESIS MUST BE ANALYZED WITH CAUTION..



5 WHAT ARE THE PENALTIES IF THE PURPOSE OF THE PROGRAM IS DEVIATED?

Inspection, without the need for the double visit criterion and registration in the active debt.

6 WHEN SHOULD THE CONDITIONS OF THE EMPLOYMENT CONTRACT BE REESTABLISHED?

The employer must reestablish the conditions of the contract within 2 calendar days from (I) the cessation of the state of public calamity; (II) the date established in the individual agreement; or (III) the date of communication by the employer informing the employee of its decision to bring forward the end of the suspension period agreed.

PAY ATTENTION TO PAYROLL PROCEDURES.

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7 WILL THE EMPLOYEE HAVE STABILITY??

Yes, (I) - during the agreed upon period of reduction of working hours and wage or temporary suspension of the employment contract; and (II) - after the reestablishment of the working hours and wage or the end of the temporary suspension of the employment contract, for a period equivalent to that agreed upon for the reduction or suspension.

8 WILL THE EMPLOYER BE ABLE TO TERMINATE THE EMPLOYMENT CONTRACT DURING STABILITY?

The employer must exercise caution when terminating the employment contract during the period of temporary employment stability. However, the employment contract may be terminated, being payable the severance payment and indemnity, which may vary between the percentage of 50% and 100% of the wage to which the employee would be entitled to during the period of provisional guarantee in the employment, pursuant to article 10, first paragraph, of the PM.

The indemnity does not apply to the cases of dismissal of the employee upon request or with cause.

9 DOES THE RECEIPT OF EMERGENCY BENEFIT AFFECT THE RECEIPT OF UNEMPLOYMENT INSURANCE?

No, it doesn't, the employee will receive the benefit as usual.



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IS THE EMPLOYEE ENTITLED TO RECEIVE BENEFITS GRANTED UNDER THE EMPLOYMENT CONTRACT DURING THE SUSPENSION?

Yes, the employee will be entitled to the benefits, including food/meal ticket. The employee will be authorized to pay to the General Regime of Social Security as an optional insured person.

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WILL THE EMPLOYER BE ABLE TO ADOPT SUCCESSIVE REDUCTIONS AND SUSPENSIONS OF THE EMPLOYMENT CONTRACT?

Yes, but the maximum time for proportional reduction of working hours and wages and temporary suspension of the employment contract, even if successive, may not be longer than ninety days, subject to the maximum term of suspension of the employment contract.

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THE MEASURES APPLY TO ALL EMPLOYEES?

Do not apply, in the scope of the Union, States, Federal District and Municipalities, to the bodies of direct and indirect public administration, to public companies and government controlled (private) companies, including their subsidiaries, and to international organizations.



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WHAT HAPPENS IF THE COMPANY HAS ALREADY SIGNED A COLLECTIVE AGREEMENT ADDRESSING SPECIFIC CONDITIONS FOR THE CALAMITY PERIOD RESULTING FROM COVID-19?

The collective bargaining agreements or conventions previously entered into may be renegotiated to adapt their terms, within ten calendar days counted from the date of publication of this Provisional Measure.

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WHO IS EXCLUDED FROM THE MEASURES PROVIDED FOR IN THE PM?

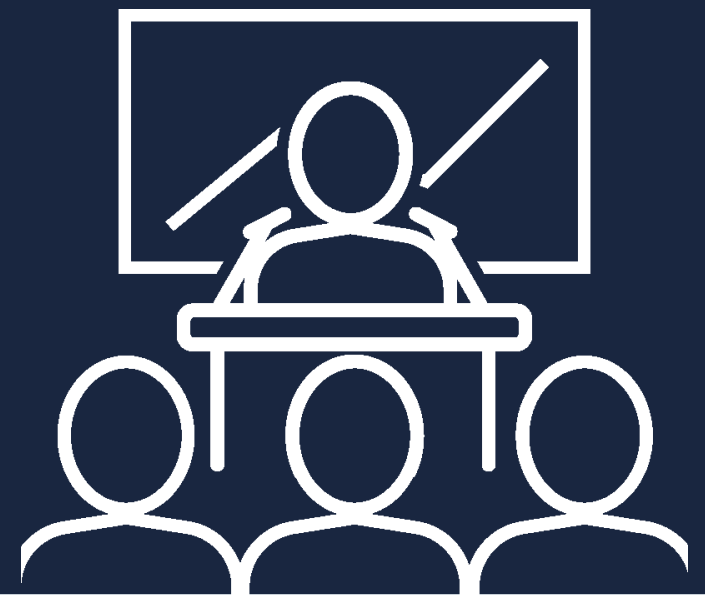
I - Employees holding a public office or job, a position in a free appointment and dismissal committee or holder of a elective office; or

II – Employees receiving:

a) a benefit of continued provision of the General Regime of Social Security or Private Regimes of Social Security, except as set forth in the sole paragraph of art. 124 of Law No. 8,213, of July 24, 1991;

b) unemployment insurance, in any of its categories; and

c) the professional qualification scholarship referred to in art. 2-A of Law No. 7,998, of 1990.



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WHAT HAPPENS IF, DURING THE PERIOD OF TEMPORARY SUSPENSION OF THE EMPLOYMENT CONTRACT, THE EMPLOYEE MAINTAINS WORK ACTIVITIES, EVEN IF PARTIALLY, THROUGH TELEWORKING, REMOTE WORK OR DISTANCE WORK?

The temporary suspension of the employment contract will not be characterized, and the employer will be subject: (I) to immediately pay the remuneration and social charges for the entire period; (II) to the penalties provided for in the legislation in force; and (III) to the sanctions provided for in a collective agreement or convention.

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WHO WILL PAY THE EMERGENCY BENEFIT?



The benefit will be funded with Union resources (operationalized and paid by the Ministry of Economics) and, as informed by the Government, deposited directly in the workers' checking account (pending regulation on the form of transmission of information and payment).

The PM offers many opportunities, which should be adopted, however, after careful analysis only. The Labor area of Azevedo Sette will continue to monitor the developments of measures related to the pandemic and we remain at your disposal for any further clarification that may be necessary.