



## **COVID-19**

### **Legal Insights no. 6**

Decree no. 2-B/2020 – Measures adopted under the scope of the State of Emergency extension

Decree no. 2-A/2020, dated March 20 (“Decree no. 2-A/2020”), that was approved by the Portuguese Government, proceeded to the execution of the State of Emergency ordered by the Decree of the President of the Portuguese Republic No. 14-A/2020, of March 18.

Now, Decree no. 2-B/2020, dated April 2 (“Decree no. 2-B/2020”) rules the renewal of the State of Emergency declared by the President of the Portuguese Republic, due to the covid-19 pandemic that caused the current situation of public health emergency, for another 15 days, until 23:59h of April 17, 2020. Decree no. 2-B/2020 puts in concrete and gives shape to the partial suspension of certain fundamental rights, in accordance with the Decree of the President of the Portuguese Republic no. 17-A/2020, dated April 2 (“Decree of the President of the Portuguese Republic”). With the renewal of the State of Emergency declaration by the Decree of the President of the Portuguese Republic, the Government, with the present Decree no. 2-B/2020 revokes and replaces Decree no. 2-A/2020.

This new Decree no. 2-B/2020 maintains the duty to limit contacts between persons as much as possible, as well as their movements, that shall be kept to the minimum necessary. Accordingly, in view of the ongoing developments in the context of the current pandemic caused by COVID-19 virus, a set of measures aiming to create additional limitations to the circulation of people were adopted, together with the adoption of additional measures now envisaged for the first time, expressly regulating situations that needed clarification and also determining that certain economic activities should continue to be carried out.

In the first place, during **the Easter period, as extraordinary measures**, it was defined that:

- (i) Citizens cannot travel outside the municipality of residence (without prejudice to the parcels of municipalities in which there is a territorial discontinuity), between 0:00h on the 9th until 24:00h on the 13th of April, except for health reasons or other reasons of imperative urgency; This limitation/restriction (a) excludes health professionals and workers of health establishments and social support; civil protection agents, security forces and services and political

officeholders, magistrates and leaders of social partners (it should be noted that these workers should circulate with a declaration from the employer certifying that they are actually performing their professional activities); and (b) does not imply the free movement of goods within this period;

- (ii) Commercial passenger flights, to and from national airports, shall not be allowed, without prejudice of emergency landings, humanitarian flights or flights for repatriation purposes, during this period.

The breach of these measures is punishable with disobedience crime.

In Decree no. 2-B/2020, the Portuguese Prime Minister also **appoints the authorities that will coordinate the implementation of the declaration of the State of Emergency within the national territory at local level.**

Regarding the **exercise of certain economic activities**, this Decree no. 2-B/2020 establishes that the activity developed by itinerant sellers shall be permitted if with the purpose of making available goods of first necessity or other goods considered essential. It is also stated that the rental of passenger vehicles without driver (rent-a-car) is allowed to journeys authorized under this Decree no. 2-B/2020, for reasons of assistance to vehicle drivers and for situations intended to provide essential public services or if they are contracted under the legal regime of the State vehicle fleet. Finally, it is also expressly regulated that the funeral activities shall be maintained, including the provision of funeral services of deceased persons diagnosed with COVID-19<sup>1</sup>.

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<sup>1</sup>The following points should also be highlighted, some that were already included in the previous Decree 2-A/2020, others that complement what was prescribed there, and others, that are new: (i) The premises and establishments referred to in Annex I of Decree 2-B/2020 are closed, under penalty of the crime of disobedience; (ii) Retail trade activities are suspended, with the exception of those that provide basic necessities or other goods considered essential, specified in Annex II to Decree 2-B/2020, under penalty of the crime of disobedience. This suspension does not apply to wholesale establishments, nor to establishments that intend to maintain their activity exclusively for the purpose of home delivery or making goods available at the door of the establishment or at the wicket; (iii) Service activities in establishments open to the public are suspended, with the exception of those providing essential services or other services considered essential, under penalty of the crime of disobedience. The suspension does not apply to restaurants and similar establishments that may maintain their activity, for the exclusive purpose of confectionery intended for consumption outside the establishment or home delivery. The suspension shall not apply to restaurant services carried out in canteens that are in regular operation or in other collective catering units whose restaurant services are carried out under a contract of continuous performance. (iv) Retail trade activities and service activities located on the motorway, inside airports and in hospitals are not suspended; (v) Establishments engaged in retail trade or in the provision of services that keep activity should give

