IV. Employment

Glossary

ACT

Authority for Working Conditions

ASF

Autoridade de Supervisão de Seguros e Fundos de Pensões (Portuguese Insurance and Pension Funds Supervisory Authority)

Council of Ministers Resolution 10-A/2020

Council of Ministers Resolution 10-A/2020 of 13 March, which approves a set of measures relating to the new Coronavirus - COVID-19 epidemic

Council of Ministers Resolution 33-A/2020

Council of Ministers Resolution 33-A/2020 of 30 April, which declares the calamity situation in the context of new Coronavirus - COVID-19 epidemic outbreak and established the respective rules

Council of Ministers Resolution 33-C/2020

Council of Ministers Resolution 33-C/2020 of 30 April, which establishes a strategy and calendar for the gradual deconfinement measures in the context of new Coronavirus - COVID 19 epidemic outbreak

Civil Protection Framework Law

Law 27/2006 of 3 July

CNPD

Comissão Nacional de Proteção de Dados (Portuguese Data Protection Supervisory Authority)

CT

Portuguese Employment Code

Declaration of Rectification 14/2020

Declaration of Rectification 14/2020 of 28 March, which corrects Decree-Law 10-G/2020 of 26 March

Decree 2-A/2020

Decree 2-A/2020 of 20 March, which implements the state of emergency declared by Presidential Decree 14-A/2020 of 18 March, repealed by Decree 2-B/2020 of 2 April

Decree 2-B/2020

Decree 2-B/2020 of 2 April, which regulates the extension of the state of emergency determined by Presidential Decree 17-A/2020 of 2 April repealed by Decree 2-C/2020 of 2 April

Decree 2-C/2020

Decree 2-C/2020 of 20 March, which regulates a new extension of the state of emergency determined by Presidential Decree 20-A/2020 of 17 April and ended on 2 May, 2020

Decree-Law 10-A/2020

Decree-Law 10-A/2020 of 13 March, which establishes exceptional and temporary measures regarding the new Coronavirus - COVID-19 epidemic (and successive amendments)

Decree-Law 10-F/2020

Decree-Law 10-F/2020 of 26 March, which establishes an exceptional and temporary regime for compliance with tax and social contribution obligations in the context of the COVID-19 pandemic, corrected by Declaration of Rectification 13/2020 of 28 March subsequently amended

Decree-Law 10-G/2020

Decree-Law 10-G/2020 of 26 March, which establishes an exceptional and temporary regime for protecting jobs in the context of the COVID-19 pandemic, corrected by Declaration of Rectification 14/2020 of 28 March subsequently amended

Decree-Law 10-K/2020

Decree-Law 10-K/2020 of 26 March, which establishes an exceptional and temporary regime for justified absences due to caring for family members, in the context of the COVID-19 pandemic

Decree-Law 12-A/2020

Decree-Law 12-A/2020 of 6 April, which establishes an exceptional and temporary regime in the context of the COVID-19 pandemic

Glossary

Decree-Law 20/2020

Decree-Law 20/2020 of 1 May - corrected by Declaration of Rectification 18-C/2020 of 5 May – which amends the exceptional and temporary regime in the context of the COVID-19 pandemic and proceeds to the seventh amendment of Decree-law n.º 10-A/2020 of 13 March.

Decree-Law 20-C/2020

Decree-Law 20-C/2020 of 7 May which defines additional exceptional measures on social protection in the context of the COVID-19 pandemic, also proceeding to the ninth amendment of Decree-law n.º 10-F/2020 of 26 March

DGS

Direção-Geral da Saúde (Health State Department)

DGS Guidance 006/2020

DGS Guidance 006/2020 of 26 February 2020, relating to procedures for the prevention, control and monitoring in companies of infection by SARS-CoV-2 (COVID-19)

DGS Guidance 008/2020

DGS Guidance 008/2020 of 10 March 2020, relating to procedures for the prevention, control and monitoring in hotels of infection by SARS-CoV-2 (COVID-19)

DGS Guidance 019/2020

DGS Guidance 019/2020 of 3 April 2020, relating to the use of Personal Protective Equipment (PPE) by non-health professionals

DGS Guidance 023/2020

DGS Guidance 023/2020 of 8 May 2020, relating to procedures for the prevention, control and monitoring in restaurants and similar establishments of infection by SARS-CoV-2 (COVID-19)

DGS Ruling 007/2020

DGS Guidance 007/2020 of 29 March 2020, relating to Personal Protective Equipment (PPE) for the infection prevention and control by SARS-CoV-2 (COVID-19)

GDPR

EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC of 24 October (General Data Protection Regulation)

General Employment Law for Public Workers

General Employment Law for Public Workers, approved in attachment to Law 35/2014 of 20 June, and its successive amendments

Health Framework Law

Law 95/2019 of 4 September

IAS

Social Support Index (EUR 438.81, in 2020, pursuant to Ordinance 27/2020 of 31 January)

IEFP

Instituto do Emprego e Formação Profissional, I.P. (Public Department for Employment and Professional Training)

IHT

Exemption from Working Hours

IRCT

Collective Bargaining Agreement

ISS

Instituto da Segurança Social, I. P. (Public Social Security Management Entity)

Law 7/2020

Law 7/2020 of 10 April, which establishes exceptional and temporary regimes in response to the SARS-Cov-2 epidemic, and makes the first amendment to Decree-Law 10-I/2020 of 26 March, and the fourth amendment to Law 27/2007 of 30 July

Glossary

Law 14/2020

Law 14/2020 of 9 May, which proceeds to the third amendment to Law 1-A/2020 of 19 March which establishes exceptional and temporary regimes in response to the SARS-Cov-2 epidemic

Order 2875-A/2020

Order 2875-A/2020 of 3 March, which adopts measures to safeguard social security for beneficiaries temporarily prevented from working by order of the health authority, due to danger of infection by COVID-19

Order 3301-D/2020

Order 3301-D/2020 of 15 March, which requires the adoption of additional exceptional measures to address the prevention and containment of the COVID-19 pandemic

Order 3614-D/2020

Order 3614-D/2020 of 23 March, which provides guidance for public services, extended– as of 3 May – by Order 5419-A/2020 of 11 May (except for numbers 7 onwards which were revoked)

Ordinance 71-A/2020

Ordinance 71-A/2020 of 15 March, which defines and regulates the terms and conditions for granting immediate support of an extraordinary, temporary and provisional nature, for employees and employers affected by the outbreak of the COVID-19 virus, in terms of retaining jobs and mitigating business crisis situations, amended by Ordinance 76-B/2020 of 18 March and repealed by Article 19(1) of Decree-Law 10-G/2020 of 26 March

Ordinance 82/2020

Ordinance 82/2020 of 29 March, which establishes essential services for the purposes of looking after the children or other dependents of relevant professionals in educational establishments.

Ordinance 94-A/2020

Ordinance 94-A/2020 of 16 April, which defines and regulates procedures for allowance and aid employment granting measures (family support, self-employed worker aids, temporary regime for protecting jobs in the context of the COVID-19 pandemic and exceptional and temporary regime for compliance with social contribution obligations)

Ordinance 97/2020

Ordinance 97/2020 of 19 April which amends Ordinance 82/2020 of 29 March

PPE

Personal Protective Equipment

Presidential Decree 17-A/2020

Presidential Decree 17-A/2020 of 2 April, which renews – for the period between 00:00 on 3 April 2020 and 23:59 on 17 April 2020 – the state of emergency declared by Presidential Decree 14-A/2020 of 18 March, initiated at 00:00 on 19 March

Presidential Decree 20-A/2020

Presidential Decree 20-A/2020 of 17 April, which renews – for the period between 00:00 on 18 April 2020 and 23:59 on 2 May 2020 – the state of emergency previously declared

RJPSST

Legal Framework Promoting Occupational Safety and Health (approved by Law 102/2009, of 10 September)

RMMG

Monthly Minimum Wage in Portugal (EUR 635 in 2020, pursuant to Decree-Law 169/2019 of 21 November)

SNS

Sistema Nacional de Saúde (National Health System)

SST

Occupational Safety and Health

IV. EMPLOYMENT

IV.A. Background

The COVID-19 pandemic has affected not only our way of living, but also of working. There is no question over the enormous impact it has had on work relations, requiring adequate measures and responses to be found and rapid adjustment by employers and employees.

The CT and related employment and social security legislation have not been able, single-handedly or as quickly as needed, to respond to all the requirements of a national state of emergency. It was considered necessary for the Government to adopt exceptional measures, which took the form of successive legislative measures, not always easy to interpret, but which need to be applied.

The future is uncertain, but it is the legislator's intention to ensure that work relations and the corporate economic system are maintained.

This chapter aims to comment on the temporary and exceptional measures that are successively being introduced, by means of legislative or administrative approaches, to address the current situation and to give employers and employees the means to adjust work relations for the purposes of the emergency measures. It also aims at contextualising and identifying the solutions or impacts resulting from the mechanisms and rules previously covered by employment legislation which have not, or have not yet, been the object of legislative measures, but which respond to the various circumstances and issues that have been generated and affect work relations, while also recommending those which, at any given moment, are considered best practices within a legislative framework subject to further continuous changes and to the implementation of new or revised measures.

In our analysis, we have also referred to legislative action concerning aids for independent workers (self-employed professionals), as well as some which relate to members of the governing bodies of companies and other entities.

IV.B. Background | Legal Framework

With respect to measures particularly focussed on the field of employment and social security, Order 2875-A/2020 and Order 3103-A/2020 were initially issued implementing measures to safeguard social security for beneficiaries prevented from working by order of the health authority.

Publication of Decree-Law 10-A/2020 and Council of Ministers Resolution 10-A/2020 followed, which, in setting out various exceptional and temporary measures related to the COVID-19 epidemic, included social security measures for sickness and parenthood, in particular, allowances or support rules applicable in case of employee absences due to prophylactic isolation, illness, caring for children during school and nursery temporary closure and caring for family members, and other support measures for self-employed workers. It also included the possibility of teleworking without the need for an agreement between the employer and employee, and the possibility that the teleworking scheme can be "unilaterally determined by the employer or requested by the employee [...] provided that it is compatible with the tasks performed", though this wording raised a number of questions. This decree was further successively amended, among others by Decree-Law 12-A/2020 and Decree-Law 20/2020[1].

These were followed by Decree-Law 10-G/2020, which amended and regulated the so-called

[1] Decree-Law 10-A/2020 was successively amended with impact in this area.

"simplified lay-off" scheme[2], corrected by Declaration of Rectification 14/2020 immediately afterwards, which has been successively amended and regulated by Ordinance 94-A/2020.

As from the confinement starting point, initiated with the first period of the state of emergency[3],a general duty to remotely work from home, regardless of the employment relationship was implemented and has been in force, in all cases where such form of work is compatible with the tasks performed. Initially introduced by Decree-Law 2-A/2020, mandatory remote work in such cases remained throughout the two successive state of emergency period renewals that followed and, after that, throughout the calamity situation that followed, and expected until June, 1[4].

With relevance to employment and social security, on that same date, Decree-Law 10-K/2020, which amended some of the previous provisions on absences, including those due to employees having to provide family support and care, and Decree-Law 10-F/2020 (amended at the beginning of May, by Decree-Law 20-C/2020), which established an exceptional and temporary regime for compliance with tax and social security obligations, were published.

The decrees which regulated the state of emergency and its extensions provided for the enhanced resources and powers of the ACT where this authority it considers that there are signs of unfair dismissals being pursued. During the calamity situation Law 14/2020 was published and approved also providing – in article 8-C added to Law 1-A/2020 – the same enhanced resources and powers of the ACT regarding dismissals. The duration of these new powers, at this time, is unknown.

The potential emergence of new measures and clarifications regarding those already created will be analysed and updated by ML by the usual means of information's disclosure.

IV.C. Employer obligations on OSH

All businesses and organisations in the private and public, cooperative and social sectors, whilst employers that are responsible for coordinating Occupational Safety and Health Services under the legal framework promoting occupational safety and health, must follow the guidance issued by the DGS and organise appropriate contingency plans relating to SARS-CoV-2 infection and procedures to be followed in case of employees presenting symptoms of COVID-19 at the workplace.

The current pandemic has increased employer OSH obligations.

REQUIREMENT FOR EMPLOYERS TO ADOPT PREVENTIVE MEASURES DERIVING FROM THE GENERAL DUTY TO PROTECT EMPLOYEES' SAFETY AND HEALTH:

- **Implementation of a contingency plan**

All businesses and organisations in the private and public, cooperative and social sectors are required to prepare and, therefore, possess a contingency plan, in accordance with DGS Guidance 006/2020. The gradual deconfinement's phases, in particular those that imply a gradual return to face-to-face work, will certainly involve updated general guidelines - along with the guidelines that have been issued

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(2) The so-called "simplified lay-off" was created by Ordinance 71-A/2020, which interpretation was unclear, rectified on the day following its publication by Declaration of Rectification 11-C/2020, then amended a few days later by Ordinance 76-B/2020, and finally revoked on March 27.

(3) Declared by Presidential Decree 14-A/2020 of 18 March for the initial period between 00:00 on 19 March 2020 and 23:59 on 2 April 2020 and renewed by Presidential Decree 17-A/2020, for a further 15 days, again renewed for an additional 15 days period by Presidential Decree 20-A/2020.

(4) The gradual strategy of lifting the confinement measures in the context of the fight against the COVID -19 pandemic, which was approved on April 30 by the Government - see Council of Ministers Resolution 33-C/2020 - points out the shift from this general obligation to a regime of "partial teleworking, with outdated hours or teams in mirror" as of June 1.

for specific sectors - which have to be reflected by employers in the contingency plans previously drawn up[5].

