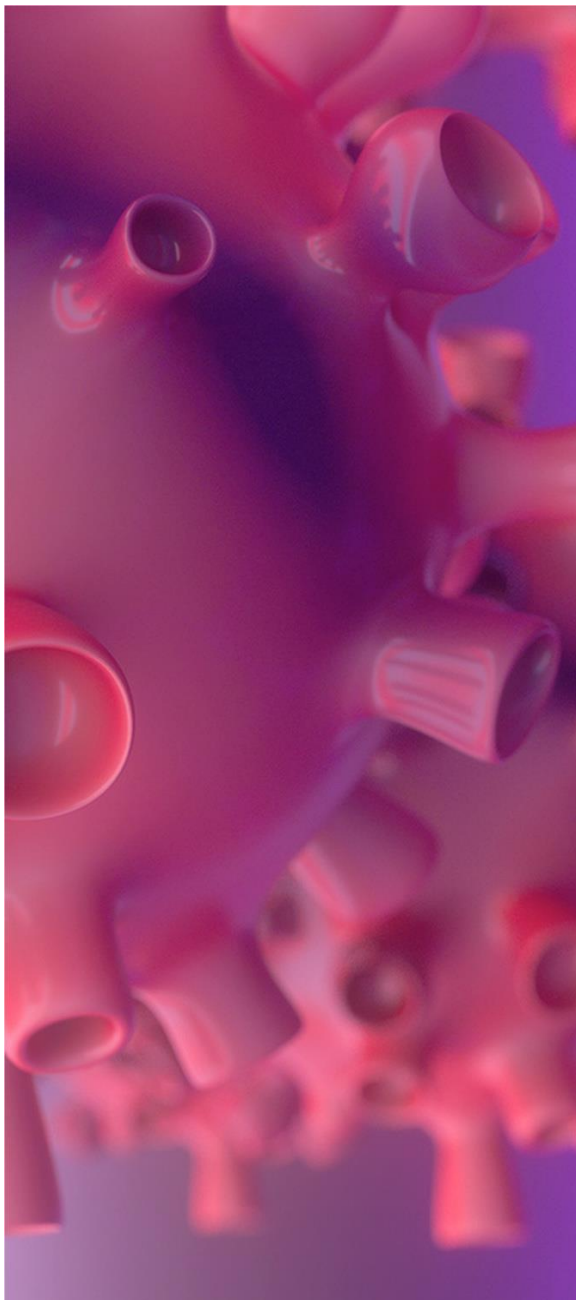

COVID-19 (No. 18)

Legal Flash | Portugal

Updated May 6, 2020



- **Measures approved by the Government after declaring the state of calamity – Council of Ministers Resolution 33-A/2020, of April 30, and Decree-Law 20/2020, of May 1**



The Government declares the state of calamity and approves a series of measures to progressively lift the lockdown

The falling number of confirmed COVID-19 cases in Portugal meant it was not necessary to extend the state of emergency, in effect from March 19 to May 2, 2020, and it has allowed the recovery and revitalization of society and the economy to get under way, as well as easing the restrictions on economic freedom and movement imposed during that period.

However, the Portuguese health care authorities have concluded that it is essential to continue prioritizing the fight against the pandemic, so the return to normal life in society and economic activity must be progressive, based on the assessment of the epidemic, health, social and economic framework to mitigate the risk of a relapse in the containment of the disease.

To guarantee this aim, through Council of Ministers Resolution 33-C/2020, of April 30, the Government approved a gradual strategy for lifting the lockdown and established a three-phase schedule of 15 days each, assessing the impact of the measures on the development of the pandemic at the end of each phase to be able to make adjustments or include new measures, if necessary.

At the same time, and to frame that strategy, the Government declared the state of calamity for the entire country through Council of Ministers Resolution 33-A/2020, of April 30, defining the first-phase measures for lifting the lockdown.

The Government has ordered a series of less stringent restrictions, suspensions, and closures than those in force during the state of emergency, but it also highlights the need for the population to continue to rigorously follow physical distancing measures, which are essential to contain the virus.

The state of calamity started on May 3 at midnight and will be in effect until May 17, at 11:59 p.m., although it may be extended or modified if the pandemic situation justifies it.

With regard to the rules that will apply in this new phase, Decree-Law 20/2020, of May 1 (rectified by Rectification Declaration 18-C/2020, of May 5) was published, providing legal coverage to a series of measures established in the decrees that regulated the state of emergency and that concluded at the end of it. New essential rules were also defined in this decree to allow a gradual return to normality, such as the obligation to use face masks and visors, and several measures with labor impact, among others.

Ministerial Order 106/2020, of May 2, establishing the maximum number of air passengers was also approved.



