



Simplified Lay off

Decree-Law no. 10-G/2020, of March 26

Extraordinary support measures for maintaining an employment contract in a business crisis situation

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Extraordinary support measures for maintaining an employment contract in a business crisis situation

Decree-Law no. 10-G/2020, of March 26, established an **exceptional and temporary regime for the reduction of normal working hours and the suspension of employment contracts** (simplified Lay Off) in order to support companies in a business crisis situation, namely extraordinary financial support for the payment of compensation and the waiving of social security contributions.

This regime **is without prejudice to the application of the common Lay Off mechanism** provided for in the Labour Code for situations of business crisis.

This guide aims to explain the conditions for its application, the procedures and the effects of this exceptional and temporary regime to mitigate the effects of the business crisis resulting from the COVID 19 pandemic, namely with regard to employment.

I. Assumptions

A. Beneficiaries

The measures provided for in the diploma are intended for private employers or employers in the social sector, public employers being excluded.

B. Purpose

Business crisis resulting from the COVID 19 pandemic

1. The **business crisis** situations that will be relevant for the application of the measure, regardless of its concrete grounds, are those **concerning companies affected by the COVID 19 pandemic and to the extent that the business crisis is a consequence of that pandemic.**

2. Decree-Law no. 10-G/2020, of March 26, requires verification of at least one of the following **grounds**:
 - a) Total or partial shutdown of the company or establishment;
 - b) Total or partial halt in the company's or establishment's activity; and
 - c) Unexpected and sharp drop in billing.

3. **Total or partial shutdown of the company or establishment:**
 - a) **Total** or **partial** shutdown of the **company or establishment** must be observed;
 - b) Such shutdown shall be due, in principle, to the **obligation to shutdown facilities and establishments**, initially provided for in Decree no. 2-A/2020, of March 20, and now in Decree no. 2-B/2020, of April 2, or by legislative or administrative determination (under the terms of Decree-Law no. 10-A/2020, of March 13, as currently drafted), or under the Basic Law of Civil Protection (approved by Law no. 27/2006, of July 3, as currently drafted), as well as the Basic Law of Health Care (approved by Law no. 95/2019, of September 4);
 - c) It should be noted, with regard to the situations covered by Decree no. 2-B/2020 of April 2, that the respective article 9 only determines the **obligation to shut down** the facilities and establishments specifically referred to in Appendix I to the said Decree (Appendix 1) - there are situations in which the decree only imposes a mere **obligation of suspension** of activities, within the scope of the provision of services or within the scope of retail (and, in the latter case, neither suspension applies, for example, to establishments that intend to maintain their activity exclusively for the purposes of home delivery or take-away, in which case access to the inside of the establishment by the public is prohibited);
 - d) DGERT - General Directorate for Employment and Labour Relations issued an understanding that states that, in certain situations, **the suspension of activity**, within the scope of retail or the provision of services in establishments open to the public, pursuant to articles 8 and 9 of Decree no. 2-A/2020, of March 20, and articles 10 and 11 of Decree no. 2-B/2000, of April, 2 (State of Emergency), **is equated to a total or partial shutdown of the company**, but, so far, Social Security has not yet officially followed this interpretation, so in these cases, the possibility of using the simplified lay off should always deserve a case by case analysis.
 - e) The measure relates only to the **establishments or companies which are actually closed**;

- f) The measure covers only **employees directly working for those companies or establishments** - thus excluding indirectly dependent employees;
- g) As regards **teleemployees**, the measure also **covers only those directly working for those closed companies or establishments** - by reference, in particular, to the prior identification of the company or department of the company in which the employee is working during the telework activity.

4. Total or partial halt in the company's or establishment's activity:

- a) **Substantive requirements:** The total or partial halt in the company's or establishment's activity should result from one of the following circumstances:
 - i. **Disruption or intermittence** of global supply chains; or
 - ii. **Suspension or cancellation of orders or reservations**, in terms that show that the production or occupancy capacity of the affected company or unit will be reduced by more than 40% in the month following the support period.
- b) **Formal requirements:** The total or partial halt in the company's or establishment's activity and the circumstances on which it is based must be supported by verifiable documentation and must result from a declaration by the employer together with a certificate from the company's certified accountant attesting to this.

