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Update

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COVID-19: Guide for Companies and Employees

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The **World Health Organization** declared a pandemic state on March 11th. Companies are resisting to operational repercussions and adaptation is the keyword. Saturday morning was published: a) **Decree-Law No. 10-A/2020** of March 13th, which establishes exceptional and temporary measures related to the epidemiological situation of the new **Coronavirus – COVID-19**; and b) Council of Ministers' Resolution No. 10-A/2020, which approves a set of measures for the same purpose.

With this guide, we intend to identify the main questions that have been raised in the field of employment.

The information provided below does not take into consideration the particularities that may arise from the provisions of collective regulation instruments and does not exempt from further legal advice in accordance with the reality and size of each organization.

1. What preventive measures shall be taken by the employer?

Employers have a general duty to ensure safety and health conditions at work, being responsible to take the necessary measures to contain contagion in their organisation. In the context of such duties and in accordance with Guidance No. 006/2020 of the Directorate-General for Health of 26 February (accessible by hyperlink), companies shall implement a Contingency Plan, which shall include: a) a strategic pandemic response plan; b) the identification of preventive measures; and c) the definition of the internal procedure to be observed in the event of suspected contamination.

2. Are employees obliged to inform the employer if they have symptoms of COVID-19?

Yes. There are general duties of loyalty and collaboration applicable to employees, as well as a special duty of cooperation on safety and health at work. Since we are facing a pandemic phenomenon, we understand that employees are obliged to report to their employer the possibility of being carriers of the virus.

3. Can the employer demand its employees to reveal whether they have travelled to areas with particularly active community transmission or if they have been in contact with an infected person in the last 14 days?

We understand that it is possible. As a rule, the company may not ask the employee to disclose information regarding his/her private life. However, the employer has the duty to ensure safety and health conditions in the workplace and shall prevent employees from being exposed to health risks. Therefore, employers may require employees to reveal whether in the last 14 days they have been in areas with especially active community transmission and/or in contact with a person infected with COVID-19.

4. To whom shall the employer report the existence of a suspicious case in the company?

The employer shall report the existence of a suspicious case to the health authorities to enable the identification of who may have been exposed to the virus. Since this communication is essential for the identification of the contagion chains, the employer must disclose to the authorities the identity of the infected or potentially infected employees. At an internal level, the employer must safeguard the identity of the employees, disclosing it only to employees' that have been in contact with them, to the employees' representatives for safety and health conditions in the workplace and to the occupational doctor. The employer shall not disclose to third parties personal information concerning the infected employees or regarding the employees that have contacted with them, if the third parties have not had contact with them.

5. Can employees refuse to work?

Employees have a duty to work and may only refuse to do so in exceptional cases, which render the performance of the professional activity unenforceable. A mere fear or abstract risk of infection does not allow the non-performance of the activity. However, being possible to carry out the professional activity remotely, by means of teleworking, both the employee and the employer may impose on the counterparty the transition to this work model. On the other hand, without prejudice to the other compensation measures described below (see 8. to 10.), the employee may request the employer to exempt him/her from the provision of work and the employer may agree with it. However, in such cases, the employee shall support the loss of income.

6. Can the employer decide to remove an employee from the workplace?

Employees who are infected with the COVID-19 virus or whose prophylactic isolation has been determined by a health authority are exempted from providing their activity. In the other cases, to prevent the spread of the virus in the workplace, the employer shall, where possible, promote remote work, in particular by means of teleworking. However, it shall be noted that the telework must be documented and there are specific rules that must be complied with.

The employer may also agree with the employee the anticipation of the latter vacation period. As a rule, in the absence of agreement, the employer may only unilaterally schedule the employees' vacation period between 1st of May and 31st of October, except in micro-enterprises (companies with less than 10 employees) or if the company's activity is related to tourism, where only 25% of the total annual vacation period must be scheduled in this period (in the absence of agreement or of different provision foreseen in collective regulation instruments).

Moreover, where admissible considering the nature of the activity, the employer may opt to close the company or the undertaking, in whole or in part, for employees' holidays: a) up to 15 consecutive days between 1st of May and 31st of October; b) for a period of more than 15 consecutive days or outside the period set forth in a), when it is so foreseen in collective regulation instruments or with the favourable opinion of the employees' committee; c) for a period of more than 15 consecutive days between 1st of May and 31st of October, where the nature of the activity so requires.

7. Telework accidents qualify as work accidents?

Yes. This was also confirmed on March 13 by the Portuguese Association of Insurers in a Statement "Coronavirus: Position of the Insurance Sector" (accessible by [hyperlink](#)), in which it is attested that accidents occurred in case of telework qualify as work accidents. In the same statement, it is also indicated that the employer must inform the insurer which employees will begin to work remotely, by means of teleworking, the normal working period, the work schedule to be observed, as well as the address of the place from which the work will be performed.

