

**MARCH 2020**

**COVID 19 – EXTRAORDINARY SUPPORT FOR THE MAINTENANCE OF THE  
EMPLOYMENT CONTRACT IN A CORPORATE CRISIS SITUATION  
ORDINANCE NO. N.º 71-A/2020, OF MARCH 15TH**

Ordinance no. 71-A/2020, published last Sunday, March 15th, defines and establishes the terms and conditions for the granting of immediate support of extraordinary, temporary and transitory nature, to employees and employers affected by the COVID-19 virus outbreak. This ordinance aims for the maintenance of employment and ease the corporate crisis situations, establishing various measures to achieve said goals, among which we highlight the extraordinary support for the employment contract.

These measures are inspired on the lay-off figure, whether in terms of structuring or for the payment methods and amounts. However, it differs from lay off, as far as it does not imply the suspension of the employment contracts and defines a simplified operationalization procedure.

- a) *A total shutdown of the company or establishment activity that emerges from the global supply chains interruption, the suspension or cancelation of orders;*
- b) *The abrupt and sharp collapse of, at least, 40% of the company invoicing, with reference to the homologous period of three months or, for those who initiated the activity less than 12 months ago, the average of that period.*

**I. COVERED ENTITIES**

This regime is only applicable to private employers, including the social sector employment entities and employees at their service, affected by the COVID-19 virus outbreak, who are in a proven corporate crisis situation.

For the purposes of this provisory legal regime, the situation of corporate crisis is:

The corporate crisis situation is certified through a declaration from the employer jointly with a certificate issued by the company certified accountant. The companies applying for this support may be audited, at any moment, by the competent public entities and shall provide evidence of the facts on which the application as well as any eventual renewal are based. The proof of the corporate crisis situation is carried out

on a document basis and may be required, namely, by the submission of:

- a) Balance sheet referring to the month in question, as well as for the homologous month;
- b) Value Added Tax (VAT) declaration for the month in question as well as for the two immediately preceding months, or the declaration for the last trimester of 2019 and the first trimester of 2020, depending on whether the applicant is in the monthly or trimester VAT regime respectively, which evidences the intermittence or interruption of the supply chains or the suspension or cancellation of orders; and
- c) Additional evidence elements to be established by the labor and social security Government member.

## II. SUPPORT

According to the Council of Ministers Resolution no. 10-A/2020, March 13th, this support has the following specifications:

- a) The extraordinary support for the maintenance of employment contracts in a company in a corporate crisis situation with the right to compensation similar to a simplified lay off regime, must be preceded by a communication to the employees and followed by a statement from the employer and a statement from the company certified accountant;
- b) The employees included in the regime receive, at least, a two-third monthly payment, up to a maximum limit of three minimum monthly guaranteed remuneration (€1.905,00), for a period of one month extended monthly up to a maximum period of six months, only when the company employees have taken the maximum period of annual leave and when the employer has adopted the working time flexibility mechanisms provided by law;
- c) Social Security ensures the payment corresponding to 70% of the remuneration amount mentioned in the previous paragraph, being the remaining amount supported by the employer.

In order to access the measures foreseen in this ordinance, the employer must have a regularized tax situation within both Social Security and Tax Authorities. The extraordinary support to the maintenance of employment contracts in a corporate crisis situation takes the form of a financial support, by employee, assigned to the company, intended, exclusively, to the payment of remunerations.

### **III. PROCEDURE**

For this purpose, the employer communicates, in writing, to the employee the decision to request extraordinary support for the maintenance of employment, indicating the foreseeable duration, after hearing the union representatives and the employee's commissions, when they do exist, immediately submitting the application to Instituto da Segurança Social, IP., accompanied by the documents referred above, the list of the employees affected and their social security number.

The employer benefiting from this measure may, on a temporary basis, assign the employee with the performance of duties not included in the employment contract, as long as this does not imply any substantial modification in the employee's position and that they are channeled to the viability of the company.

Employers who benefit from the measures provided for in this ordinance have the right to full exemption of payment of social security contributions due by the employer, related with the employees affected and members of statutory bodies of the company, for the duration of the measures. Employers submit autonomous remuneration statements for the employees affected and undertake the payment of their contributions.

This measure may be cumulated with a formation plan approved by IIEFP, I.P., to which a scholarship is added.

The measures foreseen in this ordinance are subject of internal regulation by the competent public entities.

### **IV. NON-COMPLIANCE**

The non-compliance by the employer of the obligations provided for in this ordinance shall result in the immediate termination of the support and the refund or payment, which case may be, total or partial, of the amounts already received or exempted, when any of the following situations arises:

- a) Dismissal, except for reasons attributable to the employee;
- b) Failure to punctually comply with the remuneration obligations due to employees;

- c) Failure of the employer to comply with its legal, tax or contributive obligations;
- d) Profit distribution throughout the duration of the obligations arising from the incentive granting period, by any means, namely through account withdrawal;
- e) Non-compliance, attributable to the employer, of the obligations assumed within the established periods;
- f) False declarations.

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**PARES | Advogados** is available to provide more detailed information on the extraordinary support for the maintenance of the employment contract in a corporate crisis situation foreseen in Ordinance no. 71-A/2020, of March 15th, that will suit the specific needs of each client, being able to offer all necessary support in this matter.

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