In what respects to **Public Services**, the members of the Government responsible for the areas of Public Administration and work, solidarity and social security shall define the necessary guidelines in the event of illness and regarding the attendance, at distance, to learning actions, and shall also define the terms under which employees of the central Administration may perform and liaise their duties in local Administration, regardless of their consent, as well as the terms under which employees of the central and local Administration, with their consent, may perform and liaise their duties in social solidarity or related institutions.

An **exceptional regime of social support activities** is also adopted, being determined that during the State of Emergency, social establishments that are able to operate and that have the necessary equipment may also be used to serve as such.

With regard to **employment agreements**, the possibility of ceasing employment agreements of health professionals bounded to the services and establishments integrated in the National Health Service ("SNS") is temporarily suspended, regardless of the legal nature of the link. Fixed-term employment agreements celebrated with health professionals linked to services and establishments integrated in the "SNS", whose termination should operate during the State of Emergency, are considered automatically and exceptionally extended until the end of the State of Emergency.

With regard to **dismissals**, in general, the human resources of the Authority for Working Conditions are reinforced in order to ensure a greater capacity of response in what concerns to the inspection actions carried out by this entity. Whenever a Labour inspector finds evidence of unlawful dismissal, even as a

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priority to persons subject to a special duty of protection (i.e. those over 70 years of age, immuno-compromised citizens and persons suffering from chronic illness who should be considered at risk), as well as health professionals, members of the security, protection and rescue forces and services, personnel of the armed forces and the provision of social support services; (vi) E-commerce activities shall not be suspended, nor shall activities for the provision of services provided at a distance, without contact with the public, or developing their activity through electronic platform; (vii) Teleworking shall be adopted, regardless of the employment relationship, whenever the functions in question allow it; (viii) The closure of establishments may not be invoked as a ground for terminating, in any form, non-residential rental contracts or other forms of contracts for the operation of immovable property, or as a ground for an obligation to vacate immovable property on which they are installed; (ix) Licenses, authorizations or other administrative acts shall remain valid irrespective of their expiry date; (x) Restrictions on movement shall not preclude free movement of goods.

result of an act attributable to the employee, the extinction of the work post or as part of a collective dismissal, he shall draw up a notice and notify the employer with the intention to legalize the situation. Until the employee's situation is legalized or until a judicial declaration is issued, *res judicata*, the employment agreement shall not be terminated and all the rights of the parties shall be maintained, in particular the employee's right to the remuneration and the inherent obligations towards Social Security.

In relation to **transports**, it is ensured that the restrictions adopted are also extended to air transportation.

Furthermore, it is also established that the Public Health General Director provides, in a duly anonymized mode, the scientific and technological community the **access to micro public health data relating to patients infected by the new coronavirus** and people suspected of having COVID-19.

Finally, a note to point out that there are still **other situations** foreseen in Decree 2-B/2020, including, the ones that allow the members of the Government responsible for the areas of internal administration, national defense, justice, transport, agriculture, sea and energy and environment, to adopt extraordinary measures within the respective sectors.

It should be recalled that, as mentioned above, this Decree 2-B/2020 takes effect at 00.00h on April 3<sup>rd</sup> 2020.

For further information please click the link below with the complete versions of Decree no. 2-B/2020, dated from 2<sup>nd</sup> April and to Decree of the President of the Republic no. 17-A/2020, dated from 2<sup>nd</sup> April:

<https://dre.pt/web/guest/home//dre/131068124/details/maximized>

<https://dre.pt/application/file/a/131068189>

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