5. Unexpected and sharp drop in billing:

- a) **Substantive requirements:** To observe a verifiable unexpected and sharp drop of at least **40% in the company's billing in the 30-day period** prior to the request to the competent Social Security services:
 - i. With reference to the monthly average of the 2 months preceding that period (i.e. in this case, if a request is filed, for example, on 31 March 2020, the fall in revenue must relate to the period from 1 to 30 March, with reference to the monthly average of the months of January and February 2020); or
 - ii. Compared to the same period of the previous year;
 - iii. For those companies who started their activity less than 12 months ago, with reference to the average of that period;
- b) **Formal requirements:** The sharp and abrupt drop in revenue should result, namely, from the **trial balance for the periods in question**, as well as from the

employer's declaration together with a certificate from the company's certified accountant attesting to this.

C. Purpose

The measures must be aimed at **maintaining jobs and employment contracts** and avoiding redundancies for economic reasons at this critical stage in the country, requiring, in theory, that the measures actually implemented help the pursuit of those objectives.

D. Duration

The simplified lay off measures and exemption from social security contributions **by the employer will last for 1 month, extendable, exceptionally, up to 3 months.**

The measures are in force from the entry into force of the law (March 27, 2020) until June 30. This regime may be extended for a further three months depending on how the economic and social consequences of COVID 19 develop.

The requests already submitted in the light of Ordinance no. 71-A/2020 (now revoked) remain effective and are considered in the light of the new legislation, and should be reviewed in the light of the new frameworks.

II. Procedures

The procedure for requesting extraordinary support for the maintenance of the employment contract is divided into four phases, namely:

1st Phase - Communication to trade union delegates and workers' committees

The first phase of the procedure is to **communicate the decision** to use the extraordinary support for the maintenance of an employment contract to the **trade union delegates and employees' committees** (if any).

This communication must be made in writing and accompanied by the following information:

- a)** Justification for the use of the measure;
- b)** Indication of the number and categories of the employees to be covered;

- c) Indication of the measure proposed for each of the employees (i.e. suspension of employment or reduction of working time);
- d) Criteria for the selection of the employees covered by this measure (to the extent applicable);
- e) Indication of the period of application of the measure; and
- f) Indication of the deadline for replying or scheduling a meeting convened for this purpose.

If a meeting is scheduled, either in person or at distance, minutes must be drawn up, containing the position of the union delegates and the employees commission (if these structures exist).

2nd Phase - Communication of the decision to employees

Once the **consultation with trade union representatives and works councils** has been concluded, the employer must communicate the decision, individually to each of the employees concerned, stating:

- a) The reasons for the use of the measure;
- b) The particular applicable measure (i.e. suspension of the employment contract or reduction of working time);
- c) The retribution / compensation;
- d) The selection criteria for the employees covered by this measure (to the extent applicable); and
- e) Indication of the period of application of the measure.

The employer is obliged to communicate the decision to make use of the extraordinary support to all employees covered by this measure, even if they may not be entitled to receive any compensation.

Given the urgency of the measure, we admit that this decision can be made by e-mail, with preference being given to the system of message sending/receiving certification.

If it is not possible to send a message by e-mail, a simple registered letter should be sent to the employee's address. In the latter case, we suggest that the employer contact the employee by telephone in advance, informing him/her of this decision, as the registered letter may take a few days to reach the employee.

3rd Phase - Submitting the request for extraordinary support for the maintenance of the employment contract

On the same date that the decision is communicated to each of the employees covered by the measure, the Employer must **submit the electronic application to the Social Security**, in a specific form (Mod. RC 3056-DGSS) → http://www.seg-social.pt/documents/10152/16889112/RC_3056.pdf/61b7f4b0-bf25-4913-a063-e510800a0141.

This form contains the declaration of the Employer regarding the identification of the business crisis situation, foreseen in article 3, no. 1 of Decree-Law no. 10-G/2020, of March 26 (see Section 3), **accompanied by a list with the names of the concerned employees**, according to the model provided by the Social Security (Annex to Mod. RC 3056-DGSS).

This list, in Excel, should include for each employee: name, Social Security Identification Number, date of birth, type of measure applied to each employees, gross monthly pay (before the application of the measure), normal weekly working period, reduction hours (if applicable), start and end date of application of the measure.

This Excel file must be zipped and named with the Social Security Identification Number of the Employer.

