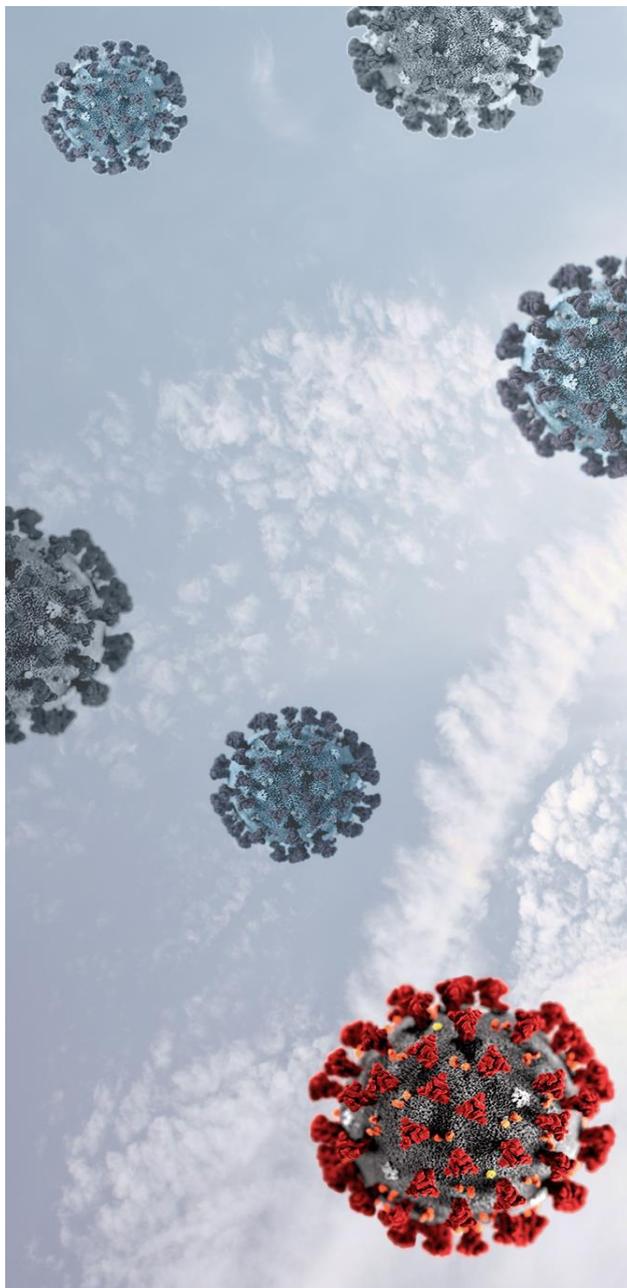

COVID-19: De-escalation in the workplace

Newsletter | Portugal

May 20, 2020



Applicable workplace measures during de-escalation: “Survival manual”

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- > Vacation and absence from work
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- > Occupational health and safety: exceptional preventive measures



Applicable workplace measures during de-escalation: “Survival manual”

The declaration of the situation of calamity and the start of the de-escalation poses new questions for employers and employees who are now returning to work. It is not always clear which measures to support job maintenance are available, what changes have been made in the regime for absence from work and leave to care for dependents, or which new occupational health and safety standards have been established.

Being aware of these concerns, we have prepared a “Survival Manual” for employers and employees during de-escalation, in which we summarize what has been maintained and what has changed within the scope of the workplace measures implemented by the Government.

We examine the impact that this return to business might have on the measures to support job maintenance, particularly access to the measures to support return and the limitations on the termination of work contracts imposed by implementing these measures.

We would also like to highlight the new regime for absence from work by immunocompromised employees or employees with chronic conditions, and the system of leave to care for dependents due to the suspension of face-to-face educational activities and its implications for employees’ availability.

We also highlight the mandatory nature of maintaining, whenever possible, remote work while heading towards a partial remote work system, and the instructions on implementing new ways to organize working hours.

Occupational health and safety requirements and guidelines have been reinforced through exceptional measures. Questions about this have been posed, particularly regarding the protection of personal data and the use of personal protection equipment.

I. Measures to support job maintenance

Simplified lay-off

- Despite the lifting of the closure or suspension obligation for certain activity sectors (see Resolutions of the Council of Ministers 33-A/2020, of April 30, and 38/2020, of May



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17), the companies affected by this measure may continue to implement the lay-off, provided they return to business within eight days.

- For other companies, the option to implement simplified lay-off (or request its renewal) will continue until June 30.

Support for business normalization

- Companies that have implemented a simplified lay-off or an extraordinary training plan will be able to receive support for business normalization, worth €635 per employee. Regulation of this support is pending.