8. What is the impact on the remuneration of employees absent due to prophylactic isolation?

On March 3rd, it was published Order no. 2875-A/2020 – accessible by [hyperlink](#), which provides for an exceptional leave regime, by equating the absences due to prophylactic isolation determined by a health authority to illness. According to this regime, employees in a situation of prophylactic isolation determined by a health authority in accordance with the model/form attached to that Act, are entitled, for a maximum period of 14 days, to an increased sickness allowance (of a percentage of 100% to the reference remuneration), without the need of complying with the usual "waiting period" of 3 days, guarantee period or professionalism index. After the period of 14 days, the normal regime of sick leave is applied, with employees being entitled to an allowance of variable value: (i) 55% of the reference remuneration up to the first 30 days of absence; (ii) 60% for an absence period exceeding 30 days and shorter than or equal to 90 days; (iii) 70% for an absence period exceeding 90 days and no longer than 365 days; and (iv) 75% for an absence period of more than 365 days.

The solution is identical in the case of infected employees, who will be entitled to a sickness allowance calculated in accordance with the preceding paragraph (between 55% and 75% of the reference remuneration), also without the need to observe the usual "waiting period" of 3 days. The form to be used by the health authorities, in a model attached to the Order, replaces the usual document justifying the absence from work, and must be electronically sent by the competent health services to the social security services within a maximum of 5 days from the issue date.

9. What is the impact on the remuneration of absent employees who are forced to assist their children or grandchildren?

If the employee must be absent from work to assist to his/her child or grandchild in prophylactic isolation or infected, he/she will be entitled to an allowance equal to 65% of the reference remuneration. If the child is under 12 or has a disability or a chronic illness, the grant of the allowance is not subject to a warranty term. With the entry into force of the 2020 State Budget, the amount of the allowance will be increased up to 100% of the reference remuneration in case of child care, being the percentage of 65% maintained in case of assistance to grandchildren.

In addition, on March 12th, the Government announced the closure of all schools until April 9th. Recognizing that this circumstance will force many employees to remain at home supporting their descendants, the following measures have been announced: a) recognition of justification for the absences of employees who have to remain at home supporting their children up to 12 years, unless teleworking is possible; b) allocation, in these cases, of a monthly allowance in the amount of 66% of the basic remuneration, being the payment of 33% of the allowance provided by the employer, and the remaining 33% by the social security. This measure was implemented through Decree-Law no. 10-A/2020, published yesterday (accessible by hyperlink), which expressly excludes from this scope of protection all school interruptions previously scheduled (here including the holiday period for Easter). To benefit from this allowance, employees must file a form available on the Social Security website (accessible by hyperlink), ascertaining that the other parent: a) is unable to provide assistance to the identified dependant; b) has not applied for nor receives exceptional financial support to the family due to the closure of the educational establishment. The compensatory portion of the social security's responsibility will be handed over to the employer, which is the one responsible to pay the full amount to the employee. This economic support has as minimum value of 635 euros (1 national minimum wage) and a maximum value of 1905 euros (3 times the national minimum wage), being therefore the maximum amount supported by the social security of 952.5 euros (1.5 national minimum wage). The employee pays a contribution of 11% of the total amount of the allowance, while the employer supports 50% of the contribution due for the total of the allowance. A form shall be filed by the employer to the social security, through Direct Social Security, attesting that there are no conditions for other forms of work, namely teleworking.

10. In what cases can the employer be forced to temporary closure?

The employer may be obliged to temporary closure if there is a decision of the health authority to that effect. If the employer has not contributed, even with negligence, to such a decision, closure may be qualified as force majeure. In such scenario, the employer is, however, forced to the payment of 75% of the employees' remuneration during the absence period.

In addition, it is also possible to resort to lay-off (i.e., "the suspension of employment contracts in a situation of business crisis"), which demanding procedure and requirements could, in practice, seriously difficult its application. It was therefore decided to introduce a transitory and exceptional lay-off, speeding up the usual procedure by companies with a suspension of the activity related to the outbreak of COVID-19 and in which there is an interruption of the global supply chains or an abrupt breakdown of 40% of sales, by reference to the same period of 3 months. In accordance with the provisions of Council of Ministers Resolution no. 10-A/2020 published yesterday ("CM Resolution") – with hyperlink –, in case of lay-off, employees will be entitled to a compensation equivalent to 2/3 of their salary, up to €1,905.00, being the employer responsible for 30% of this amount and the remaining 70% being paid by the Social Security. The duration of this support is of 1-month, monthly renewable after evaluation, up to a maximum of 6 months. Additionally, it is also foreseen the possibility of a total exemption from social security contributions during the lay-off period and of an extraordinary financial incentive in the period following the lay-off, for a total of 1-month period and in the maximum amount of 1 guaranteed monthly remuneration per employee.

The implementation of part of the above described measures still lacks regulation from the Government. Over the coming days, new questions will be raised, requiring further adaptation efforts. Further amendments to this guide will be introduced, whenever appropriate.