MEASURES APPLICABLE TO PEOPLE

Under the declaration of the state of calamity, freedom of movement is still restricted, but only in two types of situations:

- a) COVID-19 patients, people infected with SARS-CoV-2 and those placed under active observation by the health care authorities or other health care professionals, who will remain in **mandatory isolation**;
- b) Other people, who are subject to the **civic duty to stay at home**.

Unlike with the state of emergency, this order does not include the special protection duty that affected high-risk groups.

People subject to mandatory isolation

- > People in this category must remain in the health care center, at home, or in another place established by the health care authorities and may not go outside.
- > Breaching isolation constitutes a crime of disobedience.

People who have the civic duty to stay at home

- > These people must refrain from going outside and stay off public roads and private roads equated to public roads, and they must remain at home, except for the following **authorized outings**:
 - All those previously authorized during the state of emergency;
 - To libraries and archives, as well as green and outdoor areas in museums, monuments, palaces, and archaeological sites or similar;
 - For individual physical and sporting activity outside, including water sports;
 - For recreational fishing;
 - To visit zoos, aquariums, riverside parks, and similar;
 - To participate in court proceedings or in acts involving notaries, lawyers, court agents, and registry officers; and
 - To establishments, entities, or services not closed under the state of calamity.

This *civic duty to stay at home* is different from the *general duty to stay at home* in effect during the state of emergency because this *civic duty* cannot be imposed by coercion.

- > **Applicable rules when going outside:** The recommendations and orders established by the health care authorities and the security forces and services must still be followed (particularly those on physical distancing).



- > **Private vehicles:** As during the state of emergency, private vehicles may be used in the outings mentioned above and can be refueled at gas stations.
- > **Funerals:** Funerals can only be held if measures are adopted guaranteeing crowds will not gather and safe distances will be maintained, in particular by allowing the local authority responsible for managing the cemetery to establish a maximum number of attendees. However, this limit must not prevent a spouse or domestic partner, parents, children, relatives, or similar people from attending a loved one's funeral.

Funeral parlors must keep working and providing funeral services to people who have died of COVID-19.

- > **Physical activity and sports:** They are authorized for up to five people in technical training and up to two people for recreational sports activities. Non-competitive outdoor physical activities and sports are allowed, provided:
 - A minimum distance of two meters between people is kept for side-by-side activities performed and four meters for activities in a line;
 - Materials, equipment, and sessions with personal trainers must not be shared; and
 - The manual on procedures for protecting users and workers must be followed.

The same hygiene rules that apply in retail establishments will apply in operating gyms, with the necessary adaptations.

- > **Events:** Celebrations and other events gatherings over 10 people are not allowed. However, the Government, along with the heads of the internal and health care administration, can authorize celebrations and events, establishing the respective terms.
- > **Face masks and visors:** Everyone must wear face masks or visors to enter or remain in the following premises:
 - retail or services establishments and spaces;
 - services and buildings dealing with the public;
 - schools and nurseries (adults and children over six); and
 - public transport.

The managers of these centers must promote the use of face masks or visors. In case of noncompliance, they must inform users that they cannot enter, stay in, or use the centers and report to the relevant authorities if users insist on breaching the regulations.

A fine of between €120 and €350 can be imposed for breaching the obligation to wear a face mask or visor on public transport.

It will not be necessary to wear a face mask or visor when the nature of the activities makes it impossible.



MEASURES APPLICABLE TO COMMERCIAL ACTIVITY

Like the measures applicable to people, the measures applicable to commercial activity adopted in this decree are generally geared towards the gradual reopening of economic activities, and **the range of retail and service establishments that are allowed to operate is expanded.**

In general, local stores with direct entry from the street and a maximum surface area of 200 m² can reopen, although they will be subject to some operating rules and restrictions detailed below. Despite this general reopening trend, some activities are still suspended, as detailed below.

I. Retail and service establishments operating during the state of calamity

During the first phase of the state of calamity now initiated, the following can operate:

- **The economic activities and establishments already authorized during the state of emergency**, plus the following:
 - Hair salons, barbershops, and beauty salons, with prior appointment;
 - Stores selling bicycles, cars and motorbikes, tractors and farming machinery, and boats;
 - Real estate businesses; and
 - Bookstores and record stores.

- **Other retail establishments with a sales or services area of 200 m² or more**, including those that are part of retail complexes, as long as they do not exceed the stated surface area and have a separate, independent external entrance.

The following is also maintained with conditions practically identical to the state of emergency:

- The possibility for catering or similar establishments to maintain their activities exclusively for preparing food for take-away or home delivery. They will be exempt from obtaining a license for that activity, and they may assign their workers to those activities, even if they are not included in their work contracts;
- The possibility of food wholesalers selling their products directly to the public and also performing a retail activity;
- Car rental businesses.