Preparation of the contingency plan must involve OSH services and employee representatives or, if non-existent, the employees themselves and must include the contents indicated by the health authorities' guidelines – namely, the above referred DGS Guidance 006/2020.

The contingency plan must have been communicated to all employees and affixed at the workplace, where it may be visible and accessible to all.

OSH Services shall play an active role in responding to the pandemic within companies, in particular: (*i*) ensuring employees are informed and trained; (*ii*) defining additional prevention measures which prove necessary; (*iii*) ensuring medical surveillance; and (*iv*) identifying any cases of infection.

Employees' failure to comply with the contingency plan could constitute grounds for disciplinary action, without prejudice general liability under the law – see DGS Guidance[6].

In addition to that referred to below on employees being required to provide health information to the company, there are various aspects resulting from the steps companies must reflect in the contingency plan, which could involve procedures that require the processing of employees' health information (sensitive personal data). By way of example, the company is required to establish an alerting procedure in case of employees with symptoms and epidemic contacts (consistent with the definition of a suspected case of COVID-19), "i.e., how to proceed with internal communication between:

– The symptomatic employee – or an employee identifying a symptomatic fellow employee within the company - and his or her direct line manager and the employer (or employer representative);

  [...]

– (Internal) process for recording contact with the Suspected Case".

The DGS also issued rules applicable to employers that engage in specific activities, as is the case, for example, of:

– wholesale distributors and manufacturers of medicinal products for human use[7];
– hotels[8];
– restaurants, catering and similar establishments[9];

[5] *Cfr*. with practical use, the guide prepared by the DGS National Occupational Health Programme Coordination Team (available at https://www.dgs.pt/documentos-e-publicacoes/saude-e-trabalho-medidas-de-prevencao-da-covid-19-pdf.aspx).

Cfr. in addition, the guidelines issued by the European Agency for Safety at Work, in particular the **Guidelines on preventive measures for a safe and healthy return to the workplace** (available at https://oshwiki.eu/wiki/COVID-19:_Voltar_ao_local_de_trabalho_-_Adapta%C3%A7%C3%A3o_dos_locais_de_trabalho_e_prote%C3%A7%C3%A3o_dos_trabalhadores).

[6] According to article 34-B of Decree-Law 10-A/2020, which was introduced by Decree-Law 20/2020, the Contingency Plans shall be appropriate to the workplaces and in accordance with the (current and future) guidelines of DGS and ACT.

[7] Regulation 006/2020 of 26 March 2020, which contains guidance prepared by the DGS, in conjunction with the pharmaceutical sector and INFARMED, I.P., sets out a series of measures that must be adopted by these employers that are specifically intended to protect their employees, contributing to preventing the spread of COVID-19 and ensuring business continuity, and regulating aspects such as: (*i*) measures to be used to minimise risk of contamination; (*ii*) information to be made permanently available to employees; (*iii*) equipment/materials that must be made available at the workplace; (*iv*) use of PPE, especially face masks, (*v*) isolation areas; (*vi*) procedure for employees with symptoms; (*vii*) contingency plan.

[8] Guidance 008/2020 of 10 March 2020, which established prevention, control and monitoring procedures in hotels and which, among others, includes rules relating to the protection of professionals responsible for maintaining accommodation for hotel guests or lodgers.

[9] Guidance 023/2020 of 8 May.

Other standards and guidelines should be expected for the activities that will be resumed, according to the deconfinement plan applicable in each case. Please note that in several cases these are guidelines that are not limited to employee health protection[10].

On April 30, through Council of Ministers Resolution 33-C/2020, the Government approved the strategy towards gradual deconfinement plan within the scope of the pandemic combat, defining a projected timeline for this strategy comprising 2-week block periods between each deconfinement stage (for assessing the impacts). All measures must be accompanied by specific operating conditions which, in many cases, involve the use of PPE, rules on social distancing in addition to the general conditions for the lifting of confinement measures, such as the availability in the market of protective masks and disinfectant gel, regular hygiene of spaces, among others. In many cases these are reflected in safety measures to be implemented by the entities, whilst employers, as SST rules[11].

- **Use of Personal Protective Equipment (PPE) by specific professionals**

  On 3 April 2020 the DGS also issued guidance on the use of PPE by groups of professionals, other than health professionals[12] who may have direct contact with suspected or confirmed COVID-19 patients or with material used by these patients, defining a group of professionals for whom the use of PPE[13] outside health institutions is recommended, as well as professional groups with indication for use of face masks[14]. This matter will also be amended throughout the deconfinement process[15].

- **Provision of information by employee in the event of travel to "critical" areas and/or about their state of health**

  The CT, as a rule, prohibits employers from requiring employees to provide information on their private life or their health.

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[10] *Cfr*: for example, in relation to football, technical opinion issued by DGS on the conditions for the return of NOS League and Portuguese Cup for the 2019/2020 sports season. For further developments see the chapter Professional Football.

[11] Although not exclusively focused on the adaptation effort and the adoption of security measures by companies, whilst employers - but without neglecting this perspective - Decree-Law 20-G/2020 of May 14 adopted an incentive system - called the **ADAPTAR Programme** - designed to support the adaptation of business activity to the context of COVID-19 for microenterprises and SMEs.

The purpose is to support smaller companies in their efforts to adapt and invest in their establishments, adjusting, among others, work organization methods to the new conditions in the context of the pandemic, ensuring compliance with the established standards and the recommendations of the competent authorities (including the costs of purchasing personal protective equipment for workers and users, hygiene equipment, disinfection contracts and the costs of reorganizing workplaces and changing the layout of establishments), with the exception of economic activities in some sectors.

[12] For professionals in the health system, the DGS had previously issued Regulation 007/2020 of 29 March 2020, which defines the proper usage of PPE by health professionals and the situations in which this use is advised. It also identifies a number of interventions which can minimise the need for using PPE in health institutions.

[13] The PPE can include respiratory PPE (surgical mask or respirators), ocular protection (glasses or visor), gloves, gowns, shoe covers and caps, which must be adopted and used based on the risk of exposure, in accordance with criteria defined in Regulation 007/2020.

[14] This includes, among other professional groups, external hospital maintenance professionals, employees (and volunteers) delivering essential goods to homes and customer care professionals at tills and customer desks, when it is not possible to have (acrylic) partition/physical barriers installed.

[15] Decree-Law 20/2020, introduced the mandatory use of a protective mask or visor "for access to or permanence in commercial spaces and establishments and for the provision of services, in services and buildings serving the public and in educational establishments and crèches by teaching and non-teaching staff", except "when, due to the nature of the activities, their use is impracticable" (*cfr*: nr.1 and 2 of article 13-B of Decree-Law 10-A/2020, introduced by Decree-Law 20/2020).

> However, the provision of information on employees' state of health, as such and in light of the GDPR, constitutes a special category of personal data, which is covered by a general principle of prohibition of processing. Processing this information is permitted when one of the exceptions to the prohibition, as listed in Article 9 of the GDPR, occurs and which, for this reason, is tantamount to a legitimate condition for the employer to be able to collect this information[16].

According to Article 281 of the CT and the RJPSST, particularly Article 15, on the one hand employers have a duty to protect the safety and health of their employees and to adopt the measures required for this purpose, and on the other hand, employees themselves have a duty to respect the orders and instructions from their employers in this regard. Therefore, the provision of information by the employee on his or her health condition and/or potential contact with people infected with COVID-19 falls within the scope of the exception set out in Article 9(2)(b) of the GDPR which permits the processing of health data when "required for the purposes of meeting obligations and exercising the specific rights" of the employer, as data controller, or of the employee, as data subject, in relation to labour, social security and social protection legislation[17].

Here, as with the implementation of the measures set out in the Contingency Plan involving the collection of information regarding employees, the employer must be limited to collecting strictly necessary data – which directly results from the regulations or guidance in question or decided by the authorities – for the specific purposes already indicated, and must not retain such data for longer than strictly necessary for same purposes, erasing them immediately afterwards[18]. It also requires employers to provide the employees with a set of information on the processing of the collected personal data (including stating the purposes of data collection, legal basis for processing, categories of recipients, criteria used to define the data retention periods, among others) in order to comply with the information duties arising in their capacity as data controller for the processing of personal data under the regulations on personal data protection[19].

The measures to be implemented must always take into account what has been defined in the contingency plan which, in turn, must already exist and have been prepared in accordance with the Guidance mentioned above, specifically the procedures to be followed in the event of a suspected case (point 6 of DGS Guidance 06/2020) and the monitoring procedure for close contacts (point 8 of the same Guidance).

The CNPD has issued Guidelines on the collection and processing of employee health and private life data in the context of COVID-19 pandemic[20].

In summary, the guidelines indicate that in the context of the adoption of measures to prevent COVID-19 staff infection employers themselves

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(16) *Vid.* for more information on this subject, Chapter VI.B "Processing of personal data in the employment context: lawfulness" *infra*.

(17) With regard to permitted (and even compulsory) processing, under the law of the EU or of the Member State which sets out adequate safeguards for the fundamental rights and interests of the data subject.

(18) Thus complying with the principles of data minimisation, purpose limitation and storage limitation which, among others, must be observed by employers when processing personal data regarding their employees, under Article 5 of the GDPR.

(19) In particular, those set forth in Articles 13 and 14 of the GDPR.

(20) CNPD Guidelines issued on 23 April on the Collection and Processing of Employee Health and Private Life Data in the context of the COVID-19 pandemic. (available at https://www.cnpd.pt/home/orientacoes/Orientacoes_recolha_dados_saude_trabalhadores.pdf).

Cfr. for its practical interest and content complementary to the indicated guidelines, also see CNPD's response to application 19/XIV (1st) EI (available at https://www.cnpd.pt/home/covid19/rp19-xiv-1ei-a.pdf).

must, neither proceed to staff temperature measuring or recording, nor to collecting other data concerning employee health (*e.g.*, requiring staff to complete questionnaires on health condition) or possible situations or staff risk behaviour (which may indicate infection risk of the new coronavirus).

DGS guidelines indicate that all processing of employee health data in the workplace should only be performed in the context of the employers OSH services[21].

In such context OSH health professionals could:

(i) evaluate employee health condition;
(ii) request relevant information to assess employee's ability to render work in terms consistent with SST rules;
(iii) adopt adequate proceedings to safeguard staff and third parties' health, whenever detecting symptomatic employees or in other justified cases.

In such guidelines, the CNPD considers that the need to prevent the spread of COVID-19 in the workplace justifies the implementation of measures by employers, such as:

(i) promoting employee adoption of intense hygiene measures (regular and thorough hand-washing);
(ii) adopting organisation measures regarding employee working areas space distribution;
(iii) adopting employee physical protection measures; and
(iv) implementing some surveillance measures;

but same supervisory authority reinforces that employers' action should be totally aligned with DGS (and other health authority) guidelines in this context and that employers should not call upon themselves measures that result in the processing employee health data without being supported on specific legal provisions or on competent authority orders.

Meanwhile, and in line with the pre-announced note from the Ministry of Labour, Solidarity and Social Security[22], the Government regulated this matter in new article 13-C of Decree-Law 10-A/2020, introduced by Decree-Law 20/2020.

This is a legal rule that expressly provides that "in the current context of COVID-19 disease, and exclusively for reasons of protection of own and others health, employee's body temperature may be controlled for the purposes of access and permanence in the workplace". It is expressly forbidden to record the body temperature associated with the identity of the person (except with the express permission of the person) in a reference that seems to call for the employee's consent to this data processing operation ("recording of body temperature") in unclear terms[23].

In addition, if the temperature is higher than normal body temperature[24], the employer may deny access to the workplace to the employee in question.

Although the new standard states that 'if the body temperature is higher than normal, that

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[21] For a more detailed indication of the type of measures that the CNPD indicates that could be developed by health professionals in the context of occupational medicine, on the criteria for determining the frequency and type of assessment to be made see Chapter VI.B "Personal data processing in the work context: legitimacy" *infra*.

[22] Note to the media of 25 April 2020, available at https://www.portugal.gov.pt/download-ficheiros/ficheiro.aspx?v=1e630d47-2006-449f-b0d6-73056ed38514..

[23] *Cfr.* this subject, as approached in Chapter VI.B "Personal data processing in the work context: legitimacy" *infra*.

[24] It seems that with this reference the law would be referring to temperature of 38ºC or higher, indicated in some of the DGS documents concerning the symptoms of COVID-19. According to more general information released by same DGS, the normal body temperature is between 36 and 37ºC, depending on the person and his/her age, the activity performed, the hour of the day and the part of the body where the temperature is being taken.

person may be denied access to the workplace', nothing else is regulated on the matter, namely nothing on how the resulting lack of work is to be understood or treated[25].

IV.D. Teleworking

Amongst the measures taken by the Government is the decision to generalise the recourse to teleworking[26]. At an initial stage, employers were given the power to unilaterally determine that employees performed their work remotely, from home and employees were granted the option to provide telework, as long as compatible with the tasks performed[27]. Upon the state of emergency having been declared, the adoption of telework became mandatory, regardless of the employment relationship, provided that the tasks allow it[28].

The current pandemic makes teleworking mandatory, raising a number of questions for employers on how to act under exceptional circumstances, where they need to cope with decreased business activity but, at the same time, have the duty to respect employees' rights.

