

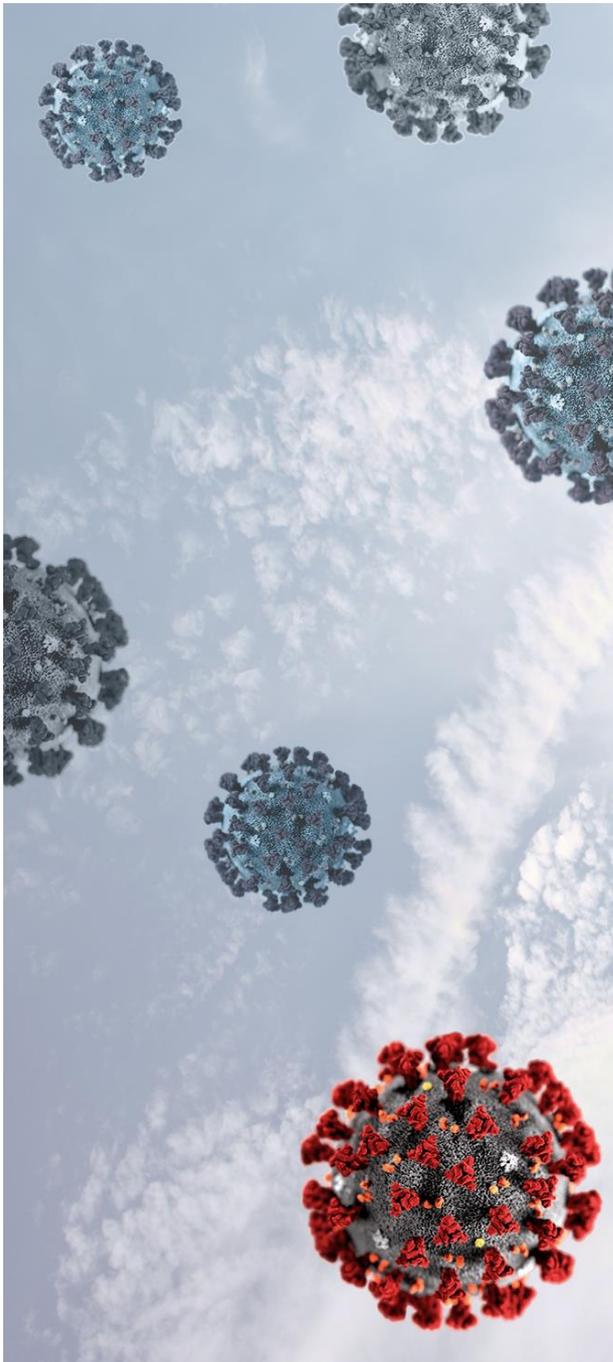
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# COVID-19: New employment protection measures under PEES

Newsletter | Portugal

August 6, 2020

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- **New employment protection measures set out in the amendment to the 2020 State Budget**
- **Extraordinary support for gradual return to activity in companies in a business crisis**



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### I. New employment protection measures set out in the amendment to the 2020 State Budget

Law 27-A/2020, of July 24, amended Law 2/2020, of March 31 (2020 State Budget) and changed other laws and decree-laws, regulating several employment -related measures set out in the Economic and Social Stabilization Program, approved by Council of Ministers Resolution 41/2020, of June 6 (PEES). We highlight the following measures:

#### Shorter periods of guaranteed access to unemployment payments and to cessation of activity subsidy

The right to unemployment payments is granted to workers employed between 180 and 360 days, with the corresponding salary record, in a 24-month period immediately prior to the unemployment date and who have been unemployed during the state of emergency and the situation of calamity.

The right to cease activity payments is also granted to the self-employed who worked for 180 days and paid social security contributions in a 24-month period immediately prior to the date they involuntarily ceased to provide contracted services and halted their activity during the state of emergency and the situation of calamity.

