

# COVID-19

## The New Regime of the Simplified Lay Off

Decree Law no. 10-G/2020, of 26 March

It has been published the Decree Law no. 10-G/2020, of 26 March, which has repealed Decree Order no. 71-A/2020, of 15 March, in its current wording, and namely, regulate the terms and conditions for the granting of supports intended to employees and companies affected by the Covid-19 pandemic, in particular the simplified lay off regime.

### Extraordinary Support for Maintaining Employment Contracts in a Business Crisis

#### What is it?

- Financial support per employee assigned to the company in a state of business crisis, intended solely for payment of remunerations.
- This support is aimed at maintaining employment contracts and covers the temporary reduction of the normal period of work and the suspension of the employment contract, and shall apply, with the necessary adaptations, the provisions of the Portuguese Labour Code.

#### To whom does it apply?

- Private employers, including, the employers entities of the social sector and employees at its service affected by the Covid-19 pandemic and which are in business crisis.
- It also applies to self-employed workers who are employers.

#### Who is entitled?

- A company in a business crisis, considered as such in the following cases:
  - total or partial closure of the company or of the establishment, resulting from the duty to closure of facilities and establishments, or by legislative or administrative determination, in relation to the establishment or company closed and covering the employees to these directly affected;
  - total or partial stoppage of the activity of the company or establishment resulting from the interruption of global supply chains, or the suspension or cancellation of orders, that may be proved by documents;

- abrupt and pronounced break of at least 40% of the invoicing in the 30 day period preceding the request before the competent social security services, with reference to the monthly average of the two months preceding that period, or in relation to the corresponding period of the previous year or, for those who started the activity less than 12 months ago, to average of the period.

### Reduction or Suspension in a Business Crisis

Either in the event of reduction of the normal period of work, or in the event of suspension of the employment contract, the rights, duties and warranties, under the terms of the Portuguese Labour Code, shall be maintained.

### Retributive Compensation

#### A. Suspension of the employment contract

The employee is entitled to receive 2/3 of gross remuneration per month, with a minimum limit of the guaranteed monthly minimum remuneration (€635,00) corresponding to its normal period of work and a maximum of three guaranteed monthly minimum remuneration (€1.905,00).

#### B. Reduction of the normal period of work

The employee is entitled to a retributive compensation in so far as it is necessary in order to jointly with the remuneration for the work done, ensure the monthly amount of 2/3 of gross remuneration, with a minimum limit of the guaranteed monthly minimum remuneration (€ 635,00) corresponding to their normal working period and a maximum of three guaranteed monthly minimum remuneration (€ 1.905,00).

- The retributive compensation is paid by the employer.
- The company is entitled to a financial support for the purpose of payment of the retributive compensation corresponding to 70%, to be paid by the Social Security, and the remaining 30% are of the employer responsibility.
- Until June 30, 2020, the retributive compensation is paid by reference to the normal gross remunerations of the work done at the company, and the Social Security services should proceed subsequently to the necessary adjustments, with possible repayment of amounts unduly received.

- If the employee is engaged in a gainful activity outside of the company, he/she must inform the employer, within 5 days of the commencement date of such activity, for the purpose of possible reduction in the retributive compensation, and the employer must report this to the Social Security within two days of the date on which it became aware of it.

### Requirements

- Regularized contributions status of the company before the Social Security and the Tax and Customs Authority;
- Up until April 30, 2020 the debts incurred on March 2020 are not relevant.

### Procedure

- The employer must report in writing to the employees covered:
  - the decision of request to the Social Security the extraordinary support to the maintenance of the employment contracts;
  - the likely duration.
- If exists, should be consulted the trade union representatives and the employees committees.
- The employer must send the electronic application (Model RC 3056-DGSS) and the respective attachment (Model RC 3056/1-DGSS), to the Direct Social Security, containing:
  - declaration of the employer with a summary description of the business crisis which affects it;
  - nominative list and Identification Number of Social Security (NISS) of the covered employees;
  - in the cases of total or partial stoppage of the company or establishment or of abrupt and pronounced break of at least 40% of invoicing, as described above, certificate of the company's certified accountant attesting the business crisis.

### Supervision

- The beneficiary entities of the support may be supervised at a later stage and must provide proof of the facts on which the application and the renewals were based, and may be requested the submission of documents, namely:
  - balance sheet referent to the month of the support as well as for the corresponding month or previous months, where applicable;
  - value added tax (VAT) return for the month of the support as well as of the two immediately preceding months, or the declaration related to the last quarter of 2019 and the first quarter of 2020, depending on whether the applicant is in the monthly or quarterly regime of VAT respectively, showing intermittence or interruption of supply chains or the suspension or cancellation of orders;
  - for the purpose of demonstrating suspension or cancellation of orders, documents demonstrating the cancellation of orders or reservations, of which result that the use of the affected company or unit will be reduced more than 40% of its production or occupancy capacity in the following month of the application for support; and
  - additional evidence to be established by order of the member of the Government responsible for Labour and Social Security.

### Duration

One month, exceptionally extendable on a monthly basis up to a maximum of 3 months.

### Cumulation

- Training plan, to which is added a training grant of € 131,64 paid by the IEFP, of which 50% is for the employee and 50% for the employer.
- Extraordinary financial incentive to support the normalization of the company's activity, to be granted by the IEFP, paid in one lump sum and with the value of a minimum monthly remuneration guaranteed (€ 635,00) per employee (the employer will have to lodge an application to the IEFP, accompanied by the documents proving the business crisis);
- Temporary exemption from the payment of the contributions for the Social Security by the employer entity, related to the covered employees and members of governing bodies, with reference to the remunerations for the months in which the company is the beneficiary of the support measures, which is officiously recognized (statements of remuneration for covered employees shall be delivered separately and the respective contributions have to be paid).

### Prohibition of Dismissal

During the period of application of the supporting measures as well as in the following 60 days, the employer cannot terminate any employment contract under collective dismissal or dismissal as a result of the dissolution of the job.

### Non-Compliance and Return of the Support

- The non-compliance for the employer or the employee of their obligations related to these supports implies their immediate termination and the repayment in full or partially of the amounts already received or exempted.
- Situations of non-compliance:
  - dismissal, except if caused by employee's conduct;
  - non-compliance of the employees' remuneration obligations;
  - non-compliance of the legal, tax or contributive obligations;
  - profit distribution during the period of the resultant obligations arising from the supporting measures, in any form, namely as a withdrawal on account;
  - non-compliance of the obligations on its due dates, attributable to the employer;
  - making false statements;
  - provision of work to the employer entity per worker covered by extraordinary support measure for the maintenance of employment contract in the form of suspension of the contract, or beyond the established time, in the modality of temporary reduction of the normal working hours.

### Administrative Offense Liability

- In case of violation of the legal regulations related to the temporary reduction of the normal work period or suspension of the employment contract, foreseen in article 298 et seq. of the Portuguese Labour Code, shall be applied the regime of administrative offense liability foreseen in the Portuguese Labour Code and, alternatively, the general regime of administrative offense liability.

### Entry Into Force and Taking Effects

This Decree Law **entered into force on March 27, 2020 and takes effect until June 30, 2020**, without prejudice to extension for a further 3 months, according to the evolution of the economic and social consequences of Covid-19.

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