



EMPLOYMENT AND LABOUR

Coronavirus: Simplified layoff

Assistance to maintain employment contracts in companies facing a proven business crisis.

Ministerial Order 71-A/2020 of 15 March defines and regulates the terms and conditions to award immediate assistance for employers and employees affected by the outbreak of the COVID-19 virus. The assistance is intended to maintain jobs and to mitigate the extreme difficulties that many businesses are now facing. This help is extraordinary, temporary and transitional in nature. The Ministerial Order was published in the official gazette, Diário da República, 1st Supplement, Series I of 15/03/2020. It was then rectified by Declaration of Rectification 11-C/2020 of 16 March and amended by Decree 76 B/2020 of 18 March.

Ministerial Order 71-A/2020 of 15 March ("Order 71-A/2020")¹ approves four immediate extraordinary measures to help employers and employees affected by the outbreak of COVID-19. These measure are:

- a) Extraordinary assistance to maintain employment contracts in companies facing a business crisis, with or without training;
- b) Creation of an extraordinary training plan;
- c) A temporary exemption from payment of the social security contributions payable by the employer; and
- d) An extraordinary financial incentive to support the normalisation of the company's activity.

"It is a temporary measure to provide extraordinary assistance to make it possible to maintain the employment contracts in private companies in a proven situation of business crisis."

Order 71-A/2020 defines and regulates the terms and conditions of the assistance referred to above. It includes a measure inspired by the concept of the layoff, both in structure and in the form and amount of payment. However, it differs from the layoff because it does not lead to the suspension of employment contracts and it has a greatly simplified procedure.

It is a temporary measure to provide extraordinary assistance to make it possible to maintain the employment contracts in private companies in a proven situation of business crisis (including companies in the social sector) that results from one of the following situations:

A complete stoppage in the operations of the business or establishment resulting from a disruption or break in global supply chains, or the suspension or cancellation of orders; or

A sudden and sharp fall of at least 40% in billing in the 60 days prior to application to the Social Security compared with the corresponding period in the previous year or, for those that went into business less than 12 months ago, the average of this period.

1. Extraordinary assistance to maintain employment contracts in a situation of proven business crisis

- o This measure takes the form of help in paying the salaries of employees of companies that fall into any of the situations mentioned above. To receive this help, companies must inform the employees concerned in writing and indicate the expected duration of the interruption in operations. If they exist, companies must also first hear the trade union representatives and the works councils.
- o Order 71-A/2020 has created a mechanism to declare and prove the existence of a crisis. This consists in submitting a certificate from the employer and a certificate from its accountant. Companies that benefit from this measure can be subject to an inspection by the public authorities at any time. If this happens, they must produce documentary evidence to prove the facts on which the application and any renewals of it are based.

¹ Ministerial Order 71-A/2020 of 15 March was rectified by Declaration of Rectification 11-C/2020 of 16 March and amended by Decree 76-B/2020 of 18 March. It came into force following Council of Ministers Resolution 10-A/2020 of 13 March.

- The financial support to be granted to businesses is an amount equal to 2/3 of the employee's gross salary, up to a maximum of 3 x the RMMG (Minimum Monthly Guaranteed Salary), which is €1,905). Of this, 70% is financed by Social Security and 30% by the employer. The support has a duration of 1 month and, exceptionally, it can be extended on a monthly basis up to a maximum of 6 months.
- This support can be combined with a training plan approved by the IEFP, I.P. (Institute of Employment and Professional Training). This includes a training grant of 30 % of the SSI (Social Support Index), which is €131.64, with half for the employee and half for the employer (€65.82 each). The grant and the training costs will be paid by the IEFP, I.P.
- The IEFP, I.P. is responsible for organising the training plan in conjunction with the employer. When possible, this can be given as distance training and it should not exceed 50% of the normal working hours in the period in which it takes place.

"The financial support to be granted to businesses is an amount equal to 2/3 of the employee's gross salary. Of this, 70% is financed by Social Security and 30% by the employer."

2. Extraordinary training plan

- Companies can apply for this support as an alternative to the measure mentioned above. It provides assistance for part-time professional training to be given to each employee covered. It is supported and given by the IEFP, I.P. and the duration is 1 month. It has as a reference the hours of training attended and the upper limit is 50% of the gross salary and it may not exceed the RMMG (Minimum Monthly Guaranteed Salary).
- If they choose to receive this support, employers must inform their employees in writing of the decision to begin a training plan and of its expected duration. They must also send the information immediately to the IEFP, I.P., together with the certificate from the employer and the certificate from its accountant.
- The training plan must correspond to the forms of qualification provided for in the National Qualifications System.

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

- Employers that benefit from the measures provided for in Order 71-A/2020 can apply for this incentive, which amounts to €635.00 per employee and is paid for 1 month.
- To benefit from this incentive, the employer must submit an application to the IEFP, I.P, accompanied by a certificate from the employer and a certificate from its accountant.

4. Temporary exemption from payment of social security contributions

- Companies covered by any of these measures have the right to a temporary exemption from paying the social security contributions payable by the employer. This applies to the employees covered and to the members of the corporate bodies. The right to the exemption is recognised on the basis of the information communicated by the IEFPP, I.P.
- The right to above exemption also applies to self-employed workers who are employers benefiting from the measures and to their spouses. The exemption applies to the contributions relating to the income for the months in which the company benefits from the measures.
- The exemption from payment of contributions means the company has to register the salary by equivalence to the entry of contributions in accordance with the basis of calculation of the social security contribution that is applicable. It does not remove the obligation to submit the quarterly declaration.
- Employers must submit the statements of autonomous remuneration for the employees covered and pay their contributions.
- False declarations to obtain these exemptions mean that the contributions for the period in which the exceptional rules are in place fall due. Employers may also be subject to the application of the other penalties that apply.

"The measures provided for in this Ministerial Order can be enjoyed at the same time as other forms of support. To have access to them, the employer must be able to prove that its payments to the Social Security and to the Tax and Customs Authority are all in order."

The measures provided for in this Ministerial Order can be enjoyed at the same time as other forms of support. To have access to them, the employer must be able to prove that its payments to the Social Security and to the Tax and Customs Authority are all in order.

If the employer fails to meet the obligations required for the support provided for in Order 71-A/2020, the support will end immediately. Moreover, the employer will have to pay or pay back, as applicable, all or a proportion of the amounts already received or exempted.

There will, of course, be other situations of temporary closure or temporary reduction in the activities of companies while this Ministerial

Order is in force, which are not a consequence of the COVID-19 crisis. These other situations will be subject to the provisions of article 309(1)(a) of the Employment Code, which provides that employees in these cases are entitled to 75% of their usual pay.

However, we would draw attention to the fact that the latter situation covers both situations of full and partial suspension of operations.

Besides the points summarised above, it is important to remember that the measures in Order 71-A/2020

(under its article 13) will be subject to internal regulations. These regulations have to be drawn up by each of the public bodies involved and this could result in practical procedures that have to be followed to benefit from the measures.

Order 71-A/2020 came into force on 16 March. ■