

COVID-19: Brazil makes labor and employment rules more flexible to help deal with the coronavirus crisis

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Provisional Measure 927 of 2020 ("MP" – Medida Provisória or "MP 927/2020"), published on 22 March 2020, governs labor and employment matters during the state of "public calamity" officially recognized by the federal government. The main measures under the MP are:

FORCE MAJEURE

- The COVID-19 pandemic constitutes an event of force majeure for employment purposes.

INDIVIDUAL EMPLOYMENT CONTRACTS

- With a view to avoiding lay-offs during the crisis, individual agreements with employees that will prevail over legal and collective bargaining instruments, subject to the limits imposed by the Constitution.

REMOTE WORK

- The MP stresses the existing rule that employers are not required to record the time worked by employees working off site;
- Employers can switch employees from on-site work to remote work on 48 hours' notice;
- Employers and employees must enter into a written agreement, either in advance or within 30 days of the change in the employee's place of work, dealing with payment or reimbursement of expenses incurred by employees working remotely;
- If employees do not have the technological equipment and infrastructure required for remote work and the employer cannot loan equipment free of charge, employees' regular working hours will be computed as time during which they are at the employer's disposition, and thus paid at normal rates;
- Time spent by employees using apps and communications programs outside their regular working hours will not count as time at the employer's disposition, or as standby or on-call time;
- Employers can also adopt remote work for interns and apprentices;
- The rules under articles 277 and following CLT on telemarketing and customer call centers do not apply to remote work.

INDIVIDUAL VACATION

- Employers can put individual employees on vacation on 48 hours' notice, which can be given electronically;
- Vacation time can be given even if the vacation accrual period is not complete;
- Vacation time can be given with respect to future accrual periods, on written agreement between employer and employee;
- Employers may suspend vacation and unpaid leave for health professionals and other employees who work in essential services, by formal notice sent to the worker; and
- Employees' requests to convert up to 1/3 of their vacation time into pay are subject to the employer's agreement.

COLLECTIVE VACATION

- Labor authorities and workers' unions do not need to be notified of collective vacation in advance;
- Employees are entitled to 48 hours' notice;
- Collective vacation can be divided into more than 2 periods, and periods of fewer than 10 days.

HOLIDAYS

- Employers can grant time off early for non-religious holidays on 48 hours' notice;
- Early holiday time may be set off against employees' balances under time banks;
- Time off given in advance for religious holidays depends on each employee's consent, given by individual written agreement.

SPECIAL TIME BANKS

- Time not worked by reason of temporary shutdowns can be compensated for through a time bank system;
- Negative time balances must be compensated for within 18 months from the end of the state of public calamity;
- At the employer's discretion, employees' negative balances can be compensated for by up to an extra 2 hours' work per day, not to exceed 10 hours in a day.

OCCUPATIONAL HEALTH AND SAFETY

- All occupational medical examinations are suspended, except for the examination required when workers leave employment and where the occupational health specialist believes there is a risk to employees. The suspended exams must be done within the 60 days following the end of the state of public calamity;
- The examination on leaving employment may be waived if the employee underwent an occupational medical examination within the preceding

180 days;

- Occupational health and safety training sessions are suspended;
- Current Commissions for Prevention of Work-Related Accidents – CIPAs will be maintained until the end of the state of public calamity, and CIPA elections are suspended.

SUSPENSION OF EMPLOYMENT FOR JOB TRAINING *

- Employment contracts (including payment of salary) can be suspended for job training on agreement with individual employees (the consent of the workers' union is not required);
- Suspensions can last up to 4 months;
- Employees must take part in a remote job training course or program during the suspension period;
- The course can be offered directly by the employment or by a specialist organization and must be relevant to the employer's business;
- Employers may (but are not required to) pay a cost allowance during the suspension period, which does not constitute salary;
- Employees will be entitled to all other benefits granted by the employer, which will not be considered to be employment benefits;
- If the training course or program is not provided, or if the employee continues to work for the employer during the suspension period, the suspension is considered to be null and the employer must pay salary and payroll charges with respect to the suspension period, and will be subject to legal penalties.

**These measures have been revoked by Provisional Measure 928 of 2020, published on 23 March 2020..*

POSTPONEMENT OF FGTS DEPOSITS

- Deposits to employees' severance guarantee fund accounts (FGTS – Fundo de Garantia por Tempo de Serviço) with respect to March, April and May 2020 may be paid in up to 6 monthly installments, starting in July 2020, without interest, fines or other charges;
- On termination of employment, the postponement is reversed, and the employer is required to pay all postponed amounts, without fines or other charges;
- The validity of FGTS clearance certificates issued prior to the MP is extended for 90 days.

HEALTH PROFESSIONALS

- By written agreement with individual workers, health establishments may
 - extend working hours, and
 - for employees working 12 hours on/36 hours off, include additional

working hours in the period from the 13th to the 24th hour off;

- Additional time worked may be compensated through a time bank system within the 18 months following the end of the state of public calamity.

FILING DEADLINES IN ADMINISTRATIVE PROCEEDINGS SUSPENDED

- Filing deadlines for defenses and appeals in administrative proceedings resulting from labor infractions and FGTS collection notices are suspended 180 days.

COVID-19 NOT AN OCCUPATIONAL DISEASE

- Contamination by Covid-19 is presumed not to be work-related.

COLLECTIVE BARGAINING INSTRUMENTS EXTENDED

Collective bargaining instruments that have expired or will expire within 180 days may be extended for a period of 90 days, at the employer's discretion.

LIMITS ON LABOR INSPECTIONS

- During a period of 180 days, Labor Inspectors will provide direction and guidance only, except in the following cases:
 - complaints of failure to register employees,
 - infractions contributing to situations of serious and imminent risk related to the situation of public calamity,
 - fatal work-related accidents
 - work in slave-like conditions and child labor

VALIDATION OF MEASURES ADOPTED BY EMPLOYERS

- Employment-related measures adopted by employers in the 30 days preceding the MP are validated, provided they do not conflict with MP's provisions.

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