

COVID19

REDUCTION OR TEMPORARY SUSPENSION OF EMPLOYMENT CONTRACTS DUE TO BUSINESS CRISIS (*Simplified Lay Off*)

PROCEDURE AND PRACTICAL APPLICATION OF THE MEASURE

CONDITIONS FOR ACCESS TO SIMPLIFIED LAYOFFS

BUSINESS CRISIS

- Private employers, including those in the social sector, and employee's in their service, affected by the SARS-CoV-2 epidemic who consequently find themselves in a state of business crisis

APPLICATION PROCESS

- Electronic application submitted by the employer through the Social Security Direct service (form RC 3056-DGSS)

DURATION

- Duration of one month, with the potential for exceptional extension on a monthly basis, for a maximum of three months

“BUSINESS CRISIS” – ARTICLE 3.º

A)

- TOTAL or PARTIAL closure of the company or establishment, resulting from the duty to close facilities that is outlined in article 7 of Decree-Law no. 2-A / 2020, of 20 March, or if determined by a legislative or administrative body under the terms provided by Decree-Law nº 10-A / 2020, of 13 March, under its current wording, or according to the Basic Law of Civil Protection as well as the Basic Law of Health, with relation to the company or establishment that is effectively closed and covering its employees.

B) i)

- TOTAL or PARTIAL closure of the business activity or establishment which results from the interruption of the global supply chain, or from the suspension and cancelation of orders.

B) ii)

- Abrupt drop in at least 40% of billing in the period 30 days prior to the request made with Social Security. Relative to:
 - the monthly average of the two previous months, OR
 - as compared to the billing of the same period last year, OR
 - for those which operations began less than 12 months ago, the cumulative average of this period

APPLICATION PROCESS

INITIAL PERIOD

- Written notification, communicating to employees the decision of requesting extraordinary support in the interest of preserving employment and indicating the expected duration of this period
- Conferring with union delegates and members of the employee's Council, if existing

INSTRUCTION

- Immediate submission of the relevant application to the Social Security service (SS Direct – form RC 3056-DGSS), accompanied by:
- Statement of the employer, summarizing the crisis situation affecting the business
- Certification from the official accountant of the company (for the cases provided for in Article 3 (b) (i) and (ii))
- Nominal list of employees being covered and their respective social security numbers (NISS)

INSPECTION

- At all times the relevant public authorities can request the following documents:
 - *Balance sheet with reference to the month where support is being received, as well as the corresponding comparative month*
 - *VAT declaration with reference to the month where support is received as well as the two previous months/ declaration referring to the last fiscal quarter of 2019 as well as the first of 2020 (proof of supply chain interruption or suspension/ cancellation of orders)*
 - *Documents demonstrating the cancellation of orders/reservations which result in a 40% drop off in production, occupancy, or sales in the month following the request for financial support*
 - *Other elements to be specified by ordinance*

REDUCTION OR SUSPENSION

SUSPENSION

All obligations of the parties that do not presuppose the provision of work are maintained

REDUCTION

Wages are calculated in proportion to hours worked

employees are entitled to RETRIBUTIVE COMPENSATION, to the extent necessary to, alongside the remuneration for work performed inside and outside the company, ensure that at least 2/3rds of their normal gross salary, or the value of the minimum wage corresponding to his normal working period, is provided. Whichever is higher, with a limit of 3 minimum wages (€ 1905)

RETRIBUTIVE COMPENSATION

PAYMENT

- Social Security subsidizes 70% of compensation paid to the employee
- The amount is paid directly to the company and not to the employee (the measure is designed as “financial support” granted to the company. The company is therefore obligated to pay the entire compensation to the employee)
- Autonomous remuneration declarations must be submitted for the employees being covered, and the relevant contributions must be paid

SOCIAL SECURITY

- Subject to Social Security contributions (11% borne by the employee)
- Exempt from contributions to Social Security (23.75% borne by the company)
- The statute provides exemptions from Social Security contributions for MOEs (Members of Statutory Bodies) which cannot benefit from the measures provided by Lay Offs as they are not employees

PERSONAL INCOME TAX

- This issue needs to be clarified.
- We understand that, in this regime, the employer is a mere paying agent for Social Security and therefore the amount corresponding to the 70% paid by Social Security would be exempted from personal income taxes (only the 30% paid by the employer would be subject to personal income tax).
- Notwithstanding, according to information provided, this is not the Government's intention. We advise to await for further clarification on this point.