II. Rules applicable to the economic activities and operating retail establishments

- Operating stores and services must observe the following **occupancy, time limit, and physical distancing rules**, as well as other rules to be established by the Directorate General of Health (*Direção-Geral da Saúde*):
 - Public-access spaces must observe the **maximum occupancy rule of 5 people per 100 m² of surface area** (excluding workers and service providers performing their functions in the appropriate space);
 - **Measures must be taken to guarantee a minimum distance of two meters between people**, including those who are going to buy the product or receive the service. If necessary, some of the checkout lines or service points can be closed;
 - The **time spent** in the establishment must be **only that strictly necessary to purchase the goods or services**;
 - **People will not be allowed to wait for services inside**. Economic operators must preferentially use appointment systems;
 - If possible, **specific routes for entering and exiting establishments** through separate doors should be established; and
 - **Codes of conduct approved for certain sectors of activity or types of establishments** must be encouraged, provided they do not contradict the rules of the present system.

- Stores and services establishments must also observe the following **rules of hygiene**:
 - The service must be provided and products must be transported observing the hygiene rules established by the Directorate General of Health;
 - **Regular, daily cleaning and disinfection** of the areas, equipment, items, and surfaces with the intense contact;
 - **Cleaning and disinfection, after each use or interaction**, of the PoS terminals, equipment, surfaces, products, and tools in direct contact with customers;
 - As far as possible, workers and customers should **refrain from touching products or equipment, as well unpackaged items**, which should preferentially be handled and dispensed by the workers;
 - **Control of access to fitting rooms in clothing stores** during this phase, keeping some of these areas closed to guarantee the minimum safe distances, where appropriate, and **disinfecting counters, clothing stands and hangers after each use**. An alcohol-based antiseptic solution must also be made available to customers.
 - For **exchanges, returns, or removal of used products**, they must be **cleaned and disinfected before putting them back for sale**, unless this is not possible or compromises the products' quality; and
 - **Respect for other rules defined in codes of conduct** approved for certain sectors of activity or types of establishments, provided they do not contradict the rules of the present system.



- Retail stores and service providers must also respect the following rules:
- **Availability of alcohol-based solutions** for workers and customers at all entrances and exits, as well as inside in appropriate places for disinfection, in accordance with the layout of each space.
 - **Priority access** for health care professionals, members of the security forces and services, emergency services, the armed forces and social support services.
 - **Supply of information to customers** on the new rules of operation, priority access, care, hygiene, safety, and other similar rules applicable to each establishment.
 - **Adjustment of business hours** to ensure offsetting of opening or closing times, at the initiative of the stores themselves, or by an agreed-upon decision, or by decision of the managers of the spaces where the establishments are located or by a member of the economic ministry. **In any case**, establishments resuming their activity under this regime **cannot open before 10 a.m.**
 - Possibility of **closing at certain times of the day to guarantee cleaning and disinfection** of the workers, the products, or the space itself.
 - **The obligation to keep a physical complaint book also remains suspended** (already in force in the state of emergency).

III. Economic activities and retail establishments that remain closed during the state of calamity

While the state of calamity is in force, the following establishments and facilities will remain closed:

- **Recreational, leisure and entertainment activities:** nightclubs, dance halls, party venues, circuses, theme parks and similar, water parks, zoos, any premises for recreational sporting activities, and other similar premises or facilities;
- **Cultural and artistic activities:** auditoriums, movie theaters, theaters, concert halls, museums, monuments, and similar, public or private, bullrings, exhibition centers, multipurpose halls and similar, all cultural events held in covered or open-air enclosures;
- **Sporting activities** (except for professional and high-performance athletes): football and rugby fields and similar, arenas or enclosed spaces, tennis and paddle tennis courts and similar, swimming pools, sports halls, gyms and academies, covered athletics tracks and stadiums, among others;
- **Activities in open spaces and on public roads:** cycle, motorcycle, and racing tracks and similar covered tracks (except those used by high-performance athletes), nautical exhibitions and races, aeronautical exhibitions and races, parades and popular festivals, folklore celebrations or other celebrations of any nature;
- **Gaming and betting centers:** casinos, gambling establishments such as bingo halls and gaming and video arcades;



- **Catering activities:** restaurants and similar establishments, cafés, tearooms, hotel bars and restaurants (except to serve meals to guests), terraces;
- Hot springs and spas or similar establishments, solariums, tattoo parlors and related activities; and
- Language schools and interpretive centers, except to hold tests in language schools, strictly complying with the physical distancing recommended by the health care authorities.

