

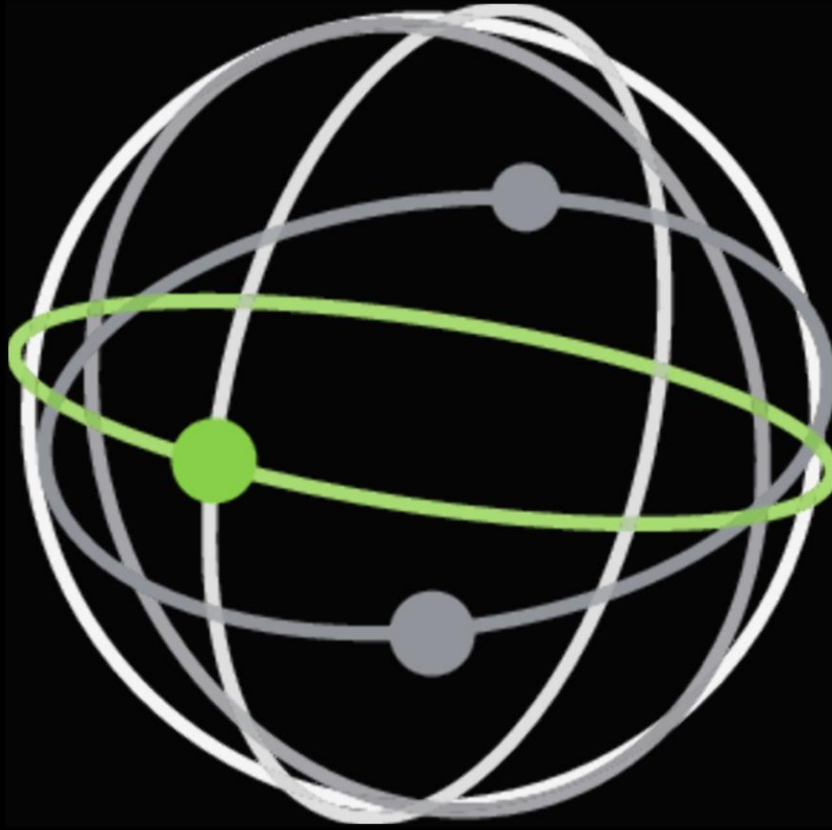
CTSU

Sociedade de Advogados

Member of Deloitte Legal network

COVID-19 Legal Insights

May 6th, 2020



COVID-19

Legal Insights no. 30

Situation of Calamity

Following the termination of the State of Emergency, a Situation of Calamity has been declared in Portugal, under the terms of the Resolution of the Ministers Council no. 33-A/2020, of April 30th.

The declaration of the Situation of Calamity intends, among others, to stipulate rules for the protection of the individual and collective health, to limit or condition the access, circulation or presence of people in spaces used by the public, and to limit or condition certain economic activities.

Citizens Duties

Under the terms of the Resolution referred above, the following shall remain to be subject to mandatory confinement, in a healthcare establishment, in their home or in another location determined by the Health Authorities:

- Patients with COVID-19 and infected with SARS-Cov2;
- Citizens for whom the health authorities or other healthcare professionals have determined active surveillance.

On the other hand, citizens in general should maintain a civic duty of home confinement, and should abstain from circulating in public spaces and streets, as well as in private spaces or streets equivalent to public streets, except for authorized trips.

Among other, the following are deemed authorized trips:

- Trips for the acquisition of goods and services;
- Trips for the purpose of performing professional activities or similar;
- Trips for the purpose of searching for a job or to attend a job interview;
- Trips for health-related purposes, in particular for the purpose of obtaining healthcare and for the transportation of persons to whom such care is to be provided;
- Trips for the assistance of vulnerable persons, people with disabilities, children, parents, the elderly or dependents;
- Trips for the support and care of minors;
- Short trips for the purpose of sports or enjoyment of the outdoors.