The right to cease professional activity payments is also granted to professionals who have logged in 360 days of activity and paid the corresponding contributions in a 48-month period immediately prior to the date they stopped working and who halted their activity during the state of emergency and the situation of calamity.

#### Support to members of statutory bodies

Extraordinary support for reduced economic activity, set out in Decree-Law 10-A/2020, of March 13, is granted, and adapted as necessary, to managers of micro and small enterprises, whether or not they have a stake in the company, and to sole traders, members of the statutory bodies of foundations, associations and cooperatives with similar managerial functions that are exclusively covered by social security systems.

This support consists of allocating financial support for one month, extended monthly up to a maximum of six months, capped at the value provided in article 305(3) of Law 7/2009, of February 12, meaning:

- a) The remuneration registered as the basis for social security contributions where it is less than 1.5 IAS (i.e., below €658.22);



- b) Two-thirds of the value of the remuneration registered as the basis for social security contributions where it is 1.5 IAS or above (i.e. €658.22 or above).

### **Compensation to National Health Service workers involved in fighting the COVID-19 pandemic**

In 2020, the government awarded compensation to all healthcare professionals who, during the state of emergency declared by Presidential Decree 14-A/2020, of March 18 and its renewals, worked for the National Health Service and carried out relevant continuing tasks directly related to people suspected of and infected by COVID-19:

- a) One day of vacation for every 80 hours worked in the period of calamity that was the basis for declaring the state of emergency;
- b) One day of vacation for every 48 hours of overtime worked during the same period; and
- c) A single unemployment payment for 50% of the worker's basic monthly salary.

### **Healthcare workers' professional illnesses**

For the purposes of the professional illnesses listed in article 94.2 of Law 98/2009, of September 4 (Accidents at Work Act), healthcare workers do not have to prove that being ill with COVID-19 is a direct consequence of the work performed or normal physical wear and tear.

Workers with individual employment contracts under the Portuguese Labor Code (*Código de Trabalho*) are equated to civil employees for the waiver of proof and compensation for professional illness, with payment assured of 100% of remuneration for absences due to professional illness.

### **COVID-19 illness subsidies**

The protection of employees and the self-employed under the general social security system in the scope of subsidy for preventive isolation or for illness is 100% of the reference remuneration, capped at 28 days.

### **Extraordinary support to economically and socially vulnerable workers**

Extraordinary welfare protection is granted to economically and socially vulnerable workers who do not have access to any welfare protection mechanism or to the support instruments created under the scope of the exceptional and temporary measures to respond to the SARS-CoV-2 epidemic.



Economically and socially vulnerable workers are employees or the self-employed whose work is halted, reduced or suspended, or who experience a fall of at least 40% of the normally provided services.

Support is given as an alternative to the extraordinary support set out in articles 26, 28-A and 28-B of Decree-Law 10-A/2020, of March 13.

It is effective from the date of application and is granted on proof, by the worker, of loss of income from work resulting from the SARS-CoV-2 epidemic or, if this is not possible, by a sworn declaration.

This support has a monthly value of 1 IAS (€438.81) and is provided between July and December, 2020. Receiving support presupposes registration in the social security system for at least 30 months from the support grant date. During the period of support, the self-employed contribution will be one-third of the value registered as the basis for the support, with the remainder payable within 12 months from the end of the support, with no applicable late payment interest.

Support will be regulated by order of the government members responsible for finance, social security and justice.

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## II. Extraordinary support for gradual return to activity in companies in a business crisis

Following the legislative authorization conferred by Law 27-A/2020, of July 24, Decree-Law 46-A/2020, of July 30, regulates extraordinary support for gradual return to activity in companies in a business crisis, with a temporary reduction in normal working hours, as set out within the scope of PEES.

### Requirements

There may be extraordinary support for gradual return to activity in companies in a business crisis, i.e., those with a drop in turnover of 40% or more in the full calendar month prior to the calendar month of the initial request for support or extension compared to the same month in the previous year or the monthly average of the two months prior to this period, and those that started operating within the last 12 months, compared to the average monthly turnover between the start of activity and the penultimate full month prior to the calendar month of the initial request for support or extension. The employer must prove to be in good standing in terms of contributions and payments to social security and the tax authority.



