

## NEW LABOR MEASURES DUE TO THE CORONAVIRUS PANDEMIC

### REDUCTION IN WAGES AND HOURS OF WORK AND SUSPENSION OF EMPLOYMENT CONTRACTS

#### PROVISIONAL MEASURE No. 936 OF APRIL 1<sup>st</sup>, 2020

Provisional Measure 936/2020 institutes the Emergency Employment and Income Maintenance Program and provides on supplementary labor measures to confront the state of emergency and the public health emergency resulting from the coronavirus (**COVID-19**).

The Provisional Measure creates the Emergency Employment and Income Preservation Benefit<sup>1</sup> (“Benefit”), payable by the Government in the following events: (i) proportional reduction in the hours of work and wages; and (ii) temporary suspension of employment contracts.

	<b>Proportional Reduction in the Hours of Work and Wages</b>	<b>Temporary Suspension of Contract</b>
<b>Access to the Program</b>	It must be informed by the employer to the Ministry of Economy within 10 days <sup>2</sup> .	It must be informed by the employer to the Ministry of Economy within 10 days.
<b>Amount of the Benefit</b>	(i) 25% of the unemployment insurance <sup>3</sup> for a 25% reduction on salary and hours of work; (ii) 50% of the unemployment insurance for a 50% reduction on salary and hours of work;	(i) 100% of the amount of the unemployment insurance; or (ii) 70% of the amount of the unemployment insurance for companies with gross revenue over R\$4,800,000.00 <sup>4</sup>

<sup>1</sup> The base of calculation of the Benefit shall be the monthly amount of the unemployment insurance to which the employee would be entitled to.

<sup>2</sup> The Ministry of Economy will regulate the form for transmission of the information by the employer. If the employer fails to provide the information, it shall be required to pay the employee’s remuneration in full until the information is provided;

<sup>3</sup> Unemployment insurance amounts: (i) for salaries of up to R\$1,599.61 = salary\*80%; (ii) for salaries from R\$1,599.62 to R\$2,666.29 = salary exceeding R\$1,599.61\*50% + R\$ 1,279.69; and (iii) salaries above R\$2,666.29 = R\$ 1,813.03 (maximum amount)

<sup>4</sup> Companies with a gross annual revenue of more than R\$4.8mi (in the calendar year 2019) may only suspend the contract of their employees upon payment of a compensatory assistance in the amount of 30% of the salary of the employee.

	(iii) 70% of the unemployment insurance for a 70% reduction in the wage and hours of work.	
<b>Term</b>	For up to 90 days.	For up to 60 days (which may be fractioned in two periods of 30 days each).
<b>Requirements</b>	(i) preservation of the salary/hour; (ii) reduction in the hours of work and wages in the following percentages: 25%, 50% or 70%.	During the suspension period, the employee shall remain entitled to all benefits granted by the employer.
<b>Forms of Agreement (Individual Agreement or Collective Agreement)</b>	By individual agreement <sup>5</sup> : (i) for employees with a salary equal to or lower than R\$3,135.00; (ii) for less vulnerable employees <sup>6</sup> . (iii) for all employees, if the reduction in the wages and hours of work corresponds to 25%. By collective agreement <sup>7</sup> : (i) for all employees.	By individual agreement: (i) for employees with a salary equal to or lower than R\$3,135.00; (ii) for less vulnerable employees. By collective agreement: (i) for all employees.
<b>Reestablishment</b>	Within 2 days as from: (i) cessation of the state of emergency; (ii) the lapse of the agreed reduction period; (iii) the employer's communication to advance the agreed period.	Within 2 days as from: (i) cessation of the state of emergency; (ii) the lapse of the agreed reduction period; (iii) the employer's communication to advance the agreed period.
<b>Compensatory Assistance by the Employer</b>	Not mandatory, but it may be paid by the employer, it being understood that any	(i) mandatory for companies with a gross revenue in excess of R\$4,800,000.00, in the

<sup>5</sup> The individual agreements shall be informed to the labor union within 10 days as from execution thereof.

<sup>6</sup> Employees who receive more than R\$12,202.12 (two times the cap of the General Social-Security Regime (RGPS)) and who have higher education.

<sup>7</sup> The collective agreement may establish different percentages for the reduction in hours of work and salary that those set forth in this Provisional Measure, which are: 25%, 50% or 70%, in which cases the Emergency Benefit will also be paid in different percentages (article 11, paragraph 2). Previously executed collective rules may be renegotiated for adjustment of their terms within ten days as from publication of the Provisional Measure.

	payment shall be indemnification in nature – without any effects on the payroll – and it shall be contemplated in the individual agreement.	amount of 30% of the employee’s salary. It will not have a salary nature. (ii) not mandatory for companies with a gross revenue lower than R\$4,800,000.00.
<b>Guarantee of Employment (Prohibition of Dismissal without Cause)</b>	(i) during the agreed period; (ii) after reestablishment of the salary, for a term equivalent to the duration of the reduction.	(i) during the agreed period; (ii) after reestablishment of the salary, for a term equivalent to the duration of the suspension.
<b>Dismissal without Cause during the Period of Guarantee of Employment</b>	Additional indemnification in the amount of: (i) 50% of the salary to which the employee would be entitled during the guarantee period - in the event of salary reduction in excess of 25% and lower than 50%; (ii) 75% of the salary to which the employee would be entitled during the guarantee period - in the event of salary reduction in excess of 50% and lower than 70%; (iii) 100% of the salary to which the employee would be entitled during the guarantee period - in the event of salary reduction in excess of 70%.	Additional indemnification in the amount of 100% of the salary to which the employee would be entitled during the period of provisional guarantee of employment.
<b>Penalties</b>	Nonconformities subject the employer to a fine in an amount from R\$1,000.00 to R\$100,000.00, depending on the nature of the violation.	(i) fine in an amount from R\$1,000.00 to R\$100,000.00, depending on the nature of the violation, in the event of nonconformities; (ii) immediate payment of salary and charges to the employee, in case of maintenance of

		the activities (even if partially) during the suspension period.
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We explain that the text above is not exhaustive and neither represents nor substitutes a specific recommendation based on analysis of the case. The law firm DDSA Advogados is available to guide its clients with respect to the main legal measures adopted to confront the pandemic and its effects on the employment relationships, as well as with respect to the applicability of Provisional Measure 936/2020.

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