

COVID-19 | Labour Measures Update

Ana Gradiz Correia

Senior ,Employment & Labour Practice Area, Gómez-Acebo & Pombo, Portugal

Inês Garcia Beato

Lawyer ,Employment & Labour Practice Area, Gómez-Acebo & Pombo, Portugal

Ana Batista Borges

Lawyer ,Employment & Labour Practice Area, Gómez-Acebo & Pombo, Portugal

Henrique Pereira Lourenço

Lawyer ,Employment & Labour Practice Area, Gómez-Acebo & Pombo, Portugal

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INTRODUCTION

As a result of the rapid evolution of the epidemiological situation of the new Coronavirus - COVID 19, the Council of Ministers understood that the measures initially adopted by the Government, approved by Ordinance No. 71-A/2020, of March 15 (as amended) and that were aimed at supporting the maintenance of jobs and mitigating business crisis situations should be strengthened eased and clarified. Accordingly, on March 26, 2020, Decree-Law no. 14-G / 2020 (the "**Decree-Law**") was published, and subsequently rectified by Statement of Rectification no. 14/2020, of 28 March, establishing a set of exceptional and transitory measures to govern the financial support to be granted to the subject employees and companies maintaining the initial purpose of protection and maintenance of jobs avoiding redundancies for economic reasons, as well as mitigating business crisis situations.

The aforementioned Decree-Law also clarified the concept of a business distress that entitles applying for these exceptional and temporary measures (the "**Business Distress**").

The requests submitted prior to the entry in force of the Decree-law are safeguarded and will be analysed in the light of the Decree-Law.

The exceptional measures provided for in the Decree-Law apply to private employers, including employers from the social sector and employees at their service, affected by the pandemic outbreak and who, as a result, are in a situation of business distress.

The Decree-Law does not prejudice the application of the rules set forth in the Labour Code regarding the temporary reduction of the normal working period or suspension of the employment contract due to a fact concerning the employer (commonly called “**lay off**”).

1. **“BUSINESS DISTRESS” DEFINITION**

Business Distress is defined in the Decree-law as:

- (a) the total or partial closure of the company or establishment, resulting from the duty to close facilities or establishments pursuant to the applicable law or due to administrative order (note: in this case, the support measures only benefits the employees affected by the closure); **or**
- (b) any of the following situations, confirmed by a statement issued by the employer and a certificate issued by the company's certified accountant, that demonstrates:
 - i) complete or partial stoppage of business or shutdown of establishment resulting from the interruption of global supply chains or the suspension or cancellation of placement orders, resulting in company or unit activity being reduced by more than 40% of its production or occupancy capacity, in the month following the application; **or**
 - ii) abrupt and sharp drop of turnover (billing), by at least 40%, in the 30 (thirty) days preceding the date of the request served to the Social Security, with reference to either the monthly average of turnover (billing) of the 2 months preceding **or** the preceding year's same period (note: for those companies that have started the activity less than 12 months ago, the drop of turnover is assessed with reference to the average turnover produced in the period of operation).

Business Distress situations are not cumulative, which means that it is sufficient that the employer falls in one of the situations that is described above to be able to apply for the benefits.

The period of 30 (thirty) days referred to in ii) above is counted in calendar days with reference to the date of submission of the application and does not have to be fixed in full months.

For cases in which the company temporarily closes or there is a temporary decrease in activity without the eligibility criteria defined in the Decree-Law being met, the company may resort to the lay-off regime provided for in the Labour Code.

2. SUPPORT MEASURES

The measures regulated by the Decree-Law, consist on the attribution of support to the employer and employees, with a view to maintaining jobs in the face of a Business Distress situation.

The measures adopted may be summarized as follows:

- ü extraordinary support for maintenance of employment contracts in a business crisis situation, with or without professional training, in case of temporary reduction of the normal working period or suspension of the employment contract ("Simplified Lay off") ;
- ü extraordinary training plan;
- ü extraordinary financial incentive to support the normalisation of the company's activity; **and**
- ü temporary exemption from the payment of Social Security contributions, chargeable to the employer;

These measures may be cumulative with each other, as noted below, and may also be cumulative with other support (e.g. European Funds).

2.1. Support measures beneficiaries

The support measures apply to private legal nature and social sector employers, and its employees, who have been affected by COVID 19 and who are therefore in a situation of business distress (as defined in 1). The employers should have their contributory and tax situation regularized before the Social Security and the Tax Authority.

