

Legal Update

Emergency Program for the Preservation of Jobs and Income

The Provisional Measure No. 936 ("MP 936"), published on April 1st, 2020, institutes the Emergency Program for the Jobs and Income Preservation ("Emergency Program"), implemented as a measure to fight the social and economic effects of Covid-19.

In that sense, the Provisional Measure No. 936 provides for the possibility of reducing the employees' workload while preserving their income, as well as the suspension of employment contracts with the payment of an emergency benefit, as well as other general provisions. Our brief about the labor-related aspects of the Provisional Measure No. 936 may be found below.

Workload reduction with income preservation

The Provisional Measure No. 936 allows the employer to reduce the employee's workload and salary proportionally, through the execution of a written individual agreement or a Collective Bargaining Agreement ("CBA"), provided that the following conditions are complied with:

- The employee's salary per hour shall not be modified;
- The offer to enter into a written individual agreement shall be sent to the employee at least two (2) consecutive days in advance;
- The agreements will be valid during the state of emergency and for a maximum period of ninety (90) days;
- The employee will be entitled to a temporary tenure during the reduction period and after the normal workload is reinstated, for a period equivalent to the reduction's time. *For instance: considering a three-month reduction, the employee will have a tenure during these three months and for the three months following the end of it, totaling six months.*

The Provisional Measure No. 936 establishes three bands of proportional workload and salary reduction: 25%, 50% and 70%. The Federal Union will complement the employees' income through the Emergency Benefit for the Preservation of Jobs and Income ("Emergency Benefit"), and its calculation is based on the monthly amount of the unemployment insurance to which the employee would be entitled.

The amount of the Emergency Benefit corresponds to the percentage of the unemployment insurance that is equivalent to the percentage of the salary and workload reduction, as summarized below:

Reduction	Compensation paid by the Federal Government	Individual Agreement	Collective Agreement
25%	25% of the unemployment insurance	Applicable to all employees	Applicable to all employees
50%	50% of the unemployment insurance	Applicable to employees with a monthly income of up to BRL 3,135 or privileged employees ¹	Applicable to all employees
70%	70% of the employment insurance	Applicable to employees with a monthly income of up to BRL 3,135 or privileged employees.	Applicable to all employees

Emergency Benefit for the Preservation of Jobs and Income

The Emergency Benefit will be paid with the Federal Union's resources during the period of salary and workload reduction or during the employment contract's suspension, without the necessity to comply with a vesting period, and regardless of the employment relationship duration or the number of salaries received by the employee.

The amount will be calculated based on the monthly amount of the unemployment insurance to which the employee would be entitled, and shall vary according to the percentage of the salary and workload reduction or depending on the annual gross revenue of the company whose employees had their employment contracts suspended.

The granting of the Emergency Benefit does not hinder the payment nor modifies the amount of the unemployment insurance which the employee may be entitled to. The employees who are not entitled to receive the Emergency Benefit are the ones: **(i)** occupying public positions or public employment, commissioned position of free nomination and exoneration or elected people during the mandate; **(ii)** receiving a continuous benefit from the RGPS, except the ones receiving a death-related pension or an accident allowance; receiving any kind of unemployment insurance or professional qualification scholarship established by the article 2 of the Law No. 7,998/1990.²

The MP 936 also allows the employer to enter into individual agreements with the employees in order to suspend the employment contracts. In such cases, the employees will receive the Emergency Benefit for a period of up to sixty (60) days that can be split in two (2) periods of thirty (30) days each. In this case, the employment contract suspension offer has to be sent to the employee at least two (2) consecutive days in advance.

The suspension of the employment contract may also be provided for on a CBA.

¹ Pursuant to the Brazilian Labor Code ("CLT"), the privileged employees are those who receive a monthly salary two times higher than the maximum limit of the General Social Security Regime ("RGPS"), that currently totals BRL 12,202.12, and who also have a higher education diploma.

² The session nº 2-A of the Law No. 7,998/1990 created a professional qualification scholarship to be paid by the Workers' Assistance Fund ("FAT"). The worker is entitled to the benefit when the employment contract is suspended in order to attend to a course offered by the employer, in compliance with the provisions of the CBA regarding the matter.

During the contractual suspension, the employer shall keep the payment of the employees' benefits (i.e. meal tickets, healthcare plans etc.). During this period, the employee will not be able to carry out any of his/her work activities (even partially), either in person or remotely, under the penalty of having to immediately pay the employee's compensation and social security for the entire period, in addition to being penalized as provided in the current legislation and/or applicable CBA.