The infringement of the civic duty of confinement is, however, no longer subject to criminal prosecution, and the charge with the crime of disobedience has been excluded in the event of failure to comply with such obligation (except in extreme circumstances or arise from the explicit infringement of legitimate commands by members of law-enforcement personnel).

Simplified Lay-Off and other labor related measures

Companies with locations that have been closed due to the state of emergency or due to restrictions set by legislative or administrative order, and which, in the meantime, have had those restrictions terminated, will still be able to access the simplified lay-off mechanism, provided that such companies resume their activities within eight days as from the date on which such termination was decided.

In addition, employers that used the simplified lay-off mechanism are not prevented from renewing the term employment contracts of their employees, as is the case in the lay-off provisions included in the Portuguese Labor Code.

Furthermore, with regards to labor law measures, this new legislation stipulates that, due to the current circumstances of the COVID-19 disease, and solely for the purpose of the protection of the health of the employees and others, body temperature measurements (i.e.fever) may be performed to employees as a prerequisite to allow them to access and remain in the workplace.

Such possibility does not preclude the right to individual data protection on the part of the employees, therefore it is expressly forbidden to record the body temperature in association with the employee's identity, unless expressly authorized by the employee.

In case the temperature measurements reveal temperature higher than normal, the employee's access to the workplace may be denied.

Also, under the terms of the referred Resolution, the adoption of the telework regime remains mandatory provided that the activity in question allows for it.

Additionally, as part of the obligations concerning hygiene, health and safety in the workplace, companies must prepare a contingency plan (including measures to be undertaken in the event of an infected employee) adequate to the workplace and in accordance with the guidelines and instructions provided by the General Health Administration and the Working Conditions Authority.

Furthermore, employees with chronic diseases with added risk (heart diseases or chronic respiratory disease) or immuno-compromised, whose work activity cannot be performed through telework, may remain absent from work assuming they provide a medical statement attesting to their health condition.

Commercial Establishments

Concerning the opening and closure of commercial establishments, under the terms of this legislation, a number of locations must remain closed, including dance halls, children parks, museums, monuments, palaces, bullfighting rings, art galleries and exhibition halls, convention venues, conference rooms and sports venues, casinos, stadiums, swimming pools or gymnasiums.

In addition, under the terms of the referred legislation, restaurants and other food related establishments may continue their activity only for the sole purpose of food confectioning intended for consumption outside the establishment or delivery to households, directly or through an intermediary.

The opening of the majority of spaces and commercial establishments is scheduled to occur gradually up to 1 of June of 2020.

Furthermore, the new regime determines that in every location where goods and services are sold, a set of rules concerning the occupation, permanence and social distancing of clients must be followed, including:

- The use of publicly accessible spaces shall comply with a maximum occupation indicative rule of 0,05 persons per square meter of area;
- The implementation of measures that ensure a minimum distance of two meters between individuals, including those actually purchasing the product or receiving the service;
- Ensuring that people remain inside the establishment for the time strictly necessary for the acquisition of goods or services;
- Establishing, whenever possible, specific entry and exit circuits in the establishments, through separate doors;
- Promote the daily and periodic cleaning and disinfection of spaces, equipment, objects and surfaces with which there is heavy contact, namely concerning the automatic payment terminals (TPA), which should be cleaned and disinfected after each use or interaction;
- Comply with the remaining rules defined by the General Health Administration;
- With regards to the opening hours, these should be adjusted in order to ensure different opening or closing hours for the locations, by the entity's unilateral decision, or by decision of the government, and specifically for the locations that have now been authorized to resume their activity, those may not open before 10 a.m. in any case.

Additionally, commercial establishments that remain open shall give priority to healthcare professionals, law-enforcement, security, protection and rescue personnel, army personnel and social assistance worker.

On a different issue, during the State of Calamity it is not mandatory to provide the complaints book in physical format (the "virtual" complaints book may continue to be used, and is available online).