2.2. The Support Measures

- 2.2.1. Extraordinary support measure for maintenance of employment in a company facing a business crisis situation (Simplified Lay off)

Through this measure, companies in Business Distress that comply with the other requirements indicated above have the possibility:

- (i) to reduce the remuneration of their employees;
- (ii) to benefit from a financial support granted by Social Security to pay the retributive compensation due to the employees covered by the measure while the working hours are reduced **or** the employment contract is suspended. The financial contribution is granted for a period of 1 (one) month, extendable monthly with a limit of 3 (three) months.

The financial support awarded to the company that applies to the simplified lay-off regime is granted by each employee that is included in the measure, and it is exclusively intended to fund the payment of retributive compensation during the period of reduced working hours or suspension of employment contracts.

For the duration of the application of the measure, the employees covered by the measure will be entitled to receive the higher of (a) a retributive compensation corresponding to 2/3 of their normal gross remuneration **or** (b) to the value of the minimum guaranteed monthly remuneration corresponding to their normal working period.

The amount of support received by the company referred to in ii) corresponds to 70% of the compensatory remuneration (2/3 of normal remuneration) or the value of the minimum monthly guaranteed remuneration corresponding to the normal period of work, up to a limit of € 1,333.50 per worker (70% of 3 RMMG [Minimum Monthly Guaranteed Remuneration = € 1,905.00]), with the remaining 30% supported by the employer.

In the event that in alternative to the suspension of the contract, the company chooses to reduce the normal working period, the compensation is attributed to the extent strictly necessary so that, along with the remuneration for the work performed in the company or outside, the minimum amount of 2/3 of the employee's gross normal wage, or the RMMG (Minimum Guaranteed Monthly Wage) amount corresponding to their normal working period, whichever is higher.

The amount of the retribution received by the employee will be subject to Social Security contributions (chargeable to the employee - 11%) and IRS taxation (Personal Income Tax).

This measure can be combined with a training plan approved by IEFP, I.P. If, during the period of application of the measure, the employee attends professional training approved by the Institute of Employment and Professional Training, IP ("**IEFP**"), a

training scholarship in the amount of 30% of the Social Support Index may be awarded (by IEFEP) (€ 131.64) [438.81x30%]. Half of this scholarship will be awarded to the employer and the other half to the employee.

Procedure to be observed:

- ü to consult the existing union delegates or works council (if any);
- ü written notice to the employees informing of the decision to request extraordinary support for the maintenance of employment (indicating the expected duration);
- ü to serve the (electronic) application form (Mod. RC 3056/1-DGSS) through the website "*Segurança Social Directa*", accompanied by the employer's statement containing a summarized description of the business distress situation and the accountant's certificate, when it is required, and the nominal list of employees being covered (through the Excel zipped file including the name and Social Security numbers of the employees affected);
- ü to register/change the employer's IBAN in the Social Security website to allow the reimbursement.

For the duration of the simplified lay off , the provisions of articles 298 and following of the Labour Code will be applied, with the necessary adaptations. In particular:

- ü the rights, duties and guarantees of both parties are maintained under the terms provided for in the Labour Code, with the exception of those that presuppose the effective performance of activity, in the case of suspension of the employment contract;
- ü the remunerative compensation to which the employee is entitled is determined in accordance with paragraph 3 of article 305 of the Labor Code, that is to say, the employee is entitled to a retributive compensation to the extent necessary to, along with the employee's remuneration of the work performed in or outside the company, ensure the minimum monthly amount corresponding to 2/3 of the normal gross remuneration or the value of the minimum guaranteed monthly remuneration (corresponding to your normal period of work), whichever is the higher, up to the triple the guaranteed minimum monthly fee, i.e € 1,905.00.

- ü the employer is entitled to extraordinary support corresponding to 70% of the amount of the compensation payable to employee (the compensation has the limit of € 1,905.00).
- ü in the event that the employee performs remunerated activity outside the company, he is obliged to communicate this fact to the employer within 5 (five) days from the beginning of the activity, so that the due reduction of the remuneration compensation can be applied, under penalty of losing the relevant right and to be obliged to refund sums wrongly received. The employer has the obligation to report this situation to Social Security, within 2 (two) calendar days from the date on which it becomes aware of it.

2.2.2. Extraordinary Training Plan

Companies in are in Business Distress that have not resorted to the extraordinary support measures for the maintenance of employment and have been affected by the Covid-19 outbreak may benefit from an extraordinary support for part-time professional training (which cannot exceed 50% of the normal working period), with the view at maintaining their respective jobs and to strengthen the employees' skills.

The extraordinary support to be given to each employee covered is supported by IEFP, I.P. and is granted according to the number of training hours attended, up to 50% of the gross remuneration, with a maximum limit of € 635.00.

