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COVID-19: New Employment Flexibility Measures

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On April 29, the Federal Government issued two **Provisional Measures (PM 1045 and PM 1046)** that again offer employers labor and employment alternatives, in order to preserve jobs and avoid massive layoffs and the economic impacts of high unemployment. Essentially, the new Provisional Measures repeat last year's initiatives under **PM 927 and PM 936** (which was converted into Law 14.020/2020).

Temporary lay-offs with emergency benefits

- A temporary lay-off may be negotiated through collective bargaining or individual written agreement between employee and employer, for up to 120 days

- The federal government may extend the length of the new Emergency Benefit and of the temporary lay-off

- Employment benefits granted by the employer must be maintained

- Employees must return to work within two calendar days of (i) the agreed date for the termination of the lay-off; or (ii) the date of notice from the employer, putting an end to the lay-off period

- Employees may not work while on lay-off, even part time.

- For companies with sale revenue in 2019 of up to BRL 4,800,000, the monthly amount paid as the employees' Emergency Benefit is 100% of the monthly amount of unemployment insurance to which the employee would be entitled

- Companies with gross annual revenues above BRL 4,800,000 must contribute 30% of the employee's salary, combined with the Emergency Benefit of 70% of the monthly amount of unemployment insurance

Reduced working hours and pay

- Working hours and wages may be reduced by 25%, 50% or 70%, for up to 120 days only, and the Emergency Benefit will compensate in part for the reduction in pay. Different percentages may be established by collective bargaining

- Employees return to regular working hours and pay within two calendar days (i) of the date fixed in their agreement with the employer; or (ii) the date of notice from the employer advising that the reduction period will end early

Remote work

- Employers may decide unilaterally on migration between in-person and telework

- Remote work arrangements must be formalized by written instrument within 30 days

- Employees' expenses must be paid or reimbursed by employers

- When employees do not have the necessary equipment and infrastructure and the employer cannot make them available for loan, the employee's normal working hours must be paid by the employer.

- Teleworking is allowed for interns and apprentices

Individual vacation

- Employers are entitled to notify employees of their annual vacation as little as 48 hours in advance

- Employees may request vacation time before the vacation acquisition period is complete

- Employers may grant annual vacation before the acquisition period is complete, and vacation pay will be deducted from severance pay if the employee resigns

- The vacation allowance (1/3 of a month's salary) may be paid at the same time as the mandatory end-of-year bonus (13th salary)

- The employer's consent is required for employees to convert 1/3 of their vacation time into pay

Collective vacation

- Prior communication to the authorities and the union is not required, and collective vacation may apply to all employees or only to certain groups

- Only 48 hours' notice to employees is required

- Collective vacation may be split into more than two periods, which may be less than the usual minimum of 10 days and more the usual maximum of 30 days

Holidays

- Holidays, including religious holidays, may be granted early, without need for employees’ agreement

- Early holidays can be used to reduce time bank balances

Special time bank scheme

- In the case of a temporary shutdown, employers can create a special time bank for time not worked during the shutdown while employees are receiving normal pay.

- The time accumulated in the bank must be compensated within 18 months after the expiry of the Provisional Measure (120 days)

- Compensation will occur at the employer’s discretion, by extending the workday by up to two hours, without exceeding 10 hours a day, including weekends

Health and safety at work

- Employers are not required to carry out occupational medical examinations of employees who do remote or off-site work

- For employees working in person, occupational medical examinations falling due during the term of the Provisional Measure may be carried out within 180 days, counting from the date they were due

- The mandatory medical examination for leaving employees is waived if a periodic examination was carried out less than 180 days ago

- Occupational health and safety training is postponed

- Accident Prevention Commission (CIPA) meetings and elections may be held remotely

- All other health and safety standards are maintained

Severance Guarantee Fund (FGTS) contributions deferred

• Employers' contributions to the FGTS fund for April, May, June and July 2021, can be deferred and paid in up to four monthly installments, starting in September 2021, without interest or other charges

• Clearance certificates issued prior to the Provisional Measure are extended for 90 days

Formalization of measures and provisional guarantee in employment

• As rule, the measures under Provisional Measure 1045 must be implemented by collective bargaining agreement.

• Individual agreements are allowed for employees who receive a monthly salary of up to BRL 3,300 or are classified as self-sufficient (university degree and monthly salary of more than BRL 12,202), and for reductions of 25% in working hours and pay.

• Individual agreements for temporary lay-offs and reductions in hours and pay are permitted if the Emergency Benefit and the amount paid by the employer adds up to employees' normal monthly salary

• Except for cause, employers may not dismiss employees during temporary lay-off or the period of reduced hours and pay, or for an equal period of time after return to regular work, subject to a penalty a 50%, 75% or 100% of the salary to which the employee would be entitled during the period of guaranteed employment

• If employees are entitled to provisional guarantees of employment under Law 14.020/2020 (which created programs similar to PM 1045), the time on the first guarantee will stop running, and will only resume after the end of the employment guarantee under PM 1045

Other measures

• Electronic means can be used to comply with formal requirements in collective bargaining, in which case legal deadlines are reduced by half

• During a 180-day period from the date PM 1045 comes into effect, procedural deadlines for filing defenses and appeals are suspended in non-electronic administrative proceedings involving labor infractions and FGTS debt, along with the respective limitation period

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