

20th JULY 2020

## COVID-19

### EXCEPTIONAL AND TEMPORARY LABOUR PROTECTION MEASURES

Following the publication of the Council of Ministers Resolution no. 41/2020, of 6 June, that approved the Economic and Social Stabilisation Programme ("PEES"), Decree-Law no. 27-B/2020 was published on the 19<sup>th</sup> of June, which completed the legal framework of labour protection measures. From 30 June 2020, employers and employees will have at their disposal the following measures:

#### I. EMPLOYERS

##### I.I. Possibility of Simplified *Lay-off* Extension

- a) Companies that have not applied for the simplified *lay-off* mechanism remain eligible, provided that the initial request is submitted no later than 30.06.2020. The application must be made for one month and may be extended up to a maximum of three months.
- b) Companies which have applied for the simplified *lay-off* mechanism and which have reached the limit of three renewals by 30 June 2020 may benefit from the extension of that support until 31 July 2020.
- c) Companies which remain under the obligation to close premises and establishments by legislative or administrative determination of a government source may apply or maintain the simplified *lay-off* for as long as the obligation to close is in place, without limit to renewals.

##### I.II Support for Progressive Resumption

This measure is provided for in Council Resolution no. 41/2020 of 6 June and aims to mitigate the effects of COVID-19 on companies and employees, once the simplified *lay-off* is no longer possible.

The beneficiaries of this support are companies that have benefited from the simplified *lay-off* regime and still have a billing shortfall of 40% or more.

The purpose is to allow, on one hand, the convergence of the employee's salary towards 100% of his salary and, on the other hand, the progressive exemption reduction of Social Security contribution.

The measure, whose regulation is still awaited, will enter into force from August to December 2020

### **I.III. Extraordinary incentive to standardise corporate activity**

In order to benefit from this extraordinary incentive, companies must choose one of the following options:

- a) Support in the amount of €635 (1 "RMMG"<sup>1</sup>) per employee included in simplified *lay-off* or Extraordinary Training Plan, to be paid as a single instalment in accordance to the following criteria:
  - i. If the period of such support happens to be longer than one month, the amount of support will be determined according to the simple arithmetic average of the number of employees covered by each month of support;
  - ii. If the period of such support happens to be less than one month, the amount of support will be proportionately reduced.
- b) Support in the amount of €1.270 (2 RMMG) per employee included in simplified *lay-off* or Extraordinary Training Plan to be paid as a phased manner over six months in accordance to the following criteria:
  - i. If the period of such support happens to be longer than one month, the amount of support will be determined according to the simple arithmetic average of the number of employees covered by each month of support;
  - ii. If the period of such support happens to be less than three months, the amount of the support provided for will be reduced proportionately.

For companies that choose the last modality of support, there is an additional right of partial waiver of 50% of the payment of Social Security contributions by the employer, with reference to the employees included in the mentioned supports.

If the period of such support is longer than 30 days, the partial waiver of 50% of the employer's Social Security contributions shall relate to the employees concerned in the last month of such support, except if the last month of support is July 2020, in which case employees concerned in June 2020 are considered.

This partial waiver of 50% of the employer's Social Security contributions shall apply in accordance to the length of the initial support, as follows:

- i. If the duration of the support is one month or less, it shall occur during the first month of the granting of the support;

---

<sup>1</sup> (RMMG – Remuneração Mínima Mensal Garantida) Guaranteed Minimum Monthly Salary.

- ii. If the duration of the support is more than one month but less than three months, it shall occur during the first two months of the granting of support;
- iii. If the duration of the support is three months or more, it shall occur during the first three months of granting of the support.

In the three months following the end of the support, the employer can still benefit from two months of total exemption from the payment of Social Security contributions, according to the following criteria:

- i. Promotion of job creation through the signing of employment contracts of indefinite term, being considered a net job creation when the employer has more employees at his service than the observed number, in average terms, in the three homologous months;
- ii. Total exemption from the payment of Social Security contributions payable by the employer refers to jobs created in net terms through an employment contract of indefinite duration;
- iii. The employer shall be subjected to the duty of maintaining the achieved level of employment for a period of 180 days.