FORMS OF WORKING:

THE SPECIAL CASE OF TELEWORK:

Article 6 of Decree 2-A/2020 leaves no doubts as to the adoption of teleworking regime having become **mandatory**, regardless of the employment relationship, provided that it is compatible with the tasks performed[29] and that the employer has the necessary resources for this[30].

Decree 2-B/2020 and Decree 2-C/2020 maintained this mandatory rule.

Under the initial stage of the calamity situation[31] this will remain in force until June, 1. In fact, in the light of the gradual strategy of lifting confinement measures contained in Council of Ministers Resolution 33-C/2020 and the strategy timeline set therein, the adoption of the teleworking regime will remain, mandatory until May 31, followed as of June 1 by "partial teleworking, with outdated hours or teams in mirror".

The following is highlighted:

- **Obligation to pay salary**

  Given the employment contract is still being performed, the employer must pay the full salary.

[25] One of the aspects mentioned in the CNPD response to Request 19/XIV (1st) EI, to which reference was made above, is precisely that 'the provision does not regulate the consequences arising from the exercise of the employer's power after such «higher than normal» temperature reading occurs. The lack of ruling as to what the employee must or may do next, after being denied access to the workplace - all the more important since, one should remember, in this case a symptom of COVID-19 disease has been detected - is further aggravated by the fact that the employee is not being considered by a doctor as being unfit for work, and therefore the sick leave regime will not be automatically applicable. It goes without saying that the rule does not regulate the legal situation of the data subject and does not establish any adequate guarantee of same subject's rights or interests».

[26] Several of the exceptional family absence allowances provided to employees and independent workers are limited to situations where it is not possible for absent employees to continue working from home.

[27] Article 29 of Decree-Law 10-A/2020.

[28] Article 6 of Government Decree 2-A/2020, Article 8 of Government Decree 2-B/2020 and Article 8 of Government Decree 2-C/2020.

[29] In order to assess the compatibility of the tasks performed by the employee, paragraph 1(a) of Order 3614-D/2020 should be referred to, although it relates to public service workers, stating that "all tasks that can be completed outside the workplace by using information and communication technologies are considered compatible with teleworking".

[30] Article 23 of Decree-Law 10-A/2020, which established exceptional and temporary measures relating to the COVID-19 epidemic originally noted that the adoption of teleworking could be unilaterally decided by the employer or requested by the employee, without any need for an agreement between the parties, whenever compatible with the tasks performed, with the exception of health professionals, security forces and services and emergency services, including volunteer firefighters, and the armed forces, key public service workers, essential infrastructure management and maintenance, and other essential services.

[31] Cfr. article 4 of Council of Ministers Resolution 33-A/2020.

- **No requirement for formalisation in writing**

  In view of the circumstance that the adoption of teleworking, in this specific context, derives from a legal order, there is no requirement for the respective formalisation by written agreement[32].

- **Refusal by employee**

  Being a statutory requirement, provided remote working is compatible with the tasks and possible with the available means, employees cannot refuse to work from home. If they do, this may be regarded as cause for disciplinary action.

- **Meal allowance**

  There is no total consensus on knowing whether meal allowances are still payable under the temporary teleworking regime and there is not, to date, any legislation adopted under the current pandemic to clarify this.

  When teleworking, the employee not only retains the right to full salary (and any other allowances that may exist), but must be granted and is subject to equal rights and duties as other employees, *e.g.*, the principle of equal treatment remains in force. In general terms, the CT and related employment legislation do not contain any general rule entitling employees to receive a meal allowance. Its payment, in countless cases, results from provisions included in collective bargaining agreements and is also often stipulated in individual employment contracts. In its typical form, the meal allowance constitutes a cash benefit that does not qualify as work pay – similar, for example, to travel allowances or transport costs and equivalent – for it does not serve to remunerate work but instead, typically, to compensate the employee in advance for increased expenses incurred with eating away from home on days when they effectively perform their work. In this context, this would mean that payment of the meal allowance would not be mandatory during the teleworking period. Despite the typical nature of a meal allowance, employers must not stop paying it to employees who begin to work from home during the current pandemic, without first performing a case by case analysis which particularly considers the source of the payment (specifically whether it comes from the IRCT or from the employment contract and the terms in which its payment is established), notwithstanding any agreement in this regard[33] and research as to whether it has the nature of pay or not.

  Finally, it should be noted that, while there is not yet any explicit legal grounds to do so, recent Q&As published by the ACT and the DGERT on this matter indicate such employment authorities are inclined to understand the employer would be required to continue to pay the meal allowance to employees who are working from home during the current pandemic.

- **Special salary due to exemption from working hours and shift allowance**

  In teleworking, the availability associated with exemption from working hours remains unchanged. Article 218(1)(c) of the CT

[32] This understanding derives expressly from paragraph 1(d) of Order 3614-D/2020, with regard to teleworking for public service workers, in which it establishes that converting to telework does not require a written agreement, to the extent that it is mandatory.

[33] In this regard, note that this was the option resulting from Order 3614-D/2020 1(i), on meal allowances for public service workers who are working from home: "in order to compensate the expenses associated with mandatory telework, the employee will always be entitled to the equivalent of their meal allowance as if they were performing their duties at their workplace". The meal allowance per se will not be paid, but rather an equivalent payment intended to cover these expenses when teleworking is mandatory.

provides that teleworking is one of the cases in which there is a possibility of employee being subject to the exemption regime. There is no reason to stop paying the special allowance due to exemption from working hours simply because employees shift to teleworking, unless they stop being subject to the exemption regime, under general terms which, in some cases, may require company and employee agreeing to do so. A case by case assessment is always necessary.

In cases where payment of a shift allowance has been individually agreed or results from the applicable collective bargaining agreement, and the work continues to be rendered in shifts, it is recommended that the shift allowance be maintained.

- **Travel/transport expenses**

  The payment of travel/transport expenses, as a rule, is not remuneration and is only due when expenses are incurred.

  When teleworking, this payment would only be due when travel were required in order to perform duties.

- **Occupational accidents**

  Accidents occurring during the course of teleworking are considered occupational accidents.

  According to the ASF alert, which issued a number of clarifications on FAQ with regard to the coverage of particular types of insurance, including occupational accident insurance given the recourse to teleworking - as a means of preventing and containing the COVID-19 epidemic – indicating that, "to avoid any doubts" as to the place of work (which is temporarily changed because the employee is working from home), the employer must tell the insurer which employees will be teleworking, indicating the address where they will be working, the dates, the working time and work timetable for employees[34][35].

- **Impossibility of teleworking and employee's refusal to go to work**

  Where the case of offices or premises being forced to close does not apply and the employer has to meet all obligations relating to adequate SST protection in the current pandemic circumstances, and if the employee has no justifiable basis to do so (only the mere theoretical fear of infection), the employee cannot refuse to work.

  In the event of refusal, the general rules on unjustified absences will apply, this also leading to disciplinary infraction.

  It should be noted that nothing prevents employer and employee from agreeing on unpaid leave for a specific period or even being excused from work, without loss of salary.

- **Remote monitoring of employees teleworking**

  In the context of the general resort to teleworking, the CNPD has given note to have received several questions addressing employee remote monitoring, both for worktime control and for labor activity follow-up purposes. This led same supervisory authority to issue brief guidelines aiming at guaranteeing compliance of employee personal data processing inherent to such monitoring activities with the provisions governing personal data processing and protection and also at minimizing the

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[34] Accessible at *https://www.asf.com.pt/NR/exeres/3415F1A5-2446-4384-95C4-A1C527D2651D.htm*

[35] *Vid.* issue dealt with in Chapter VIII, Insurance.

impact on privacy of employee monitoring in the teleworking context[36].

The Guidelines issued by the CNPD remind companies of the general prohibition contained in the CT against employers resorting to remote surveillance in the workplace when intended for employee performance control purposes. It underlines that this general prohibition is fully applicable to teleworking context – knowing no special rules are provided on this for the teleworking context. CNPD considers that the employers cannot adopt forms of systematic collection of information on the employee's activity and inactivity moments[37]. Imposing duties on the employee to permanently keeping videocams turned on – throughout the working hours – is also considered as being inadmissible.

The employer is acknowledged the power to control the employees' activity, for example:

- through target (KPI) fixing (and monitoring activity by level of KPIs met);
- establishing periodical remote reporting, as frequent as reasonably understood by the employer;
- scheduling videoconference meetings[38].

As far as keeping working time records in teleworking – working time record being one of the records that the employer must mandatorily organize and keep - (and, to our understanding, also for working schedule control of the teleworker) the supervisory authority recommends that this be made by resorting to specific technological solutions. The Guidelines provide that, alternatively, the employer may determine that employees email, text or send the employer an equivalent communication – the beginning, end and break periods in his or her daily activity – to allow both worktime control and record[39], also allowing for such control to occur through phone calls or email contacts made by the employer.

IV.E. Effects on scheduling holidays

The question has been raised as to whether an employer can require employees to take holidays as a result of the reduced company business activity.

The specific regulations issued in the context of the current pandemic have initially given no answer to this question, so the general rules in the CT will apply.

As a rule, holidays are scheduled by agreement between the employer and employee. In the absence of an agreement, the employer may unilaterally schedule holidays, but must do so in the period between 1 May and 31 October (unless an applicable Collective Bargaining Agreement or the opinion of consulted workers' representatives permits a different period).

Regarding tourism-related activities and in the absence of an agreement, employers are required to schedule 25% of the holiday period to which

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(36) These are particularly relevant issues, under the current mandatory telework system, specially taking into account that a large number of companies has serious difficulties in organizing, in due time, sufficient technological resources (IT and communication equipment) to provide to all employees changing to telework, causing a relevant number of employees to use their private equipment and means for telework purposes, whilst sharing that with their own private use, raising issues equivalent to those that justify *bring your own device* (*BOYD*) policies.

(37) Cfr. more information on this subject matter in Chapter VI.B "Personal data processing in the work context: legitimacy" *infra*.

(38) Note that in the Guidelines issued, the CNPD mentions that *"in principle the possibility of recording videoconferences between the employer (or line managers) and the employees is not permissible"*.

(39) Our understanding is that the solution that allows worktime recording – which also applies to employees that are exempt from working hour limits or not subject to fixed working hours – will have to take in due account the requirements on accessibility and (authority) consultation reflected in paragraph 1 of article 202 of the CT and reflect the mandatory information contents listed in paragraph 2 of same article.

employees are entitled (or a higher percentage if resulting from a Collective Bargaining Agreement) between 1 May and 31 October, which is taken consecutively.

The law also sets out the possibilities listed below.

- **Closure of company or establishment for holidays**

  Where compatible with the nature of the business, employers may fully or partially close the company or premises for employee holidays, in the following cases:

  (i) up to 15 consecutive days between 1 May and 31 October;
  (ii) for more than 15 consecutive days or outside the period listed in (*i*), when this is determined in an applicable Collective Bargaining Agreement or with the assent of the works council;
  (iii) for more than 15 consecutive days, between 1 May and 31 October, when the nature of the job so requires.

- **Taking early holidays**

By agreement between the employer and employee, it is possible to take holidays earlier, by using the days of paid leave carried over from the previous year and which must be taken before 30 April.

It should be noted that if the employer has already scheduled and approved holidays, any changes must be agreed[40].

Changes made to the holiday period by the employer may entitle employees to compensation for losses resulting from not having been able to take holidays in the scheduled period.

Notwithstanding the above, attention is drawn to the recent possibility of the employee scheduling holidays, without the need for the agreement of the employer, which was introduced by Decree-Law 10-K/2020.

- **Holiday schedule**

The CT provides that the employer must prepare a holiday schedule, indicating the start and duration of the holiday periods for each employee, by 15 April of each year and display it in workplaces between this date and 31 October. However, Decree-Law 12-A/2020 establishes the possibility of approving and displaying the holiday schedule up to 10 days after the end of the state of emergency[41].

Knowing that the emergency period has been extended until 2 May, this means that companies will have until 12 May to approve and display the holiday schedule.

IV.F. Business crisis resulting from the current epidemiological outbreak when there is a complete stoppage of business/establishment activity or fall in turnover

Although now repealed, Ordinance 71-A/2020 defined and regulated the terms and conditions for awarding immediate extraordinary, temporary and provisional support for employees and employers affected by the outbreak of the SARS-CoV-2 virus, in view of retaining jobs and mitigating business crises.

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[40] Given the various questions raised on the alleged "pressure" from employees on this matter, recommendation was for consideration being made in keeping agreements on taking early holidays in writing, even if simplified, in order to enhance the employee's freedom to agree to this and allow them to demonstrate this. *I.e.*, agreement to schedule holidays for a period before 1 May.

[41] *Cf.* Article 32-A of Decree-Law 12-A/2020. This also applies for work covered by the General Employment Law for Public Workers, approved in attachment to Law 35/2014 of 20 June.

Decree-Law 10-G/2020[42], which repealed that ordinance, extended the possibility of recourse to "simplified lay-off", which had been introduced by the repealed Ordinance, to other businesses such as those which were required to fully or partially close or those regarding which all or some of their establishments were closed by force of the Government Decrees that regulated the emergency state periods or by legislative or administrative resolution, pursuant to Decree-Law 10-A/2020, or under the Civil Protection Framework Law and the Health Framework Law.

[42] This statute came into force on 27 March 2020 and will remain in force until 30 June 2020. It may be extended for a further three months. Two days after publication, it was corrected by means of Declaration of Rectification 14/2020 and has been subsequently further amended. Same Decree-Law provisions were further regulated by Ordinance 94-A/2020 that, as per the scope of application defined in respective article 1 "*regulates the proceedings for granting the exceptional family support/allowances, the extraordinary support to self-employed professionals affected by activity reduction, and measures for job preserving in business crisis situations and for deferral of social security contributions*".