An employer that is in a business crisis situation can apply for extraordinary support for progressive return to activity with a temporary reduction of normal working hours for all or some of its employees. This temporary reduction has the following limits per worker:

- a) For an employer with a drop in turnover of 40% or more, the reduction in normal working hours will be a maximum of:
  - i) 50% in August and September 2020; and
  - ii) 40% in October, November and December 2020.
- b) For an employer with a drop in turnover of 60% or more, the reduction in normal working hours will be a maximum of:
  - i) 70% in August and September 2020; and
  - ii) 60% in October, November and December 2020.

The reduction in normal working hours is assessed over the employee's average hours at the end of each month, observing the daily and weekly maximum limits for the normal working period set out in the Labor Code. This reduction will last for one month and can be extended monthly until December 31, 2020. Lifting the temporary reduction in normal working hours, with the respective suspension of support, does not affect the possibility of extending it, which can be requested in following months.

### Procedure

In applying the temporary reduction to the normal working hours, the employer must notify the concerned employees in writing, stating the percentage reduction per worker and the estimated duration of the measure, with feedback from union delegates and employee committees, when applicable. The employer can schedule a time of no less than three business days for them to give their opinion.

To apply for extraordinary support for a gradual return to activity with a temporary reduction of normal working hours, the employer must submit electronically a form provided by social security, which is effective in the month of its submission. The form is submitted through the social security platform (*segurança social direta*), containing an employer's declaration and certification from a certified accountant confirming the business crisis situation, accompanied by a list of the employees affected, their social security numbers, their gross remuneration and the applicable monthly average reduction in working hours per worker.



## Employees' rights

### ***Reimbursement / Reimbursement compensation***

During reduced working hours, the worker is entitled to remuneration corresponding to the hours worked, calculated under article 271 of the Labor Code. During that period, the worker is also entitled to monthly reimbursement compensation up to three times the Minimum Guaranteed Monthly Wage (€1,905.00) paid by the employer for the value of:

- a) Two-thirds of gross normal remuneration for hours not worked in August and September, 2020; and
- b) Four-fifths of gross normal remuneration for hours not worked in October, November and December 2020.

If the value of the remuneration and reimbursement compensation is less than the RMMG (€635.00), the reimbursement compensation is increased to the extent strictly needed to guarantee this minimum amount. The reimbursement compensation is calculated proportionately to hours not worked, and gross normal remuneration is the sum of regular remuneration components normally declared to social security and usually paid to the worker, related to:

- basic salary;
- monthly bonuses;
- regular monthly allowances, including shift allowance;
- meal allowance, where this comes under remuneration; and
- night work

Each one of these components is considered regular when the worker has received it for at least 10 months between March 2019 and February 2020 or an identical proportion if the worker has been linked to the employer for less than 12 months.

### ***Vacation and Christmas***

The reduction in normal working hours does not affect the entitlement to and duration of vacation or have any impact on qualifying for and taking vacation. The worker is entitled to payment from the employer of the remuneration and reimbursement compensation, plus the vacation allowance that would be due in normal working conditions. The worker is entitled to full Christmas allowance, with social security compensation for a twelfth of half the reimbursement compensation for the number of months support is granted and the rest from



the employer, if the payment date of that allowance coincides with the period of application of extraordinary support for a gradual return to activity.

### Employer supports

#### ***Reimbursement compensation***

During a reduction in normal working hours, the employer is entitled to financial support exclusively to pay reimbursement compensation to employees affected by the reduction. This support is 70% of the reimbursement compensation borne by social security and the remaining 30% by the employer. Social security transfers the support to the employer to pay the worker's reimbursement compensation, and it must not be used for any other purpose. Payment of the reimbursement, jointly with the reimbursement compensation, is made by the employer on the respective due date. Financial support must be paid by bank transfer.

