

Covid-19 **Brazilian Labor** **Measures**

Updated until April 7, 2020

Sperling Advogados



LABOR MEASURES

➤ **Work time compensation**

- Possibility for the company to establish the obligation for employees to do overtime in the future to compensate the paid days not worked during the Covid-19 outbreak situation

➤ **Anticipation of Holiday days**

- Non-religious holidays can be anticipated so that employees remain at home at this time, with 48 hours prior notice
- The anticipation of religious holidays will depend on the employees' consent and must be formalized through an individual written agreement

LABOR MEASURES

➤ Anticipation of Vacations

- Companies may choose to anticipate employees' vacation, even if they have not yet completed the 12-month acquisition period. The requirements are:
 - ✓ The company must inform the employee about the vacation period within 48 hours in advance
 - ✓ Priority must be given to employees who are part of the Covid-19's risk group (such as elderly, pregnant woman and people with chronic diseases)
 - ✓ The vacation period must be proportional to the period already acquired by the employee (e.g., 6-month acquisition period = 15 days of vacation), being at least five vacation days
 - ✓ The vacation may be paid until the 5th business day of the following month, and
 - ✓ The additional payment of 1/3 may be made until December

LABOR MEASURES

➤ **Collective Vacations**

- Companies may choose to put all employees on collective vacations for up to 30 days. The only requirement is to communicate the employees within 48 hours

➤ **Guarantee Fund for Length of Service (“FGTS”)**

- Postponement of the payment of the Guarantee Fund for Length of Service (“FGTS”) for the next three months
- The payments may be made in up to six monthly installments, starting in July of 2020, without the imposition of any fine or charges

LABOR MEASURES

➤ Layoff

- The employment contracts may be suspended, through a collective agreement with the union, for a minimum of 2 months and up to 5 months, while employees are engaged in a professional training program provided by the company
- During the layoff period, the employees would receive a scholarship payment from the Government of up to BRL 1,8K, according to unemployment insurance rules
- The company may have to pay an additional allowance – not deemed as salary - to employees who receive salaries higher than BRL 1,8K, and some fringe benefits must be maintained (such as health insurance) for all employees

**NEW LABOR MEASURES – MP
936**



PROVISIONAL MEASURE 936

- The Provisional Measure No. 936 ("MP 936") was enacted on April 1, 2020 to enable companies to implement new labor measures to confront the Covid-19 outbreak situation
- Through the MP 936, the government created the "Emergency Employment and Income Maintenance Program" establishing:
 - Proportional reduction in employees' working hours and salaries, and
 - Temporary suspension of the employment contracts

PAYMENT OF GOVERNMENT AID

- The amount of the benefit will be based on the monthly amount of unemployment insurance that the employee would be entitled if he/she was dismissed, considering the calculation below:

Average salary range received (in the last 3 months)	Employment insurance amount to be received by the employee
Up to BRL 1,599.61	80% of the average salary
From BRL 1,599.62 to BRL 2,666.29	50% of the amount that exceeds BRL 1,599.61 plus BRL 1,279.69
Above BRL 2,666.29	BRL 1,813.03

- The government aid will be calculated proportionally to the reduction of work time and salaries (25%, 50% or 70%)
- Upon suspension of the employment contract, the benefit amount will be:
 - 100% of the unemployment insurance, when the company's 2019 gross revenue was lower than BRL 4.8M
 - 70% of the unemployment insurance, when the company's 2019 gross revenue was higher than BRL 4.8M

PROPORTIONAL REDUCTION IN WORK HOURS AND SALARIES

- The proportional reduction in employees' working hours and salaries may be negotiated through an individual agreement (depending on the employees' salary range) or a collective agreement

Reduction amount	Government aid amount	Is it possible to implement through individual agreement?
25%	25% of the Unemployment Insurance	Yes
50%	50% of the Unemployment Insurance	Only for employees who (i) receive monthly salary of up to BRL 3,135 or (ii) receive monthly salary higher than BRL 12,202.01, if they have a higher education degree
70%	70% of the Unemployment Insurance	

