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Provisional measure (MP) adapts labor legislation to meet business demands arising from the Covid-19 pandemic

Published in an extra edition of the 22nd March 2020, Provisional Measure (MP) No. 927/20 regulates the adjustments in the labor laws announced by the government to minimize the impact of the declared public emergency until December 31, 2020 due to the coronavirus pandemic.

The rule establishes that, during this period, the agreement between employer and employee will prevail over any other legal act, provided that the agreement is signed in writing, aimed at maintaining employment and obey the limits provided for in the Federal Constitution.

In addition, it suspends the payment of the Severance Pay Fund (FGTS) for the months of March, April and May (payable in April, May and June respectively). The FGTS for these months may be paid in up to six months, without incurring fines and other legal charges. Payment starts in July and must be made on the seventh day of each month.

It also postpones the performance of occupational, clinical and complementary medical examinations. The postponement will not occur if the physician coordinating the Occupational Health and Medical Control Program evaluates that this puts the health of the worker at risk. Dismissal exams, on the other hand, will only be waived if the last medical exam was done less than 180 days ago.

For companies dealing with the interruption of face-to-face services, the measure eases some instruments already provided for in the legislation. Teleworking, for example, is now allowed regardless of the provision in individual or collective agreements and prior registration of changes in the employment contract. Interns and apprentices can also work in the home office.

Individual holidays can be granted whether the acquisition period has elapsed or not. Companies still retain the option whether or not to accept or not the employee's vacation redemption. Workers in the health sector or in roles considered essential can suspend when they have to take their vacations and unpaid leave.

In the case of collective vacations, restrictions established in the Consolidation of Labor Laws (CLT) are suspended. Prior communications by the Ministry of Economy and trade unions are also waived.

The changing of work regimes and anticipated vacations and holidays require that the worker be notified at least 48 hours in advance. This notification can also be made electronically.

The interruption of activities may also be compensated by the creation of a bank of hours through a formal individual or collective agreement, even if not provided for in a convention or work agreement. Compensation must be made within 18 months after the state of public emergency has ended and can be done by extending the workday by up to two hours a day, as long as it is restricted to 10 hours a day.

The MP also brought something new: the possibility of suspension of the employment contract for four months, during which the employer does not need to pay wages. The negative impact of this announcement made the government announce the revocation of this provision.

It is important to remember that provisional measures have immediate effects, but depend on approval by the Legislative Branch, which can change or even reject them. Congress has up to 120 days to approve an MP. If the deadline is not observed, it will expire.

In addition, a measure dating from April 2 (MP 936) provides for the possibility of a reduction in working time with a reduction in wages, and the possibility of suspending the employment contract:

The employer may reduce the employee's wages and hours of work, proportionally, so that there is no reduction in hourly wages, for a maximum period of 90 days. The reduction can be 25%, 50% and 70%, respecting the proportionality of the workload and the reduction in salary. In the event of a reduction of 25%, 50% and 70%, the government will grant the worker corresponding compensation, in the same percentages, therefore, 25%, 50% and 70% on the amount of unemployment insurance to which the employee is entitled, if he had been dismissed.

The government has announced that small businesses (2019 revenue < R\$ 4.8 million) can suspend the employment contract without paying the wages of their employees. In this case, the government will pay 100% of the unemployment benefit amount.

For bigger companies (2019 revenue > R\$ 4.8 million), the government will pay 70% of the amount of unemployment insurance provided that the employer pays compensatory assistance of 30% of the employee's salary.

Remember that this unemployment allowance starts at 80% of gross salary and is capped at R\$ 1,813.13 (around 350 USD), so this government assistance only partially compensates for the decrease / suspension of salary.

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