SIMPLIFIED LAY-OFF

Topic	Background / Recommendations
Extraordinary support to maintain employment contracts for employers experiencing business crisis resulting from the current pandemic	**1. Business crisis**, for this purpose, corresponds to the following: a) Full or partial closure of the business or establishment, resulting from the requirement to close facilities or establishments, as set out in the Decrees that regulated the state of emergency and in the Council of Ministers Resolutions regulating the subsequent calamity situation or by legislative resolution, pursuant to Decree-Law 10-A/2020 or under the Civil Protection Framework Law or the Health Framework Law, in respect of establishments or businesses effectively closed and covering employees directly affected by this. Companies with establishments which activities have been subject to mandatory closure lifting will keep the possibility of accessing the "simplified lay-off" mechanism as from that moment, provided they resume their activity within eight days[43]; b) Full or partial stoppage of the business or establishment activity, resulting from the interruption in global supply chains; c) Full or partial stoppage of the business or establishment's activity, resulting from the suspension or cancellation of orders or bookings which lead to the use of the company or premises being reduced by more than 40% of its production or occupation capacity in the month following the request for assistance (see *infra* point **6**); d) Abrupt and significant fall of at least 40% in turnover in the 30 days prior to the request to the relevant social security services, with reference to the monthly average for the two months prior to this period, or the same period[44] in the previous year (or, when there has been less than 12 months activity, the average for this period).

[43] Cfr. article 25-C, paragraph 1, of Decree-Law 10-A/2020, added by Decree-Law 20/2020.

[44] For example, if the request is made on 31 March 2020, the preceding 30 days began on 1 March 2020. Therefore, the corresponding reference period is 1 March 2019 - 30 March 2019; the preceding two-month period corresponds to January and February 2020. For a request made on 15 April 2020, the preceding 30 days began on 16 March 2020. Therefore, the corresponding reference period is 16 March 2019 - 14 April 2019; the preceding two-month period corresponds to February and March 2020.

SIMPLIFIED LAY-OFF

Topic	Background / Recommendations
	2. Effects on employment contracts Employment contracts maintained, with a reduction in normal working time, or suspension of employment contracts
	3. Measures of assistance The assistance takes the form of co-payment by social security of the compensation payable to the employee, calculated on the following basis: – In the event of the contract being suspended, the employee receives compensation equivalent to 2/3 of salary[45] or, if higher, to the RMMG amount (EUR 635), up to the maximum limit of three times the RMMG (EUR 1905), 70% of which is paid by social security and 30% by the employer; – In the event of reduced working time, the employee is paid proportionally for the hours worked, and is only entitled to additional compensation to the extent required, together with this payment[46], to make up to 2/3 of the amount earned in consideration of the work performed, with the RMMG amount (EUR 635) as the minimum, and the maximum of three times the RMMG (EUR 1905). When it exists, the compensation is shared between social security and the employer at the respective ratio of 70% and 30%. If the applicable measure is combined with a training plan supported by the IEFP, an IEFP-funded grant is added, of EUR 131.64 per employee, to be shared equally between the employee and the employer. Employers may only benefit from assistance when their contributions and tax payments are up-to-date and in compliance with Social Security and the Tax and Customs Authority. For this purpose, and until 30 April 2020, debts created in March 2020 are not included[47].

(45) Ordinance 94-A/2020 foresees that for the purposes of the extraordinary support granted in the simplified *lay-off*, "*the salary compensation is calculated on the basis of the remuneration items normally declared to the social security for contributions received by the employee on a regular basis, referring to base salary, monthly bonuses, and regular monthly allowances*".

(46) Or payment earned for work done outside the company. In this case, the employee must inform the employer as to this fact, within five days of its start, for the purposes of reduction in the compensation that may apply, under penalty of losing that compensation and, also, of the duty to reimburse amounts received, whereby failure to do so constitutes grounds for disciplinary action. This employee requirement and the deduction of the salary received for work done outside the company from the compensation also apply in the event of the employment contract being suspended.

The employer must report this to the ISS with two days of becoming aware of it.

Employees affected by suspension or reduction resulting from lay-off will not see their salary compensation reduced if they provide work, during that period, in the business areas of social support, health, foodstuff production, logistics and distribution.

(47) Ordinance 94-B/2020 of 17 April, suspended the pre-requirement of contributions and tax payments (between March 1 and June 30) being up-to-date and in duty compliance with Social Security and the Tax and Customs Authority for approval of support measures or aids borne by the IEFP.

SIMPLIFIED LAY-OFF

Topic	Background / Recommendations
	4. Duration of assistance One month, exceptionally renewable on a monthly basis, up to a maximum of three months[48].
	5. Procedure • Written communication to the employees encompassed, with an indication of the expected duration and prior hearing of the works council and union representatives, if applicable; • Digital application sent to Social Security[49][50] accompanied by employer statement with brief description of the business crisis affecting them and, in the cases set out above in point 1(b) and (d), in addition to a certificate from the company's certified accountant and a list of names of the employees covered and their respective Social Security Identification Number – NISS[51]; the employer must also have their IBAN registered with Social Security, which may be done via the Social Security Direct platform. If the entity benefiting from the assistance is audited, it will have to provide documentary evidence of the facts on which the request for assistance is based (and any renewals) *a posteriori*, if applicable, by submission of:[52] – Balance sheet relating to the month assistance is provided and the two preceding months or the relevant corresponding period, as appropriate; – VAT declaration for the month assistance is provided and the two preceding months in the case of monthly VAT returns, or for the last quarter of 2019 and the first quarter of 2020 in the case of quarterly VAT returns; – In the event of cancelled orders – documents demonstrating this, resulting in use of the company or affected unit being reduced by more than 40% of its production capacity or occupancy in the month following the request for assistance; – Any other items to be specified by Government Order.

(48) RC 3057 form available at http://www.seg-social.pt/documents/10152/16982645/RC_3057.pdf/4ec02973-0f95-4289-a42d-5127d34d47f4 and the respective Annex (Excel file).

(49) RC 3056 form available at: http://www.seg-social.pt/documents/10152/16889112/RC_3056.pdf/61b7f4b0-bf25-4913-a063-e510800a0141and its respective Annex available at http://www.seg-social.pt/documents/10152/16889124/RC3056_1.xlsm/863c52c1-55f1-48c0-9f76-4bd0b0fca3e9

(50) The applications delivered before 27 March, under Ordinance 71-A/2020, remain in effect and will be assessed in light of Decree-Law 10-G/2020.

(51) While Decree-Law 10-G/2020 mentions that digital applications should be "accompanied" by these additional documents, these statements are apparently already covered in Form RC 3056 and its Annex, and need not be attached separately.

(52) Companies must note that under paragraph 1 of article 8 of ordinance 94-A/2020, entities benefiting from the support must preserve the relevant information and documents for 3 years to provide evidence of the business crisis grounds allowing the supports resulting from the simplified lay-off (initial period and any of its renewals).

SIMPLIFIED LAY-OFF

Topic	Background / Recommendations
	6. Adding new employees to the lay-off measures during the measure (aid) granted On the basis of the understanding that each company (each employer) should only submit one single aid request form to request the extraordinary support granted under the simplified *lay-off*, Ordinance 94-A/2020 foresees that companies wishing to "*add employees to the list of employees in lay-off during the measure grant period – in addition to those that had been previously indicated in the initial form submitted - must complete and submit a new form annex, which will allow support being granted regarding the added employees for the remainder of the support period*"[(53)].
	7. Extension The extension of the extraordinary support is applied for on a monthly basis, through the Direct Social Security platform, using the form and annex provided containing the identification of the employees covered by the extension[(54)]. According to the information provided by Social Security, the request for extension should only be submitted after the initial request is granted. Nevertheless, this is an indication that should be considered in each case.
	8. Miscellaneous questions • **Notion of "order" (Article 3(1)(b,i))** With reference to the expected cancellation of "bookings", it is clear that this does not only relate to manufacturing units or product distribution companies, but also other service providers, for example, hotels which are not receiving room bookings and which, therefore, are fully or partially, stopping work. • Notion of "stoppage of business activity" (Article 3(1)(b,*ii*)) The stoppage applicable to a business or establishment is full or partial, which appears to cover the interruption or pause in operations of any autonomous or individual sectors or departments. • Possibility of recourse to lay-offs as set out in the CT It is possible to invoke simplified lay-offs and, after the maximum period of three months set out in the relevant Decree-Law, resort to the lay-offs set out in the CT, for the remaining term of the business crisis, provided that the prerequisites of this are met with the most rigorous procedure set out in the CT

(53) *Cfr.*, paragraph 2 of article 4 of Ordinance 94-A/2020. This is a rule that raises interpretation doubts and practical difficulties, particularly in the case of companies that own multiple business units (premises) that are affected in different ways, particularly as far as the facts that qualify as a business crisis situation are concerned and relevant time frame each unit is affected.

(54) Model RC 3057-DGSS available at http://www.seg-social.pt/documents/10152/16982645/RC_3057.pdf/4ec02973-0f95-4289-a42d-5127d34d47f4 together with the respective Excel annex – RC 3057/1-DGSS – available at http://www.seg-social.pt/formularios?kw=RC+3057-DGSS.

Risks
Given the innovative nature of the measures and the questions on its combination with the lay-off scheme, there is a risk of the Social Security considering, from the outset or *a posteriori*, that the requirements for being awarded assistance are not met and refuse to award it, or having done so, demand repayment of any amounts disbursed.

Other assistance or incentive measures set out in Decree-Law 10-G/2020[55]

Topic	Background / Recommendations
Extraordinary assistance for part-time professional training	**1. Purposes** Maintaining jobs and enhancing employees' skills.
	2. Beneficiaries Companies experiencing a business crisis[56] but which have not resorted to extraordinary assistance to maintain contracts (*simplified lay-off*).
	3. Measures of assistance[57] Maximum extraordinary assistance corresponding to an award for each employee covered, with the support of the IEFP, on the basis of the training hours attended, up to a maximum of 50% of gross salary, with the maximum limit of the RMMG (EUR 635).
	4. Duration of assistance One month.
	5. Procedure • The employer informs employees in writing of the decision to begin a training plan and the expected length of this measure; • The employer sends this information to IEFP, with accompanying documents demonstrating the company circumstances (employer statement confirming the business crisis and certificate from a certified accountant) with a list of the employees covered and their social security numbers.
	6. Training plan - Requirements • The training plan is implemented in conjunction with the training body, which the IEFP will organise and training must be provided remotely [58]; • The plan must contribute to improving employees' professional skills and to increasing the company's competitiveness; • The plan must correspond to the types of qualifications covered by the National Qualification Framework; • The duration of the training must not exceed 50% of the normal working time while the assistance is being given;

[55] In line with those set out previously in Ordinance 71-A/2020.

[56] *Cfr.*, specific notion of business crisis in simplified lay-off *supra*.

[57] *Vid.* Footnote above on Ordinance 94-B/2020 of April, 17 that suspended the pre-requirement of contributions and tax payments (between March 1 and June 30) being up-to-date and in duty compliance with Social Security and the Tax and Customs Authority for approval of support measures or aids borne by the IEFP

[58] Order 4698-F/2020 of April, 17 extended the suspension of presence training courses organised or promoted by the IEFP until April, 30, subject to possible future renewal.

Other assistance or incentive measures set out in Decree-Law 10-G/2020[55]

Topic	Background / Recommendations
	• The minimum number of learners for each training initiative is defined by agreement between the employer and the IEFP; • The training bodies are the IEFP centres for employment and professional training.
Extraordinary financial incentive to support normalisation of business activities[59]	**1. Recipients and measures of assistance** Employers benefiting from the measures set out in the Decree-Law (simplified lay-off or extraordinary assistance for training) are entitled to a financial incentive to support the resumption of business activities, to be paid by the IEFP, at the value of the RMMG (EUR 635) per employee.
	2. Procedure The employer submits the application to the IEFP[60], accompanied, among other documents, by: – Balance sheet relative to the month of assistance and the respective corresponding month or preceding months, as applicable; – VAT declaration for the month assistance is provided and the two preceding months in the case of monthly VAT returns, or for the last quarter of 2019 and the first quarter of 2020 in the case of quarterly VAT returns; – Any other items to be specified by Government Order; – In the event of cancelled orders, documents demonstrating the cancellation of orders or bookings, which lead to the use of the company or affected unit being reduced by more than 40% of its production capacity or occupancy in the month following the request for assistance.
Temporary exemption from contribution payments	**1. Recipients and measures of assistance** Employers benefiting from the measures set out in the Decree-Law (lay-off or extraordinary assistance for training) are entitled to an exemption from Social Security contributions (only the contributions the employer is responsible for), relating to employees covered by the measure and members of governing bodies[61]. The employer must prove that their contributions and tax payments are up-to-date and in compliance with Social Security and the Tax and Customs Authority.

[59] Article 25-C, paragraph 2 of Decree-Law 10-A/2020, added by Decree-Law 20/2020, provides that this incentive will be regulated by an ordinance of the member of the Government responsible for the area of employment, namely with regard to procedures, conditions and terms of access.

[60] Via the iefponline portal on which the company must be registered and have an identified representative.

[61] The right to exemption also applies to independent works who are employers that benefit from the measures and their respective partners. However, this does not waive the requirement for quarterly declarations (Article 11(2) and (6) of Decree-Law 10-G/2020).