We would like to mention that in order to fill in the employees' data, the employer can access «Segurança Social Direta», on “Emprego » Admissão e Cessação de Trabalhadores » Consulta Trabalhadores”, available at <http://www.seg-social.pt/inicio>.

In cases where **there is no forced shutdown**, the certified **accountant** of the company should **certify the business crisis situation** following the COVID 19 pandemic on the form itself (Section 4).

4th Phase (potential) - Supervision and Presentation of Documentation

Employers who benefit from of this measure **may be audited after the event by the competent public authorities and will be obliged to prove the facts on which the application and the respective renewals** (if any) were based.

To this purpose, employers may be required to submit the following documents in particular:

- a)** Trial balance for the month of the support as well as for the month or two immediately preceding months, where applicable;
- b)** Value Added Tax (VAT) declaration for the month of the support as well as the two immediately preceding months, or the declaration for the last quarter of 2019 and the first quarter of 2020, depending on whether the applicant is in the monthly or quarterly VAT regime respectively, which show the intermittence or interruption of the supply chains or the suspension or cancellation of orders; and
- c)** In case of total or partial halt in the activity of the company or establishment resulting from the interruption of the global supply chains, or the suspension or cancellation of orders, documents demonstrating the cancellation of orders or reservations, which show that the use of the affected company or unit will be reduced by more than 40% of its production or occupancy capacity in the month following the request for support; and
- d)** Additional supporting documents to be required by order of the member of the Government responsible for the area of employment and social security;
- e)** Certificates of non-existence of debt to Social Security and Tax and Customs Authority.

III. Results

The results of the application of the extraordinary support measures for maintaining an employment contract in a business crisis situation are:

A. Situation of the employer

The employer is entitled to:

- a)** Extraordinary support to maintain an employment contract, with or without training, in case of temporary reduction of the normal working period or suspension of the employment contract, under the terms of articles 298 and following of the Labour Code;
- b)** Extraordinary training plan;
- c)** Extraordinary financial incentive to support the normalisation of the company's activity;
- d)** Temporary exemption from the payment of Social Security contributions.

These measures may be combined with other support measures.

B. Situation of the employee

The employees concerned are in one of the following situations:

- a) Suspension of employment, i.e. without activity;
- b) Reduction of the normal working period.

1. Employee rights in the event of suspension of the employment contract

In the event of suspension of the employment contract, the employee is entitled to a **compensation corresponding to 2/3 of the gross normal salary** (sum of the amounts earned by the employee of a retributive nature and regular character, subject to the payment of Social Security contributions) in the company with a minimum limit of € 635 (minimum guaranteed monthly salary) and a maximum of € 1,905 (3x the minimum guaranteed monthly salary).

Example:

An employee with a gross regular salary of € 1,200 is entitled to a compensation of € 800 (2/3 of € 1,200).

Of this amount (€ 800), €5 60 is reimbursed to the employer by the Social Security and the remainder (€ 240) is borne by the employer.

2. Employees' rights in the event of a reduction in the normal working period

In the event that the employee continues to work with a reduction in the normal working period, the amount to which the employee is entitled to **has two components**:

- a) **Remuneration paid by the employer** calculated in **proportion to the number of hours worked** taking into account the following formula for calculating the hourly rates:

(MW*12): (52xn) in which:

“MW” is the monthly wage;

and

“n” the number of hours of the normal weekly working period;

- b) A compensation in the amount necessary for the employee to receive 2/3 of the gross normal salary** for the work done in the company with a minimum limit of € 635 and a maximum of € 1,905.

Example:

An employee with a normal monthly salary of € 1,200 and a normal working period of 40 hours who as a result of the application of this exceptional regime starts working 2 days a week instead of 5 is entitled to pay for his work and to a compensation payment.

The employee is entitled to a salary compensation of € 442.88 because he works 8 days a month (hourly rate of € 6.92 and daily compensation of € 55.36 multiplied by 8 days of the month, calculated according to the indicated formula).

The employee is also entitled to a salary compensation that guarantees 2/3 of the employee's monthly salary, i.e. € 800. Thus, the compensation is € 357.12 corresponding to the difference between the amount paid for the work done (€ 442.88) and the minimum amount guaranteed to the employee (€ 800).

The compensation is paid by the employer, although 70% of this amount is reimbursed by Social Security. In our example, the employer is entitled to a social security reimbursement of around € 250 for a payment to the employee of € 800.