PROPORTIONAL REDUCTION IN WORK HOURS AND SALARIES

- Maximum period of 90 days
- The amount of the hourly wage must be maintained
- After the reduction period, the employees are entitled to job stability, and their contracts cannot be terminated for the same time during which the reduction occurred
- The predominant understanding is that it is unconstitutional to reduce salaries through individual agreement with the employee. Therefore, we strongly recommend making this kind of agreement with the Labor Union through collective agreement

PROPORTIONAL REDUCTION IN WORK HOURS AND SALARIES

- The MP 936 also allows that companies agree to reductions on percentages different from those indicated above, only through collective agreement, subject to the following proportion:

Reduction amount	Government aid amount
Under 25%	None
From 25% to 49%	25% of the Unemployment Insurance
From 50% to 69%	50% of the Unemployment Insurance
Over 70%	70% of the Unemployment Insurance

TEMPORARY SUSPENSION OF EMPLOYMENT CONTRACT

- The temporary suspension of the employment contracts may be negotiated through an individual agreement (depending on the employees' salary range) or a collective agreement
- If company's 2019 gross revenue was higher than BRL 4.8M, it would have to pay 30% of the employees' salaries without any labor or tax burden
- Maximum period of 60 days
- All benefits granted to the employees must be maintained during the suspension
- After the suspension period, the employees are entitled to job stability, and their contracts cannot be terminated for the same time during which their contracts remained suspended
- Although, at first, this rule is not considered unconstitutional, there are reasonable discussions that it is not lawful. Therefore, we recommend making this kind of agreement with the labor union through collective agreement

LAYOFF x SUSPENSION OF MP 936

	Layoff	Suspension of employment MP 936
Suspension period	2 to 5 months	Up to 60 days (can be divided into 2 periods of 30 days)
Objective	Suspension of the employment contract, being mandatory for the company to provide professional training to its employees	Suspension of the employment contract, during the period of public calamity, without the obligation for the company to provide professional training
Formalization tools	Mandatory collective agreement with the Labor Union	Individual agreements are only permitted with employees who: - receive monthly salary of up to BRL 3,135 - receive monthly salary higher than BRL 12,202.01, if they have a higher education degree
Professional training	The company must provide professional training from 1 to 3 months, exclusively online	There is no legal obligation
Payment of monthly compensatory aid by the company	There is no legal obligation, however it is one of the main points of negotiation with the Labor Union. If the payment is agreed, there is no labor or tax burden	If the company's annual gross revenue is higher than BRL 4.8M, the employer must pay 30% of the employee's salary without any labor or tax burden
Fringe Benefits	The company must maintain at least the health insurance plan to all employees	All benefits granted by the employer must be maintained during the suspension, except transportation vouchers
Payment of government aid	The government will pay a monthly Professional Scholarship to the employee, based on the proportional rule of the unemployment insurance	The government will pay an emergencial benefit in the amount of 70% of the unemployment insurance, when the company's annual gross revenue is higher than BRL 4.8M

LAYOFF x SUSPENSION OF MP 936

	Layoff	Suspension of employment MP 936
Employees prevented to receive the government aid	a) who do not meet the minimum requirements for receiving unemployment insurance; b) who have received all the unemployment insurance installments within 16 months prior to Layoff; c) who receive social security benefits, except accident assistance and death pension	a) who are occupants of public office or employment, commissioned or hold an elective mandate; b) who receive any type of social security benefit
Extension	It can be negotiated through collective agreement with the Labor Union, but the payment of the government aid cannot be extended	Not allowed
Job stability	There is no legal obligation	While the employment contract is suspended, and for the same time during which their contracts remained suspended
Payment of unemployment insurance by the government in case of dismissal	The employee partially loses the right to receive the unemployment insurance. The government aid received by the employee will be deducted from the unemployment insurance amount. If the employee is dismissed, he/she will be entitled to receive just one installment of the unemployment insurance	If the employee is dismissed, he will be entitled to receive the unemployment insurance without any deductions
Non-compliance and penalties	The Layoff will not be valid if the professional training is not provided by the company and / or the employee remains working during the period. In this case, the company may have to pay salaries and social charges for the period, administrative and collective agreement's penalties	The suspension of the employment contract will not be valid if the employee remains working during the period. In this case, the company may have to pay salaries and social charges for the period, administrative and collective agreement's penalties (if applicable)

Thank you!

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