Extraordinary training plan

- An extraordinary training plan, lasting one month, can be implemented as an alternative to the simplified lay-off, provided the company is in a situation that allows implementation of this measure. The extraordinary training plan makes it possible to receive financial support with a maximum limit equal to the guaranteed minimum monthly remuneration, namely €635. Like the simplified lay-off, this measure will remain in force until June 30.

II. Absence from work

Absence from work to care for dependents as a result of the suspension of face-to-face educational activities

- Absence from work due to undelayable assistance to a child or other dependent under the age of 12 (or regardless of their age, with a deficiency or chronic condition) resulting from the suspension of face-to-face educational and non-educational activities are regarded as justified, with no loss of remuneration. It should be pointed out that:
 - employees are entitled to a monthly or proportional support corresponding to two thirds of their base remuneration, paid 50% by the employer and 50% by social security;
 - the restart of face-to-face educational activities was scheduled, but only for some grades (11th and 12th grades);
 - a transition period to open daycare, between May 18 and June 1, has been established, during which it is possible to opt for daycare or keep children at home; and
 - extraordinary support for the suspension of educational activities is not cumulative with the simplified lay-off system.



Absence from work by particularly vulnerable employees

- Immunodepressed individuals and those with chronic conditions who, according to the healthcare authority guidelines, should be regarded as being at risk, can justify their absence from work by means of a medical certificate if they are unable to perform their duties via remote work or other forms of work, particularly:
 - cardiovascular patients;
 - chronic respiratory disease patients;
 - cancer patients; and
 - kidney failure patients.

The absence does not entail a loss of remuneration until the 30th day.

III. Dismissal

Prohibition of dismissals

- During the implementation of the support measures established in Decree Law 10-G/2020, of March 26 (including the simplified lay-off), and within 60 days of its end, employers affected by these measures may not terminate contracts through a collective redundancy or by removing the position.

Suspension of dismissals

- If a work inspector establishes the existence of a dismissal in breach of the Portuguese Labor Code (*Código do Trabalho*), it will start proceedings and notify the employer, and the dismissal will remain suspended until the situation is regularized or the court gives a ruling. The parties' rights and duties, including the right to remuneration, will remain in force during the suspension period.

IV. Remote work and other forms of work organization

Remote work, rotation schedules, and different times

- Remote work remains mandatory whenever the employees' duties so allows.



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- > For those duties for which remote work is not possible, daily or weekly rotation schedules must be established for employees, within the limits established by law or the applicable labor regulations, with different entry and exit times.
- > Unless expressly permitted by law, changes in working ways, in addition to working hours individually agreed with the employee, require the employees' agreement.
- > Remote work does not exempt the employer from assessing the risks to the employee's health and safety, or from the consequences of failing to fulfill this duty.
- > Regarding work accident insurance, the insurance company must be notified of the change in the work facilities resulting from remote work.

V. Occupational health and safety: exceptional preventive measures

Contingency plan

- > Companies must provide an occupational health and safety “contingency plan,” following the guidelines given by the Directorate General for Health and the Authority for Work Conditions.
- > The rules given in the health and safety plan must be followed. Failure to do so may constitute a disciplinary breach.

Monitoring employees' temperature

- > The law gives the option to take the employees' body temperature for them to access and remain in the work facilities. It also establishes that they should not be allowed to access the work facilities if the temperature taken is above “the normal body temperature.”
- > However, this new rule must be made compatible with the restrictions in the Labor Code and the laws on data protection, as well as follow the guidelines given by the National Data Protection Authority. For more details about this, see our [Newsletter COVID-19: New developments in data protection](#).



Personal protection equipment

- > The personal protection equipment must be specified by the Occupational Health and Safety Services and be included in the contingency plan to be implemented by each company.
- > The current wording of section 13-B of Decree Law 10-A/2020, of March 13, makes it mandatory to wear masks or visors when accessing or staying in commercial and service areas and establishments, in public-access services and buildings, and in educational establishments and crèches for teaching and non-teaching personnel and students over the age of ten.
- > However, the current recommendations and guidelines from the Directorate General for Health and the Authority for Work Conditions do not make wearing masks mandatory for occupational health and safety purposes, except for specific professions.

Information to employees

- > The guidelines given by the Directorate General for Health and the recommendations given by the Authority for Work Conditions highlight the need for social dialog. The duty to inform and train employees in this area and the measures taken has been reinforced.
- > Decree Law 20-G/2020, of May 14, establishes an incentive system for the reorganization and adaptation of work facilities and changes in layout, which make it possible to implement the guidelines and good practices given by the authorities for the COVID-19 virus, particularly hygiene, safety, and physical distancing measures.



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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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