

## EXCEPTIONAL AND TEMPORARY MEASURES UNDER THE COVID-19 PANDEMIC

### REDUCTION OR TEMPORARY SUSPENSION OF EMPLOYMENT CONTRACTS DUE TO BUSINESS CRISES

#### 1. Analysis of the procedure and practical application of these measures

**Scope of application:** These measures only cover private employers, including those in the social sector, who face a business crises due to COVID-19 pandemic and employee's at their service.

Regarding the **application process**, this takes place electronically, through the submission of the application by the employer through the social security Direct Service (form RC 3056-DGSS).

The **duration** of these measures shall be one month, with the potential for exceptional extension on a monthly basis, for a maximum of three months.

#### 2. Business Crisis Concept

Article 3 of **Decree Law 10-G/2020** considers the following situations to be subsumable to the concept of business crisis:

- a) Total or partial closure of the Company or establishment, resulting from the duty to close facilities that is outlined in article 7 of the Decree-Law no. 2-A/2020, of 20 March, or if determined by a legislative or administrative body under the terms provided by Decree-Law n.º 10-A/2020, of 13 March, under its current wording, or according to the Basic Law of Civil Protection as well as the Basic Law of Health, with relation to the Company or establishment that is effectively closed and covering its employees.
- b) Upon declaration by the employer jointly with the certificate of the certified accounting officer of the company attesting to it:
  - (i) Total or partial closure of the business activity or establishment resulting from the interruption of the global supply chains, or from the suspension or cancellation of orders;



- (ii) The abrupt drop of at least **40 %** of the turnover in the period of thirty days prior to the request to Social Security services, with reference to:
  - The average **two months** preceding that period, or
  - Compared to the **same period of the previous year** or,
  - For those who started the activity less than 12 months ago, at **the average** of this period.

### 3. Procedure for the application of these measures

#### Initial period:

- Written notification, communicating to employees the decision of requesting extraordinary support in the interest of preserving employment and indicating the expected duration of this period;
- Conferring with the union delegates and members of the employee's Council, if they exist.

#### Instruction:

- Immediate submission of the relevant application to the Social Security Services (SS Direct – form RC 3056-DGSS), accomplished by:
  - Statement of the employer, summarizing the crises situation affecting the business;
  - Certification from the official accountant of the Company (for the cases provided in Article 3 (b) (i) and (ii));
  - Nominal list of the employees covered by the application of this measures and their social security numbers (NISS);

#### Inspection:

- At all times the relevant public authorities can request the following documents:
  - Balance sheet reference to the month where the support is being received, as well as the corresponding comparative month;
  - Value Added Tax Return (VAT) declaration with reference to the month where the support is received as well as the two previous months/ declaration referring to the last fiscal quarter of 2019 as well as the first of 2020 (proof of supply chain interruption or suspension/ cancellation of orders);



- Documents demonstrating the cancellation of orders/reservations which result in a 40% drop off production, occupancy or sales in the month following the request for financial support;
- Other elements to be specified by ordinance.

#### 4. Reduction or Suspension

- **Suspension:** All obligations of the parties that do not presuppose the provision of work are maintained.
- **Reduction:** Wages are calculated in proportion to hours worked.

In both cases, employees are entitled to **retributive compensation**, to the extent necessary to, alongside the remuneration for work performed inside and outside the Company, ensure that at least 2/3rds of their normal gross salary, or the value of the minimum wage corresponding to his normal working period, is provided. Whichever is higher, with a limit of 3 minimum wages (€1.905,00).

#### 5. Retributive Compensation

##### Payment:

- Social Security subsidizes 70% of the compensation paid to the employee;
- The amount is paid directly to the Company and not to the employee (the measure is designed as “financial support” granted to the Company. The Company is therefore obligated to pay the entire compensation to the employee);
- Autonomous remuneration declarations must be submitted for the employees covered, and the relevant contributions must be paid.

##### Social Security:

- Subject to Social Security contributions (11% borne by the employee);
- Exempt from contributions to Social Security (23.7% borne by the Company);
- The statute provides exemptions from Social Security contributions for MOEs (Members of Statutory Bodies) which cannot benefit from the measures provided by Lay Offs as they are not employees.



## Personal income tax:

- This issue still needs to be clarified.

## 6. Breach and Restitution of Support

Situations that result in the immediate restitution or termination of financial support:

- Dismissal for reasons that are not directly attributable to the employee;
- Failure to punctually comply with remuneration obligations due to the employee;
- Profit distribution during the period of implementation of the support measures, in any form;
- Non-compliance attributable to the employer of the obligations that have been assumed, within their respective deadlines;
- Providing false information;
- Continuation of work to the employer by employee covered by the measure of extraordinary support for the maintenance of the employment contract under the provision of contract suspension or, beyond the ordinary Schedule, in the modality of temporary reduction of the normal working hours.

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