Other assistance or incentive measures set out in Decree-Law 10-G/2020[55]

Topic	Background / Recommendations
	2. Duration The months when the measure is in force (for example, during the lay-off period).
	3. Procedure • The employer provides separate remuneration statements relating to covered employees and pays the respective contributions; • The exemption is recognised ex officio, on the basis of information from the IEFP.

Risks

Given the innovative nature of the measures and the questions on its combination with the lay-off scheme, there is a risk of the Social Security considering, from the outset or *a posteriori*, that the requirements for being awarded assistance are not met and refuse to award it, or having done so, demand repayment of any amounts disbursed.

DEFAULT AND REIMBURSEMENT OF ASSISTANCE

Topic	Risks	Background / Recommendations
Non-performance by the employer of the obligations relating to assistance	Cessation of assistance: • Non-payment of assistance or its reimbursement, in full or in part, if it has already been awarded; • In relation to the recovery of amounts already paid, interest will be due at the current legal rate, with regard to amounts due to the Social Security, if these are not paid within the term set by the IEFP and enforced recovery is required. Assistance is terminated when one of the following circumstances is confirmed: • Dismissal (except when event attributable to the employee) - the employer may not terminate employment contracts under the types of collective dismissal or redundancy during the term of the assistance measures, or in the subsequent 60 days[62];	Despite not being referred to in the Decree-Law, there are other limitations under the CT for companies resorting to lay-off which will certainly be considered applicable to simplified lay-off, for which reason we recommend the following: • Not to increase the salary or any other payment to any member of the governing bodies, while the Social Security is co-paying the salaries of the employees; • Not to hire or renew contracts in order to take up jobs that can be performed by employees under reduction or suspension[63]. Despite not resulting from the CT or the Decree-Law, avoiding payment of bonuses or additional benefits should be avoided.

(62) In the wording of Article 13 of Decree-Law 10-G/2020 which established the prohibition of these dismissals, this prohibition was expected to relate to "(…) employment contracts where the employee is covered by these measures (…)", i.e., employees covered by the measures due to reduction or suspension applied under the simplified lay-off scheme. However, Declaration of Rectification 14/2020 amended the wording of this article, removing the reference to "(...) employee is covered by these measures (...)". Therefore, in light of the amended wording of Article 13 of Decree-Law 10-G/2020, it follows that an employer using simplified lay-offs is prohibited from terminating the employment contracts of any of its employees, by collective or individual redundancy, during the term of the corresponding assistance measures, or in the subsequent 60 days.

(63) Recently, paragraph. 3 of article 25-C of Decree-Law 10-A/2020, added by Decree-Law 20/2020, established that, for the purposes of non-compliance and claw back on the extraordinary support for the maintenance of an employment contract in a company in a situation of business crisis, the limitation provided for in the CT to companies that resort to lay-off is not applicable, insofar as it is established that such companies must renew fixed-term employment contracts in order to fill a position that may be ensured by an employee in a reduction or suspension situation.

DEFAULT AND REIMBURSEMENT OF ASSISTANCE

Topic	Risks	Background / Recommendations
	• Failure to promptly pay remuneration owed to employees; • Failure by the employer to meet legal, tax or contributory obligations; • Distribution of profits, in any form, such as interim dividends, during the incentive period; • Default, attributable to the employer, of obligations assumed within the agreed deadlines; • Submission of false declarations - the submission of false declarations to a public authority is a crime, punished by a prison sentence of up to one year or a fine, and a very serious administrative infraction; • Work done for the employer by an employee covered by the assistance measure under suspension of contract or in excess of the established hours under a temporary reduction in normal working time; In the event of breaching legal standards relating to the temporary reduction in normal working time or suspension of the employment contract, as set out in Article 298 *et seq.* of the CT, the regime of administrative liability set out in Article 548 *et seq.* of the same statute applies, as does, subsidiarily, the general administrative offence regime.	

IV.G. Business crisis for market, structural or technological reasons, disasters or other events that seriously affect the company's business: lay-off under the CT

In cases of companies whose circumstances cannot be categorised as "business crisis", as defined by Decree-Law 10-G/2020 which currently provides the simplified lay-off scheme[(64)] and which, therefore, cannot rely on the immediate extraordinary measures defined and regulated by this Decree-Law, the possibility of resorting to lay-off already permissible under the CT is not excluded, in conformity with the application requirements specified in the CT and for the appropriate purposes and assistance, as a direct result of this pre-existing regulation in the CT.

(64) In order to access the measures set out in Decree-Law 10-G/2020, specifically the simplified lay-off scheme, the employer must prove that it is in compliance with regard to Social Security and Tax and Customs Authority payments. This scheme will only apply if either of the following circumstances are confirmed:

– Full or partial stoppage of the business or establishment's activity, resulting from the interruption in global supply chains or the suspension or cancellation of orders; or

– Abrupt and significant fall of at least 40% in turnover in the 60 days prior to the request for assistance, against the same period in the previous year (or, when there has been less than 12 months activity, the average for this period).

In a CT-regulated lay-off, it is also possible to resort to measures which allow work arrangements to be more flexible on a temporary basis, within the specific context of a business crisis, by adapting employment contracts to the circumstances, for example, of economic difficulty faced by the company in view of its recovery. The measures to be taken may relate to suspension of employment contracts, reduction of normal working time, or a combination of both. A CT-governed lay-off could, for example, be adopted by a company suffering significant reduction in demand for its goods or services due to the COVID-19 outbreak, which, while the cause of the abrupt and marked fall in turnover, does not (or has not yet) reached an average of 40% of the turnover in the previous 30 days[(65)], but which may, nevertheless, be considered a "business crisis" situation for the purposes of the lay-off scheme set out and regulated in the CT, justifying the need for the company to take-up the measures of suspending employment contracts or reducing working time, in order to ensure its future viability and to preserve jobs. This may also be the case for a company suffering a partial stoppage as a result of a suspension or cancellation of orders, that leads to a reduction of less than 40% in its production capacity or occupancy in the month following the request for assistance.

These companies may decide to take measures to reduce the normal working time of all or some employees or to suspend employment contracts to address the situation, provided such measures are adequate for ensuring the company's recovery and prove to be essential for ensuring its viability and maintaining jobs.

(65) When the request is made to the competent social security services, this fall is compared to the average monthly turnover recorded for the two months to the thirty-day period under consideration, or against the same thirty-day period in the previous year or, even, for those who have been operating for less than twelve months, the average for this period.

It is, therefore, possible to resort to lay-off measures and the corresponding assistance set out in the CT for non-business crisis circumstances (under the tighter simplified lay-off pre-requisite criteria), as configured according to the special legislation which established immediate extraordinary assistance for employees and employers affected by the SARS-CoV-2 pandemic).

SUSPENSION OF EMPLOYMENT CONTRACTS AND/OR REDUCTION OF NORMAL WORKING TIME FOR ALL OR SOME EMPLOYEES UNDER THE CT-REGULATED LAY-OFF REGIME:

1. Business crisis (for application of CT-regulated lay-off):

Situation due to:

a) Market, structural or technological reasons;
b) Disasters; or
c) Other events which have a serious, abnormal effect on the business, which could call their viability into question.

2. Effects on employment contracts

Subsistence of employment contracts, with:

- Temporary suspension of some or all employment contracts;
- Temporary measure to reduce working time for some or all employees.

  The reduction may cover:

  - a decrease in the number of normal daily or weekly working time; or
  - the interruption of business for one or more normal daily or weekly working periods and this may relate, in turn, to different groups of employees;

or substantiate

- The application of a set of measures to suspend (for some contracts) and reduce working time, for others[(66)].

It is up to the company to choose one or both of these measures, depending on their assessment of the situation; nevertheless, for use of each of these, the law requires them to be indispensable for ensuring the survival of the company and avoiding cutting jobs.

Only available for temporary (suspension or reduction) measures:

- The adoption of which is appropriate for achieving the required normalisation and recovery (whatever the appropriate instrument to ensure the company's recovery); and
- Which are proved indispensable for ensuring the viability of the company and maintaining jobs.

3. Duration of suspension and/or reduction (and assistance) measures

Six months or, in the event of a disaster or other occurrence which seriously affects the company's normal business, up to one year.

4. Procedure

The law establishes a strict procedure for applying these measures of suspension of employment contracts or reduction of normal working time.

Within this procedure, the following stages should be highlighted:

- Communication stage

  Written communication (intention to reduce or suspend work, accompanied by the information indicated below) sent to the relevant employees' representative body or to the employees (in this last case, initially, so that the employees can appoint an *ad-hoc* representative committee).

  Information sent to the employees' representatives (made available to the relevant employees for consultation) on:

  - economic, financial or technical grounds for the measure;
  - workforce, separated by department;
  - criteria for selecting employees to be covered;
  - number of employees covered and professional categories;
  - term of application;
  - training areas to be attended by employees during reduction or suspension of work (if applicable)

- Information and negotiation stage

  Within five days following the communicating of the information, the negotiation and information stage will take place between the company and the employees' representative body with a view to reaching an agreement on the type, scope and duration of the measures to be taken (minutes should be taken detailing the agreement and any dissenting positions, as well as, opinions, suggestions and proposals of each party).

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(66) Nothing prevents the use, within a single company, of the measure to reduce normal working time for some employees and the measure to suspend employment contracts for other employees, provided that both measures prove, specifically, to be indispensable for ensuring the viability of the business.

It is necessary for the application of different measures (reduction on one side and suspension on the other) to be justified for objective reasons linked to the viability of the company itself, and the different application cannot be simply discriminatory.

- Decision and individual communication stage

  After entering into the agreement or, if failing to do so, at least five days after communicating the information, the company will notify each employee in writing of the measure they have decided to apply, expressly mentioning the justification and the start and end dates.

  On the same date, the company will send the representative body and Social Security:

  – Minutes of negotiation meeting;
  – Listing with the name, address, date of birth and start date with the company, Social Security status, profession, category and salary, individually applied measure and start and end dates for application of the measure, relating to every employee.

IN SUMMARY:

Communication to appoint *Ad-hoc* representative committee	**Send information to representative body and**	**(Information and) negotiation stage with representative body**	**Individual notification of decision**
(in the absence of a Workers' council, Inter-trade union committee or Trade union committee)	**Make available information for employee consultation**	**Within 5 days after** sending and making information available	**Send minutes and listing of employees to representative body**
5 days to appoint	Information (reasons for measure, staff, criteria for selecting employees to be covered and professional categories, term of application, training areas to be followed (if applicable))	Prepare minutes indicating agreements, disagreements, opinions, suggestions and proposals from each party	**Submit application for assistance to Social Security** (Form RC 3056 – DGSS) **accompanied by the employee listing** (Form RC 3056/1-DGSS) **and negotiation minutes** As soon as agreement is reached or, otherwise, **at least** 5 days after information communicated

5. Effects on employee salary and some other effects

- The company must pay the employee a minimum monthly amount equal to the highest of the following:
  - two thirds of the normal gross salary (up to the maximum of three times the RMMG)[67]; or
  - the amount equivalent to one RMMG (EUR 635) corresponding to their normal working time;
- In cases of reduction, the salary is reduced in proportion to the reduction in working time[68]; if the reduced salary is less than two-thirds of the employee's normal gross salary, or to the RMMG corresponding to their normal working time, the employee is entitled to receive compensation equal to the difference[69];
- In cases of suspension, the amount to be paid will correspond in full to compensation in lieu of remuneration;
- The duration of the reduction or suspension is taken in account for the purposes of seniority of service;

[67] The current value of three times the RMMG is EUR 1905.

[68] So, for example, if the working hours are reduced to 80%, the employee will receive from the company a salary equivalent to 80% of the previously earned salary.

[69] So, in a 50% reduction, the employee will receive a salary equivalent to 50% but will also receive (if the 50% is less than EUR 1905) additional compensation insofar as necessary to reach the minimum of two-thirds of employees' normal gross salary (up to the stated maximum of EUR 1905 - three times the RMMG) and, in any case, never less than EUR 635 - one RMMG.

- The term of fixed-term contracts will not be interrupted for the purposes of expiry (if applicable), and this expiry can operate in general terms;
- The duration of the reduction or suspension will not affect the scheduling or taking of holidays, in general terms.

6. Social Security Assistance

- Compensation paid by the company in lieu of remuneration will be paid at 30% by the company and 70% by the Social Security[70]; the company must pay this compensation in full to the employee and obtain the corresponding assistance from the Social Security for its share by submitting an application on the Social Security Direct platform[71];
- In cases where employees are attending professional training courses in accordance with the training plan approved by the IEFP, there an additional award is paid by the IEFP of EUR 131.64 per employee, to be shared equally between the employee and the company;
- Employees covered by this measure should, in due course, receive from the company a holiday allowance equal to that which they would have been entitled to receive if they were working as normal;
- The right to a Christmas allowance is maintained in its entirely, 50% of the compensation for which is covered by the Social Security, and the remainder by the company.

Employers may only benefit from assistance when their contributions and tax payments are up-to-date and in compliance with Social Security and the Tax and Customs Authority[72].

The duty to continue paying employee and employer contributions to Social Security remains in force regarding the salary effectively earned, whether as consideration for work provided (under reduction) or as compensation.

7. Business limitations (during lay-off)

During the lay-off period, the company cannot:

(i) Distribute profits, in any way, namely, provisional withdrawals;
(ii) Increase the salary or other additional payments to members of the governing bodies;
(iii) Hire new employees or renew contracts in order to pre-fill jobs that could be occupied by employees covered by the lay-off.

