

COVID-19

**SUMMARY OF
MAIN LEGAL
INNOVATIONS**
(BRAZILIAN LAW)



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COVID-19

Summary of Main legal innovations (Brazilian Law)

1. **REGULATORY LAW**
2. **LABOR LAW**
3. **MIGRATORY LAW**
4. **TAX RETURNS AND FOREIGN CAPITAL**
5. **CORPORATE LAW**
6. **CONTRACT LAW**
7. **SOCIAL ASSISTANCE**
8. **TAX LAW**

1. REGULATORY LAW

1.1. Suspension of activities

- a) Federal regulation defines the list of essential activities, which cannot be suspended.
- b) Federal, State and Municipal regulations indicate which activities may or may not remain open. It is necessary a specific analysis considering the activity and the applicable legislation to each sector of the activity based on the facts of the situation of the client or interested person.

2. LABOR LAW

2.1. Law n° 13.979/2020 is the general legislation for ruling of the effects of the pandemic.

It permits the realization of measures of isolation, quarantine and the determination of compulsory examination, laboratory tests and specific medical treatments.

2.2. Provisional Measure 927, March 22nd, 2020 (it ceased to be effective on July 19th, 2020, as Brazilian Senate did not convert it in law: established labor measures to face the situation created by the pandemic:

- a) Possibility of amend/negotiate the employment agreement, which would overlap other labor rules, respecting the delimitation of the Constitution;
- b) Work from Home regime with specific rules;

- c) Anticipation of Annual leave;
- d) Mandatory vacation leave;
- e) Use and anticipation of holidays;
- f) Exceptional Working Hours Bank;
- g) Suspension of certain Administrative Requirements for HSE;
- h) Extension of the Collective Agreements and suspension of administrative deadlines procedures;
- i) Not recognizing the coronavirus as work related disease;
- j) Force Majeure.

As the Provisional Measure was not converted in law, general labor rules return to be applied.

2.3. Law 14.020/20, July 6th, 2020 – converses in law **Provisional Measure n° 936, April 1st, 2020** – which established Employment Maintenance Emergency Plan and additional labor rules.

a) 1st Option stated by the Plan: proportional reduction of working hours and wage:

By employer and employee agreement. Reduction of 25, 50 or 75%. The employer pays a reduced wage. Federal Government pays to the employee a complementary benefit, the Job, and Income Preservation Emergency benefit, which the amount varies in accordance with the reduction percent. There is employment guaranty and other detailed rules on the consolidate material.

b) 2nd Option stated by the Plan: temporary suspension of the employment agreement.

The employment agreement would be suspended. Federal Government pays the employee a complementary benefit, variable in accordance with the profit of the company.

c) Procedures for employers to decide between 1st or 2nd options are describes in the Ministry of Economy's website: <https://servicos.mte.gov.br/bem>,

d) Additional labor rules, regarding to prior notice, pregnant workers, handicapped worked etc.

According article 16, Federal Government published decrees to extend the maximum term of proportional reduction of working hours and wage and temporary suspension of the employment agreement. Currently, Decree 15.017, published on October 14th, 2020, which extended the maximum term for 60 days more, totalizing 240 days, limited to the public calamity situation.

2.4. Law 14.043, August 19th, 2020 (conversion of Provisional Measure n° 944, April 3rd, 2020) establishes Emergency Employment Support Program - Bank loan for payroll funding.

- a) For companies with 2019 annual earnings from BRL 360,000 to 10,000,000;
- b) Limit for employee – BRL 2,090 (2times of legal minimum wage). Exceeding amount must be paid by the employer;
- c) Interests rate at 3.75 per year, grace period of 6 months, payment in 36 installments
- d) Companies must not dismiss its employees unjustifiably from the date of approval of the loan to the 60th day after receiving of the last part of the amount.

2.5. Ordinance n° 20, June 19th, 2020, from Labor Special Secretary and Minister of Health - establishes guidelines for prevention, control, and reduction in risk of COVID-19 transmission in workplaces, during the pandemic.

2.6. Revocation, on April 20th, 2020 of Provisional Measure 905/2019, which instituted the Green Yellow Employment Contract and changed several rules of labor law.

3. MIGRATORY LAW

3.1. Closing borders

- a) Restrictions on the entry of foreign individuals, depending on their country of origin and date;
- b) Not applicable to Brazilian citizens.

4. TAX RETURNS AND FOREIGN CAPITAL

4.1. Deferred of the deadline of DCBEs (Declaration of Brazilian Capital Abroad) Annually (to June 1st, 2020) and Quarterly (from June 15th, 2020 to July 15th, 2020) already ended.

