



COVID-19

Legal Insights no. 13

Decree Law no. 10-G/2020, which provides exceptional and temporary measures to protect employment

The **Decree Law no. 10-G/2020**, establishes exceptional and temporary measures defining and regulating the terms and conditions for granting support to employees and companies affected by COVID-19, namely through the lay-off regime, in order to maintain employment and mitigate business crisis situations, revoking Ordinance no. 71-A/2020, from March 15th.

A **business crisis situation** is considered to be:

- a) The total or partial closure of the company or establishment arising from the duty to close facilities and establishments following the declaration of the state of emergency, in relation to the establishment or company effectively closed and covering the respective employees; or
- b) The total or partial halt of activity of the company or establishment resulting from the interruption of the global supply chains, or from the suspension or cancellation of orders which can be proven by documentary evidence; or
- c) The abrupt and severe drop of, at least, 40% of invoicing within the thirty days period prior to the application of the request before Social Security, with reference to the monthly average of the two months preceding that period, or in relation with the same period of the previous year; for those who have initiated their activity within less than 12 months ago, with reference to the average of such period.

For the purposes of subparagraphs b) and c), the following shall be submitted (i) a declaration from the employer jointly with a certificate from the company's licensed accountant attesting the situation, and (ii) a list with the names of the covered employees and their social security number.

Entities benefiting from this support may be inspected, *a posteriori*, and must prove the facts on which the application and the respective renewals were based on. The submission of documents may be required, in the applicable cases, namely:

- a) Trial balance from the month the support was provided, as well as from the equivalent month or previous months;

- b) VAT declaration from the month the support was provided, as well as from the two preceding months, or the declaration from the last quarter of 2019 and the first quarter of 2020 showing intermittent or interrupted supply chains or the suspension or cancellation of orders; and
- c) For the purposes of suspension or cancellation of orders, documents indicating the cancellation of orders or reservations from which it results that the use of the company or the affected unit will be reduced in over 40% of its production or occupancy capacity within the month following the request for support.

In a business crisis situation, the employer has the right to:

- a) **Extraordinary support for the maintenance of an employment contract, with or without training, in the event of temporary reduction of the normal working period or suspension of the employment contract**, under the terms foreseen in articles 298 *et seq.* of the Labor Code (regarding the regime applicable to the temporary reduction of the normal working period or suspension of the employment contract, due to an event concerning the employer). To this end, the employer shall notify the employees in writing of the respective decision, indicating the foreseeable duration and immediately sending an electronic request to the competent social security department together with an employer's declaration containing a summary description of the business crisis situation affecting the employer.
- b) **Extraordinary training plan**;
- c) **Extraordinary financial incentive** to support the normalization of the company's activity;
- d) **Temporary exemption from the payment of Social Security contributions** by the employer.

These support measures can be cumulated with other supports. Both the extraordinary support for the maintenance of an employment contract and the temporary exemption from the payment of Social Security contributions by the employer will last

for one month and, exceptionally, may be extended monthly up to a maximum of three months.

The **extraordinary support for the maintenance of an employment contract**, granted to the company, is exclusively destined for the payment of remunerations, by reference to normal gross remunerations.

The compensation – corresponding to 2/3 of the employee's salary – will be paid 30% of its amount by the employer and 70% of its amount by the Social Security.

An employee that engages in a remunerated activity performed outside the company shall notify the employer within five days from the beginning of the performance of this remunerated activity, for purposes of a potential reduction of the compensation.

Companies that do not resort to the above-mentioned extraordinary training support may have access to an **extraordinary support for part-time vocational training**, which will last for one month. The extraordinary support to be granted to each covered employee is supported by IEFP and it is granted up to 50% of the gross remuneration, with a maximum limit of 635,00 €.

Employers who benefit from the foreseen measures are also entitled to an **extraordinary financial incentive** to support the return of the company's activity, to be granted by IEFP in the amount of 635,00 € per employee, paid in one lump sum.

To access this incentive, the employer must submit an application to the IEFP together with, namely, the documents proving the facts on which the lay-off request and the respective renewals were based on.

On the other hand, employers are also entitled to **full exemption from the payment of Social Security contributions**, regarding the covered employees and the members of statutory bodies, for the duration period of the support measures.

The exemption refers to contributions related to the remuneration of the months in which the company is beneficiary of the measures. This right to full exemption from the payment of Social Security contributions also applies to self-employed workers who are employers benefiting from the measures and their spouses.

During the period of application of the foreseen support measures, as well as for the following 60 days, **the employer may not terminate the employment contract** of an employee covered by those measures, under neither collective dismissal nor dismissal due to the extinction of the work position.

The non-compliance by the employer or by the employee with the obligations related to the provided supports implies the immediate termination of such supports and the refund or payment, in full or *pro rata*, of the amounts already received or exempted, whenever one of the following situations is fulfilled:

- a) Dismissal, except for an act attributable to the employee;
- b) Failure to comply punctually with the remuneration obligations owed to the employees;
- c) Non-compliance by the employer with the legal, tax or contributory obligations;
- d) Distribution of profits within the duration period of the obligations arising from the granting of the incentive, in any form, in particular by way of account withdrawal;
- e) Non-compliance, attributable to the employer, of the respective obligations, within the established time limits;
- f) Provision of false statements;
- g) Provision of work to the employer by an employee covered by the extraordinary support measure for the maintenance of an employment contract in the form of suspension of the contract, or beyond the established schedule, in the form of temporary reduction of the normal working period.

This Decree Law entered into force on March 27th 2020.

For further information, please see below link:

<https://dre.pt/application/file/a/130779603>

<https://dre.pt/application/conteudo/130779510>

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