During the lay-off period and during the thirty days following application of the measure[73] the company may not terminate the employment contract of an employee covered by the lay-off, except when this relates to the end of a service commission, the end of a fixed-term contract or dismissal due to a fact attributable to the employee[74].

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[70] This assistance only applies to the compensation and not also to the salary in proportion to work due in the case of reduction of working time, which is covered in full by the employer.

[71] In this case, the form for submitting the request for assistance is, as in the case of simplified lay-offs (or, as it is called on the form, "extraordinary assistance to maintain employment contracts"), form RC 3056 (available at http://www.seg-social.pt/documents/10152/16889112/RC_3056.pdf/61b7f4b0-bf25-4913-a063-e510800a0141) on which employers must indicate which type of lay-off they are requesting assistance for. In a CT lay-off, the employer must also attach a copy of the negotiation minutes and an Excel spreadsheet which is part of Form RC3056/1-DGSS relating to the listing of employees encompassed and indication of measures applied (annex available at http://www.seg-social.pt/documents/10152/16889124/RC3056_1.xlsm/863c52c1-55f1-48c0-9f76-4bd0b0fca3e9).

[72] Except where it relates to an employer for which the suspension or reduction measure is ordered in the context of the company declaring itself in a difficult economic situation or in the process of company recovery.

[73] Or sixty days following application of the measure in the event of the measure having been applied for longer than six months.

[74] Under penalty of the company being required to return the assistance received - for the employee whose contract has ended - on which interest may be due, and incurring a serious administrative offence.

IV.H. Temporary closure of the company/establishment or temporary reduction in activity due to force majeure or employer's decision (apart from situations of business crisis) - Article 309 of the CT

There are several cases of companies who have been required to close or reduce their activities temporarily, in particular, by legal order[(75)], and such closure may also result from a decision by the health authority. Under the framework of Decree-Law 10-G/2020, these cases fall under business crisis and allow for the implementation of the measures of suspension of employment contracts and/or reduction of working time, and access to the extraordinary assistance to maintain employment contracts, regulated by Decree-Law 10-G/2020. There could, however, be companies that are again driven to closure or temporary activity reduction to due force majeure (which is not a business crisis for the purposes of the simplified lay-off scheme, nor for CT lay-offs, because they do not meet all the requirements for resorting to that measure). Decree-Law no. 10-G/2020 clarifies that the measures it introduces and regulates do not affect the system under the CT in relation to a temporary reduction in normal working time or suspension of the employment contract for reasons relating to the employer or which could include the CT lay-off described above, or the closure or temporary decrease in activity (which is not a business crisis) due to force majeure mentioned in the following section[(76)].

(75) See the cases resulting from Decree 2-C/2020 (and, previously, from Decree 2-B/2020 and Decree 2-A/2020), which regulated the extensions (and, initially, the declaration) of the state of emergency by the Portuguese President.

(76) The now repealed Ordinance no. 71-A/2020 also established that other circumstances of temporary closure or temporary decrease in company activity occurring while it was in force "but which are not the result of a business crisis" would be governed by the rules set out in Article 309(1)(a) of the CT.

Handling of temporary closures of the company or premises or temporary reduction in activity due to *force majeure* that does not constitute a business crisis - Article 309(1)(a) of the CT

Topic	Background / Recommendations
Temporary closure of the company or premises or temporary reduction in activity due to force majeure (not constituting a business crisis)	**1. Effects on employee salary** For these cases, the CT provides that employees have the right to receive 75% of their salary.
	2. Social Security Assistance (not applicable) For these cases, none of the amounts to be paid by the company will be borne by the Social Security In cases where the full or partial closure of the company or premises is decided by the company, due to conditions not allowing regular activities do be maintained in view of the SARS-CoV-2 pandemic, it seems to use that, despite the closure being a direct result from a company's decision to close, this will still qualify as closure due to *force majeure*. In such cases, however, a case by case analysis is recommended for clear conclusions. Likewise, in these cases, it appears that to be able to move from paying the full salary to paying 75% of the salary, the company will have to have notified the employees of the suspension of their employment contracts as a result of the closure or temporary reduction in the activity of the company or premises (which cannot be categorised as a business crisis) due to *force majeure*.

Topic	Background / Recommendations
	Even in cases where the company has been aided under Article 309(1)(a) of the CT by paying 75% of salary, it appears to us that it would be possible, at a later date, to resort to the assistance provided in Decree-Law no. 10-G/2020 (simplified lay-off) or to the conventional lay-off provided and regulated in the CT to the extent that the situation evolves to meet the requirements for "business crisis" situation as defined, respectively, in the relevant systems, and other requirements for applying the measures and accessing the assistance provided in each case.

DISMISSAL MEASURES

Topic	Background / Recommendations
Dismissals	Under simplified lay-off, the dismissal of an employee (unless due to a fact attributable to them) is considered a breach by the employer of the obligations relating to the extraordinary assistance from which it benefits, under which the company is prohibited from terminating employment contracts by collective dismissal or redundancy, throughout the duration of the lay-off aid and the 60 days subsequent to the lay-off measure end[(77)]. Under the lay-off set out in the CT, the employer may not terminate the employment contract of an employee covered by these measures (except in the case of the end of a service commission, end of a fixed-term contract or dismissal due to a fact attributable to the employee) - but in this case, during the term of the lay-off measures and in the 30 or 60 days following application of the measures, depending on the duration of the lay-off. The impossibility of terminating employment contracts under these measures is related to their rationale, which aims to maintain the largest number of employment contracts possible. However, the scope of the prohibition is broader in simplified lay-offs. Apart from these cases and the time frame, the employer does not seem to be prevented from terminating employment contracts in one of the ways set out in law. It should be noted that the rules on terminating employment contracts are mandatory and remain unchanged in the current pandemic context. In this regard, it should also be noted that, following the extension of the state of emergency, the Government increased the means and powers of the ACT in relation to dismissals, keeping this reinforcement for the further state of emergency renewal period[(78)]. Whenever the ACT considers that there are signs of unfair dismissal, it records it and notifies the employer to "*rectify the situation*".

(77) *Cfr.*, Article 13 of Decree-Law no. 10-G/2020 in the wording corrected by Correction Statement no. 14/2020.

(78) Currently, this reinforcement of powers is provided for and regulated by article 8-C of Law 1-A/2020 and introduced by Law 14/2020.

DISMISSAL MEASURES

Topic	Background / Recommendations
	When the employer has been notified and until the situation is rectified (or definitive judicial ruling handed down in the action that examines the dismissal)[79], the employment contract in question is not terminated and the parties retain all their rights, particularly the right of the employee to receive pay, whereby the dismissal is suspended[80][81].

IV.I. Employee's health status

In light of the COVID-19 pandemic, the field of the employee and their respective rights and duties has changed in order to comply with the current public health requirements and recommendations. As such, this chapter aims to answer questions related to employees, in the event of COVID-19 infection or prophylactic isolation[82].

[79] Article 8-C of Law 1-A/2020 clarifies that the competence for legal action, which the legislator has in mind, is on the labour courts.

[80] We believe that the legislation refers to the dismissal of any employee and not only employees encompassed by the exceptional temporary measures created in the context of the pandemic, particularly lay-offs.

[81] "The understanding of the Portuguese Bar Association is that Article 24(1) and (2) of this legislation, relating to the increased means and powers for the Authority for Working Conditions (ACT), by allowing an administrative authority to declare dismissals suspended, is unconstitutional because it violates the competence of the Employment Courts, which has the power, under Articles 33-A *et seq.* of the Employment Procedural Code, to judge interlocutory injunctions to suspend dismissals. Since this is an urgent action, in which fundamental rights are at stake, it is not affected by the suspension of court proceedings decreed as a result of the state of emergency" (*Cfr.* Communication of 3 April 2020 from the Executive Committee of the Bar Association's General Council).

[82] The exceptional and temporary measures established in response to the epidemic by Law 7/2020 includes the suspension of the ability to collect fees due for using and making payments through digital platforms from payment service providers (e.g., home banking) from people who are in prophylactic isolation or quarantine or who are looking after children or grandchildren (under the terms established by Decree-Law 10-A/2020), from employees covered by lay-off, from the unemployed (registered with IEFP), from independent workers eligible for extraordinary assistance due to reduction of economic activity (also under Decree-Law 10-A/2020) and, furthermore, from employees of entities whose establishment or business has been specifically closed during the state of emergency, by those involved submitting documents demonstrating the occurrence of one of the above situations to payment service providers.

Topic	Background / Recommendations
Obligation for employee to inform employer in the event of COVID-19 sickness	The CT states that employees have the right to privacy, which specifically covers access to and disclosure of matters relating to their state of health. However, given that the pandemic has been announced by the World Health Organisation, and that employees are required to cooperate for the improvement of occupational safety and health, we consider it justifiable for employees to be required to inform their employer in the event of COVID-19 sickness[83].

[83] *Vid.* for more information on this subject, *supra* "Provision of information by employee in the event of travel to "critical" areas and/or about their state of health" in the chapter on **Employer obligations on OSH**, as well as Chapter VI.B "Processing of personal data in the employment context: lawfulness" *infra*.

Topic	Background / Recommendations
COVID-19 sickness	In the event of COVID-19 sickness, the general employment and social security rules apply to employees, with the most important aspects listed below. • **Measures:** *(i)* Justified absences; *(ii)* Suspension of the employment contract, when absence lasts for more than one month or from the time when this becomes likely. • **Financial effect of measures:** *(i)* Justified absences – imply loss of salary; *(ii)* Suspension of the employment contract - granting of sickness benefit, paid by the Social Security, the amount of which will vary between 55% and 75% of the reference salary amount, with the specific point in relation to the general rules that this benefit is paid from the first day of absence and not from the third day, as occurs under the general rules. • **Duration:** The sickness benefit may only be granted for a maximum of 1095 days. • **Procedure:** Issuance of certificate of temporary incapacity for work, in addition to the requirement in the previous point of informing the employer. The process follows the general rules on communication and evidence as set out in the CT.
Prophylactic isolation due to risk of infection	• **Background:** Prophylactic isolation is confirmed when there is a serious risk to public health, announced by the entities holding health authority powers. This situation is equivalent, for all proper legal purposes, to sickness with the necessary consequences in terms of granting the respective sickness benefit. • **No possibility of teleworking or distance training:** If employees cannot do their job by teleworking or distance training, the absences are considered justified with loss of salary. The Social Security grants sickness benefit in an amount corresponding to 100% of salary, which is paid from the first day of isolation for a duration of 14 days. The right to sickness benefit does not depend on confirming the qualifying period, the paid work done and the certificate of temporary incapacity for work, since it is not subject to a waiting period. Statements to take into consideration: *(i)* Statement for prophylactic isolation to be issued by the Health Authority (form at http://www.seg-social.pt/documents/10152/16819997/GIT_70.docx/e6940795-8bd0-4fad-b850-ce9e05d80283); *(ii)* Statement to be issued by the employer and sent to social security (form at http://www.seg-social.pt/documents/10152/16810094/GIT_71/60e25aa1-0ea0-4bfd-ae90-a3b6bcba9b14).

Topic	Background / Recommendations
	Additional note: if, during or after prophylactic isolation, an employee develops symptoms which culminate in a COVID-19 diagnosis, they will be covered by the sickness scheme (including for the purposes of determining the level of sickness benefit and its duration), and the benefit for prophylactic isolation will cease. • **Teleworking or distance training:** The possibility of teleworking or distance training is not covered in Decree-Law no. 10-A/2020. This possibility is only referred to in Order no. 2875-A/2020, which provides that sickness benefit is not granted to employees who are able to do their job by teleworking or distance training. As such, in the case of prophylactic isolation and when employees can do their job by teleworking or distance training, the employer must pay their salary, as their employment contract subsists. See point above on teleworking.
Exceptional protection regime for immuno-depressed and chronically ill persons	• **Framework** Immuno-depressed persons and persons with chronic disease who, according to the guidelines of the health authority, should be considered at risk, in particular cardiovascular patients, persons with chronic respiratory disease, cancer patients and persons with renal insufficiency. • **Special regime for work absences** In accordance with article 25-A of Decree-Law 10-A/2020, as amended by Decree-Law 20/2020 and effective as of 03-05-2020, employees with the illnesses referred to in the previous paragraph may justify their absence from work, by means of a medical declaration, as long as they cannot carry out their activity in a teleworking regime or through other forms of activity. This medical declaration must certify the worker's health condition that justifies his/her special protection[84]. This special regime does not apply to employees of essential services provided for in article 10 of Decree-Law 10-A/2020.
Risks	
The risks related to the measures listed in this chapter are predominantly linked to the possibility of interpretative divergences by the Social Security which could culminate in the described allowances and assistance not being granted or in the requirement to repay assistance granted.	

[84] These rules do not regulate any other effect other than qualifying this absence as justified, nor do they regulate the granting of any allowance for this situation. On the basis of the existing rules on justified absences contained in the CT, it seems that we will be in the presence of a justified absence which, as long as it does not exceed 30 days per year, will not determine the loss of salary by the employee (cf. article 255, paragraph 2, subparagraph d) of the CT).

IV.J. Caring for third parties

In light of the COVID-19 pandemic and the recent Declaration of a State of Emergency, a number of legislative changes have been introduced to protect employees in order for them to be able to comply with current public health requirements and recommendations, as well as measures to prevent infection and spread of the disease. Therefore, this chapter aims to answer questions related to the assistance that employees must provide, in the event of COVID-19 infection of their children or relatives, the prophylactic isolation of these family members and looking after children due to the suspension of school and extracurricular activities and learning.

