

Labor Law Alert – Provisional Measure No. 936/2020

As a complement to the terms set forth by Provisional Measure No. 927/2020, the federal government published Provisional Measure No. 936/2020, on Wednesday, 04/01/2020, which instituted the “Emergency Program to Maintain Employment and Income” and established new labor measures to address the state of public calamity and public-health emergency resulting from the pandemic caused by the novel coronavirus (COVID-19).

Again, such measures seek to prevent a substantial increase in the number of layoffs and to reduce the negative impact on employers’ cash flow, by authorizing:

- a) Payment of the recently created “Emergency Benefit to Protect Employment and Income”;
- b) Proportional reduction to working hours and monthly wages; and
- c) Temporary suspension of employment contracts.

In short, the “Emergency Benefit to Protect Employment and Income” will be paid by the federal government to employees during the period in which their working hours and wages are reduced, or during the period in which employment contracts are temporarily suspended. Said benefit will be calculated based on the monthly amount of unemployment insurance to which the employee would be entitled in case of dismissal, and it will not alter the amount of money or prevent insurance from being granted in the event of the employee’s dismissal, as long the normally required legal requirements have been met.

A proportional reduction in working hours and wages has been authorized for a maximum of ninety (90) days, up to the fixed reduction limits of 25%, 50%, or 70%, provided that the employee’s hourly wage is protected, which may be negotiated in a collective bargaining agreement, or even through an individual contract (depending on the employee’s classification).

However, the temporary suspension of employment contracts has only been authorized for a maximum of sixty (60) days, which may be split up into two 30 (thirty) day periods. The suspension shall also be negotiated through a collective bargaining agreement or a written individual contract (depending on the employee's classification). During the suspension period, employees will have the right to all their normal benefits, but services may not be rendered.

Specifically in relation to those companies whose gross revenue, in 2019, was more than BRL 4.800.000,00 (four million, eight hundred thousand reais), temporary suspension of employment contracts will require that at least a 30% monthly compensation assistance be granted upon the suspended monthly wage.

In addition, in consideration of the eventual suspension or reduction of working hours and wages, an employee's temporary job-stability period has already been authorized, and permission is given to convert it into compensatory indemnity in the event of unmotivated termination of their employment contract.

Finally, considering the potential conflicts this new legislation may create with the basic principles of Brazilian labor law, historically applied through the country's labor courts, it is possible that, after the contagion caused by COVID-19 in Brazil has stabilized, some individual agreements, and possibly even some collective ones, may be questioned in labor court. As such, particular caution should be taken with all respective adjustments.

We remain entirely at your disposal should further clarifications be required.

Cordially,



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