Finally, it is mandatory the use of masks or visors to access or remain in commercial and services spaces and establishments, in establishments which provide services and attendance to the public, as well as in education establishments and

kindergartens by the teaching and non-teaching staff and by students over six years of age.

The use of masks may be waived when its use is impracticable due to the nature of the corresponding activities.

Other measures

The Resolution also establishes a range of other measures, of which the following are of particular importance:

- Public services – Public services will resume face-to-face attendance services, although through prior appointment, as of 4 of May of 2020.

The Citizens Offices (*«Lojas do Cidadão»*) will remain closed, although the face-to-face attendance service through prior appointment will be available in the municipalities where there are no decentralized offices, as well as the provision of those services through digital channels and contact centers with citizens and companies.

- Events – In general, celebrations and other events that entail a crowd of more than 10 persons are not allowed.
- Funerals – The performance of funerals is subject to the implementation of organizational measures to ensure that there are no crowds of people and that safety distances are complied with, namely through the stipulation of maximum attendance limit.

In any case, the presence at the funeral of a spouse or unmarried partner, ascendants, descendants, relatives or other related family members cannot be denied.

- Physical exercise – The practice of non competitive physical and sports activities outdoors may be performed, provided that certain requirements are met, including the compliance with the minimum distance of two meters between persons and the avoidance of sharing of equipment and other materials (ex.: sessions with personal trainers);

Additionally, under the terms of Decree-Law no. 20/2020, of May 1st, the use of masks or visors inside public transportation is mandatory.

Failure to comply with the obligation to wear masks on public transportation enables the forbiddance of access to such transportation and it may entail the payment of a fine between (euro) 120 and (euro) 350.

Furthermore, public or private entities responsible for public transportation must ensure, cumulatively:

- a) A maximum occupancy of 2/3 of its total capacity for land, river and maritime transportation;

b) The adequacy of the maximum number of passengers in aerial transportation, establishing an occupancy limit in accordance with the guidelines concerning maximum occupancy, to be determined by Government Order;

c) The daily cleaning, weekly disinfection and monthly hygienization of vehicles, facilities and equipment used by passengers and other users, in accordance with the guidelines of the health authorities.

With regards to taxi and ride-sharing companies, the front seats shall only be used by the driver, and the maximum occupancy of such vehicles by passengers shall not exceed 2/3 of the remaining seats.

And finally, the citizen card, certificates and certifications issued by registry and civil identification services, driving license, visas and other documents related to the permanence in national territory, as well as licenses and permits whose validity expires as of May 2th or within the preceding 15 days shall be accepted, under the usual terms, until 30 of June of 2020.

These documents shall continue to be accepted under the usual terms after 30 of June of 2020, provided that the holder proves that it has already scheduled the renewal thereof.

To access the full version of this legislation click the following links:

<https://dre.pt/web/guest/home/-/dre/132883344/details/maximized?serie=I&day=2020-04-30&date=2020-05-01>

<https://dre.pt/web/guest/home/-/dre/132883356/details/maximized?serie=I&day=2020-05-01&date=2020-05-01>

If you do not intend to receive these communications, you may oppose, at any time, to the use of your data for these purposes, by sending a written request to the following email address: geral@ctsu.pt. CTSU also ensures the right to access, update, rectify and delete, as per the applicable law, upon written request sent to the above mentioned email address. This communication contains only general information, therefore it is not an advice nor a provision of professional services by CTSU. Before any act or decision which may affect you, you should seek advice from a qualified professional. CTSU is not liable for any damages or losses suffered as a result of decision-making based on this communication. CTSU - Sociedade de Advogados, SP, RL, SA is an independent law firm member of Deloitte Legal network. "Deloitte Legal" means the legal practices of Deloitte Touche Tohmatsu Limited member firms or their affiliates that provide legal services. For legal and regulatory reasons, not all member firms provide legal services