EMPLOYEES' RIGHTS - EXAMPLES

Considering the situation of a married employee, with two title holders and a dependent.

With withholding tax	SUSPENSION OF EMPLOYMENT CONTRACTS FOR 1 MONTH								
	€ 700		€ 1 000		€ 2 000		€ 4 000		
		LAY OFF		LAY OFF		LAY OFF		LAY OFF (*)	
	€ 700	€ 635	€ 1 000	€ 666,67	€ 2 000	€ 1 333,33	€ 4 000	€ 1 905	€ 2 333,33
Quotização SS (11%)	€ 77,00	€ 69,85	€ 110	€ 73,33	€ 220	€ 146,67	€ 440	€ 209,55	€ 256,67
IRS	€ 9,1 (1,3%)	€ 0,00	€ 89 (8,9%)	€ 0,00	€ 440 (22%)	€ 211 (15,8%)	€ 1.220 (30,5%)	€ 400,05 (21%)	€ 562,33 (24,1%)
TOTAL LÍQUIDO	€ 614	€ 565,15	€ 801	€ 593,34	€ 1 340	€ 975,66	€ 2 340	€ 1 295,40	€ 1 514,33
Contribuição SS (23,75%)	€ 166	<i>Isento</i>	€ 238	<i>Isento</i>	€ 475	<i>Isento</i>	€ 950	<i>Isento</i>	<i>Isento</i>
Custo Empresa	€ 866,25	€ 190,50	€ 1 237,50	€ 200,00	€ 2 475,00	€ 400,00	€ 4 950,00	€ 571,50	€ 999,83
Comparticipação SS (70%)	NA	€ 444,50	NA	€ 466,67	NA	€ 933,33	NA	€ 1 333,50	€ 1 333,50

(*) The law is unclear as to the upper limit for what can be guaranteed to the employee. It could be interpreted that the maximum wage is three times the minimum wage, or that compensation is limited to three times the minimum wage. We are inclined to believe the first option (in the same vein: Bernardo da Gama Lobo Xavier, Manual de Direito do Trabalho, 3ª Ed., Editora Rei dos Livros, pages 711 and following).

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BREACH AND RESTITUTION OF SUPPORT

SITUATIONS THAT RESULT IN THE IMMEDIATE RESTITUTION OR TERMINATION OF FINANCIAL SUPPORT

Dismissal for reasons that are not directly attributable to the employee (expiration and denunciation do not, in our opinion, coincide with the notion of dismissal provided for in this case), during the period where support is received and in the 60 days following.

Failing to punctually comply with remuneration obligations due to employees

Failure of the employer to comply with its legal, tax, or contributory obligations

Profit distribution during the term where these obligations arise, in any form, particularly, by way of withdrawal on account

Non-compliance attributable to the employer of the obligations that have been assumed, within their respective deadlines

Providing false information

Continuation of work to the employer by employee covered by the measure of extraordinary support for the maintenance of the employment contract under the provision of contract suspension or, beyond the ordinary schedule, in the modality of temporary reduction of the normal working hours

SUPPORT FOR THE RESUMING OF ACTIVITIES

SUPPORTING THE NORMALIZATION OF BUSINESS ACTIVITIES

- Employers who benefit from the measures provided for in this Decree-Law are entitled to financial incentives in the interest of supporting the resumption of the company's regular activities, which will be granted by the IEFPP, and paid in one installment with the value of the minimum wage per employee (the law seems to provide for the automatic payment of the value of one minimum wage, independent of the application of the measure of suspension or reduction of normal working periods in relation to the employee concerned.)



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