5. CORPORATE LAW

5.1. Law 14.050, July 28th, 2020 (conversion of Provisional Measure n° 931, March 3rd, 2020.

- a) Deferred by 3 months of corporate obligations to approve management accounts; profit or loss destination and Managers designation;
- b) Deferred of the term of office of managers and other corporate officers until said meeting / assembly is held;
- c) Unless contrary disposition at the bylaws, competence for the Board of Directors to resolve on urgent matters within the competence of the General Assembly;
- d) For corporate acts celebrated until February 16th, 2020, the register period of 30 days will be counted only from the date on which the Board of Trade restores the regularity of its services;

- e) Possibility of one of the Partners, in limited liability companies and in companies, to participate and vote remotely in Assemblies and Partners Meetings.

6. CONTRACT LAW

6.1. Impacts on business agreements. Main aspects.

- a) Parties must collaborate in order to protect the agreement;
- b) Only Pandemic is not enough as a cause neither to agreement termination or renegotiation nor to exempt liability from breach of contract;
- c) If the agreement could not be fully preserved, revision must be applied in the minimum extension;
- d) If revision could not be applied, there are two theories: (i) Force Majeure or (ii) excessive burden;
- e) In M&A operations, pay attention to MAC clauses (*Material Adverse Change*) or MAE clauses (*Material Adverse Effect*) – to events occurred between signing and closing. In operations already terminated or agreed in stages, a case by case analysis is necessary;
- f) The party aggrieved by the default must act to mitigate its own damages, in order to avoid the indemnity to be paid by the other party be unproportionally increased;
- g) Brazilian Courts tend to decide for agreement maintaining even if hard facts had interfered in the debtor's situation.

6.2. Law 14.010/20, June 10th, 2020 – establish **Emergency and Transitional Legal Regime of the Private Law Legal Relations – RJET**, which includes the following:

- a) Suspension of statute of limitations from June 10th to October 30th, 2020;
- b) The effects of the pandemic on the contracts will not be retroactive, that is, the contracts should not be revised or reevaluated prior to the moment they were impacted by the consequences of the pandemic and, certainly not before March 20th, 2020, the initial term of the effects of Covid-19 set by the Law referred to above.
- c) In inter-company relations, it will not be considered unpredictable facts the increase in inflation, exchange rate variation, devaluation, or substitution of the monetary standard, and it must be applied to the pandemic already well-established jurisprudential understandings;

- d) Suspension of customer rights which allow to return in up to 7 days perishable products or medicines acquired online;
- e) Postpones LGPD (Brazilian GDPR) coming into force from August/2020 to August/2021, about administrative sanctions.

6.3. Credit lines offered by the Government to companies to face the pandemic:

a) Payroll – BNDES – according to MP 944

Subject: Credit operations with companies to pay the payroll.

Reach: Companies with annual gross revenue between BRL 360k and BRL10million in 2019.

Financing allocation: Payment of 2 months of payroll, limited to the value of 2 minimum wages per employee,

b) Credit for medium-sized companies - BNDES

Subject: Credit operations with companies for working capital.

Scope: **I)** Micro and small companies and individual entrepreneurs; **II)** medium-sized companies with revenues up to BRL 90 million; **III)** medium-sized companies with revenues between BRL 90 million and BRL 300 million.

Funding allocation: Maintenance and / or job creation.

c) Suspension of payments for non-automatic and mixed indirect operations - BNDES

Object: Temporary suspension of up to 6 months of loan repayments with BNDES, in direct and indirect modalities, for companies affected by the crisis. There are exclusions defined by the Bank.

d) Suspension of payments for direct and mixed operations (direct sub-credits) - BNDES

Subject: Temporary suspension of up to 6 months of amortization of loans contracted with BNDES, in direct and indirect modalities, for companies affected by the crisis. There are exclusions defined by the Bank.

e) Emergency line for the health sector - BNDES

Subject: Emergency loan to increase the supply of goods and services in the health sector, to meet the needs of assistance to victims of the coronavirus pandemic. There are requirements defined by the Bank.

f) Working capital and microcredit - BRDE (Recupera Paraná)

Subject: Credit operations with micro, small and medium-sized companies for working capital and microcredit.

Scope: Individuals, Municipalities and legal entities of all sizes engaged in economic activity in the Southern Region of Brazil or in the State of Mato Grosso do Sul. There are exclusions defined by the Bank.

g) Working capital and microcredit - Fomento Paraná (Recupera Paraná)

Subject: Emergency working capital credit lines for maintaining salaries and jobs in informal ventures, MEI, micro and small companies affected by the effects of coronavirus on the economy of Paraná.

Scope: Informal entrepreneurs, MEI, micro and small companies.

7. SOCIAL ASSISTANCE

Social “Corona Voucher” Program – Law nº 13.982/20 and Provisional Measure 1.000/20 institute the emergency aid for low-income people during the pandemic of COVID-19.

- a) Monthly total amount of R\$ 600,00 from April to August (emergency aid) and of R\$ 300,00 from September to December (residual emergency aid)
- b) Requirements as legislation.

8. TAX LAW

- 8.1.** Please request our **Chart of COVID-19 Tax Modifications** by e-mail (info@andersenballao.com.br)



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