#### ***Additional support***

In situations where the drop in turnover is 75% or more, the employer is entitled to additional support of 35% of normal gross remuneration for hours worked for each employee whose normal working hours have been reduced. The sum of the additional support and the reimbursement compensation support cannot exceed three times RMMG (€1,905.00).

#### ***Contribution exemption***

An employer benefiting from support is entitled to exemption or partial waiver from paying social security contributions for the employees affected, calculated on the value of the reimbursement compensation. Total or partial exemption is officially acknowledged and applies in the months in which the employer benefits from this measure. It is granted on the following terms:

- a) For August and September 2020:
  - i) Total exemption from contributions for micro, small and medium enterprises;
  - ii) Partial exemption of 50% for large companies;
- b) For October, November and December 2020, partial exemption of 50% for micro, small and medium enterprises.

#### ***Training plan***

Extraordinary support for a gradual return to activity in companies in a business crisis situation is cumulative with a training plan approved by the Institute of Employment and Professional Training (IEFP, I. P.) on its request. The training plan grants the right to a bursary of 30% of



the indexed amount of social supports per worker covered (i.e., €131.64), paid by IEFP, I. P. in equal parts to the employer and the worker. It must:

- a) Be implemented in conjunction by the employer with the IEFP, I. P. responsible for its organization, which may take place remotely;
- b) Contribute to improving employees' professional skills, increasing their qualification level when possible, and contribute to increasing the company's competitiveness;
- c) Qualify as set out in the National Qualification System;
- d) Be implemented outside working hours, on condition that this is within the normal working period.

### ***Accumulated supports***

The employer can accumulate extraordinary support for a gradual return to activity in companies in a business crisis situation with a training plan approved by IEFP, I. P.

The employer cannot benefit simultaneously from the supports set out in this Decree-Law and in Decree-Law 10-G/2020, of March 26, in its current wording, or from the reduction or suspension measures set out in articles 298 et seq. of the Labor Code.

An employer that benefits, now or in the future, from the extraordinary incentive to normalize business activity set out in Decree-Law 27-B/2020, of June 19, in its current wording, cannot access these supports.

An employer using this incentive can, at the end of such support, apply to reduce or suspend measures set out in articles 298 et seq. of the Labor Code, without article 298-A of the Labor Code applying.

### **Employer rights and duties**

During application of reduced working hours, the employer can hire new workers, except to fill positions reserved for a worker who has reduced hours, and can also, in any situation, renew short-term contracts and make short-term contracts permanent.

Under penalty of having to return the support and civil or criminal liability, if applicable, during the reduction in normal working hours, the employer must:

- a) Prove it is in good standing in terms of social security contributions and taxes;
- b) Promptly pay the reimbursement compensation and the applicable increase in the case of professional training;
- c) Promptly pay social security contributions on employees' remuneration;



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- d) Not increase the remuneration or other assets awarded to the company's management body while social security is paying part of the reimbursement compensation allocated to employees;
- e) Not make false declarations in the context of this support; and
- f) Not require work from an employee covered by a reduction in normal working hours above the number of hours stated in the request.

During the reduction period, and in the next 60 days, the employer cannot:

- a) End employment contracts within the scope of collective dismissal, dismissal due to end of position, or dismissal for inadequacy set out in articles 359, 367 and 373 of the Labor Code, respectively, or start the respective procedures; or
- b) Distribute dividends, of any kind, as payments on account.

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### III. Extraordinary incentive to normalize business activity

The notice of the opening of the application period for the extraordinary incentive to normalize business activity (regulated by Decree-Law 27-B/2020, of June 19, and by Decree 170-A/2020, of July 13) was published on August 3, 2020. The application period starts on August 4, 2020. The regulation and its attachments, including the application form and acceptance document, can be viewed at the Institute of Employment and Professional Training website: [www.iefp.pt](http://www.iefp.pt)



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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 Task Force by email [TFcoronavirusPT@cuatrecasas.com](mailto: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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