If the employee receives a salary for work done in excess of € 1,905 (3x minimum guaranteed monthly salary), no compensation is due because the maximum limit of the amount is reached. Therefore, the employer is not entitled to any reimbursement by Social Security because there is no compensation due.

It is accepted that, in the event of the suspension of the employment contract or reduction of the normal working period, the employer can pay the worker beyond the legal limit of € 1.905, without it compromising the right to the social security reimbursements. The Ministry of Labour, Solidarity and Social Security clarified that for the employees in lay off situation, either in the form of suspension of the contract, or in the form of reducing normal working periods, employers can pay higher amounts than those legally imposed (but, in such cases, endorsing the opinion that the employer must support Social Security contributions on the increments), being a matter to be analysed on a case by case basis.

3. Rights of an employee providing another service during the period of suspension or reduction of his employment contract

During the period of suspension of the employment contract or reduction of the normal working period, **the amount of compensation received by the employee for another service provided to another employer is deducted from the amount of compensation to be paid by the employer and reimbursed by Social Security until it reaches 2/3 of the gross monthly salary or the maximum limit of the salary compensation (€ 1,905).**

Example:

An employee with a normal monthly pay of € 1,200 and a normal working period of 40 hours who, as a result of the application of this exceptional regime who starts working 2 days a week for his employer, is entitled to a pay of € 442.88 because he works 8 days a month.

If an employee receives € 200 for work done for another company, he is also entitled to a compensation of € 157.12 corresponding to the difference between the amount paid for the work done (€ 442.88) and the amount received from another company and the minimum amount guaranteed to the employee (€ 800).

IV. Other business support measures

In a situation of business crisis, in addition to the extraordinary support for maintaining an employment contract, with or without training, in the event of temporary reduction of the normal work period or suspension of the employment contract (simplified lay off), Decree-Law no. 10-G/2020, of March 26, also establishes other measures to which the employer may be entitled:

- a)** Extraordinary training plan;
- b)** Extraordinary financial incentive to support the normalisation of the company's activity;
- c)** Temporary exemption from the payment of Social Security contributions by the employer.

1. Extraordinary training plan

- a)** It consists of extraordinary support measures for part-time vocational training in order to maintain jobs and reinforcing employees' skills in

order to preventively act against unemployment, in accordance with a training plan organised and operated by the IEFP, I.P., together with the employer;

- b) Scope:** It applies only to employers who have not resorted to extraordinary support measures for maintaining an employment contract (simplified lay off);
- c) Purpose:** Extraordinary support is granted to each employee, based on the hours of training attended, up to a limit of 50% of the gross salary, with a maximum limit of a minimum guaranteed monthly salary (RMMG), supported by IEFP, I.P.;
- d) Duration** The support lasts one month, coinciding with the implementation of the training plan;
- e) Formal requirements:** To access the support, the employer must only inform the employees in writing of the decision to start a training plan, as well as the foreseeable duration of the measure, immediately sending that information to IEFP, I.P., instructed with specific documentation.

2. Extraordinary financial incentive to support the normalisation of the company's activity

- a) It consists of an extraordinary support in cash, to be granted to the employer by IEFP, I.P.;**
- b) Scope:** It applies to employers who benefit from one of the other measures provided for in Decree-Law no. 10-G/2020, of March 26;
- c) Purpose:** The extraordinary support in cash has the value of a minimum guaranteed monthly salary (RMMG) per employee;
- d) Duration** The extraordinary support in cash is paid in one lump sum;
- e) Formal requirements:** To access the support, the employer must submit an application to IEFP, I.P., instructed with specific documentation.

3. Temporary exemption from the payment of Social Security contributions

- a) It consists of the total exemption from the payment of social security contributions by the employer in respect of the employees covered and also the members of the company's governing bodies;**
- b) Scope:** It applies to employers who benefit from one of the other measures provided for in Decree-Law no. 10-G/2020, of March 26;

- c) **Purpose:** The exemption concerns the contributions relating to remuneration for the months in which the company is the beneficiary of the measures;
- d) **Duration** The exemption shall apply for the duration of the measures;
- e) **Formal requirements:** The exemption from the payment of contributions in respect of the employees covered is officially recognised, namely on the basis of information transmitted by IEFEP, I.P. In this case, the employers submit the autonomous salary declarations in respect of the employees covered and pay their contributions.