Topic	Background / Recommendations
Sickness of minor child or other relative	• **Background:** This topic includes the following: *(i)* Sickness of minor child; *(ii)* Sickness of minor grandchild; *(iii)* Sickness of adult child, collateral relative or family member to the second degree of kinship, who is part of the employee's household; *(iv)* Sickness of spouse or person cohabiting under a civil partnership or shared household economy with the employee; *(v)* Sickness of lineal ascendant relative or family member (parents, grandparents). • **Measure:** Employee absences for the reasons of sickness indicated in the previous point must be considered justified absences. • **Financial effect:** These justified absences imply the loss of salary. However, the Social Security offers a general allowance for caring for a child or grandchild. • **Duration:** Up to 30 days off work per year are allowed in order to look after a child (or, otherwise, parents or grandchildren) under 12 years old or, regardless of age, with chronic illness or disability and while hospitalised. In other circumstances (see other situations listed above in the point on background), up to 15 absences may be given per year. • **Procedure:** To justify these absences, a Certificate of Temporary Incapacity for Work or declaration from a private doctor must be issued alongside completion of application form RP5052–DGSS (form at *http://www.seg-social.pt/documents/10152/38600/RP_5052_DGSS/5daaf7be-c2fc-4b11-86e0-eac57b462401*).

Topic	Background / Recommendations
Monitoring of prophylactic isolation due to risk of infection of a child or other dependent	• **Background:** This topic covers looking after the prophylactic isolation of a child or dependent of the employee, including children under 12 years old or, regardless of age, with a disability or chronic illness, and the employee being unable to work. • **Measure**: Employee absences for the reasons of sickness indicated in the previous point must be considered justified absences. • **Financial effect:** These justified absences imply the loss of salary. However, the Social Security grants an allowance for looking after a child or grandchild (*i.e.*, children under 12 years old or, regardless of age, with a disability or chronic illness). • **Duration:** Up to 14 days. • **Procedure:** To explain these absences, a Health Authority Statement must be issued (form at http://www.seg-social.pt/documents/10152/16819997/GIT_70.docx/e6940795-8bd0-4fad-b850-ce9e05d80283). According to the Social Security website, the beneficiary must complete the form and attach the supporting documents via the Social Security Direct platform. • **Additional note:** If, during or after the prophylactic isolation, the minor or other dependant, as defined above, develops symptoms which culminate in a diagnosis of COVID-19, the employee will become covered by the regime for looking after children or grandchildren, in the case of illness, and the allowance for prophylactic isolation will cease.
Looking after child due to closure of educational establishment - Article 22 of Decree-Law no. 10-A/2020	• **Background:** **Assessment made under Article 22 of Decree-Law no. 10-A/2020.** Need to look after child under 12 years old, or regardless of age with a disability or chronic illness, due to the suspension of on-site school and extracurricular activities at a school or social assistance facility for early childhood[(85)] or disabilities, by order of the Government or health authority. The Government has already decided to close educational establishments.

[(85)] Article 6 of Law 7/2020 establishes an equivalence between **nurseries** and **social security-registered childminders**, for the purpose of applying the financial assistance set out in Articles 23 (employees) and 24 (independent workers) of Decree-Law 10-A/2020.

Topic	Background / Recommendations
	• **No possibility of teleworking or distance training:** If employees cannot do their job by teleworking or distance training, the absences are considered justified with loss of salary. They are granted financial assistance corresponding to 2/3 of their base salary[86], paid for in equal part by the employer and the Social Security[87], at a minimum corresponding to the RMMG and the maximum of three times this (EUR 635 and EUR 1905, respectively[88]. This amount is subject to employer contributions to Social Security reduced by half, and employee contributions. The Social Security portion is delivered to the employer who then pays the full assistance amount to the employees. Financial assistance granted to only one parent, regardless of the number of children. It should be noted that, in accordance with the information on the social security website, if one parent is teleworking, the other may not benefit from this exceptional assistance. This financial assistance will be provided during the period of closure, not including school breaks[89] (*e.g.*, Easter holidays). This assistance cannot be combined with the assistance set out in Decree-Law 10-G which regulates the "simplified lay-off" scheme. **1) The specific case of domestic workers:** In this case, the value of the assistance is two-thirds of the salary recorded for January 2020, using the limits referred to above, with one third paid by Social Security and the employers being required to: (*i*) pay one third of the salary; (*ii*) state the working hours and normal salary declared for the employee, regardless of the partial suspension of actual payment; (*iii*) pay the corresponding contributions. Procedures/Statements to take into consideration: *(i)* Absence notification by employee, five days in advance where expected, or as soon as possible otherwise (form available at http://www.seg-social.pt/formularios). *(ii)* Application by the employer, which will be granted automatically.

(86) Under Ordinance 94-A/2020, the base remuneration declared in March 2020 referring to February 2020 will be the relevant base remuneration to be taken into account or, when no such base remuneration declared, the RMMG.

(87) Unless the employer is public, except for the state corporate sector.

(88) Ordinance 94-A/2020, clarifies that in cases where the employee works for more than one employer the "*maximum limit* (...) *applies to the sum of the base remunerations paid by the different employers and the support is divided between the employers on a prorated basis*" (article 2, paragraph 2).

(89) Periods of school interruption are those set in Annexes II and IV to Order no. 5754 -A/2019, published in the Diário da República, 2nd series, no. 115, of 18 June, or those defined by each school under the option detailed in Article 4(5) of Ordinance no. 181/2019 of 11 June.

Topic	Background / Recommendations
	(iii) This exceptional assistance must be reflected on the individual remuneration return to the Social Security[90]. Additional questions: *(i)* **If the child is over 12 years old, is the employee entitled to this exceptional assistance?** In this situation, the exceptional assistance is only granted if the child has a chronic illness or disability. *(ii)* **Are these days included in the statutory limit of 30 days per year for caring for children?** Given that this is a special scheme provided for the current situation and that it entails exceptional assistance for parents who have to look after children, due to the closure of educational establishments by order of the government, it seems to us that these absences should not be included in the limit of 30 days per year. It should be highlighted that Decree-Law no. 10-K/2020 (see following point) expressly states that the absences indicated in Article 2 of this statute do not count towards the annual limit set out in Articles 49 and 50 of the CT. • **Teleworking or distance training:** In the event of school closures and if employees can do their job by teleworking or distance training, the employer must pay their salary, as their employment contract subsists. See point above on teleworking.
Other justified absences[91]	• **Background:** **Assessment made under Article 2 of Decree-Law no. 10-K/2020.** Notwithstanding the provisions of Article 22 of Decree-Law no. 10-A/2020, the following are also considered to be justified absences: *(i)* Those motivated by looking after a child or other dependent under 12 years old or, regardless of age, with a disability or chronic illness, as well as a grandchild who lives in the same household as the employee and is the child of an adolescent under 16 years old, **during the periods of school interruption** set out in the applicable statute or defined by each school[92], as applicable; *(ii)* Those motivated by looking after a spouse or person cohabiting under a civil partnership or shared household economy with the employee, parent or similar direct line ascendant for whom the employee is responsible who attends social facilities which are closed by order of the health authority of by the Government, provided that it is not possible for support to continue through an alternative social solution;

[90] Employee contributions for social security (at the general rate of 11%) and 50% of the employer's contribution for social security (at the general rate of 23.75%) apply to the assistance paid.

[91] Article 2 of Decree-Law no. 10-K/2020.

[92] Periods of school interruption are those set in Annexes II and IV to Order no. 5754 -A/2019, published in the *Diário da República*, 2nd series, no. 115, of 18 June, or those defined by each school under the option detailed in Article 4(5) of Ordinance no. 181/2019 of 11 June.

Topic	Background / Recommendations
	(iii) Those motivated by the provision of aid or transport, within the COVID-19 pandemic, by volunteer firefighters with employment contracts with employers in the private or social sectors, who have been demonstrably called up by the respective firefighting departments - in this situation, the chief of the respective firefighting department issues a duly signed, written document, demonstrating the days on which the volunteer firefighters worked, the salary for which is paid by the National Authority for Emergency and Civil Protection. If employees cannot do their job by teleworking or distance training, absences are considered justified, not requiring the loss of any rights except that of salary[93]. Employees must notify employers of absences as required by Article 253 of the CT. It should be noted that these absences are not included in the annual limit set out in Articles 49, 50 and 252 of the CT. • **Possibility of scheduling holidays:** In the circumstances set out above in points (*i*) and (*ii*), the employee may schedule holidays, without the need for the agreement of the employer, by written notification two days before the start of the holiday period. In terms of the practical consequences of scheduling holidays, it should be noted that during this holiday period, the same salary for the period is payable as the employee would receive if they were at work. With regard to the holiday allowance, Article 264(3) of the CT does not apply (*i.e.*, payment of holiday allowance before the start of the holiday period and proportionally if staggering holidays taken), and the holiday allowance may, in this case, be paid in full up to the fourth month following the start of the holidays taken. • **Teleworking or distance training:** If employees can do their job by teleworking or distance training, the employer must pay their salary, as their employment contract subsists. See point above on teleworking. • **Additional note:** This exceptional regime does not exclude the applicable of a more favourable provision in the CT, in specific legislation or in an applicable collective working regulation.
Risks	
The risks related to the measures listed in this chapter are predominantly linked to the possibility of interpretative divergences by the Social Security which could culminate in the described allowances and assistance not being granted or in the requirement to repay assistance granted.	

[93] The Decree-Law does not provide for extending the assistance to school holidays.

IV.K. Special case of "essential services" workers

In light of the COVID-19 pandemic, the rights and duties of a specific group of workers have been enshrined, named Essential Services Workers. Therefore, this chapter aims to answer questions related to this group of workers, pursuant to subsequent updates.

Topic	Background / Recommendations
Essential Services Workers	• **Background:** In accordance with Article 10 of Decree-Law 10-A/2020 and among others, essential services workers correspond to health professionals, members of security forces and services and emergency services, including volunteer firefighters, as well as the armed forces, key public service workers, and workers in social institutions and equipment to support the elderly such as residential homes, day centres and similar[94], essential infrastructure management and maintenance, and other essential service workers whose mobilisation for service or standby prevents them looking after their children or other dependants, following the suspension of school and extracurricular activities and learning. • **Rights related to the suspension of school and extracurricular activities and learning:** Under Article 10 of Decree-Law no. 10-A/2020, among each school grouping, one educational establishment and nurseries must be identified that will look after the children and other dependants of the essential workers listed in the preceding paragraph[95]. It should be highlighted that, in accordance with Decree-Law no. 10-K/2020, these establishments must also guarantee to look after these beneficiaries during periods of school interruption. In addition, under Decree-Law no. 10-K/2020, these essential workers cannot schedule holidays without the need for the agreement of the employer by notification (see option described in the point above), in order to look after a child or others during the period of school interruption, and/or to look after a spouse or person cohabiting under a civil partnership or shared household economy with the employee, parent or similar direct line ascendant for whom the employee is responsible who attends social facilities which are closed by order of the health authority of by the Government, provided that it is not possible for support to continue through an alternative social solution.

(94) Employees of social institutions and equipment to support the elderly such as residential homes, day centres and similar have been added to this list by the amendment introduced by Law 5/2020 of 10 April.

(95) The wording of Article 10 of Decree-Law 10-A/2020 was amended by Decree-Law 12-A/2020, adding the reference to nurseries in addition to educational establishments. This latter legislation also added a provision (Article 10(2)) establishing that "institutions for those with disabilities, including Occupational Activity Centres, notwithstanding the suspension of their activity, must ensure support for those who are responsible for the institution's users and are considered essential services workers, in accordance with the preceding paragraph".

Topic	Background / Recommendations
	It should be noted that, in the special case of health professionals, the rights and duties related to looking after family follow the special rules set out in Order no. 3301/2020, only highlighting, on this basis, that this Order makes distinctions in terms of the professions carried out by the members of the household and the respective consequences of granting the right to look after a child or other dependants under 12 years old, or, regardless of age with a disability or chronic illness. Decree-Law no. 10-K/2020 safeguards the possibility of establishing a specific regime for health professionals which accommodates the possibility of looking after a dependant who attends social facilities and is not covered by the regime already provided for looking after the families of health professionals (Order 3301/2020) also during school holidays[(96)].
Suspension of limits on maximum number of overtime hours per year, per employee	Under the provisions of Article 6 of Decree-Law 10-A/2020, with the wording given by Decree-Law 12-A/2020, the annual limits on the maximum number of additional or overtime hours per worker as established in the General Employment Law for Public Workers and in the CT have been suspended for all bodies, agencies, services and other entities within the Ministry of Health, the security forces and services, and a selection of other Institutes, Directorates-General and Authorities and entities listed in that legal provision, as well as in private social support institutions, non-profit associations, cooperatives and other entities in the social economy performing essential activities in the social area and health, namely, health services, residential or host structures or home support services for vulnerable populations, the elderly and people with disabilities.

Risks

The risks related to the measures listed in this chapter are predominantly linked to the possibility of interpretative divergences, relating to health professionals, in the suspension of school and extracurricular activities and learning, as a result of applying said Order no. 3301/2020.

(96) This extension is detailed in Ordinance no. 82/2020, which establishes essential services for the purposes of looking after, in educational establishments, the children or other dependents of relevant professionals.

