

MARCH 2020

COVID 19 SIMPLIFIED LAYOFF | PROTECTION OF JOBS

Decree-Law no. 10-G/2020 of 26th March, which comes into force today, 27th March 2020, rectified through the Declaration of Rectification no 14/2020 of March 28th, institutes an *exceptional and temporary measure for the protection of jobs, in the context of the COVID-19 pandemic*, replacing the already commonly known *simplified layoff*, but in everything similar to it.

WHAT IS IT?

This measure prescribes the following, cumulatively:

- (i) Extraordinary support for the payment of compensations employees are entitled to by virtue of (total or partial) inactivity, granted for each covered employee and exclusively for the payment of this compensation;
- (ii) Support for the resumption of the company's activity; and also
- (iii) Temporary exemption from employers' social security contributions (no waiver for employees' contributions).

WHO CAN APPLY FOR SUPPORT?

The support is aimed at private employers (including those in the social sector) and their employees who, having been affected by the Covid-19 pandemic, are in a situation of business crisis as assessed by one of the following criteria:

- a)** total or partial closure of the establishment or business, arising from the legal obligation to close facilities and establishments, regarding establishments or businesses actually closed and covering only the employees directly assigned to these;
- b)** total or partial shut-down of the establishment or business stemming from:
 - i. the disruption of global supply chains,
 - ii. the suspension or cancellation of orders which results in the use of business or affected unit being reduced by more than 40% of its production or occupancy capacity in the month following the request for support, or
 - iii. an abrupt and sharp drop of at least 40% in invoicing in the 30-day period preceding the application to the competent social security services, with reference to the monthly average of the two months preceding that period, or to the same period of the previous year or, for those having initiated activity less than 12 months ago, to the average of that period, both situations being subject to a

declaration by the employer and a certificate from the company's certified accountant attesting them.

This support is granted to companies without pending debts to social security and to the tax administration being that, until 30th April 2020, debts constituted in March 2020 will not be taken into account.

During the period of application of the support measures and for the following 60 days, the company cannot terminate any employment contract either by collective dismissal or by redundancy (i.e. either related with the employees who benefit of this support or with any other employees).

WHAT DOES THE SUPPORT CONSIST OF?

1) Reduction of normal pay

The support is conditional on the suspension of the employment contract or on the reduction of the normal working period, its purpose being the support to the payment of compensation due to the employees for the mentioned inactivity and not the contribution to the costs incurred by the employer with the work actually done by its employee(s).

Thus, where employment contracts are suspended, the employees covered by these measures are entitled to receive, during the suspension period, compensation corresponding to 2/3 of their normal salary, with one guaranteed monthly minimum salary (currently at €635.00) as a minimum, and a maximum limit of three guaranteed monthly minimum salaries (i.e., currently on a ceiling of €1,905.00).

In the event of a reduction in the normal working period, covered employees are entitled to receive, during the period of reduction in working time, compensation to the extent necessary to ensure, in addition to the remuneration for work done within the company or outside it, the aforementioned monthly amount of 2/3 of their normal remuneration, the same minimum and maximum limits being applicable as above. This compensation is that which is paid by the company to the employee.

Social security pays 70% of this compensation directly to the company, the remaining 30% being borne by the company.

2) Waiver of contributions payment

During the period of assistance, the company is exempted from paying social security

contributions in respect of the remunerations paid to employees who benefit from this support and is also exempt from paying social security contributions in respect of the remuneration of members of the statutory bodies.

Workers' contributions do not benefit from any exemption and must be withheld and paid to social security, along with a separate remuneration statement.

3) Support to the resumption of activity

Companies benefiting from these measures are also entitled to a one-off support payment corresponding to a minimum guaranteed monthly salary per employee (currently €635.00).

HOW TO APPLY FOR SUPPORT?

Before applying for social security support, the company shall, in writing, inform employees of the decision to apply for support, indicating the foreseeable duration, after hearing union representatives and workers' committees, if any.

The company should then send an electronic application made available by social security to the relevant department, accompanied by the employer's declaration containing a summary description of the business crisis situation affecting it and a certificate from the certified accountant of the company attesting it (in cases where the application does not arise from the legal duty to close the company or establishment totally or partially), as well as the nominative list of covered employees with the information required by social security (name, social security number, date of birth, type (suspension or reduction), gross monthly pay, number of normal weekly working hours, number of reduction hours and start and end date of support).

WHAT IS THE DURATION OF THE SUPPORT?

It is currently envisaged that the support will last for one month and may exceptionally be extended on a monthly basis up to a maximum of three months.

NON-COMPLIANCE

Failure by the company or employee to comply with the obligations relating to the support shall result in the immediate termination of the support and the repayment or payment, in full or in proportion, of the amounts already received or exempted, where one of the following situations arises:

- a) Dismissal, except for reasons attributable to the employee;
- b) Failure to strictly meet the remuneration obligations owed to employees;
- c) Non-compliance by the employer with its legal, tax or contributory obligations;

- d) Profit distribution during the duration of the obligations arising from the support, in any form, notably as a withdrawal on account;
- e) Failure by the employer to fulfil its obligations within the deadlines laid down;
- f) Making false statements;
- g) Work done for the employer by an employee covered by the extraordinary support measure for the maintenance of an employment contract in the suspension of the contract case, or beyond the established working schedule, in the case of temporary reduction of the normal work period.

In addition, it is expressly provided that the violation of legal rules relating to the temporary reduction of the normal working period or the suspension of the employment contract gives rise to misdemeanor liability under the general terms.

FINAL NOTES

Applications submitted under Ordinance No. 71-A/2020, of 15th March and before 27th March 2020, remain effective and are assessed in the context of this new regime.

We will update this information as and when legislative acts amending or supplementing the above are published.

PARES | Advogados is available to provide more detailed information on how to benefit from the incentives provided under this scheme that will suit the specific needs of each client, being able to offer all necessary support.

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