V. Restrictions

1. During the period of application of the measures, the employer must have its **tax status regularized before the Social Security and the Tax and Customs Authority** (until April 30, 2020, the debts constituted in March 2020 are not relevant for this purpose);
2. **Failure** by the employer or the employee to comply with the obligations relating to the support provided for in Decree-Law no. 10-G/2020, of March 26, will result in the immediate **termination of the support and the refund or payment, in full or in proportion, of the amounts already received or exempted**, when any of the following situations occurs:
 - a) Dismissal, except for fact attributable to the employee (thus covering collective dismissal, individual redundancy and unsuitability);
 - b) Failure to timely pay the salaries owed to employees;
 - c) Non-compliance by the employer with its legal, tax or contributory obligations;
 - d) Profit distribution during the duration of the obligations arising from the granting of the incentive, in any form, in particular as a withdrawal on account of profits;
 - e) Failure by the employer to fulfil its obligations within the defined time limits;
 - f) Providing false statements;
 - g) Work provided to the employer by an employee covered by the extraordinary support measure for the maintenance of an employment contract in the form of suspension of the contract, or beyond the established time, in the form of temporary reduction of the normal work period.
3. **During** the period of application of the support measures provided for in Decree-Law no. 10-G/2020, of March 26, as well as **in the following 60 days, the employer**

may not terminate the employment contracts of any employee, regardless that they are covered or not by lay off measures, under the terms of collective dismissal or individual redundancy, provided for, respectively, in articles 359 and 367 of the Labour Code.

4. In so far as the Decree is not clear on this point, it should be accepted that failure to fulfil these obligations in respect of only one or some of the employees covered may result in the refund or payment, as the case may be, of the amounts already received or exempted, in respect of all the employees covered.
5. Under article 24 of the Decree no. 2-B/2020, of April 2, which extended the state of emergency, labour inspectors can notify employers to rectify the situation whenever there are signs of irregularity in dismissal for reasons imputable to the employee, collective dismissal or individual redundancy. This notification determines the suspension of the dismissal until the situation of the employee is regularized or until the judicial decision becomes final. This possibility (notification by the labour inspector) is restricted to the period of validity of the Decree no. 2-B/2020, of April 2, that is, between April 3 and until the state of emergency ends.
Materially, there is a provisional suspension of the dismissal, which may last beyond the period corresponding to the period of exception, which discourages the decision of collective dismissal and individual redundancy to be taken in this period.

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Appendix I

1 - Recreational and leisure activities:

Discos, bars and dance or party halls; Circuses; Amusement parks and playgrounds for children and the like; Water parks and zoos, without prejudice to employees' access for the care of animals; Any sites for leisure sport; Other sites or facilities similar to the above.

2 - Cultural and artistic activities:

Auditoriums, cinemas, theatres and concert halls; Museums, monuments, palaces and archaeological or similar sites (interpretative centres, caves, etc.), national, regional and municipal, public or private, without prejudice to the employees' access for conservation and security purposes; Libraries and archives; Squares, places and bullfighting arenas; Art galleries and exhibition halls; Congress pavilions, multi-purpose halls, conference rooms and multi-purpose pavilions.

3 - Sports activities, except those intended for the activity of high-performance athletes:

Football, rugby and similar fields; indoor football, basketball, handball, volleyball, hockey and similar courts; tennis courts, padel and similar courts; skating rinks, ice hockey and similar courts; Swimming pools; Boxing rinks, martial arts and the like; Motorcycle, automobile and similar permanent circuits; Velodromes; Hippodromes and the like; Multi-sport pavilions; Gymnasiums and gyms; Athletics tracks; Stadiums; Golf courses.

4 - Activities in open spaces, public spaces and roads and private spaces and roads similar to public spaces:

Cycling, motorcycling, car racing and similar circuits, except those intended for the activity of high-performance athletes; nautical tournaments and exhibitions; Aeronautical tournaments and exhibitions; Parades and popular festivals or folkloric or other events of any nature.

5 - Gaming and gambling facilities:

Casinos; Gambling establishments such as bingos or similar; Games rooms and recreation rooms.

6 - Restaurants and catering:

Restaurants and similar, cafeterias, tea houses and the like, with the exceptions of this decree; Bars and the like; Hotel bars and restaurants, except for the latter for the purpose of delivering meals to guests; Esplanades; Vending machines.

7 - Spas or similar establishments.