The partial waiver of the employer's Social Security contributions is recognised *ex officio*, namely on the basis of the exchange of information between Instituto do Emprego e da Formação Profissional, I. P. and Instituto da Segurança Social, I. P.<sup>2</sup>

This support is awaiting the publication of a proper regulating order and is granted by Instituto do Emprego e da Formação Profissional, I. P., namely on the basis of information transmitted by Instituto da Segurança Social, I. P.

#### **I.IV Support accumulation and sequentiality**

Taking in account the large range of measures, employers should bear in mind that they cannot benefit from all measures neither from several measures at the same time. Therefore, it is urgent to clarify:

The Employer cannot benefit simultaneously from the support provided for in Decree-Law no. 10 - G/2020, of 26 March (simplified *lay-off* and Extraordinary Training Plan), and from the support for progressive resumption provided for in Council of Ministers Resolution no. 41/2020, of 6 June.

The Employer who uses the Extraordinary Incentive cannot access the support to the progressive resumption foreseen in the Resolution of the Council of Ministers n.º 41/2020, of 6 June.

---

<sup>2</sup> Institute for Employment and Vocational Training and Social Security Institute.

Once the simplified *lay off* is over, the Employer will have to choose between:

- i. resorting to Extraordinary Incentive; or
- ii. resorting to the support for progressive resumption provided for in Council of Ministers Resolution 41/2020 of 6 June; or,
- iii. resorting to the application of reduction or suspension measures provided for in Articles 298 et seq. of the Labour Code, in which case the provisions of Article 298-A of the Labour Code that imposes a time limit equivalent to half of the period previously used between *lay-offs* shall not apply.

## **I.V Employer Duties**

Such as with the simplified *lay-off*, employers benefiting from the Extraordinary Incentive may not terminate employment contracts under the terms of collective dismissal, dismissal for termination of employment or dismissal for maladjustment, nor may they initiate the respective proceedings.

Employers benefiting from Extraordinary Incentive in the modality of support of 2 RMMG must maintain the level of employment observed in the last month of implementation of the *lay-off* measures or Extraordinary Training Plan. When the last month of implementation of these measures corresponds to July 2020, the month of June will be considered.

Fulfilment of these duties must be observed throughout the entire period of granting of Extraordinary Incentive support and within 60 days thereafter.

During the period of granting of the benefits foreseen in Decree-Law no. 27-B/2020, of 19 June, the employer must maintain social security and tax situations regularized towards Social Security and Tax and Customs Authority.

The breach of the *above* duties shall entail the immediate cessation of the support and the repayment or payment, as appropriate, to the IEFEP, I.P. and/or ISS, I.P. of the amounts already received or exempted.

## **II. EMPLOYEES**

For employees whose gross base salary in February 2020 was €1.270 or less (2 RMMG) and who, between April and June 2020, were for at least one full month covered by the simplified *lay off* or *lay off* provided for in the Labour Code, a stabilisation supplement has been created.

This stabilisation supplement consists of an extraordinary support in an amount corresponding to the difference between the value of the base salary declared for the month of February 2020

and the value of the base salary declared in the month in which the employee was subjected to one of the two measures referred, and in which was observed the greatest difference in base salary. This supplement has the minimum limit of €100 and a maximum limit of €351.

This support is granted automatically and *ex-officio* by Social Security and is predicted to be granted in the month of July.

This information will be updated whenever new legislation on the matter is published.

---

**PARES | Advogados** is available to provide more detailed information on this and other matters that will suit the specific needs of each client, being able to offer all necessary support.

---

**Sílvia S. Cristóvão**  
[sc@paresadvogados.com](mailto:sc@paresadvogados.com)

**Carolina Guerreiro**  
[cg@paresadvogados.com](mailto:cg@paresadvogados.com)

---

This Newsletter is intended for clients and lawyers, shall not constitute publicity and its copying, circulation or any other form of reproduction are prohibited without the express authorization by its authors. The information provided is of general scope and does not preclude seeking legal advice prior to any decision regarding the matter at hand. For further clarifications please contact **Sílvia S. Cristóvão** ([sc@paresadvogados.com](mailto:sc@paresadvogados.com)) or **Carolina Guerreiro** ([cg@paresadvogados.com](mailto:cg@paresadvogados.com)).