MEASURES ON WORK AND EMPLOYMENT

The following measures relating to work and employment have been implemented:

- **Working from home:** Working from home remains mandatory, regardless of the employment or professional relationship, provided the duties involved allow it.
- **Checking workers' body temperature:** To protect the health of staff and third parties, workers may have their body temperature taken before they can enter and remain in the workplace. This will not affect personal data protection rights, as it is expressly prohibited to record the body temperature associated with the individual's identity, unless expressly authorized. If the temperature is above normal, the person may be prevented from entering the workplace.
- **Absences of particularly vulnerable people:** Immunocompromised and chronically ill people who, based on guidelines from the health care authorities, are considered high-risk, particularly cardiovascular patients, those with chronic respiratory disease, cancer patients, and those with kidney failure can justify absences from work with a medical certificate if they cannot work from home or otherwise (the rectification of Decree-Law 20/2020 in Rectification Declaration 18-C/2020, of May 5, has excluded people with high blood pressure and diabetes from the list).
- **Reactivation of activity and lay-off:** The simplified lay-off mechanism is still available to companies with establishments whose activities have been reopened at the end of the state of emergency or have been restricted by legislative or administrative resolution, if they resume their activity within eight days.
- **Regulation of the activity normalization incentive:** The extraordinary financial incentive supporting normalization of business activity established in article 10.1 of Decree-Law 10-G/2020, of March 26, in its current wording, is regulated by order of the employment minister, essentially regarding procedures, conditions and access periods.
- **Clarification on the prohibition against renewing temporary contracts during the lay-off:** For the purposes of breach and repayment of the extraordinary support to maintain work contracts for companies in a situation of economic crisis, as



established in article 5 of Decree-Law 10-G/2020, of 26 March, article 303.1(e) of the Employment Code, in its section on contract renewals, does not apply.

- **Strengthening of the ACT human resources:** These will be strengthened to guarantee the Authority for Working Conditions' (*Autoridade para as Condições do Trabalho*) response capacity.
- **Health and safety at companies (contingency plan):** Companies must draw up a contingency plan appropriate for the workplace and in accordance with the guidelines of the General Directorate of Health and the Authority for Working Conditions.

MEASURES APPLICABLE TO PUBLIC SERVICES

- Public services are resuming **in-person appointments** from May 4, 2020.
- **The “Citizen’s Offices” remain closed during the state of calamity.** However, in-person appointments at those offices are possible in towns without decentralized service centers, and these services may also be provided online and through points of contact for citizens and companies.
- All the public services providing services in person must comply with the **hygiene rules** applicable to retail establishments, with the necessary adaptations.
- Priority assistance must also be offered to health care professionals, members of the security forces and services, emergency services, the armed forces, and social support services.

TRANSPORT

- The following rules must be implemented in collective passenger transport:
 - **Land, river, and sea transport:** maximum occupancy of 2/3 of capacity.
 - **Air transport:** by regulation, passenger occupancy is reduced to 2/3 of normal capacity, but various exceptions are admitted, as established in Order 106/2020, of May 2.
 - **Transport in taxis and via ride-sharing apps:** the front seats may only be occupied by the driver.
- Measures must also be adopted for daily cleaning, weekly disinfection, and monthly sanitization of the vehicles, facilities, and equipment used by passengers and other users.



VALIDITY OF DOCUMENTS

- > Until June 30, 2020, documents such as national identification documents, accreditations and certificates issued by registries, and driving licenses, as well as licenses and authorizations expiring from May 12 or the 15 days immediately before, are accepted under the same terms.
- > From June 30, 2020, those documents will continue to be accepted, if the holder proves they have requested an appointment for their renewal.

CONTROL AND GENERAL DUTY OF COOPERATION

- > During the state of calamity, citizens and all types of entities have a duty of cooperation, particularly regarding compliance with orders and instructions issued by the national security, civil protection, and public health bodies and agents, and of timely fulfillment of justified requests from the competent bodies to implement the measures justifying the declaration of the state of calamity.
- > The security forces and services and the municipal police will **control compliance** with the measures adopted and will be able to:
 - Make citizens aware of the civil duty to stay at home and remind them of the need for compliance;
 - Issue legitimate orders under the system now approved, particularly on staying at home;
 - Shut down establishments and halt activities that are not allowed to operate during this phase of the state of calamity;
 - Notify of the crime of disobedience regarding breaching of the closure of establishments or mandatory isolation; and
 - Advise people not to gather in the streets and disperse gatherings of over 10 people, unless they belong to the same household or are gathering for professional filming, as long as they follow the health care authorities' guidelines.
- > With regard to municipal councils (*juntas de freguesia*), the Government recommends that they:
 - Advise people to avoid gathering in the streets;
 - Make all citizens aware that they should fulfill their civic duty to stay at home, under the new terms approved; and
 - Notify the security forces and the municipal police about the establishments that should be shut down.



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Cuatrecasas has set up a Coronavirus Task Force, a multidisciplinary team that constantly analyses the situation emerging from the COVID-19 pandemic. For additional information, please contact our taskforce by email TFcoronavirusPT@cuatrecasas.com or through your usual contact at Cuatrecasas. You can read our publications or attend our webinars on our [website](#).

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