COVID-19: Provisional Labor Measure provides for a reduction in working hours and wages and suspension of the contract during the state of public calamity

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Provisional Measure N° 936 ("MP 936"), published on April 1, 2020, instituted the **Emergency Employment and Income Maintenance Program** during the state of public calamity, already officially recognized by the Federal Government, with the objectives (i) to preserve employment and income; (ii) to guarantee the continuity of work and business activities, and (iii) to reduce the social impact resulting from the consequences of the state of "public calamity" and public health emergency. The main measures are as follows:

EMERGENCY BENEFIT FOR THE PRESERVATION OF EMPLOYMENT AND INCOME

- The Emergency Benefit for the Preservation of Employment and Income ("Emergency Benefit") was created, to be paid during the period of proportional reduction of working hours and wages or temporary suspension of the employment contract;
- The first installment will be paid within thirty days from the date of conclusion of the agreement;
- The employer must inform the Ministry of Economy of the measures taken within ten days from the date of conclusion of the agreement;
- Employees who (i) occupy a public office or job, a position on a free appointment and dismissal commission or an elected official; (ii) receive the benefit of continued provision of RGPS, except pension for death or accident assistance; (iii) receive unemployment insurance; and (iv) receive a professional qualification scholarship; are not entitled to receive the Emergency Benefit;
- The amount of the Emergency Benefit will be based on the monthly unemployment insurance amount to which the employee would be entitled, subject to the percentages related to the measure to be adopted;
- An employee with more than one employment relationship may receive more than one Emergency Benefit.
- It applies to apprentices and part-time work contracts.

PROPORTIONAL REDUCTION IN WORK DAY AND WAGES

- The reduction of working hours and wages for up to 90 days is allowed, exclusively, in the percentages of 25%, 50% or 70%, preserving the value of hourly wages;
- Emergency Benefit will be based on the monthly unemployment insurance amount to which the employee would be entitled, applying the same reduction percentage as above;
- Collective bargaining with the union may establish percentages of reduced working hours and different wages: (i) without perception of the Emergency Benefit for the reduction of working hours and wages below 25%; (ii) 25% Benefit on the calculation basis for the reduction of hours and wages between 25 and 50%; (iii) 50% benefit on the calculation basis for the reduction of hours and wages between 50% and 70%; and (iV) 70% benefit on the calculation basis for the reduction of hours and wages over 70;
- The working day and regular salary are re-established within two calendar days (i) of the end of the state of public calamity; (ii) the date established in the individual agreement for the end of the reduction period; and (iii) the date of communication by the employer about its decision to bring forward the end of the reduction period.

TEMPORARY SUSPENSION OF THE WORK CONTRACT

- It may be agreed through an individual written agreement between employee and employer, for up to 60 calendar days or up to two periods of 30 days;
- The benefits granted by the employer must be maintained;
- The employment contract will be reestablished within two calendar days (i) of the end of the state of public calamity; (ii) the date established in the individual agreement for the termination of the suspension; and (iii) the date of communication by the employer about the decision to bring forward the end of the suspension period;
- If the employee continues to work, even if partially, the temporary suspension of the employment contract will be out of character;
- For companies with gross revenues in 2019 up to R$ 4,800,000.00, the monthly amount of the employee's Emergency Benefit will be 100% of the monthly amount of unemployment insurance to which the employee would be entitled;
- A company with annual gross revenue above R$ 4,800,000.00 must pay monthly compensatory aid to the employee in the percentage of 30% of the salary, in addition to the Emergency Benefit of 70% of the monthly unemployment insurance amount.

PROVISIONAL GUARANTEE IN EMPLOYMENT

- Employers are no allowed to dismiss the employee without cause in this period, as well as in the months following the reestablishment of the workday and salary or closing of the temporary suspension of the contract, for the same period of the duration of the measures.
- In the event of dismissal without cause, the employer will pay, in addition to severance payments, compensation equivalent to 50%, 75% or 100% of

the salary to which the employee would be entitled during the period of job tenure, depending on the case.

METHOD OF IMPLEMENTED THE MEASURES

- The measures provided for in the MP may be implemented by individual written agreement or collective bargaining for employees who receive a salary of up to R$ 3,135.00 or with employees classified as self-sufficient (article 444, CLT);
- For the other employees, only by convention or collective agreement, except for the reduction of working hours and salary of 25%, which may be agreed upon by individual agreement written by any employee;
- The proposal to reduce working hours and wages or temporarily suspend the employment contract, through individual agreement, must be sent to the employee at least two calendar days in advance;
- Maximum term of proportional reduction of hours and wages and temporary suspension of the employment contract, even if successive, may not exceed 90 days, within the maximum period of 60 days for the suspension.
- Employers must communicate to the union, within 10 calendar days, about the conclusion of individual workload and salary reduction agreements or temporary suspension of the employment contract, agreed under the terms of MP 936.

COLLECTIVE BARGAINING

- CBAs previously entered into may be renegotiated within ten calendar days from the date of publication of the MP.
- The use of electronic means to meet the formal requirements of collective bargaining is permitted;
- Legal deadlines for collective bargaining are reduced by half.

COMPENSATIVE AID BY THE EMPLOYER

- Employer may grant the employee additional compensatory aid to the Emergency Benefit, the amount of which will be defined in the individual or collective agreement;
- The aid will have an indemnity nature, with no incidence of income tax, labor and social security charges.

INTERMITTENT EMPLOYMENT CONTRACT

- The intermittent employee will be entitled to an Emergency Benefit, in the amount of R$ 600.00, for a period of three months and paid in up to thirty days.
- An employee with more than one intermittent contract will not be entitled to accumulate benefits.

SUSPENSION OF EMPLOYMENT FOR JOB TRAINING

- Suspension can last from 1 to 3 months;
- Courses can only be offered in the non-face-to-face modality;
- The other provisions in article 476-A of the CLT have not been changed.

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