This support has a duration of 1 (one) month and is intended for the implementation of a training plan in articulation with IEFP, IP.

For this purpose, the employer must inform the employees in writing of the decision to initiate a training plan and the expected duration of the measure. The employer must immediately forward this information to IEFP, I. P., evidencing the business crisis.

The minimum number of trainees to be included in each training initiative is defined by agreement between the employer and IEFP, I.P., in accordance with the respective training modality.

Further information is expected to be made public in respect to practical aspects of this support.

2.2.3. Extraordinary financial incentive to support the normalisation of the company's activity

Employers who may benefit from the measures above mentioned shall be entitled to an extraordinary financial incentive to support the resume of the company's activity.

This measure intends to support the employer in the payment of salaries during the normalisation phase of the activity and will be granted one-shoot, for an amount of EUR. 635.00 per employee.

The employer should request the granting of this incentive to IEFP, I.P., stating and certifying the business distress situation and make available the documents referred to in 6.

2.2.4. Temporary exemption from the payment of Social Security contributions, chargeable to the employer

Employers who may benefit from the measures approved by the Decree-Law are entitled to a total exemption from the payment of Social Security contributions chargeable to them with respect to the employees covered and members of statutory bodies, during the period of enforcement of the measures and concerning the remunerations paid in that period.

This exemption does not apply to the contributions due by the employee covered by the measure, therefore it is up to the employer to continue to deduct them when processing wages, to communicate them through autonomous remuneration declarations, hand them over to Social Security and make the respective payment.

3. PROHIBITION OF DISMISSAL

During the period of application of the support measures accrued of a 60 (sixty) days term, the employer is prohibited to terminate any employment contracts under the terms of collective redundancy or dismissal due to the extinction of a job position.

4. TELEWORK

Assuming that telework is compatible with the functions performed, the provision of telework is mandatory, and may be determined unilaterally by the employer or requested by the employee, without the need of an agreement between the parties (notwithstanding this, we recommend that it be formalized).

As long as the telework provision is in force, the employee only has his workplace changed, maintaining his duties, including the duties to comply with working hours and observe the orders and instructions transmitted by the employer or superior.

The identification of employees who provide teleworker must be communicated to the Insurance Company to whom work accident insurance has been contracted.

5. NON-COMPLIANCE AND REFUND OF SUPPORTS

In addition to other sanctions and penalties that may apply, the breach of the employer of the obligations regarding the supports determines its immediate termination and the obligation to refund or payment, totally or proportionally, as the case may be, of the amounts already received or that have not been paid because of the exemption, notably, should any of the following situations occur:

- ü dismissal (except for dismissals by fair cause);
- ü non-compliance with the punctual payment of remuneration due to employees;
- ü failure by the employer to comply with its legal, tax or contributory obligations;
- ü distribution of profits during the term of the obligations arising from the granting of the incentive, in any form, namely by way of withdrawal on account;
- ü non-compliance, attributable to the employer, of the obligations assumed, within the established deadlines;
- ü making false statements; **and**
- ü provision of work to the employer by employee covered by the extraordinary support measure for the maintenance of an employment contract in the form of suspension of the contract, or beyond the established worktime, in the form of temporary reduction of the normal period of work.

When reimbursement is due and not voluntarily paid, interests will be charged at the legal rate in force since the end of the deadline, and the debt may even be coercively collected.

6. INSPECTION

The support beneficiaries may be subject to inspection by the competent public entities, and shall be under the obligation to supply evidence of the facts that supported their requests and renewals.

The demonstration of the business distress situation must be made by documentary evidence, and the Social Security and IAFP, I.P. may require, in addition to others, the following documents:

- ü accounting balance sheet referring to the month of support, as well as of the homologous month;

- ü value added tax (VAT) statement referring to the month of support, as well as to the two (2) months immediately preceding, or the statement of the last quarter of 2019 and of the first quarter of 2020, depending on whether the applicant observes the monthly or quarterly tax regime, respectively, evidencing the intermittency or interruption of supply chains or the suspension or cancellation of orders;
- ü supporting documents demonstrating the cancellation of placement orders or reservations, resulting in company or unit activity being reduced by more than 40% of its production or occupancy capacity, in the month following the application;
- ü other supporting elements to be set out by order of the member of the Government responsible for the area of labour and social security.

The Decree-Law entered into force on March 27 2020, and will take effect until June 30, 2020.

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This information will be updated regularly.

The information provided and the opinions expressed are of a general nature, not substituting the use of adequate legal advice for the resolution of specific cases.

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