IV.L. Independent workers ("green receipts")

EXTRAORDINARY ASSISTANCE DUE TO REDUCTION OF ECONOMIC ACTIVITY[97]:

- **Requirements**
  Obtaining the assistance depends on confirmation of the following cumulative requirements:

(i) Being covered exclusively by the system for independent workers (i.e. not applicable to employees under the cumulative system) and not being a pensioner;
(ii) Being subject to pay contributions for at least three consecutive or six interpolated months for at least the last 12 months; and
(iii) Being under the following circumstances:

  a. demonstrable complete stoppage of work or of the activity of the respective industry, as a result of the COVID-19 outbreak; or
  b. abrupt and significant fall of at least 40% in turnover in the 30 days prior to the request to the social security services, with reference to the monthly average for the two months prior to this period, or the same period in the previous year (or, for those who have less than 12 months activity, the average for this period).

  The circumstances above are attested by self-declaration on word of honour, or by the certified accountant (if under the organised accounting scheme).

  It should also be noted that this assistance was also recently granted, with the necessary adjustments, to managing directors of companies, as well as members of the governing bodies of foundations, associations or cooperatives with equivalent duties, but not to employees, who are exclusively covered by social security schemes in that capacity, and which, in the previous year, have reported a turnover of less than EUR 80,000[98][99][100] via the e-fatura electronic billing system. In this case – under the rules implemented by Ordinance 94-A/2020 – the relevant remuneration upon which to calculate the support will be the base remuneration declared in March 2020 referring to the month of February 2020 or, where no such remuneration was declared, an amount equivalent to the IAS.

- **Financial assistance**
  While this measure is in force, independent workers are entitled to financial assistance corresponding to:

(i) the recorded taxable wage base, with the limit of one IAS (EUR 438.81), in cases where the recorded taxable wage base is lower than 1.5 IAS; or
(ii) two thirds of the recorded taxable wage base, with the maximum limit of the RMMG, in cases when the recorded wage is equal to or greater than 1.5 IAS.

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[97] *Cfr.*, Article 26 of Decree-Law 10-A/2020, recently amended by Decree-Law 12-A/2020 and subsequently amended Decree-Law 14-F/2020 of April 13.

[98] In this case, the support granted depends on the resumption of the activity within eight days (cf. paragraph 13 of article 26 of Decree-Law 10-A/2020, amended by Decree-Law 20-C/2020).

[99] Cfr. paragraph 6 of article 26 of Decree-Law 10-A/2020, with the wording introduced by Decree-Law 20-C/2020.

[100] When the communication of the elements of the invoices through e-factura does not reflect the totality of the practiced operations subject to VAT, even if exempt, related to the transmission of goods and rendering of services, referring to the period in analysis, the measurement of the limits foreseen therein is made by declarative way, with reference to the turnover, with the respective certification by a certified accountant, and subject to subsequent verification by the social security, within one year from the attribution of the support, based on information requested to the Tax and Customs Authority, giving rise to the eventual restitution of the unduly received amounts (cfr, paragraph 10 of article 26 of Decree-Law 10-A/2020, amended by Decree-Law 20-C/2020).

To calculate this aid – under the rules implemented by Ordinance 94-A/2020 – the relevant remuneration will be equal to the average of the taxable wage base registered in months where remuneration occurred during the 12 month period before the aid request is filed.

In addition to this financial assistance, independent workers will also be entitled to defer the payment of contributions relating to the months in which they are receiving assistance.

Payment of contributions resume on the second month after the end of the assistance measure and may be made over a maximum of 12 months, in equal monthly instalments.

In the cases described under subparagraph (iii) b) above (abrupt and significant fall of at least 40% in turnover) the amount of the financial assistance is multiplied by the percentage of the turnover fall. The turnover fall will be subject to subsequent auditing by the Social Security, within one year following the date on which the financial assistance was granted, on the basis of information provided by the Tax Authority and inaccuracies will cause the company to reimburse amounts received in excess[101].

- **Duration**
  One month, renewable on a monthly basis, up to a maximum of six months. This is paid from the month following submission of the application.

- **Procedure**

(i) Complete the online form to apply for assistance for the independent worker (to be made available by Social Security);

(ii) Record/change the IBAN on the Social Security Direct platform (payment of assistance must be made by bank transfer).

- **Extension**
  The support's extension must be subject to the same conditions as those laid down for the granting of the support, with the assessment of the break in invoicing being reported to the reference period preceding the initial application.

  The extension must be requested monthly, through the Social Security Direct platform.

Notes:

– During payment of the extraordinary assistance, the independent worker remains required to make quarterly returns (when applicable);
– This assistance does not grant an exemption from payment of social security contributions;
– This assistance may not be combined with other supports such as prophylactic isolation, sickness benefit, child or grandchild care allowances and exceptional family support.

EXCEPTIONAL ASSISTANCE DUE TO INABILITY TO WORK IN ORDER TO CARE FOR CHILDREN UNDER 12 YEARS OLD:

- **Requirements**
  Obtaining the assistance depends on confirmation of the following cumulative requirements:

(i) Being prevented from doing their job (with no other way to do the job, *e.g.*, by remote working) because of looking after children or other minor dependants who are under 12 years old, or who have a disability or chronic illness, regardless of age, as a result of the closure of educational establishments;
(ii) Having been required to meet contributory obligations for at least three consecutive months in the last 12 months.

[101] Article 26, paragraphs 8 and 9 of Decree-Law 10-A/2020, as amended by Decree-Law 14-F/2020 of April 13.

Notes:

– This support may be applied for by both parents, but is not cumulative in overlapping periods;
– If one parent is under teleworking regime, the other parent cannot benefit from this exceptional support.

- **Financial assistance**
  Corresponding to one third of the monthly contribution basis amount relating to the first quarter of 2020, with a minimum limit of EUR 438.81 (one IAS) and a maximum limit of EUR 1097.03 (2.5 IAS), and cannot exceed, in any case, the amount of the registered taxable remuneration.

  Note: the assistance is subject to quarterly income returns, and subject to the corresponding social contribution.

- **Duration**
  During the period in which the closure of school is decreed, except if it coincides with school holidays.

  The assistance is provided automatically after the application from the independent worker and should be applied for monthly.

- **Procedure**
  Complete the online form to apply for assistance for the independent worker.

SICKNESS BENEFIT DUE TO PROPHYLACTIC ISOLATION:

In the case of prophylactic isolation motivated by the serious risk to public health ordered by the Health Authority, the independent worker benefits from the protection set out for employees, *i.e.*, they will receive sickness benefit corresponding to 100% of salary for the 14 day isolation period.

For this purpose, independent workers must:

(i) Complete the GIT71-DGSS form referred to *supra*[102], with their personal details;
(ii) Send the form referred to in (*i*) and the declaration of prophylactic isolation issued by the health representative, through the Social Security Direct platform, using the subject: "COVID19 – Declaration of prophylactic isolation for employees".

EXTRAORDINARY MEASURE TO ENCOURAGE PROFESSIONAL ACTIVITY[103]:

- **Requirements**
  Obtaining this assistance depends on confirmation of the following cumulative requirements:

(i) Being covered exclusively by the system for independent workers in March 2020;
(ii) Being under one of the following situations:

  a) Having been in business for more than 12 months and do not being eligible to obtain extraordinary assistance due to reduction of economic activity;
  b) Having been in business for less than 12 months; or
  c) Being exempted from contributions according to article 157, paragraph 1, subparagraph d) of the Code of the Contributory Regimes of the Protection Systems of Social Security.

- **Financial assistance**
  The amount is calculated in accordance with paragraph 1 of article 162 of Code of

[102] According to the guidelines provided by the Social Security in the document "Exceptional measures for the Covid-19 crisis - How to access", independent workers must complete the same form made available to employers for their employees, attaching their own personal details.

[103] Recently, article 28-A of Decree-Law 10-A/2020, added by Decree-Law 20-C/2020, extended the scope of protection for independent workers by introducing this new extraordinary measure.

the Contributory Regimes of the Protection Systems of Social Security[104], based on the average of the invoicing reported for tax purposes between March 1, 2019 and February 29, 2020[105], having as maximum limit half of the IAS (EUR 219.40) and as minimum the corresponding to the lowest base value of the minimum contributory base.

- **Duration:**
  One month, extendable monthly up to a maximum of three months.

- **Note:**
  The application for this support determines that the framework for independent workers takes effect or the exemption terminates from the month following the end of the support.

[104] "The relevant income of the independent worker shall be determined on the basis of the income obtained in the three months immediately preceding the month of the quarterly declaration, as follows:

a) 70 % of the total value of services provided;
b) 20 % of income from the production and sale of goods".

[105] The value of the average invoice that determines the calculation of the support is communicated by the Tax and Customs Authority to Social Security.

IV.M. Social security contributions and payments

Topic	Background / Recommendations
Exceptional and temporary scheme for complying with social security contributions - Articles 3 and 4 of Decree-Law no. 10-F/2020[106]	**Deferred payment of contributions payable by employers and independent workers** • **Scope of application** Employers in the private and social sectors are entitled to defer social contribution payments, if they: *(i)* have fewer than 50 employees; *(ii)* have a total of between 50 and 249 employees, provided that they demonstrate a fall of at least 20% in e-billing turnover in March, April and May 2020, compared to the same period in the preceding year or, for those who have not been operating for 12 months, the average for their operating period; *(iii)* have a total of 250 or more employees, provided that they demonstrate a fall of at least 20% in e-billing turnover in March, April and May 2020, compared to the same period in the preceding year or, for those who have not been operating for 12 months, the average for their operating period, and meet one of the following requirements: a. corresponds to a private social solidarity institution or equivalent; b. corresponds to an employer whose activity is within a sector closed under the Government Decrees that have regulated the successive state of emergency periods[107], or in the tourism or aviation sectors, which have been effectively closed (or, relating to an establishment effectively closed); or

[106] In the case of Article 3, with the wording given by Declaration of Rectification 13/2020.

[107] Decrees 2-A/2020, 2-B/2020 and 2-C/2020.

Topic	Background / Recommendations
	c. corresponds to an employer whose activity has been suspended, by legislative or administrative resolution, pursuant to Decree-Law 10-A/2020 or under the Civil Protection Framework Law or the Health Framework Law, and has been effectively closed (or relating to facilities effectively closed). *(iv)* Independent workers. The number of employees is measured by reference to the remuneration return relating to February 2020. Beneficiary employers may be inspected at any time by the competent public bodies, and must provide evidence of the reasons on which their award depends, as well as confirming electronically with the AT. • **Payment deadlines** Contributions to be paid by the employer, due in March, April and May 2020, may be paid under the following terms: a) One third of the value of the contributions must be paid in the month in which it is due; b) The remaining two thirds can be paid in equal and successive, interest-free instalments, according to the two following alternatives: *(i)* July, August and September 2020; or *(ii)* July to December 2020. Deferment of the contributions payable by independent workers applies to April, May and June 2020 and the contributions may be paid under the terms detailed above. **Notes:** – For employers who have already paid all contributions due in March 2020, the deferment will start in April 2020 and end in June 2020; – Nothing prevents employers making full payment of the contributions due; – Employers who have not paid 1/3 of the contributions due in the first month of joining the measure (March or April) and who immediately pay this amount plus default interest maintain the right to deferment of payment of contributions[108]. • **Procedure** Deferment of contribution payments is not subject to formal request. Employers need only pay the contributions on behalf of the employee and 1/3 of the employer contributions in the months covered by the deferment. In July 2020, employers should indicate which payment schemes - equal instalments over 3 months or over 6 months - they intend to use on the Social Security Direct platform.

[108] Cfr. paragraph 2 of article 9 of Decree-Law 10-F/2020, in the wording introduced by Decree-Law 20-C/2020.

Topic	Background / Recommendations
	Requirements relating to invoicing should be documented by the employer during July 2020, together with a certificate from their certified accountant. • **Default** Failure to pay the one third of the value of the contributions, in the month in which it is due, or to pay the contributions on behalf of the employee, will lead to immediate termination of the benefit. Failure to meet the requirements for deferment of contribution payments will lead to all outstanding payments becoming due immediately, and the interest waiver will terminate.
Automatic renewal of unemployment benefits and other social assistance - Article 6 of Decree-Law 10-F/2020	Unemployment benefits and all other social security system benefits which ensure a minimum standard of living, are extraordinarily renewed until 30 June 2020[109]. Ordinance 94-A/2020 clarifies that such renewal is automatic and applies to benefits ending in March or any of the following months of April, May or June 2020[110]. Reassessments of the conditions for maintaining these benefits are also suspended until the same date.
Extension of the scope of social unemployment benefit – Article 2 of Decree-Law 20-C/2020	Without prejudice to paragraphs 2 and 3 of article 22 of Decree-Law 220/2006, as currently worded, to be entitled to the initial social unemployment benefit unemployed workers must have, immediately prior to the date of unemployment, at least: a) 90 days of paid work, with the corresponding wage record, in a 12-month period or; b) 60 days of paid work, with the corresponding wage record, in a period of 12 months, in cases where this occurred due to the expiry of the fixed-term employment contract or due to termination of the employment contract by the initiative of the employer during the trial period (these situations are not relevant for the purposes of paragraph 6 of article 24 of Decree-Law 220/2006). The period for granting the initial unemployment social benefit is fixed, regardless of the age or the contributory career of the employee on: Cases of paragraph a) above: 90 days; Cases of subparagraph (b) above: 60 days.

[109] Article 6 of Decree-Law 10-F/2020.

[110] The renewal period will not be taken into account neither in the granting of other unemployment allowances – social unemployment allowance -, nor for relevant equivalence remuneration periods for pension calculation purposes. This means that the exceptional extension of the payment of unemployment benefit has no effect on the duration of the social unemployment benefit, nor is it relevant to the employee's career contribution, thus departing from the normal unemployment benefit regime.

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