Moreover, the MP 936 guarantees a temporary tenure to the employee that has his/her employment contract suspended. The tenure shall be valid during the suspension period and after the re-establishment of the workload for a period equivalent to the suspension period.

In the case the employee is dismissed without cause during the temporary tenure period, the employer shall pay the severance payment commanded by law, as well as the following indemnifications: **(i)** 25% of the salary the employee would be entitled to during the temporary tenure, in case of a workload and salary reduction between 25% and 50%; **(ii)** 75% of the salary the employee would be entitled to during the temporary tenure, in case of a reduction between 50% and 70%; or **(iii)** 100% of salary the employee would be entitled to during the temporary tenure, in case of a reduction higher than 70%, or in case of an employment contract suspension.

The MP 936 also sets specific rules regarding the payment of the Emergency Benefit and the granting of a compensatory aid by the employer, that vary according to the company's annual gross revenue. A summary on the main aspects of the referred benefit may be found below:

Company's Annual Gross Revenue	Compensatory Aid by the employer	Benefit Amount	Individual Labor Agreement	CBA
Up to BRL 4.8 million	Not mandatory	100% of the unemployment insurance	Applicable to employees with salaries up to BRL 3,135.00 or privileged employees.	Applicable to all employees
More than BRL 4.8 million	Mandatory. 30% of the employee's salary ³	70% of the unemployment insurance	Applicable to employees with salaries up to BRL 3,135.00 or privileged employees.	Applicable to all employees

General provisions

- *Collective Negotiations*

The CBAs entered into between before the publication of the MP 936 may be renegotiated in order to adequate their terms to the provisions of the MP 936 within ten (10) consecutive days.

In such cases, the convocation, deliberation, voting, decision, formalization and publishing of the CBA may be done through electronic means and with its deadline reduced in half.

If the employee has already entered into a written individual agreement with the company under the terms of the MP 936 and there is a new CBA with provisions about the matter, the rules set forth by the CBA will prevail.

³ The monthly compensatory aid to be granted by the employer will not have salary status, will not constitute the calculation basis of the income tax, of the social security, of the other taxes applicable to the payroll and the amounts due to the Unemployment Guarantee Fund ("FGTS")

For the collective agreements that establish a percentage of reduction different from the bands provided by the MP 936, the Emergency Benefit will be paid based on the following bands:
(i) reduction of less than 25%: the employee will not be entitled to the Emergency Benefit;
(ii) reduction between 25% and 50%: the employee will receive 25% of the unemployment insurance;
(iii) reduction between 50% and 70%: the employee will receive 50% of the unemployment insurance;
(iv) reduction of 70% or more: the employee will receive 70% of the unemployment insurance.

- ***Re-establishing of the original workload and salary***

The workload and the salaries previously paid will be re-established within two (2) consecutive days, counting from: **(i)** the end of the state of emergency; **(ii)** the date set forth by the individual agreement as the end of the reduction period; or **(iii)** the date in which the employer notifies the employees of the company's decision to anticipate the end of the reduction period.

- ***Professional Qualification Programs or Courses***

During the state of emergency, the professional qualification courses and programs envisaged by the session 476-A of the CLT may be offered by the employer exclusively through remote access and will last between one and three months.

- ***Intermittent Employment Contract***

The employee who has an intermittent employment contract will be entitled to a monthly emergency benefit of BRL 600,00 (six hundred reais) for three months.

- ***Applicability to the Apprentice and Part Time Employment Contracts***

The MP 936 is applicable to the apprentice and part-time employment contracts.

- ***Labor and Employment Public Inspections***

The irregularities found by the Labor and Employment Public Authorities regarding the workload and salary reduction agreements or the employment contract suspension agreements provided by the MP 936 subject the companies to the criteria established by the legislation in force.

- ***Monthly Compensatory Aid's Indemnification Status***

The monthly compensatory aid, that shall have its value defined by the individual agreement or CBA, will be considered as an indemnification for all purposes. Moreover, the monthly compensatory aid will not be part of the calculation basis of: **(i)** the employee's income tax; **(ii)** the social security contribution and other taxes levied on the payroll; **(iii)** the amount owed to the FGTS. Lastly, the monthly compensatory aid may be excluded from the net profit in order to determine the company's income tax, as well as from the Social Contribution over the Net Profit (CSLL) of the companies taxed by the taxable profit.

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Informative Note elaborated by the Employment & Benefits team.

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